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STATUTORY INSTRUMENTS

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**2001 No. 1170**

**EMPLOYMENT TRIBUNALS, SCOTLAND**

**The Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001**

<i>Made</i>	- - - -	<i>23rd March 2001</i>
<i>Laid before Parliament</i>		<i>27th March 2001</i>
<i>Coming into force</i>	- -	<i>18th April 2001</i>

The Secretary of State, in exercise of the powers conferred on him by section 24(2) of the Health and Safety at Work etc. Act 1974<sup>(1)</sup>, sections 1(1), 4(6) and (6A), 7(1), (3) and (5), 9(1), (2) and (4), 10(2), (5), (6) and (7), 10A(1), 11(1), 12(2), 13, 19 and 41(4) of the Employment Tribunals Act 1996<sup>(2)</sup> and paragraph 37 of Schedule 6 to the Scotland Act 1998<sup>(3)</sup>, and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals, hereby makes the following Regulations:-

**Citation and commencement**

1.—(1) These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001 and the Rules of Procedure contained in Schedules 1, 2, 3, 4, 5 and 6 to these Regulations may be referred to, respectively, as—

- (a) the Employment Tribunals Rules of Procedure (Scotland) 2001;
- (b) the Employment Tribunals (National Security) Complementary Rules of Procedure (Scotland) 2001;
- (c) the Employment Tribunals (Equal Value) Complementary Rules of Procedure (Scotland) 2001;
- (d) the Employment Tribunals (Levy Appeals) Rules of Procedure (Scotland) 2001;

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(1) 1974 c. 37; “prescribed” is defined by section 53(1) of the Act as meaning prescribed by regulations.  
(2) 1996 c. 17; by virtue of section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) industrial tribunals were renamed employment tribunals and references to “industrial tribunal” and “industrial tribunals” in any enactment were substituted with “employment tribunal” and “employment tribunals”. Section 4(6) was amended by paragraph 12(4) of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998 and section 4(6A) was inserted by section 3(6) of that Act. Section 7 was interpreted by section 239(4) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), as inserted by paragraph 1 of Schedule 5 to the Employment Relations Act 1999 (c. 26). Section 9(4) was amended by paragraph 15 of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998. Section 10 was substituted, and section 10A was inserted, by paragraph 3 of Schedule 8 to the Employment Relations Act 1999. Section 13(2) was amended by paragraph 4 of Part III of Schedule 4 to the Employment Relations Act 1999.  
(3) 1998 c. 46.

- (e) the Employment Tribunals (Improvement and Prohibition Notices Appeals) Rules of Procedure (Scotland) 2001; and
  - (f) the Employment Tribunals (Non-Discrimination Notices Appeals) Rules of Procedure (Scotland) 2001.
- (2) These Regulations shall come into force on 18th April 2001.

## Interpretation

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

- “the 1975 Act” means the Sex Discrimination Act 1975(4);
- “the 1976 Act” means the Race Relations Act 1976(5);
- “the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992(6);
- “the 1995 Act” means the Disability Discrimination Act 1995(7);
- “the 1996 Act” means the Employment Tribunals Act 1996;
- “Assistant Secretary” means the person for the time being acting as the secretary of a Regional Office of the Employment Tribunals;
- “chairman” means the President or a member of the panel of chairmen selected in accordance with regulation 9(1), or, for the purposes of proceedings in relation to which a direction is given under section 10(3) of the 1996 Act or an order is made under section 10(4) of that Act, a member of the panel referred to in regulation 6(a) selected in accordance with regulation 9(5)(a);
- “the clerk” means the person appointed as clerk to the tribunal by the Secretary or an Assistant Secretary to act in that capacity at one or more hearings;
- “devolution issue” means a devolution issue within the meaning of paragraph 1 of Schedule 6 to the Scotland Act 1998;
- “hearing” means a sitting of a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the tribunal to reach a decision on any question;
- “the Lord President” means the Lord President of the Court of Session;
- “the Office of the Tribunals” means the Central Office of the Employment Tribunals (Scotland);
- “panel of chairmen” means the panel appointed under regulation 5(1)(a);
- “the President” means the President of the Employment Tribunals (Scotland) or the person nominated by the Lord President to discharge for the time being the functions of the President;
- “Regional Chairman” means a member of the panel of chairmen who has been appointed to the position of Regional Chairman in accordance with regulation 8(1) or who has been nominated to discharge the functions of a Regional Chairman in accordance with regulation 8(2);
- “Regional Office of the Employment Tribunals” means a regional office which has been established under the Office of the Tribunals for an area specified by the President or an office established for an area within such an area;
- “Register” means the Register of applications, appeals and decisions kept in pursuance of regulation 12;

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(4) 1975 c. 65.

(5) 1976 c. 74.

(6) 1992 c. 52.

(7) 1995 c. 50.

“the relevant authority” means the Advocate General for Scotland and the Lord Advocate;  
“the Secretary” means the person for the time being appointed to act as the Secretary of the Office of the Tribunals;  
“tribunal” means an employment tribunal established in pursuance of regulation 4 and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President or a Regional Chairman.

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

“the 1970 Act” means the Equal Pay Act 1970<sup>(8)</sup>;  
“the 1986 Act” means the Sex Discrimination Act 1986<sup>(9)</sup>;  
“Crown employment proceedings” has the meaning given by section 10(8) of the 1996 Act;  
“decision” in relation to a tribunal includes—  
    a declaration,  
    an order, including an order striking out any originating application or notice of appearance made under rule 4(8)(b) or 15(2),  
    a recommendation or an award of the tribunal, and  
    a determination under rule 6,

but does not include any other interlocutory order or any other decision on an interlocutory matter;

“equal value claim” means a claim by an applicant which rests upon entitlement to the benefit of an equality clause by virtue of the operation of section 1(2)(c) of the 1970 Act;

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

- (a) a direction of a Minister of the Crown under rule 8(1)(b) or (c), or
- (b) an order of the tribunal under rule 8(2)(a) read with 8(1)(b) or (c);

“expert” means a member of the panel of independent experts within the meaning of section 2A(4) of the 1970 Act;

“misconceived” includes having no reasonable prospect of success;

“report” means a report required by a tribunal to be prepared by an expert, pursuant to section 2A(1)(b) of the 1970 Act;

“respondent” means a party to the proceedings before a tribunal other than the applicant;

“special advocate” means a person appointed pursuant to rule 7A(1).

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

“the 1982 Act” means the Industrial Training Act 1982<sup>(10)</sup>;

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

“decision” includes any order which is not an interlocutory order;

“levy” means a levy imposed under section 11 of the 1982 Act.

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

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

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<sup>(8)</sup> 1970 c. 41; section 2A was inserted by the Equal Pay (Amendment) Regulations 1983 (S.I. 1983/1794).

<sup>(9)</sup> 1986 c. 59.

<sup>(10)</sup> 1982 c. 10.

“decision” in relation to the tribunal includes a direction under rule 4(1) and any order which is not an interlocutory order;

“improvement notice” means a notice under section 21 of the 1974 Act;

“inspector” means a person appointed under section 19(1) of the 1974 Act;

“prohibition notice” means a notice under section 22 of the 1974 Act;

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

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

“the 1999 Act” means the Disability Rights Commission Act 1999<sup>(11)</sup>;

“decision” in relation to a tribunal includes a direction under section 68(3) of the 1975 Act, under section 59(3) of the 1976 Act or, as the case may be, under paragraph 10(4) of Schedule 3 to the 1999 Act and any other order which is not an interlocutory order;

“non-discrimination notice” means a notice under section 67 of the 1975 Act, under section 58 of the 1976 Act or, as the case may be, under section 4 of the 1999 Act;

“respondent” means the Equal Opportunities Commission established under section 53 of the 1975 Act, the Commission for Racial Equality established under section 43 of the 1976 Act or, as the case may be, the Disability Rights Commission established under section 1 of the 1999 Act.

(6) Any period of time for doing any act required or permitted to be done under any of the rules in Schedules 1, 2, 3, 4, 5 and 6, or under any decision, direction, declaration, order, recommendation, award or determination of a tribunal or a chairman, shall be calculated in accordance with paragraphs (7) to (10).

(7) Where any act must or may be done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. For example, a respondent receives a copy of an originating application on 1st October. He must present a written notice of appearance to the Secretary within 21 days of receiving the copy. The last day for presentation of the notice is 22nd October.

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

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

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

### **President of Employment Tribunals**

**3.—(1)** There shall be a President of the Employment Tribunals (Scotland) who shall be appointed by the Lord President and shall be a person—

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(11) 1999 c. 17.

- (a) being an advocate or solicitor admitted in Scotland of at least seven years standing;
  - (b) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(12)</sup>; or
  - (c) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing.
- (2) The President may resign his office by notice in writing to the Lord President.
- (3) The President shall vacate his office at the end of the completed year of service in the course of which he attains the age of 72 years.
- (4) If the Lord President is satisfied that the President is incapacitated by infirmity of mind or body from discharging the duties of his office, or the President is adjudged to be bankrupt or makes a composition or arrangement with his creditors, the Lord President may revoke his appointment.
- (5) The functions of President under these Regulations may, if he is for any reason unable to act or during any vacancy in his office, be discharged by a person nominated for that purpose by the Lord President.

#### **Establishment of employment tribunals**

- 4.—(1) The President shall from time to time determine the number of tribunals to be established in Scotland for the purposes of determining proceedings.
- (2) The President or, in relation to the area specified in relation to him, a Regional Chairman shall determine at what times and in what places in Scotland tribunals shall sit.

#### **Panels of members of tribunals**

- 5.—(1) There shall be three panels of members of the Employment Tribunals (Scotland), namely—
- (a) a panel of persons appointed by the Lord President consisting of persons—
    - (i) being an advocate or solicitor admitted in Scotland of at least seven years standing;
    - (ii) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990; or
    - (iii) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing;
  - (b) a panel of persons appointed by the Secretary of State after consultation with such organisations or associations of organisations representative of employees as he sees fit; and
  - (c) a panel of persons appointed by the Secretary of State after consultation with such organisations or associations of organisations representative of employers as he sees fit.
- (2) Members of the panels constituted under these Regulations shall hold and vacate office under the terms of the instrument under which they are appointed but may resign their office by notice in writing, in the case of a member of the panel of chairmen, to the Lord President and, in any other case, to the Secretary of State; and any such member who ceases to hold office shall be eligible for reappointment.

#### **Further panels in national security cases**

6. For the purposes of proceedings in relation to which a direction is given under section 10(3) of the 1996 Act, or an order is made under section 10(4) of that Act, the President shall—

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(12) 1990 c. 41.

- (a) select a panel of persons from the panel of chairmen to act as chairmen in such cases, and
- (b) select—
  - (i) a panel of persons from the panel referred to in regulation 5(1)(b) as persons suitable to act as members in such cases, and
  - (ii) a panel of persons from the panel referred to in regulation 5(1)(c) as persons suitable to act as members in such cases.

### **Modification of section 4 of the Employment Tribunals Act 1996**

7.—(1) For the purposes of proceedings in relation to which a direction is given under section 10(3) of the 1996 Act, or an order is made under section 10(4) of that Act, section 4 of the 1996 Act shall be modified as follows.

(2) In section 4(1)(a), for the words “in accordance with regulations made under section 1(1)” substitute the words “in accordance with regulations 6(a) and 9(5) of the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001”.

(3) In section 4(1)(b), for the words “in accordance with regulations so made” substitute the words “in accordance with regulations 6(b) and 9(5) of those Regulations”.

(4) In section 4(5), for the words “in accordance with regulations made under section 1(1)” substitute the words “in accordance with regulation 6(a) of the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001”.

### **Regional Chairmen**

8.—(1) The Lord President may from time to time appoint Regional Chairmen from the panel of chairmen and each Regional Chairman shall be responsible for the administration of justice by tribunals in the area specified by the President in relation to him.

(2) The President or the Regional Chairman for an area may from time to time nominate a member of the panel of chairmen to discharge for the time being the functions of the Regional Chairman for that area.

### **Composition of tribunals**

9.—(1) For each hearing of any matter before a tribunal the President or the Regional Chairman shall select a chairman, who shall, subject to paragraph (5), be the President or a member of the panel of chairmen, and the President or the Regional Chairman may select himself.

(2) In any proceedings which are to be determined by a tribunal comprising a chairman (selected in accordance with paragraph (1) or (5), as the case may be) and two other members, those other members shall, subject to paragraph (5), be selected by the President or by the Regional Chairman, as to one member from the panel of persons appointed by the Secretary of State under regulation 5(1)(b) and as to the other from the panel of persons appointed under regulation 5(1)(c).

(3) In any proceedings which are to be determined by a tribunal whose composition is described in paragraph (2), or, as the case may be, paragraph (5)(b), those proceedings may, with the consent of the parties, be heard and determined in the absence of any one member other than the chairman, and in that event the tribunal shall be properly constituted.

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

(5) For the purposes of proceedings in relation to which a direction is given under section 10(3) of the 1996 Act, or an order is made under section 10(4) of that Act—

- (a) the President or the Regional Chairman shall select a chairman, who shall be the President or a member of the panel selected in accordance with regulation 6(a), and the President or the Regional Chairman may select himself, and
- (b) in any such proceedings which are to be determined by a tribunal comprising a chairman (selected in accordance with sub-paragraph (a) of this paragraph) and two other members, those other members shall be selected by the President or by the Regional Chairman, as to one member from the panel selected in accordance with regulation 6(b)(i) and as to the other from the panel selected in accordance with regulation 6(b)(ii).

### **Overriding objective**

**10.**—(1) The overriding objective of the rules in Schedules 1, 2, 3, 4, 5 and 6 is to enable tribunals to deal with cases justly.

- (2) Dealing with a case justly includes, so far as practicable—
  - (a) ensuring that the parties are on an equal footing;
  - (b) saving expense;
  - (c) dealing with the case in ways which are proportionate to the complexity of the issues; and
  - (d) ensuring that it is dealt with expeditiously and fairly.
- (3) A tribunal shall seek to give effect to the overriding objective when it—
  - (a) exercises any power given to it by the rules in Schedules 1, 2, 3, 4, 5 and 6; or
  - (b) interprets any rule in Schedules 1, 2, 3, 4, 5 and 6.
- (4) The parties shall assist the tribunal to further the overriding objective.

### **Proceedings of tribunals**

**11.**—(1) Subject to paragraphs (2) to (6), the rules in Schedule 1 shall apply in relation to all proceedings before a tribunal except where separate rules of procedure made under the provisions of any enactment are applicable.

(2) In proceedings to which the rules in Schedule 1 apply and in which any power conferred on the Minister or the tribunal by rule 8(1), (2) or (3) of Schedule 1 is exercised—

- (a) rules 3, 4, 7, 10, 11, 12 and 13 of Schedule 1 shall be modified in accordance with Schedule 2; and
- (b) rules 7A (special advocate) and 7B (reasons for the tribunal’s decision in national security cases) as referred to in paragraph 4 of Schedule 2, shall be inserted into Schedule 1.

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

- (a) rules 4, 11, 12, 14, 15 and 23 of Schedule 1 shall be modified in accordance with Part I of Schedule 3; and
- (b) rule 10A (procedure relating to expert’s report), as referred to in paragraph 2 of Part I of Schedule 3, shall be inserted into Schedule 1.

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

- (a) the insertion of rules 4(9), 7B and 12(5A) to (5D) into Schedule 1 shall be in accordance with Part II of Schedule 3; and
- (b) rule 11(2) of Schedule 1 shall be modified in accordance with Part II of Schedule 3.

(5) The rules contained in Schedules 1, 2 and 3 shall apply in proceedings to which they relate where—

- (a) the respondent or one of the respondents resides or carries on business in Scotland;
- (b) the proceedings relate to a contract of employment the place of execution or performance of which is in Scotland; or
- (c) the proceedings are to determine a question which has been referred to the tribunal by a sheriff in Scotland.

(6) The rules in Schedules 4, 5 and 6 shall apply in relation to proceedings before a tribunal which relate to matters arising in Scotland and consist, respectively, in—

- (a) an appeal by a person assessed to levy imposed under a levy order made under section 12 of the 1982 Act;
- (b) an appeal against an improvement or prohibition notice under section 24 of the 1974 Act; and
- (c) an appeal against a non-discrimination notice under section 68 of the 1975 Act, section 59 of the 1976 Act or paragraph 10 of Schedule 3 to the 1999 Act.

### **Register**

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

(2) The Register shall contain—

- (a) details of originating applications in accordance with rule 2 of Schedule 1;
- (b) details of appeals in accordance with rule 5 of Schedule 4, rule 3 of Schedule 5 and rule 2 of Schedule 6;
- (c) the fact of applications in accordance with rule 4 of Schedule 5; and
- (d) documents recording the decisions of tribunals and the reasons therefor.

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

### **Proof of decisions of tribunals**

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

### **Transitional provision**

**14.** These Regulations shall apply in relation to all proceedings to which they relate, irrespective of when those proceedings were commenced.

### **Revocations**

**15.** The instruments listed in Schedule 7 are hereby revoked.



23rd March 2001

*Alan Johnson,*  
Parliamentary Under-Secretary of State for  
Competitiveness,  
Department of Trade and Industry

## SCHEDULE 1

Regulation 11(1)

## THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE (SCOTLAND)

**Originating application**

1.—(1) Where proceedings are brought by an applicant, they shall be instituted by the applicant presenting to the Secretary an originating application, which shall be in writing and shall set out—

- (a) the name and address of the applicant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the proceedings to be sent;
- (b) the names and addresses of the person or persons against whom relief is sought; and
- (c) the grounds, with particulars thereof, on which relief is sought.

(2) Two or more originating applications may be presented in a single document by applicants who claim relief in respect of or arising out of the same set of facts.

(3) Where the Secretary is of the opinion that the originating application does not seek or on the facts stated therein cannot entitle the applicant to a relief which a tribunal has power to give, he may give notice to that effect to the applicant stating the reasons for his opinion and informing him that the application will not be registered unless he states in writing that he wishes to proceed with it.

(4) An application in respect of which such a notice has been given shall not be treated as having been received for the purpose of rule 2 unless the applicant intimates in writing to the Secretary that he wishes to proceed with it; and upon receipt of such an intimation the Secretary shall proceed in accordance with that rule.

(5) In the case of an originating application in respect of a complaint under section 6(4A) of the 1986 Act relating to a term of a collective agreement, the following persons, whether or not identified in the originating application, shall be regarded as the persons against whom relief is sought and shall be treated as respondents for the purposes of these rules, that is to say—

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

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

(6) Where proceedings are referred to a tribunal by a court, these rules shall be applied to them, except where the rules are inappropriate, as if the proceedings had been instituted by the presentation of an originating application.

(7) Paragraph (1)(b) does not apply to an originating application in respect of an application under section 3C of the Employment Agencies Act 1973<sup>(13)</sup> for the variation or revocation of a prohibition order, but on any application the Secretary of State shall be treated as the respondent for the purpose of these rules.

**Action upon receipt of originating application**

2.—(1) Upon receiving an originating application the Secretary shall—

- (a) send a copy of it to the respondent;

<sup>(13)</sup> 1973 c. 35; section 3C was inserted by paragraph 1(1) and (3) of Schedule 10 to the Deregulation and Contracting Out Act 1994 (c. 40).

- (b) give every party notice in writing of the case number of the application (which shall constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent; and
- (c) send to the respondent a notice in writing which includes information, as appropriate to the case, about the means and time for entering an appearance, the consequences of failure to do so, and the right to receive a copy of the decision.

(2) The Secretary shall enter such of the details of an originating application as are referred to in paragraph (4) in the Register either within 28 days of receiving it or, if that is not practicable, as soon as reasonably practicable thereafter.

(3) The Secretary shall also, in all cases, notify the parties that, in every case where an enactment provides for conciliation, the services of a conciliation officer are available to them.

(4) The details of an originating application to be entered in the Register are—

- (a) the case number;
- (b) the date the Secretary received the application;
- (c) the name and address of the applicant;
- (d) the name and address of the respondent;
- (e) the Regional Office of the Employment Tribunals dealing with the application; and
- (f) the type of claim brought in general terms without reference to its particulars.

(5) In any case appearing to the Secretary to involve allegations of the commission of a sexual offence, where any person referred to in paragraph 4(c) or 4(d) appears to the Secretary to be a person affected by or making the allegations he shall omit from the Register the details in paragraph 4(c) or 4(d), as the case may be, relating to that person.

### **Appearance by respondent**

**3.—**(1) A respondent shall, within 21 days of receiving the copy of the originating application, enter an appearance to the proceedings by presenting to the Secretary a written notice of appearance—

- (a) setting out his full name and address and, if different, an address within the United Kingdom to which he requires notices and documents relating to the proceedings to be sent;
- (b) stating whether or not he intends to resist the application; and
- (c) if he does intend to resist it, setting out sufficient particulars to show on what grounds.

Upon receipt of a notice of appearance the Secretary shall send a copy of it to each other party.

(2) Two or more notices of appearance relating to originating applications in which the relief claimed is in respect of or arises out of the same set of facts may be presented in a single document, provided that in respect of each of the originating applications to which the notices so presented relate—

- (a) the respondent intends to resist the applications and the grounds for doing so are the same in each case; or
- (b) the respondent does not intend to resist the applications.

(3) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except—

- (a) to apply under rule 17 for an extension of the time appointed by this rule for entering an appearance;

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- (b) to make an application under rule 4(1) for a direction requiring the applicant to provide further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (c) to make an application under rule 13(4) in respect of rule 13(1)(b);
- (d) to be called as a witness by another person;
- (e) to be sent a copy of a document or corrected entry in pursuance of rule 12(5), 12(9) or 12(10);

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

### **Case management**

4.—(1) A tribunal may at any time, on the application of a party or of its own motion, give such directions on any matter arising in connection with the proceedings as appear to the tribunal to be appropriate.

(2) An application under paragraph (1)—

- (a) may be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and set out the grounds of the application, or
- (b) may be made at the hearing of the originating application.

(3) Directions under paragraph (1) may include any requirement relating to evidence (including the provision and exchange of witness statements), the provision of further particulars, and the provision of written answers to questions put to a party by the tribunal.

(4) A tribunal may appoint the time at or within which and the place at which any act required in pursuance of this rule is to be done and may direct that a copy of any document furnished pursuant to any requirement imposed under this rule be sent to the tribunal.

(5) A tribunal may, on the application of a party or of its own motion,—

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

(6) Every document containing a requirement imposed under paragraph (5) shall state that, under section 7(4) of the 1996 Act, any person who without reasonable excuse fails to comply with the requirement shall be liable on summary conviction to a fine, and the document shall also state the amount of the current maximum fine.

(7) Where a requirement has been imposed under paragraph (1) or (5)—

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.

(8) If a requirement under paragraph (1) or (5) is not complied with, the tribunal—

- (a) may make an order in respect of expenses under rule 14(1)(a), or

- (b) before or at the hearing, may strike out the whole or part of the originating application, or, as the case may be, the notice of appearance, and, where appropriate, direct that a respondent be debarred from defending altogether;

but a tribunal shall not exercise its powers under this paragraph unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so, or the party has been given an opportunity to show cause orally why the powers conferred by this paragraph should not be exercised.

### **Time and place of hearing**

5.—(1) The President or a Regional Chairman shall fix the date, time and place of the hearing of the originating application and the Secretary shall send to each party a notice of hearing together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents, representation by another person and the making of written representations.

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

- (a) where the Secretary has agreed a shorter time with the parties; or
- (b) on an application for interim relief made under section 161 of the 1992 Act or section 128 of the Employment Rights Act 1996(14).

### **Entitlement to bring or contest proceedings**

6.—(1) A tribunal may at any time before the hearing of an originating application, on the application of a party made by notice to the Secretary or of its own motion, hear and determine any issue relating to the entitlement of any party to bring or contest the proceedings to which the originating application relates.

(2) A tribunal shall not determine such an issue unless the Secretary has sent notice to each of the parties giving them an opportunity to submit representations in writing and to advance oral argument before the tribunal.

### **Pre-hearing review**

7.—(1) A tribunal may at any time before the hearing of an originating application, on the application of a party made by notice to the Secretary or of its own motion, conduct a pre-hearing review, consisting of a consideration of—

- (a) the contents of the originating application and notice of appearance;
- (b) any representations in writing; and
- (c) any oral argument advanced by or on behalf of a party.

(2) If a party applies for a pre-hearing review and the tribunal determines that there shall be no review, the Secretary shall send notice of the determination to that party.

(3) A pre-hearing review shall not take place unless the Secretary has sent notice to the parties giving them an opportunity to submit representations in writing and to advance oral argument at the review if they so wish.

(4) If upon a pre-hearing review the tribunal considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have no reasonable prospect of success, the tribunal may make an order against that party requiring the party to pay a deposit

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(14) 1996 c. 18; section 128(1)(b) was amended by regulations 2(1) and 35(2) of the Working Time Regulations 1998 (S.I. 1998/1833), section 9 of the Public Interest Disclosure Act 1998 (c. 23) and section 6 of the Employment Relations Act 1999 (c. 26).

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of an amount not exceeding £500 as a condition of being permitted to continue to take part in the proceedings relating to that matter.

(5) No order shall be made under this rule unless the tribunal has taken reasonable steps to ascertain the ability of the party against whom it is proposed to make the order to comply with such an order, and has taken account of any information so ascertained in determining the amount of the deposit.

(6) An order made under this rule, and the tribunal's reasons for considering that the contentions in question have no reasonable prospect of success, shall be recorded in summary form in a document signed by the chairman. A copy of that document shall be sent to each of the parties and shall be accompanied by a note explaining that if the party against whom the order is made persists in participating in proceedings relating to the matter to which the order relates, he may have an award of expenses made against him and could lose his deposit.

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

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

the tribunal shall strike out the originating application or notice of appearance of that party or, as the case may be, the part of it to which the order relates.

(8) The deposit paid by a party under an order made under this rule shall be refunded to him in full except where rule 14(8) applies.

(9) No member of a tribunal which has conducted a pre-hearing review shall be a member of the tribunal at the hearing of the originating application.

### **National security**

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

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

(2) A tribunal may, if it considers it expedient in the interests of national security, by order—

- (a) do anything of a kind which a tribunal can be required to do by direction under paragraph (1);
- (b) direct any person to whom any document (including any decision or record of the proceedings) has been provided for the purposes of the proceedings not to disclose any such document or the content thereof to—
  - (i) any excluded person,
  - (ii) in any case in which a direction has been given under paragraph (1)(a) or an order has been made under paragraph (2)(a) read with paragraph (1)(a), to any person excluded from all or part of the proceedings by virtue of such direction or order, or

(iii) in any case in which a Minister of the Crown has informed the Secretary in accordance with paragraph (3) that he wishes to address the tribunal with a view to the tribunal making an order under paragraph (2)(a) read with paragraph (1)(b) or (c), to any person who may be excluded from all or part of the proceedings by virtue of such an order, if an order is made, at any time before the tribunal decides whether or not to make such an order;

(c) take steps to keep secret all or part of the reasons for its decision.

The tribunal shall keep under review any order it makes under this paragraph.

(3) In any proceedings in which a Minister of the Crown considers that it would be appropriate for a tribunal to make an order as referred to in paragraph (2), he shall (whether or not he is a party to the proceedings) be entitled to appear before and to address the tribunal thereon. The Minister shall inform the Secretary by notice that he wishes to address the tribunal and the Secretary shall copy the notice to the parties.

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

#### **Dismissals in connection with industrial action**

**9.**—(1) In relation to a complaint under section 111 of the Employment Rights Act 1996 (unfair dismissal: complaint to employment tribunal) that a dismissal is unfair by virtue of section 238A of the 1992 Act<sup>(15)</sup> (participation in official industrial action) a tribunal may adjourn the proceedings where specified civil proceedings have been brought until such time as interlocutory proceedings arising out of the specified civil proceedings have been concluded.

(2) In this rule—

“specified civil proceedings” means legal proceedings brought by any person against another person in which it is to be determined whether an act of that other person, which induced the applicant to commit an act, or each of a series of acts, is by virtue of section 219 of the 1992 Act not actionable in delict or in tort; and

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

#### **The hearing**

**10.**—(1) Any hearing of an originating application shall be heard by a tribunal composed in accordance with section 4(1) and (2) of the 1996 Act.

(2) Any hearing of or in connection with an originating application shall take place in public.

(3) Notwithstanding paragraph (2), a tribunal may sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any enactment, or
- (b) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of the 1992 Act, cause substantial injury to any undertaking of his or any undertaking in which he works.

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

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(4) A member of the Council on Tribunals or of its Scottish Committee shall be entitled to attend any hearing taking place in private in his capacity as a member.

(5) If a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the originating application he shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy to each other party.

(6) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Secretary less than 7 days before the hearing.

(7) The Secretary of State if he so elects shall be entitled to appear as if he were a party and be heard at any hearing of or in connection with an originating application in proceedings which may involve a payment out of the National Insurance Fund, and in that event he shall be treated for the purposes of these rules as if he were a party.

### **Procedure at hearing**

**11.**—(1) The tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts of law. The tribunal shall make such enquiries of persons appearing before it and witnesses as it considers appropriate and shall otherwise conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Subject to paragraph (1), at the hearing of the originating application a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.

(3) If a party fails to attend or to be represented at the time and place fixed for the hearing, the tribunal may, if that party is an applicant, dismiss or, in any case, dispose of the application in the absence of that party or may adjourn the hearing to a later date; provided that before dismissing or disposing of any application in the absence of a party the tribunal shall consider his originating application or notice of appearance, any representations in writing presented by him in pursuance of rule 10(5) and any written answer furnished to the tribunal pursuant to rule 4(3).

(4) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

### **Decision of tribunal**

**12.**—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal, which may be given orally at the end of a hearing or reserved, shall be recorded in a document signed by the chairman.

(3) The tribunal shall give reasons for its decision in a document signed by the chairman. That document shall contain a statement as to whether the reasons are given in summary or extended form and where the tribunal—

- (a) makes an award of compensation, or
- (b) comes to any other determination by virtue of which one party is required to pay a sum to another (excluding an award of expenses or allowances),

the document shall also contain a statement of the amount of compensation awarded, or of the sum required to be paid, followed either by a table showing how the amount or sum has been calculated or by a description of the manner in which it has been calculated.

(4) The reasons for the decision of the tribunal shall be given in summary form except where—

- (a) the proceedings involved the determination of an issue arising under or relating to the 1970 Act, the 1975 Act, the 1986 Act, the 1976 Act or the 1995 Act;



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- (b) a request that the reasons be given in extended form is made orally at the hearing by a party;
- (c) such a request is made in writing by a party after the hearing either—
  - (i) before any document recording the reasons in summary form is sent to the parties, or
  - (ii) within 21 days of the date on which that document was sent to the parties; or
- (d) the tribunal considers that reasons given in summary form would not sufficiently explain the grounds for its decision;

and in those circumstances the reasons shall be given in extended form.

(5) The clerk shall transmit the documents referred to in paragraphs (2) and (3) to the Secretary who shall enter them in the Register and shall send a copy of the entry to each of the parties and, where the proceedings were referred to the tribunal by a sheriff, to that sheriff.

(6) The document referred to in paragraph (3) shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs. In such a case the Secretary shall send that document to each of the parties; and where there are proceedings before an appellate court relating to the decision in question, he shall send the document to that court, together with a copy of the entry in the Register of the document referred to in paragraph (2).

(7) In any case appearing to involve allegations of a sexual offence, the document referred to in paragraph (3) shall be entered on the Register with such deletions or amendments as have been made in accordance with rule 15(6).

(8) Clerical mistakes in the documents referred to in paragraphs (2) and (3), or errors arising in those documents from an accidental slip or omission, may at any time be corrected by the chairman by certificate.

- (9) If a document is corrected by certificate under paragraph (8), or if a decision is—
  - (a) revoked or varied under rule 13, or
  - (b) altered in any way by order of an appellate court,

the Secretary shall alter any entry in the Register which is affected to conform with the certificate or order and send a copy of any entry so altered to each of the parties and, where the proceedings were referred to the tribunal by a sheriff, to that sheriff.

(10) Where a document omitted from the Register pursuant to paragraph (6) is corrected by certificate under paragraph (8), the Secretary shall send a copy of the corrected document to the parties; and where there are proceedings before any appellate court relating to the decision in question, he shall send a copy to that court together with a copy of the entry in the Register of the document referred to in paragraph (2), if it has been altered under paragraph (9).

(11) Where this rule requires a document to be signed by the chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other members or member of the tribunal, who shall certify that the chairman is unable to sign.

### **Review of tribunal's decision**

**13.—**(1) Subject to the provisions of this rule, a tribunal shall have power, on the application of a party or of its own motion, to review any decision on the grounds that—

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

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- (e) the interests of justice require such a review.
- (2) A tribunal may not review a decision of its own motion unless it is the tribunal which issued the decision.
- (3) A tribunal may only review a decision of its own motion if—
  - (a) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review; and
  - (b) such notice has been sent on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties.
- (4) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.
- (5) An application for the purposes of paragraph (1) may be refused by the President or by the chairman of the tribunal which decided the case or by a Regional Chairman if in his opinion it has no reasonable prospect of success.
- (6) If such an application is not refused under paragraph (5) it shall be heard by the tribunal which decided the case, or—
  - (a) where it is not practicable for it to be heard by that tribunal, or
  - (b) where the decision was made by a chairman acting alone under rule 15(8),by a tribunal appointed by either the President or a Regional Chairman.
- (7) On reviewing its decision a tribunal may confirm the decision, or vary or revoke the decision; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

## **Expenses**

- 14.**—(1) Where, in the opinion of the tribunal, a party has in bringing the proceedings, or a party or a party’s representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by a party has been misconceived, the tribunal shall consider making, and if it so decides, may make—
- (a) an order containing an award against that party in respect of the expenses incurred by another party;
  - (b) an order that that party shall pay to the Secretary of State the whole, or any part, of any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under section 5(2) or (3) of the 1996 Act to any person for the purposes of, or in connection with, his attendance at the tribunal.
- (2) Paragraph (1) applies to a respondent who has not entered an appearance in relation to the conduct of any part in the proceedings which he has taken.
- (3) An order containing an award against a party (“the first party”) in respect of the expenses incurred by another party (“the second party”) shall be—
- (a) where the tribunal thinks fit, an order that the first party pay to the second party a specified sum not exceeding £10,000;
  - (b) where those parties agree on a sum to be paid by the first party to the second party in respect of those expenses, an order that the first party pay to the second party a specified sum, being the sum so agreed; or

(c) in any other case, an order that the first party pay to the second party the whole or a specified part of the expenses incurred by the second party as taxed (if not otherwise agreed).

(4) Where the tribunal has on the application of a party postponed the day or time fixed for or adjourned the hearing, the tribunal may make orders, of the kinds mentioned in paragraphs (1)(a) and (1)(b), against or, as the case may require, in favour of that party as respects any expenses incurred or any allowances paid as a result of the postponement or adjournment.

(5) A tribunal shall make orders against a respondent of the kinds mentioned in paragraphs (1) (a) and (1)(b) as respects any expenses or any allowances paid as a result of the postponement or adjournment of a hearing where, on a complaint of unfair dismissal, the applicant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing of the complaint and the postponement or adjournment has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the applicant was dismissed, or of comparable or suitable employment.

(6) Any expenses required by an order under this rule to be taxed may be taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order, and thereafter the tribunal may issue an order for payment of the amount as taxed.

(7) Where—

- (a) a party has been ordered under rule 7 to pay a deposit as a condition of being permitted to continue to participate in proceedings relating to a matter;
- (b) in respect of that matter, the tribunal has found against that party in its decision, and
- (c) there has been no award of expenses made against that party arising out of the proceedings on the matter,

the tribunal shall consider whether to award expenses against that party on the ground that he conducted the proceedings relating to the matter unreasonably in persisting in having the matter determined by a tribunal; but the tribunal shall not make an award of expenses on that ground unless it has considered the document recording the order under rule 7 and is of the opinion that the reasons which caused the tribunal to find against the party in its decision were substantially the same as the reasons recorded in that document for considering that the contentions of the party had no reasonable prospect of success.

(8) Where an award of expenses is made against a party who has had an order under rule 7 made against him (whether the award arises out of the proceedings relating to the matter in respect of which the order was made or out of proceedings relating to any other matter considered with that matter), his deposit shall be paid in part or full settlement of the award—

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

and if the amount of the deposit exceeds the amount of the award of expenses, the balance shall be refunded to the party who paid it.

### **Miscellaneous powers**

**15.—**(1) Subject to the provisions of these rules, a tribunal may regulate its own procedure.

(2) A tribunal may—

- (a) if the applicant at any time gives notice of the withdrawal of his originating application, dismiss the proceedings;

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- (b) if both or all the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;
- (c) subject to paragraph (3), at any stage of the proceedings, order to be struck out or amended any originating application or notice of appearance, or anything in such application or notice of appearance, on the grounds that it is scandalous, misconceived or vexatious;
- (d) subject to paragraph (3), at any stage of the proceedings, order to be struck out any originating application or notice of appearance on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or, as the case may be, respondent has been scandalous, unreasonable or vexatious; and
- (e) subject to paragraph (3), on the application of the respondent, or of its own motion, order an originating application to be struck out for excessive delay in proceeding with it.

(3) Before making an order under sub-paragraph (c), (d) or (e) of paragraph (2) the tribunal shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made; but this paragraph shall not be taken to require the tribunal to send such notice to that party if the party has been given an opportunity to show cause orally why the order should not be made.

(4) Where a notice required by paragraph (3) is sent in relation to an order to strike out an originating application for excessive delay in proceeding with it, service of the notice shall be treated as having been effected if it has been sent by post or delivered in accordance with rule 23(4) and the tribunal may strike out the originating application (notwithstanding that there has been no direction for substituted service in accordance with rule 23(7)) if the party does not avail himself of the opportunity given by the notice.

(5) A tribunal may, before determining an application under rule 4 or rule 19, require the party making the application to give notice of it to every other party. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified for the purposes of the application by the tribunal.

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

(7) A chairman may postpone the day or time fixed for, or adjourn, any hearing (particularly where an enactment provides for conciliation in relation to the case, for the purpose of giving an opportunity for the case to be settled by way of conciliation and withdrawn) and vary any such postponement or adjournment.

(8) Any act required or authorised by these rules to be done by a tribunal may be done by a chairman except—

- (a) the hearing of an originating application under rule 10;
- (b) an act required or authorised to be so done by rule 11 or 12 which the rule implies is to be done by the tribunal which is hearing or heard the originating application;
- (c) the review of a decision under rule 13(1), and the confirmation, variation or revocation of a decision, and ordering of a re-hearing, under rule 13(7).

(9) Any act required or authorised by rule 17 and paragraph (7) to be done by a chairman may be done by a tribunal or on the direction of a chairman.

(10) Any function of the Secretary may be performed by an Assistant Secretary or by a person acting with the authority of the Secretary or of an Assistant Secretary.

### **Restricted reporting orders**

**16.**—(1) In any case which involves allegations of sexual misconduct the tribunal may at any time before promulgation of its decision in respect of an originating application, either on the application of a party made by notice to the Secretary or of its own motion, make a restricted reporting order.

(2) In proceedings on a complaint under section 8 of the 1995 Act in which evidence of a personal nature is likely to be heard by the tribunal, it may at any time before promulgation of its decision in respect of an originating application, either on the application of the complainant made by notice to the Secretary or of its own motion, make a restricted reporting order.

(3) Where the tribunal makes a restricted reporting order under paragraph (2) and that complaint is being dealt with together with any other proceedings, the tribunal may direct that the order applies also in relation to those other proceedings or such part of them as the tribunal may direct.

(4) The tribunal shall not make a restricted reporting order unless it has given each party an opportunity to advance oral argument at a hearing, if they so wish.

(5) Where a tribunal makes a restricted reporting order—

- (a) it shall specify in the order the persons who may not be identified;
- (b) the order shall remain in force until the promulgation of the decision of the tribunal on the originating application to which it relates unless revoked earlier; and
- (c) the Assistant Secretary shall ensure that a notice of that fact is displayed on the notice board of the tribunal with any list of the proceedings taking place before the employment tribunal, and on the door of the room in which the proceedings affected by the order are taking place.

(6) A tribunal may revoke a restricted reporting order at any time if it thinks fit.

(7) For the purposes of this rule “promulgation” occurs on the date recorded as being the date on which the document recording the determination of the originating application was sent to the parties.

### **Extension of time**

**17.**—(1) A chairman may, on the application of a party or of his own motion, extend the time for doing any act appointed by or under these rules (including this rule) and may do so whether or not the time so appointed has expired.

(2) An application under paragraph (1) shall be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(3) The Secretary shall give notice to each of the parties of any extension of time granted under this rule.

### **Devolution issues**

**18.**—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform the relevant authority thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time—

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send the relevant authority a copy of the originating application and the notice of appearance.

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

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### **Sisted and representative respondents**

**19.**—(1) A tribunal may at any time, on the application of any person made by notice to the Secretary or of its own motion, direct any person against whom any relief is sought to be sisted as a party, and give such consequential directions as it considers necessary.

(2) A tribunal may likewise, on such application or of its own motion, order that any respondent named in the originating application or subsequently added, who appears to the tribunal not to have been, or to have ceased to be, directly interested in the subject of the originating application, be dismissed from the proceedings.

(3) Where there are a number of persons having the same interest in an originating application, one or more of them may be cited as the person or persons against whom relief is sought, or may be authorised by the tribunal, before or at the hearing, to defend on behalf of all the persons so interested.

### **Combined proceedings**

**20.**—(1) Where, in relation to two or more originating applications pending before the employment tribunals, it appears to an employment tribunal, on the application of a party made by notice to the Secretary or of its own motion, that—

- (a) a common question of law or fact arises in some or all the originating applications, or
- (b) the relief claimed in some or all of those originating applications is in respect of or arises out of the same set of facts, or
- (c) for any other reason it is desirable to make an order under this rule,

the tribunal may order that some (as specified in the order) or all of the originating applications in respect of which it so appears to the tribunal shall be considered together, and may give such consequential directions as may be necessary.

(2) The tribunal shall only make an order under this rule if—

- (a) each of the parties concerned has been given an opportunity at a hearing to show cause why such an order should not be made; or
- (b) it has sent notice to all the parties concerned giving them an opportunity to show such cause.

(3) The tribunal may, on the application of a party made by notice to the Secretary or of its own motion, vary or set aside an order made under this rule but shall not do so unless it has given each party an opportunity to make either oral or written representations before the order is varied or set aside.

### **Transfer of proceedings**

**21.**—(1) On the application of a party made by notice to the Secretary or of his own motion, the President or a Regional Chairman may at any time, with the consent of the President of the Employment Tribunals (England and Wales), direct any proceedings to be transferred to the Office of the Employment Tribunals (England and Wales) if it appears to him that the proceedings could be, and would more conveniently be, determined in an employment tribunal (England and Wales) established in pursuance of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001<sup>(16)</sup>; but no such direction shall be made unless notice has been sent to all parties concerned giving them an opportunity to show cause why a direction should not be made.

(2) Where proceedings have been transferred to the Office of the Employment Tribunals (Scotland) under rule 21(1) of the Employment Tribunals Rules of Procedure 2001 they shall be treated as if in all respects they had been commenced by an originating application pursuant to rule 1.

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(16) [S.I.2001/1171](#).

## References to the European Court of Justice

22. Where a tribunal makes an order referring a question to the European Court of Justice for a preliminary ruling under Article 234 of the Treaty establishing the European Community, the Secretary shall send a copy of the order to the Registrar of that Court but shall not do so until the time for appealing against the order has expired or, if an appeal is made within that time, until the appeal has been determined or otherwise disposed of.

## Notices, etc

23.—(1) Any notice given under these rules shall be in writing.

(2) All notices and documents required by these rules to be presented to the Secretary, other than an originating application, may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary to the parties.

(3) An originating application may be presented at the Office of the Tribunals or at any Regional Office of the Employment Tribunals.

(4) All notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraph (6)) or delivered to or at—

- (a) in the case of a notice or document directed to the Secretary of State in proceedings to which he is not a party (or in respect of which he is treated as a party for the purpose of these rules by virtue of rule 10(7)), the offices of the Department of Trade and Industry (Employment Relations Directorate 2) at 1 Victoria Street, London, SW1H 0ET, or such other office as may be notified by the Secretary of State;
- (b) in the case of a notice or document directed to the Advocate General for Scotland pursuant to rule 18, the Office of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ;
- (c) in the case of a notice or document directed to the Lord Advocate pursuant to rule 18, the Legal Secretariat to the Lord Advocate, 25 Chambers Street, Edinburgh, EH1 1LA;
- (d) in the case of a notice or document directed to a sheriff, the office of the sheriff clerk;
- (e) in the case of a notice or document directed to a party—
  - (i) the address specified in his originating application or notice of appearance 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 or a Regional Chairman may allow;
- (f) 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 deemed to have been sent or given to that party.

(5) A party may at any time by notice to the Secretary 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.

(6) The recorded delivery service shall be used instead of the ordinary post—

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- (a) when a second set of notices or documents is sent to a respondent who has not entered an appearance under rule 3(1); and
  - (b) for service of an order made under rule 4(5).
- (7) The President or a Regional Chairman may direct that there shall be substituted service in such manner as he may deem fit in any case he considers appropriate.
- (8) In proceedings brought under the provisions of any enactment providing for conciliation the Secretary shall send copies of all documents and notices to a conciliation officer who in the opinion of the Secretary is an appropriate officer to receive them.
- (9) Paragraph (8) does not apply in relation to documents or notices falling within a description of documents or notices in respect of which the Secretary and the Advisory, Conciliation and Arbitration Service have agreed that copies need not be sent.
- (10) 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 he is a party.
- (11) Copies of every document and copy entry sent to the parties under rules 12(5) or 12(9) shall—
- (a) in the case of proceedings under the 1970 Act, the 1975 Act or the 1986 Act, be sent to the Equal Opportunities Commission;
  - (b) in the case of proceedings under the 1976 Act, be sent to the Commission for Racial Equality; and
  - (c) in the case of proceedings under the 1995 Act, be sent to the Disability Rights Commission.

## SCHEDULE 2

Regulation 11(2)

THE EMPLOYMENT TRIBUNALS (NATIONAL SECURITY)  
COMPLEMENTARY RULES OF PROCEDURE (SCOTLAND)  
*For use only in proceedings in which a power conferred on the Minister  
or the tribunal by rule 8(1), (2) or (3) of Schedule 1 is exercised*

### Modification of rule 3 of Schedule 1

1. In rule 3 of Schedule 1 (appearance by respondent), insert the following paragraphs after paragraph (1)—

“(1A) Paragraph (1)(c) shall not apply in any case in which—

- (a) a direction of a Minister of the Crown under rule 8(1)(b) (exclusion of applicant) applicable to this stage of the proceedings is given, or
- (b) a Minister of the Crown has informed the Secretary in accordance with rule 8(3) that he wishes to address the tribunal with a view to the tribunal making an order applicable to this stage of the proceedings under rule 8(2)(a) read with 8(1)(b),

before the expiry of the period for entering the appearance.

(1B) Where paragraph (1A) applies—

- (a) in a case falling within sub-paragraph (b) of paragraph (1A) and in which the tribunal decides not to make an order under rule 8(2)(a) read with 8(1)(b), the respondent shall within 21 days of the tribunal so deciding provide to the Secretary in writing sufficient particulars to show on what grounds he intends to resist the application. Upon receipt thereof the Secretary shall send a copy to each other party;



- (b) in a case falling within sub-paragraph (b) of paragraph (1A) and in which the tribunal makes an order under rule 8(2)(a) read with 8(1)(b), or in a case falling within sub-paragraph (a) of paragraph (1A), the respondent shall, within 42 days of the making of the order or the giving of the direction, as the case may be, provide to the tribunal and, where applicable, to the special advocate in writing sufficient particulars to show on what grounds he intends to resist the application.

(1C) In any case not falling within paragraph (1A) but in which a direction of a Minister of the Crown under rule 8(1)(c) (exclusion of applicant’s representative) applicable to this stage of the proceedings is given, or an order of the tribunal under rule 8(2)(a) read with 8(1)(c) applicable to this stage of the proceedings is made, the Secretary shall not send a copy of the notice of appearance to any person excluded from all or part of the proceedings by virtue of such direction or order.

(1D) In any case not falling within paragraph (1A) or (1C) but in which a Minister of the Crown has informed the Secretary in accordance with rule 8(3) that he wishes to address the tribunal with a view to the tribunal making an order applicable to this stage of the proceedings under rule 8(2)(a), read with 8(1)(c), the Secretary shall not send a copy of the notice of appearance to any person who may be excluded from all or part of the proceedings by virtue of such an order, if an order is made, at any time before the tribunal decides whether or not to make such an order.”

#### **Modification of rule 4 of Schedule 1**

2. At the end of rule 4 of Schedule 1 (case management), insert the following paragraph—

“(9) Where—

- (a) a Minister has at any stage issued a direction under rule 8(1)(b) or (c) (exclusion of applicant or his representative), or the tribunal has at any stage made an order under rule 8(2)(a) read with 8(1)(b) or (c), and
- (b) the tribunal (whether on application of a party or of its own motion) is considering whether to impose, or has imposed, a requirement under paragraph (1) or (5) on any person,

a Minister of the Crown (whether or not he is a party to the proceedings) may make an application to the tribunal objecting to the imposition of a requirement under paragraph (1) or (5), or, where a requirement has been imposed, an application to vary or set aside the requirement, as the case may be. The tribunal shall hear and determine the Minister’s application in private and the Minister shall be entitled to address the tribunal thereon. The application shall be made by notice to the Secretary and the Secretary shall give notice of the application to each party.”

#### **Modification of rule 7 of Schedule 1**

3. For paragraph (3) of rule 7 of Schedule 1 (pre-hearing review), substitute—

“(3) A pre-hearing review shall not take place unless the Secretary has sent notice to the parties giving them an opportunity to submit representations in writing and, except in the case of a pre-hearing review in which a special advocate has been appointed in respect of the applicant, to advance oral argument at the review if they so wish. Where a special advocate has been appointed in respect of the applicant, oral argument may be advanced on behalf of the applicant at the review by the special advocate.”

#### **Insertion of rules 7A and 7B into Schedule 1**

4. After rule 7 of Schedule 1, insert—

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### “Special advocate

7A.—(1) In any proceedings in which there is an excluded person the tribunal shall inform the Advocate General of the proceedings before it with a view to the Advocate General, if he thinks it fit to do so, appointing a special advocate to represent the interests of the applicant in respect of those parts of the proceedings from which—

- (a) any representative of his is excluded;
- (b) both he and his representative are excluded; or
- (c) he is excluded, where he does not have a representative.

(2) A special advocate shall be—

- (a) an Advocate; or
- (b) a solicitor who has by virtue of section 25A of the Solicitors (Scotland) Act 1980(17) rights of audience in the Court of Session or the High Court of Justiciary.

(3) Where the excluded person is the applicant, he shall be permitted to make a statement to the tribunal before the commencement of the proceedings, or the part of the proceedings, from which he is excluded.

(4) Except in accordance with paragraphs (5) to (7), the special advocate may not communicate directly or indirectly with any person (including an excluded person)—

- (a) (except in the case of the tribunal and the respondent) on any matter contained in the particulars referred to in rule 3(1B)(b), or
- (b) (except in the case of a person who was present) on any matter discussed or referred to during any part of the proceedings in which the tribunal sat in private pursuant to a direction of the Minister under rule 8(1)(a) or an order of the tribunal under rule 8(2)(a) read with rule 8(1)(a).

(5) The special advocate may apply for directions from the tribunal authorising him to seek instructions from, or otherwise to communicate with, an excluded person—

- (a) on any matter contained in the particulars referred to in rule 3(1B)(b), or
- (b) on any matter discussed or referred to during any part of the proceedings in which the tribunal sat in private as referred to in paragraph (4)(b).

(6) An application under paragraph (5) shall be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and set out the grounds of the application.

(7) The Secretary shall notify the Minister of an application for directions under paragraph (5) and the Minister shall be entitled to address the tribunal on the application.

(8) In these rules, in any case in which a special advocate has been appointed to represent the interests of the applicant in accordance with paragraph (1), any reference to a party shall (save in those references specified in paragraph (9)) include the special advocate.

(9) The references mentioned in paragraph (8) are the following, namely those in rule 2(1)(b), 2(3), 3(3), 4(7)(a), 6(1) (on the second occasion “party” appears), 7(4) (on the second and third occasions “party” appears), 7(5), 7(6) (on the second occasion “party” appears), 7(7) (on the first and third occasions “party” appears), 7(8), 8(1), 8(3) (on the first occasion “party” appears), 10(7), 11(3), 12(3)(b), 14, 15(3), 15(4), 19(1), 23(4)(a), 23(4)(e) (on the second occasion “party” appears), 23(4) (in the full out words) and 23(10).

### **Reasons for the tribunal's decision in national security cases**

**7B.**—(1) This rule applies to the document setting out the reasons for the tribunal's decision prepared under rule 12(3) in any particular Crown employment proceedings in which a direction of a Minister of the Crown has been given under rule 8(1)(a), (b) or (c), or an order of the tribunal has been made under rule 8(2)(a) read with 8(1)(a), (b) or (c).

(2) Before the Secretary enters the document referred to in rule 12(3) in the Register he shall send a copy of that document to the Minister.

(3) If the Minister considers it expedient in the interests of national security he may—

(a) direct the tribunal that the document referred to in rule 12(3) shall not be disclosed to any person who was excluded from all or part of the proceedings and to prepare a further document setting out the reasons for its decision but with the omission of such of the reasons as are specified in the direction;

(b) direct the tribunal that the document referred to in rule 12(3) shall not be disclosed to any person who was excluded from all or part of the proceedings but that no further document setting out the tribunal's reasons for its decision should be prepared.

(4) Where the Minister has directed the tribunal in accordance with paragraph (3)(a), the document prepared pursuant to that direction shall be signed by the chairman and marked in each place where an omission has been made.”

### **Modification of rule 10 of Schedule 1**

**5.** In rule 10 of Schedule 1 (hearing)—

(a) for paragraph (2) substitute—

“(2) Any hearing of or in connection with an originating application shall, subject to any direction of a Minister of the Crown under rule 8(1)(a) or order of a tribunal under rule 8(2)(a) read with 8(1)(a), take place in public.”; and

(b) for paragraph (4) substitute—

“(4) A member of the Council on Tribunals or of its Scottish Committee shall be entitled to attend any hearing taking place in private in his capacity as a member, save where the hearing is taking place in private pursuant to a direction of a Minister of the Crown under rule 8(1)(a) or an order of a tribunal under rule 8(2)(a) read with 8(1)(a).”

### **Modification of rule 11 of Schedule 1**

**6.** For paragraph (2) of rule 11 of Schedule 1 (procedure at hearing), substitute—

“(2) Subject to paragraph (1), and to any direction of a Minister of the Crown under rule 8(1)(b) or (c) (exclusion of applicant or his representative) or order of the tribunal under rule 8(2)(a) read with 8(1)(b) or (c), at the hearing of an originating application a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.”

### **Modification of rule 12 of Schedule 1**

**7.** In rule 12 of Schedule 1 (decision of tribunal)—

(a) after paragraph (5), insert—

“(5A) Where the Minister has directed the tribunal as referred to in rule 7B(3) (a) (keeping secret certain reasons for the tribunal's decision), the clerk shall transmit the document prepared pursuant to that direction to the Secretary who shall enter the

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document, and the document referred to in paragraph (2), in the Register and, where applicable, shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) to the Secretary. That document shall be omitted from the Register but the Secretary shall send a copy of it, of the document referred to in paragraph (2) and the document prepared pursuant to the direction under rule 7B(3)(a), in accordance with paragraph (5D).

(5B) Where the Minister has directed the tribunal as referred to in rule 7B(3)(b) (keeping secret all of the reasons for the tribunal's decision), the Secretary shall enter the document referred to in paragraph (2) in the Register and shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) to the Secretary. That document shall be omitted from the Register but the Secretary shall send a copy of it and of the document referred to in paragraph (2) in accordance with paragraph (5D).

(5C) Where—

- (a) a Minister of the Crown has given a direction under rule 8(1)(d) (concealing identity of witness);
- (b) the tribunal has made an order under rule 8(2)(a) read with 8(1)(d); or
- (c) the tribunal has taken steps under rule 8(2)(c) to keep secret all or part of the reasons for its decision;

any further document prepared pursuant to that direction or order, or pursuant to those steps, as the case may be, shall be signed by the chairman and marked in each place where an omission has been made. The clerk shall transmit such further document to the Secretary who shall enter the document, and the document referred to in paragraph (2), in the Register and, where applicable, shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) to the Secretary. That document shall be omitted from the Register but the Secretary shall send a copy of it, of the document referred to in paragraph (2) and of the document prepared pursuant to the direction, order or steps referred to in sub-paragraphs (a) to (c) in accordance with paragraph (5D).

(5D) Any documents required by paragraphs (5A) to (5C) to be sent in accordance with this paragraph shall be sent by the Secretary to—

- (a) the respondent,
- (b) such of the applicant or the applicant's representatives as was not an excluded person,
- (c) if applicable, the special advocate,
- (d) where the proceedings were referred to the tribunal by a sheriff, to that sheriff, and
- (e) where there are proceedings before an appellate court relating to the decision in question, to that court.”;

(b) for paragraph (8) substitute—

“(8) Clerical mistakes in the documents referred to in paragraphs (2), (3) and rule 7B(4), or errors arising in those documents from an accidental slip or omission may at any time be corrected by the chairman by certificate.”; and

(c) for paragraphs (10) and (11) substitute—

“(10) Where a document (“the first document”) omitted from the Register pursuant to paragraph (5A), (5B), (5C) or (6) is corrected by certificate under paragraph (8), the Secretary shall send a copy of the corrected document to those persons to whom in

accordance with paragraph (5D) or (6) as the case may be, he sent the first document; and where there are proceedings before any appellate court relating to the decision in question, he shall send a copy to that court together with a copy of the entry in the Register of the document referred to in paragraph (2), if it has been altered under paragraph (9).

(11) Where this rule or rule 7B(4) requires a document to be signed by a chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other member or members of the tribunal, who shall certify that the chairman is unable to sign.”

### **Modification of rule 13 of Schedule 1**

8. For paragraph (1)(c) of rule 13 of Schedule 1 (review of tribunal’s decision), substitute—

“(c) the decision was made in the absence of a party (other than in pursuance of a direction of the Minister under rule 8(1) or an order of the tribunal under rule 8(2)(a));”.

## SCHEDULE 3

Regulation 11(3) and (4)

### THE EMPLOYMENT TRIBUNALS (EQUAL VALUE) COMPLEMENTARY RULES OF PROCEDURE (SCOTLAND) *For use only in proceedings involving an equal value claim*

## PART I

### *—ordinary cases*

### **Modification of rule 4 of Schedule 1**

1. In rule 4 of Schedule 1 (case management)—

(a) after paragraph (5), insert—

“(5A) Subject to paragraph (5B), a tribunal may, on the application of an expert who has been required by the tribunal to prepare a report—

- (a) require any person whom the tribunal is satisfied may have information which may be relevant to the question or matter on which the expert is required to report to furnish, in writing, such information as the tribunal may require;
- (b) require any person to produce any documents which are in the possession, custody or power of that person and which the tribunal is satisfied may contain matter relevant to the question on which the expert is required to report.

(5B) A tribunal shall not make a requirement under paragraph (5A)—

- (a) of a conciliation officer who has acted in connection with the complaint under section 18 of the 1996 Act, or
- (b) if it is satisfied that the person so required would have good grounds for refusing to comply with the requirement if it were a requirement made in connection with a hearing before the tribunal.

(5C) A person, whether or not a party, upon whom a requirement has been made under paragraph (5A), may apply to the tribunal by notice to the Secretary before the appointed time at or within which the requirement is to be complied with to vary or set aside the

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requirement. Notice of such application shall be given to the parties and to the expert upon whose application the requirement was made.”; and

(b) for paragraphs (6) and (7), substitute—

“(6) Every document containing a requirement imposed under paragraph (5) or (5A) shall state that, under section 7(4) of the 1996 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 state the amount of the current maximum fine.

(7) Where a requirement has been imposed under paragraph (1), (5) or (5A)—

- (a) on a party in his absence; or
- (b) on a person other than a party;

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.”

## **Insertion of rule 10A into Schedule 1**

2. After rule 10 of Schedule 1, insert—

### **“Procedure relating to expert’s report**

**10A.**—(1) In any case involving an equal value claim where a dispute arises as to whether work is of equal value to other work in terms of the demands made on the person employed on the work (for instance under such headings as effort, skill and decision) (in this rule, hereinafter referred to as “the question”) the tribunal shall, except in cases where it is satisfied that there are no reasonable grounds for determining the question in the affirmative, determine whether to require an expert to prepare a report with respect to the question.

(2) Before determining under paragraph (1) whether to require an expert to prepare a report the tribunal shall give the parties an opportunity to make representations to the tribunal as to whether an expert should be so required.

(3) Where the tribunal has determined not to require an expert to prepare a report it may nevertheless, at any time during its consideration of the question, require an expert to prepare a report, but shall not do so unless it has given the parties a further opportunity to make representations to the tribunal as to whether an expert should be so required.

(4) Any requirement to prepare a report shall be made in writing and shall set out—

- (a) the name and address of each of the parties;
- (b) the address of the establishment at which the applicant is (or, as the case may be, was) employed;
- (c) the question;
- (d) the identity of the person with reference to whose work the question arises;
- (e) the date by which the expert is required to send his report to the tribunal; and
- (f) the length of the intervals, during the currency of the requirement to prepare the report, before the expiration of which the expert must send progress reports pursuant to paragraph (8).

The Secretary shall send a copy of the requirement to each of the parties together with a notice informing them that a party who unreasonably delays the preparation of the expert’s report may have an award of expenses made against him, which may include an award

in respect of the expert's fees, or have his originating application or notice of appearance struck out.

- (5) The requirement shall stipulate that the expert shall—
  - (a) take account of all such information supplied and all such representations made to him as have a bearing on the question;
  - (b) before drawing up his report, produce and send to the parties a written summary of the said information and representations and invite the representations of the parties upon the material contained therein;
  - (c) make his report to the tribunal in a document which shall reproduce the summary and contain a brief account of any representations received from the parties upon it, any conclusion he may have reached upon the question and the reasons for that conclusion or, as the case may be, for his failure to reach such a conclusion;
  - (d) take no account of the difference of sex and at all times act fairly.

(6) Where a tribunal requires an expert to prepare a report, it shall adjourn the hearing.

(7) In paragraphs (8), (9), (11) and (12), “the required date” means the most recent date specified as the date by which the expert must send his report to the tribunal either in the requirement made upon him under paragraph (4) or in a notice given to him under paragraph (11).

(8) Before the expiration of each interval specified in the requirement given to the expert under paragraph (4), the expert shall send a progress report to the tribunal—

- (a) stating whether he considers that he will be able to send his report to the tribunal by the required date; and
- (b) if he considers that he will be unable to do so, giving the reasons for the delay and the date by which he now expects to send his report to the tribunal.

Where a progress report states that the expert considers that he will be unable to send his report to the tribunal by the required date the Secretary shall send a copy to each party.

(9) If at any time when a progress report under paragraph (8) is not imminent, the expert comes to the view that he will be unable to send his report to the tribunal by the required date, he shall give notice in writing to the tribunal—

- (a) stating that fact; and
- (b) giving the reasons for the delay and the date by which he now expects to send his report to the tribunal.

The Secretary shall send a copy of any such notice to each party.

(10) In giving the reasons for any delay, pursuant to paragraph (8) or (9), the expert shall, in particular, state whether he considers that any action (including an omission) by a party has contributed to the delay and, if he so considers—

- (i) identify the party,
- (ii) give particulars of the action,
- (iii) describe how it has contributed to the delay, and
- (iv) give an assessment of the extent to which the delay is attributable to it.

(11) On receiving a progress report under paragraph (8) or a notice under paragraph (9) stating that the expert considers that he will be unable to send his report to the tribunal by the required date, the tribunal shall do one of the following—

- (a) give written notice to the expert that he is still required to send the report by the required date;

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- (b) give written notice to the expert substituting a later date as the required date; or
- (c) if, but only if, it considers that it would be in the interests of justice to replace the expert, revoke, by notice in writing to the expert, the requirement to prepare a report,

but shall not do so before it has informed the parties of the action it proposes to take and given each party the opportunity to make representations.

(12) Paragraph (11) shall also apply where the expert does not send his report to the tribunal by the required date but as if sub-paragraph (a) were excluded.

(13) Where, acting under paragraph (11), a tribunal has revoked the requirement made upon an expert to prepare a report it shall require another expert to prepare a report by proceeding under this rule as if it had just determined to require an expert to prepare a report, and the rule shall apply accordingly.

(14) Where in giving the reasons for any delay pursuant to paragraph (8) or (9), the expert has, in accordance with paragraph (10), stated that an action by a party has contributed to the delay, the tribunal shall consider whether the party has unreasonably delayed the preparation of the expert's report and, if it so considers, shall either—

- (a) make an order under and in accordance with rule 14, or
- (b) strike out the whole or part of the originating application, or, as the case may be of the notice of appearance and, where appropriate, direct that a respondent shall be debarred from defending altogether;

but the tribunal shall not exercise its powers under this paragraph without giving the party an opportunity to make representations.

(15) Notwithstanding rule 14(1)(b), the tribunal may, in making an order under rule 14 in pursuance of paragraph (14), order that a party shall pay to the Secretary of State the whole, or any part, of any fees and allowances paid or payable to the expert in respect of the time so far spent by him in carrying out work pursuant to the requirement to prepare a report.

(16) Where a tribunal has received the report of an expert, it shall send a copy of the report to each party and fix a date for the hearing of the case to be resumed; and the date so fixed shall be the earliest reasonably practicable date, but shall be no less than 14 days after the date on which the report is sent to the parties.

(17) Upon the resumption of the hearing of the case in accordance with paragraph (16) the report shall be admitted as evidence in the case unless the tribunal has exercised its power under paragraph (18) not to admit the report.

(18) Where the tribunal, on the application of one or more of the parties or otherwise, forms the view—

- (a) that the expert has not complied with a stipulation in paragraph (5), or
- (b) that the conclusion contained in the report is one which, taking due account of the information supplied and representations made to the expert, could not reasonably have been reached, or
- (c) that for some other material reason (other than disagreement with the conclusion that the applicant's work is or is not of equal value or with the reasoning leading to that conclusion) the report is unsatisfactory,

the tribunal may, if it thinks fit, determine not to admit the report, and in such a case the tribunal shall proceed under this rule as if it had just determined to require an expert to prepare a report, and the rule shall apply accordingly.

(19) In forming its view on the matters contained in paragraph (18)(a), (b) and (c) the tribunal shall take account of any representations of the parties thereon and may in that



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connection, subject to rule 11(2A) and (2B), permit any party to give evidence upon, to call witnesses and to question any witness upon any matter relevant thereto.

(20) The tribunal may, at any time after it has received the report of an expert, require that expert (or, if that is impracticable, another expert) to explain any matter contained in that report or, having regard to such matters as may be set out in the requirement, to give further consideration to the question.

(21) A requirement under paragraph (20) shall stipulate that the expert shall make his reply in writing to the tribunal, giving his explanation or, as the case may be, setting down any conclusion which may result from his further consideration and his reasons for that conclusion.

(22) Paragraphs (4), (7) to (12), (14) and (15) shall apply in relation to a requirement under paragraph (20) as if that requirement was a requirement to prepare a report except that—

- (a) the duty on the Secretary under paragraph (4) to send a notice concerning unreasonable delay by the parties of the preparation of the expert's report shall not apply;
- (b) for the purpose of such application the following sub-paragraphs shall be substituted for the sub-paragraphs of paragraph (11)—
  - “(a) give written notice to the expert that he is still required to send the reply by the required date;
  - (b) give written notice to the expert substituting a later date as the required date;
  - (c) notify the expert in writing that the requirement is cancelled without requiring another expert to fulfil it; or
  - (d) so notify the expert and require another expert to fulfil the requirement in accordance with paragraph (20);” and;
- (c) the tribunal may decide not to require the expert to send progress reports to the tribunal if it considers the requirement to be inappropriate in the circumstances and in that event—
  - (i) paragraphs (4)(f) and (8) shall not apply; and
  - (ii) paragraph (9) shall apply if the expert at any time comes to the view that he will be unable to send his reply to the tribunal by the required date.

(23) Where the tribunal has received a reply from the expert under paragraph (21), it shall send a copy of the reply to each of the parties and shall allow the parties to make representations thereon, and the reply shall be treated as information furnished to the tribunal and be given such weight as the tribunal thinks fit.

(24) Where a tribunal has determined not to admit a report under paragraph (18), that report shall be treated for all purposes (other than the award of expenses or allowances under rule 14) connected with the proceedings as if it had not been received by the tribunal and no further account shall be taken of it, and the requirement on the expert to prepare a report shall lapse.”

### **Modification of rule 11 of Schedule 1**

3. For paragraphs (1) and (2) of rule 11 of Schedule 1, substitute—

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### **“Procedure at hearing**

**11.—(1)** The tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts of law. The tribunal shall make such enquiries of persons appearing before it and witnesses as it considers appropriate and, subject to paragraphs (2A), (2B), (2C), (2D) and (2E), shall otherwise conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Subject to paragraphs (1), (2A), (2B), (2C), and (2D), at the hearing of the originating application a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.

(2A) The tribunal may, and shall upon the application of a party, require the attendance of an expert who has prepared a report in connection with an equal value claim in any hearing relating to that claim. Where an expert attends in compliance with such requirement any party may, subject to paragraph (1), cross-examine the expert on his report and on any other matter pertaining to the question on which the expert was required to report.

(2B) At any time after the tribunal has received the report of the expert, any party may, on giving reasonable notice of his intention to do so to the tribunal and to any other party to the claim, call one witness to give expert evidence on the question on which the tribunal has required the expert to prepare a report; and where such evidence is given, any other party may cross-examine the person giving that evidence upon it.

(2C) Except as provided in rule 10A(19) or by paragraph (2D), no party may give evidence upon, or question any witness upon, any matter of fact upon which a conclusion in the report of the expert is based.

(2D) Subject to paragraphs (2A) and (2B), a tribunal may, notwithstanding paragraph (2C), permit a party to give evidence upon, to call witnesses and to question any witness upon any such matters of fact as are referred to in paragraph (2C) if either—

- (a) the matter of fact is relevant to and is raised in connection with the issue contained in subsection (3) of section 1 of the 1970 Act (defence of genuine material factor) upon which the determination of the tribunal is being sought; or
- (b) the report of the expert contains no conclusion on the question of whether the applicant’s work and the work of the person identified in the requirement of the tribunal under rule 10A(4) are of equal value and the tribunal is satisfied that the absence of that conclusion is wholly or mainly due to the refusal or deliberate omission of a person required by the tribunal under rule 4(5A) to furnish information or to produce documents to comply with that requirement.

(2E) A tribunal may, on the application of a party, if in the circumstances of the case, having regard to the considerations expressed in paragraph (1), it considers that it is appropriate so to proceed, hear evidence upon and permit the parties to address it upon the issue contained in subsection (3) of section 1 of the 1970 Act (defence of genuine material factor) before determining whether to require an expert to prepare a report under rule 10A.”

### **Modification of rule 12 of Schedule 1**

**4.** In rule 12 of Schedule 1 (decision of tribunal)—

(a) after paragraph (4), insert—

“(4A) There shall be appended to the document referred to in paragraph (3) a copy of the report (if any) of an expert received by the tribunal in the course of the proceedings.”;

(b) for paragraph (5) substitute—

“(5) The clerk shall transmit the documents referred to in paragraphs (2) and (3) and the copy of the report referred to in paragraph (4A), if any, to the Secretary who shall enter them in the Register and shall send a copy of the entry to each of the parties and where the proceedings were referred to the tribunal by a sheriff, to that sheriff.”; and

(c) for paragraph (6) substitute—

“(6) The document referred to in paragraph (3) and the copy of the report referred to in paragraph (4A), if any, shall be omitted from the Register in any case in which evidence had been heard in private and the tribunal so directs. In such a case the Secretary shall send that document to each of the parties; and where there are proceedings before an appellate court relating to the decision in question, he shall send the document to that court, together with a copy of the entry in the Register of the document referred to in paragraph (2).”

#### **Modification of rule 14 of Schedule 1**

5. After paragraph (2) of rule 14 of Schedule 1 (expenses), insert—

“(2A) For the purposes of paragraph (1)(a), the expenses in respect of which a tribunal may make an order include expenses incurred by the party in whose favour the order is to be made in or in connection with any investigations carried out by an expert in preparing his report.”

#### **Modification of rule 15 of Schedule 1**

6. In rule 15 of Schedule 1 (miscellaneous powers)—

(a) for paragraph (5) substitute—

“(5) A tribunal may, before determining an application under rule 4 or rule 19, require the party making the application or, in the case of an application under rule 4(5A), the expert, to give notice of it to every other party (or, in the case of an application by the expert, to the parties and any other person on whom the tribunal is asked, in the application, to impose a requirement). The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified for the purposes of the application by the tribunal.”; and

(b) after paragraph (6), insert—

“(6A) Without prejudice to paragraph (7), the tribunal shall, before proceeding to hear the parties on an equal value claim, invite them to apply for an adjournment for the purpose of seeking to reach a settlement of the claim and shall, if both or all the parties agree to such a course, grant an adjournment for that purpose.

(6B) If, after the tribunal has adjourned the hearing under rule 10A(6) but before the tribunal has received the report of the expert, the applicant gives notice under paragraph (2) (a), the tribunal shall notify the expert that the requirement to prepare a report has ceased. The notice shall be without prejudice to the operation of rule 14(2A).”

#### **Modification of rule 23 of Schedule 1**

7. For paragraph (6) of rule 23 of Schedule 1 (notices etc.), substitute—

“(6) The recorded delivery service shall be used instead of the ordinary post—

(a) when a second set of notices or documents is sent to a respondent who has not entered an appearance under rule 3(1); and

(b) for service of an order made under rule 4(5) or (5A).”

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## PART II

### —national security cases

#### Modification of rule 4 of Schedule 1

1. At the end of rule 4 of Schedule 1 (case management) insert—

“(9) Where—

- (a) a Minister has at any stage issued a direction under rule 8(1)(b) or (c) (exclusion of applicant or his representative), or the tribunal has at any stage made an order under rule 8(2)(a) read with 8(1)(b) or (c), and
- (b) the tribunal (whether on application of a party or of its own motion) is considering whether to impose, or has imposed, a requirement under paragraph (1), (5) or (5A) on any person,

a Minister of the Crown (whether or not he is a party to the proceedings) may make an application to the tribunal objecting to the imposition of the requirement under paragraph (1), (5) or (5A), or, where a requirement has been imposed, an application to vary or set aside the requirement, as the case may be. The tribunal shall hear and determine the Minister’s application in private and the Minister shall be entitled to address the tribunal thereon. The application shall be made by notice to the Secretary and the Secretary shall give notice of the application to each party.”

#### Insertion of rule 7B into Schedule 1

2. For rule 7B of Schedule 1 (as referred to in paragraph 4 of Schedule 2), substitute—

##### “Reasons for the tribunal’s decision in national security cases

**7B.**—(1) This rule applies to the document setting out the reasons for the tribunal’s decision prepared under rule 12(3), and the report (if any) of an expert received by the tribunal in the course of the proceedings, in any particular Crown employment proceedings in which a direction of a Minister of the Crown has been given under rule 8(1)(a), (b) or (c), or an order of the tribunal has been made under rule 8(2)(a) read with 8(1)(a), (b) or (c).

(2) Before the Secretary enters the document referred to in rule 12(3), and the copy of the report referred to in paragraph (1), in the Register he shall send a copy of those documents to the Minister.

- (3) If the Minister considers it expedient in the interests of national security he may—
  - (a) direct the tribunal that the document referred to in rule 12(3) and the report referred to in paragraph (1) shall not be disclosed to any person who was excluded from all or part of the proceedings;
  - (b) direct the tribunal to prepare a further document setting out the reasons for its decision but with the omission of such of the reasons as are specified in the direction;
  - (c) direct the tribunal that no further document setting out the tribunal’s reasons for its decision should be prepared;
  - (d) direct the tribunal that a further copy of the report referred to in paragraph (1) be prepared, with the omission of such parts of the report as are specified in the direction;
  - (e) direct the tribunal that no further report referred to in paragraph (1) be prepared.

(4) Where the Minister has directed the tribunal in accordance with paragraph (3)(b) or (d), any document prepared pursuant to that direction shall be signed by the chairman and marked in each place where an omission has been made.”

### **Modification of rule 11 of Schedule 1**

3. For paragraph 2 of rule 11 of Schedule 1 (procedure) substitute—

“(2) Subject to paragraphs (1), (2A), (2B), (2C) and (2D), and to any direction of a Minister of the Crown under rule 8(1)(b) or (c) or order of the tribunal under rule 8(2)(a) read with 8(1)(b) or (c), at the hearing of the originating application a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.”

### **Modification of rule 12 of Schedule 1**

4. In rule 12 of Schedule 1 (decision of tribunal) after paragraph (5), insert—

“(5A) Where the Minister has directed the tribunal as referred to in rule 7B(3)(b) or (d) (keeping secret certain reasons for the tribunal’s decision or certain parts of the expert’s report), the clerk shall transmit any document prepared pursuant to that direction to the Secretary who shall enter the document, and the document referred to in paragraph (2), in the Register and, where applicable, shall send a copy of the entry to the excluded person. The clerk shall also transmit the document referred to in paragraph (3) and a copy of the report referred to in paragraph (4A), if any, to the Secretary. Those documents shall be omitted from the Register but the Secretary shall send a copy of them, the document referred to in paragraph (2) and any document prepared pursuant to the direction under rule 7B(3)(b) or (d) in accordance with paragraph (5D).

(5B) Where the Minister has directed the tribunal as referred to in rule 7B(3)(c) or (e) (keeping secret all of the reasons for the tribunal’s decision or all of the expert’s report), the Secretary shall enter the document referred to in paragraph (2) in the Register and shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) and a copy of the report referred to in paragraph (4A), if any, to the Secretary. Those documents shall be omitted from the Register but the Secretary shall send a copy of them and of the document referred to in paragraph (2) in accordance with paragraph (5D).

(5C) Where—

- (a) a Minister of the Crown has given a direction under rule 8(1)(d) (concealing identity of witness);
- (b) the tribunal has made an order under rule 8(2)(a) read with 8(1)(d); or
- (c) the tribunal has taken steps under rule 8(2)(c) to keep secret all or part of the reasons for its decision;

any further document prepared pursuant to that direction or order, or pursuant to those steps, as the case may be, shall be signed by the chairman and marked in each place where an omission has been made. The clerk shall transmit such further document to the Secretary who shall enter the document, and the document referred to in paragraph (2), in the Register and, where applicable, shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) and a copy of the report referred to in paragraph (4A), if any, to the Secretary. Those documents shall be omitted from the Register but the Secretary shall send a copy of them, the document referred to in paragraph (2) and any document prepared pursuant to the direction, order or steps referred to in sub-paragraphs (a) to (c) in accordance with paragraph (5D).

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(5D) Any documents required by paragraphs (5A) to (5C) to be sent in accordance with this paragraph shall be sent by the Secretary to—

- (a) the respondent,
- (b) such of the applicant or the applicant’s representatives as was not an excluded person,
- (c) if applicable, the special advocate,
- (d) where the proceedings were referred to the tribunal by a sheriff, to that sheriff, and
- (e) where there are proceedings before an appellate court relating to the decision in question, to that court.”

#### SCHEDULE 4

Regulation 11(6)(a)

### THE EMPLOYMENT TRIBUNALS (LEVY APPEALS) RULES OF PROCEDURE (SCOTLAND) *for use only in proceedings on levy appeals*

#### **Notice of appeal**

1. An appeal against an assessment to a levy shall be instituted by the appellant sending to the Board in duplicate a notice of appeal which shall be substantially in accordance with Form 1, and shall set out the grounds of the appeal.

#### **Action upon receipt of appeal**

2.—(1) Subject to provisions of rules 3 and 4, the Board shall, within 21 days of receiving the notice of appeal, send to the Secretary—

- (a) one copy of the notice of appeal;
- (b) a copy of the assessment notice and of any notice by the Board allowing further time for appealing;
- (c) a notice giving the Board’s address for service under these rules where that address is different from the address specified in the assessment notice as the address for service of a notice of appeal; and
- (d) any representations in writing relating to the appeal that the Board may then desire to submit to the tribunal.

(2) Failure to comply with any provision of this rule or rule 3 shall not render the appeal or anything done in pursuance thereof invalid.

#### **Further particulars of appeal**

3.—(1) Subject to rule 4, this rule applies in a case where the Board upon receiving the notice of appeal requires further particulars of the grounds on which the appellant intends to rely and of any facts and contentions relevant thereto.

(2) The Board shall within 21 days of receiving the said notice of appeal send to the appellant a notice specifying the further particulars required by the Board.

(3) The appellant shall within 21 days of receiving the said notice, or within such further period as the Board may allow, send to the Board in duplicate such further particulars.

(4) Subject to the provisions of paragraph (5), the Board shall, within 21 days of receiving such further particulars, send to the Secretary—

- (a) the documents specified in rule 2;
- (b) a copy of the notice requiring the further particulars; and
- (c) such further particulars, and any representations in writing with respect thereto that the Board may then desire to submit to the tribunal.

(5) If such further particulars are not received by the Board in due time, the documents mentioned in sub-paragraphs (a) and (b) of paragraph (4) shall be sent by the Board to the Secretary—

- (a) within fifty days of the receipt of the notice of appeal by the Board; or
- (b) if the Board has allowed a further period of time for delivery of further particulars under paragraph (3), within seven days of the end of that period.

#### **Withdrawal of appeal or assessment**

4.—(1) The appellant may withdraw the notice of appeal by notice given to the Board at any time before the entry of the appeal in the Register under rule 5(a) and in that event no further action shall be taken in relation to the appeal.

(2) Where an assessment is withdrawn by the Board, no further action shall be taken in relation to the appeal.

#### **Entry of appeal**

5. Upon receiving from the Board the relevant documents in accordance with rule 2(1), 3(4) or 3(5) the Secretary shall as soon as practicable—

- (a) enter the following details of the appeal in the Register, namely—
  - (i) the case number;
  - (ii) the date the Secretary received the relevant documents;
  - (iii) the name and address of the appellant;
  - (iv) the name and address of the Board;
  - (v) the Regional Office of the Employment Tribunals dealing with the appeal; and
  - (vi) the fact that the appeal is an appeal by a person assessed to levy imposed under a levy order made under section 12 of the 1982 Act;
- (b) give notice to the appellant and to the Board of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the appeal) and of the address to which notices and other communications to the Secretary shall be sent;
- (c) give notice to the appellant of the Board's address for service under these rules; and
- (d) send to the appellant a copy of any representations in writing that the Board has submitted to the tribunal under rule 2 or rule 3.

#### **Direction for further particulars**

6.—(1) In any case in which an appellant has not sent to the Board further particulars in accordance with a notice sent by the Board under rule 3 the tribunal may, on the application of the Board (which may be sent to the Secretary with the documents referred to in rule 3(5)), by notice direct the appellant to supply such further particulars of the grounds on which he intends to rely and of any facts and contentions relevant thereto as may be specified in the notice, and the appellant shall send such particulars in duplicate to the Secretary within such time as the tribunal shall direct.

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(2) Upon receipt of further particulars from the appellant the Secretary shall send a copy thereof to the Board.

(3) If the appellant makes default in complying with a direction made by the tribunal under this rule the tribunal may on the application of the Board dismiss the appeal or give such other directions as may seem proper.

(4) The tribunal may at any time by notice direct the Board to furnish any particulars relating to the assessment which appear to be requisite for the decision of the appeal, and thereupon the Board shall send the particulars to the Secretary and to the appellant.

### **Attendance of witnesses and recovery of documents**

7.—(1) On the application of the appellant or the Board made either by notice to the Secretary or at the hearing the tribunal may—

- (a) require one party to grant to the other party such recovery or inspection of documents as might be ordered by a sheriff; or
- (b) require any person (including a party) to attend as a witness and to give evidence or to produce any documents in his possession or power which relate to the appeal;

and may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

(2) A party on whom a requirement has been imposed under paragraph (1)(a) of this rule or a person on whom a requirement has been imposed under paragraph (1)(b) may, if such requirement was made upon an ex parte application, apply to the tribunal to vary or set aside the requirement, and notice of such an application shall be given to the party upon whose application the requirement was made.

(3) No application to vary or set aside a requirement as aforesaid shall be entertained by the tribunal in a case where a time has been appointed in relation to the requirement unless the application is made before the time or, as the case may be, the expiration of time so appointed.

(4) Every document containing a requirement under paragraph (1) shall contain a reference to the fact that, under section 7(4) of the 1996 Act, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

### **Time and place of hearing of appeal**

8. The President or a Regional Chairman shall fix the date, time and place of the hearing of an appeal, and the Secretary shall, not less than 14 days before the date so fixed, send to the appellant and to the Board a notice substantially in accordance with Form 2.

### **The hearing**

9.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with section 4(1) and (2) of the 1996 Act.

(2) Subject to paragraph (3), any hearing of or in connection with an appeal shall take place in public.

(3) A tribunal may sit in private—

- (a) for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

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



- (ii) any information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
  - (iii) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of the 1992 Act, cause substantial injury to any undertaking of his or in which he works; or
- (b) if it considers it expedient in the interests of national security.
- (4) A member of the Council on Tribunals or of its Scottish Committee shall be entitled to attend any hearing taking place in private in his capacity as member.

### **Procedure at hearing**

**10.**—(1) At the hearing of an appeal the appellant and the Board shall be entitled to make opening statements, to call witnesses, to cross-examine any witnesses called by the other party and address the tribunal.

(2) The appellant may if he so desires give evidence on his own behalf.

(3) If the appellant or the Board or both of them shall fail to appear or to be represented at the time and place fixed for a hearing the tribunal may dispose of the appeal or application in the absence of such party or parties or may adjourn the hearing to a later date; provided that before disposing of an appeal in the absence of either or both parties the tribunal shall consider any representations submitted by such party or parties under these rules.

(4) The tribunal may require any witnesses to give evidence on oath or affirmation in due form.

### **Devolution issues**

**11.**—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform the relevant authority thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time—

(a) send a copy of the notice to the parties to the proceedings; and

(b) send the relevant authority a copy of the notice of appeal.

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

### **Decision of tribunal**

**12.**—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) The clerk shall transmit the document signed by the chairman to the Secretary who shall enter it in the Register, and shall send a copy of the entry to the appellant and the Board.

(4) The reasons for the decision shall be omitted from the Register in any case in which—

(a) evidence has been heard in private and the tribunal so directs, or

(b) the tribunal on the application of the appellant so directs on the ground that disclosure will be contrary to the interests of the appellant.

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(5) The chairman of the tribunal shall have power by certificate to correct in the document recording the tribunal's decision clerical mistakes or errors arising therein from any accidental slip or omission.

(6) The clerk shall send a copy of any document so corrected and the certificate of the chairman to the Secretary who shall thereupon make such correction as may be necessary in the Register and shall send a copy of the corrected entry or the corrected reasons, as the case may be, to the appellant and the Board.

### **Expenses**

**13.**—(1) The decision of the tribunal may include—

- (a) an order that the Board shall pay to the appellant or that the appellant shall pay to the Board either a specified sum in respect of the expenses incurred by the appellant or the Board, as the case may be, or, in default of agreement, the taxed amount of those expenses;
- (b) an order that the Board or the appellant shall pay to the Secretary of State the whole, or any part of, any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under section 5(2) or (3) of the 1996 Act to any person, for the purposes of, or in connection with, his attendance at the tribunal.

(2) Any expenses required by an order under this rule to be taxed may be taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order, and thereafter the tribunal may issue an order for payment of the amount as taxed.

### **Miscellaneous powers**

**14.**—(1) The tribunal may if thinks fit—

- (a) extend the time appointed by these rules for doing any act notwithstanding that the time appointed may have expired;
- (b) before granting an application referred to in rule 6(1), 6(3), 7(1) or 15, require the party making the application to give notice thereof to the other party;
- (c) postpone the day or time fixed for, or adjourn the hearing of, any appeal or application;
- (d) if at any time after the entry of the appeal in the Register the appellant gives notice of the abandonment of his appeal to the Secretary and to the Board, or the Board gives notice that the appeal is not contested to the Secretary and to the appellant, dismiss or allow the appeal, as the case may be, and thereupon rule 13 shall apply;
- (e) if the appellant and the Board agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(2) A notice under paragraph (1)(b) shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified by the tribunal for the purposes of the application.

(3) Subject to the provisions of these rules the tribunal may regulate its own procedure.

(4) Any act required or authorised by these rules to be done by a tribunal may be done by a chairman except—

- (a) the hearing of an appeal under rule 9; and
- (b) an act required or authorised to be so done by rule 10 or 12 which the rule implies is to be done by the tribunal which is hearing or heard the appeal.

(5) Any functions of the Secretary other than those mentioned in rules 5 and 12 may be performed by an Assistant Secretary.

## **Applications**

**15.**—(1) An application to the tribunal for an extension of the time appointed by these rules for doing any act may be made by the appellant or the Board either before or (subject to rule 7(3)) after the expiration of the time so appointed.

(2) The appellant or the Board may at any time apply to the tribunal for directions on any matter arising in connection with the appeal.

(3) An application made under the foregoing provisions of these rules or to the tribunal for an extension of the time for appealing against an assessment to a levy shall be made by sending to the Secretary in duplicate a notice of application which shall state the title of the appeal, or the number of the assessment in the case where an appeal has not been entered in the Register, and shall set out the grounds of the application.

(4) The Secretary shall give notice to the appellant and to the Board of any extension of time granted by the tribunal or of any directions given by the tribunal in pursuance of these rules.

## **Notices, etc**

**16.**—(1) Any notice given under these rules shall be in writing, and all notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post, by means of the recorded delivery service or delivered to or at—

- (a) in the case of a notice of appeal, the Board's address for service specified in the assessment notice;
- (b) in the case of a notice or document directed to the Advocate General for Scotland pursuant to rule 11, the Office of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ;
- (c) in the case of a notice or document directed to the Lord Advocate pursuant to rule 11, the Legal Secretariat to the Lord Advocate, 25 Chambers Street, Edinburgh, EH1 1LA;
- (d) in the case of any other document directed to the Board, the Board's address for service;
- (e) in the case of a document (other than a notice of appeal) directed to the Secretary, the Office of the Tribunals or such other office as may be notified by the Secretary to the appellant and to the Board under rule 5(b) or paragraph (3);
- (f) in the case of a document directed to the appellant, his address for service specified in a notice given under these rules or, failing such a notice or if a notice sent to such an address has been returned, his last known address or place of business in the United Kingdom, or if the appellant is a corporation, such address or place of business or its registered or principal office;

and if sent or given to the authorised representative of the appellant or the Board shall be deemed to have been sent or given to the appellant or the Board as the case may be.

(2) The appellant or the Board may at any time by notice to the Secretary and to the other party change his address for service under these rules.

(3) The Secretary shall give notice to the appellant and the Board of any change in an address of which notice has been given to the parties under rule 5(b).

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**APPENDIX**  
**FORM 1 INDUSTRIAL TRAINING ACT 1982 NOTICE OF APPEAL AGAINST AN ASSESSMENT**

TO  
\*INDUSTRIAL TRAINING BOARD  
.....  
.....[ ]  
.....  
.....

AND TO  
The Secretary of the Tribunals (Scotland)

I/We + ..... of  
.....#  
hereby give notice that I/we + appeal to an employment tribunal under the Industrial Training Act 1982, section 12, against the assessment to the levy made by the above-mentioned industry training board on ..... 20.....  
being the assessment numbered .....

**Grounds of appeal**  
The grounds of my/our + appeal are as follows:

**Address for service**  
All communications regarding the appeal should be addressed to me/us + at .....  
.....#  
to my/our + Solicitor(s)/Agent(s) ~ ,  
..... at  
.....#  
Date ..... 20.....  
Signed .....

- \* Insert name of the Board.
- [ ] Insert the address of the Board.
- + Delete if inappropriate.
- # Insert address applicable.
- ~ If the notice is signed on behalf of the appellant, the signatory must state in what capacity or what authority he signs.

**FORM 2 INDUSTRIAL TRAINING ACT 1982 NOTICE OF HEARING**

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Case No ..... Central/\*Regional Office of the Employment  
Tribunals (Scotland),  
Tribunal  
.....  
.....

NOTICE IS HEREBY GIVEN that the appeal of .....  
..... against the  
assessment made to the levy by the

.....  
Industry Training Board and numbered  
.....  
will be heard by an employment tribunal at .....  
on the ..... day of ..... at  
..... o'clock in the .....  
noon, or as soon as may be thereafter.

Unless the appellant receives from me a communication to the contrary, he should in his own interest appear at the hearing with his witnesses at the above time and place.

The appellant is entitled to be represented by counsel or solicitor or by another person.

If for any reason the appellant does not propose, or is unable, to appear at the hearing either in person or by representative, the appellant should immediately inform me in writing at the address mentioned at the head of this notice, stating the case number of the appeal and the reasons for the inability to attend or to be represented.

The appellant and the Board are entitled to submit representations in writing for consideration of the tribunal at the hearing of the appeal. Any such representations must be received by the Secretary of the Employment Tribunals (Scotland) at the address mentioned at the head of this notice on or before [date] and a copy must be sent at the same time to the other party. If either or both parties fail to attend the hearing, the tribunal may dispose of the appeal in their absence, but in such case the tribunal will consider any representations so submitted.

Dated ..... 20.....  
Signed .....  
\*Secretary/\*Assistant Secretary

To the Appellant .....  
And  
To ..... Industry  
Training Board.

SCHEDULE 5

Regulation 11(6)(b)

THE EMPLOYMENT TRIBUNALS (IMPROVEMENT AND PROHIBITION  
NOTICES APPEALS) RULES OF PROCEDURE (SCOTLAND)  
*for use only in proceedings on an appeal against an improvement or prohibition notice*

**Notice of appeal**

1. An appeal shall be commenced by the appellant sending to the Secretary a notice of appeal which shall be in writing and shall set out—

- (a) the name and address of the appellant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the appeal to be sent;
- (b) the date of the improvement notice or prohibition notice appealed against and the address of the premises or place concerned;

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- (c) the name and address of the respondent;
- (d) particulars of the requirements or directions appealed against; and
- (e) the grounds of the appeal.

### **Time limit for bringing appeal**

2.—(1) Subject to paragraph (2), the notice of appeal shall be sent to the Secretary within 21 days from the date of the service on the appellant of the notice appealed against.

(2) A tribunal may extend the time mentioned above where it is satisfied, on an application made in writing to the Secretary either before or after the expiration of that time, that it is not or was not reasonably practicable for an appeal to be brought within that time.

### **Action upon receipt of notice of appeal**

3. Upon receiving a notice of appeal the Secretary shall—

- (a) enter the following details of the appeal in the Register, namely—
  - (i) the case number;
  - (ii) the date the Secretary received the notice of appeal;
  - (iii) the name and address of the appellant;
  - (iv) the name and address of the respondent;
  - (v) the Regional Office of the Employment Tribunals dealing with the appeal; and
  - (vi) the fact that the appeal is an appeal against an improvement or prohibition notice, as the case may be, under section 24 of the 1974 Act;
- (b) send a copy of the notice of appeal to the respondent; and
- (c) inform the parties in writing of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent.

### **Application for direction suspending the operation of a prohibition notice**

4.—(1) Where an appeal has been brought against a prohibition notice and an application is made to the tribunal by the appellant in pursuance of section 24(3)(b) of the 1974 Act for a direction suspending the operation of the notice until the appeal is finally disposed of or withdrawn, the application shall be sent in writing to the Secretary and shall set out—

- (a) the case number of the appeal if known to the appellant or particulars sufficient to identify the appeal; and
- (b) the grounds on which the application is made.

(2) Upon receiving the application, the Secretary shall enter the fact of it against the entry in the Register relating to the appeal and shall send a copy of it to the respondent.

### **Power to require attendance of witnesses and production of documents, etc**

5.—(1) A tribunal may on the application of a party made either by notice to the Secretary or at the hearing—

- (a) require a party to furnish in writing to the other party further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) require one party to grant to the other party such recovery or inspection of documents as might be ordered by a sheriff; and

(c) require the attendance of any person as a witness or require the production of any document relating to the matter to be determined, and  
may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

(2) A person on whom a requirement has been made under paragraph (1) may apply to the tribunal either by notice to the Secretary or at the hearing to vary or set aside the requirement.

(3) No such application to vary or set aside shall be entertained in a case where a time has been appointed under paragraph (1) in relation to the requirement unless it is made before the time or, as the case may be, expiration of the time so appointed.

(4) Every document containing a requirement under paragraph (1)(b) or (c) shall contain a reference to the fact that, under section 7(4) of the 1996 Act, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

### **Time and place of hearing and appointment of assessor**

6.—(1) The President or a Regional Chairman shall fix the date, time and place of the hearing of the appeal and the Secretary shall not less than 14 days (or such shorter time as may be agreed by him with the parties) before the date so fixed send to each party a notice of hearing together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.

(2) Where the President or a Regional Chairman so directs, the Secretary shall also send notice of the hearing to such persons as may be directed, but the requirement as to the period of notice contained in paragraph (1) shall not apply to any such notice.

(3) The President or a Regional Chairman may, if he thinks fit, appoint in pursuance of section 24(4) of the 1974 Act a person or persons having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal as assessor or assessors.

### **The hearing**

7.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with section 4(1) and (2) of the 1996 Act.

(2) Subject to paragraph (3), any hearing of or in connection with an appeal shall take place in public.

(3) A tribunal may sit in private—

(a) for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

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

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

(iii) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of the 1992 Act, cause substantial injury to any undertaking of his or in which he works; or

(b) if it considers it expedient in the interests of national security.

(4) A member of the Council on Tribunals or of its Scottish Committee shall be entitled to attend any hearing taking place in private in his capacity as member.

### **Written representations**

8. If a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the appeal, that party shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy of it to the other party.

### **Procedure at hearing**

9.—(1) At any hearing of or in connection with an appeal a party shall be entitled to make an opening statement, to give evidence on his own behalf, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2) If a party shall fail to appear or to be represented at the time and place fixed for the hearing of an appeal, the tribunal may dispose of the appeal in the absence of that party or may adjourn the hearing to a later date; provided that before disposing of an appeal in the absence of a party the tribunal shall consider any written representations submitted by that party in pursuance of rule 8.

(3) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

### **Devolution issues**

10.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform the relevant authority thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time—

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send the relevant authority a copy of the notice of appeal.

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

### **Decision of tribunal**

11.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) The clerk shall transmit the document signed by the chairman to the Secretary who shall enter it in the Register and shall send a copy of the entry to each of the parties.

(4) The reasons for the decision shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs.

(5) The chairman of a tribunal shall have power by certificate to correct in the document recording the tribunal's decision clerical mistakes or errors arising therein from any accidental slip or omission.

(6) The clerk shall send a copy of any document so corrected and the certificate of the chairman to the Secretary who shall as soon as practicable make such correction as may be necessary in the Register and shall send a copy of the corrected entry or of the corrected reasons, as the case may be, to each of the parties.

(7) If any decision is—

- (a) corrected under paragraph (5),
- (b) reviewed, revoked or varied under rule 12, or
- (c) altered in any way by order of an appellate court,



the Secretary shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties.

### **Review of tribunal's decision**

**12.—**(1) A tribunal shall have power on the application of a party to review and revoke or vary by certificate any of its decisions on the grounds that—

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

(2) An application for the purposes of paragraph (1) may be made at the hearing. If the application is not made at the hearing, such application shall be made to the Secretary within 14 days from the date of the entry of a decision in the Register and must be in writing stating the grounds in full.

(3) An application for the purposes of paragraph (1) may be refused by the chairman of the tribunal which decided the case, by the President or by a Regional Chairman if in his opinion it has no reasonable prospect of success and he shall state the reasons for his opinion.

(4) If such an application is not refused under paragraph (3), it shall be heard by the tribunal and if it is granted the tribunal shall either vary its decision or revoke its decision and order a re-hearing.

(5) The clerk shall send to the Secretary the certificate of the chairman as to any revocation or variation of the tribunal's decision under this rule. The Secretary shall as soon as practicable make such correction as may be necessary in the Register and shall send a copy of the entry to each of the parties.

### **Expenses**

**13.—**(1) A tribunal may make an order that a party shall pay to the other either a specified sum in respect of the expenses of or in connection with an appeal incurred by that other party or, in default of agreement, the taxed amount of those expenses.

(2) Any expenses required by an order under this rule to be taxed may be taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order, and thereafter the tribunal may issue an order for payment of the amount as taxed.

### **Miscellaneous powers**

**14.—**(1) Subject to the provisions of these rules, a tribunal may regulate its own procedure.

(2) A tribunal may, if it thinks fit—

- (a) postpone the day or time fixed for, or adjourn, any hearing;
- (b) before granting an application under rule 5 or 12 require the party making the application to give notice thereof to the other party;
- (c) either on the application of any person or of its own motion, direct any other person to be sisted as a party to the appeal (giving such consequential directions as it considers necessary), but may do so only after having given to the person proposed to be sisted a reasonable opportunity of making written or oral objection;
- (d) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;

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- (e) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;
  - (f) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.
- (3) Any act required or authorised by these rules to be done by a tribunal may be done by a chairman except—
- (a) the granting of an extension of time under rule 2(2);
  - (b) the hearing of an appeal under rule 7;
  - (c) an act required or authorised to be so done by rule 9 or 11 which the rule implies is to be done by the tribunal which is hearing or heard the appeal;
  - (d) the hearing of an application under rule 12(1), and the variation or revocation of a decision, and ordering of a re-hearing, under rule 12(4).
- (4) Any function of the Secretary may be performed by an Assistant Secretary.

#### **Notices, etc**

**15.**—(1) Any notice given under these rules shall be in writing and all notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraphs (3) and (4)) or delivered to or at—

- (a) in the case of a document directed to the Secretary, the Office of the Tribunals or such other office as may be notified by the Secretary to the parties;
- (b) in the case of a notice or document directed to the Advocate General for Scotland pursuant to rule 10, the Officer of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ;
- (c) in the case of a notice or document directed to the Lord Advocate pursuant to rule 10, the Legal Secretariat to the Lord Advocate, 25 Chambers Street, Edinburgh, EH1 1LA;
- (d) in the case of a document directed to a party, his address for service specified in the notice of appeal or in a notice under paragraph (2) or (if no address for service is so specified or if a notice sent to such an address has been returned), his last known address or place of business in the United Kingdom or, if the party is a corporation, the corporation's registered or principal office;
- (e) in the case of a 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 such a person is a corporation, the corporation's registered or principal office;

and if sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(2) A party may at any time by notice to the Secretary and to the other party change his address for service under these rules.

(3) Where a notice of appeal is not delivered, it shall be sent by the recorded delivery service.

(4) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this rule, the President or a Regional Chairman may make an order for substituted service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this rule.

(5) In the case of an appeal to which the respondent is an inspector appointed otherwise than by the Health and Safety Executive, the Secretary shall send to that executive copies of the notice of appeal and the document recording the decision of the tribunal on the appeal.

## SCHEDULE 6

Regulation 11(6)(c)

### THE EMPLOYMENT TRIBUNALS (NON-DISCRIMINATION NOTICES APPEALS) RULES OF PROCEDURE (SCOTLAND) *for use only in proceedings on an appeal against a non-discrimination notice*

#### **Notice of appeal**

**1.—(1)** An appeal, as referred to in section 68(1)(a) of the 1975 Act, section 59(1)(a) of the 1976 Act and paragraph 10(1) and (2)(a) of Schedule 3 to the 1999 Act, shall be commenced by the appellant sending to the Secretary a notice of appeal which shall be in writing and shall set out—

- (a) the name and address of the appellant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the appeal to be sent;
- (b) the date of the non-discrimination notice appealed against;
- (c) the name and address of the respondent;
- (d) particulars of the requirements appealed against; and
- (e) the grounds of the appeal.

#### **Action upon receipt of notice of appeal**

**2.** Upon receiving a notice of appeal the Secretary shall—

- (a) enter the following details in the Register, namely—
  - (i) the case number;
  - (ii) the date the Secretary received the notice of appeal;
  - (iii) the name and address of the appellant;
  - (iv) the name and address of the respondent;
  - (v) the Regional Office of the Employment Tribunals dealing with the appeal;
  - (vi) the fact that the appeal is an appeal against a non-discrimination notice under section 68(1)(a) of the 1975 Act, section 59(1)(a) of the 1976 Act or paragraph 10(1) and (2)(a) of Schedule 3 to the 1999 Act, as the case may be;
- (b) send a copy of the notice of appeal to the respondent; and
- (c) inform the parties in writing of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent.

#### **Power to require attendance of witnesses and production of documents, etc**

**3.—(1)** A tribunal may on the application of a party made either by notice to the Secretary or at the hearing—

- (a) require a party to furnish in writing to the other party further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) require one party to grant to the other party such recovery or inspection of documents as might be ordered by a sheriff; and
- (c) require the attendance of any person as a witness or require the production of any document relating to the matter to be determined,

and may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

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(2) A person on whom a requirement has been made under paragraph (1) may apply to the tribunal either by notice to the Secretary or at the hearing to vary or set aside the requirement.

(3) No such application to vary or set aside shall be entertained in a case where a time has been appointed under paragraph (1) in relation to the requirement unless it is made before the time or, as the case may be, expiration of the time so appointed.

(4) Every document containing a requirement under paragraph (1)(b) or (c) shall contain a reference to the fact that, under section 7(4) of the 1996 Act, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

### **Time and place of hearing**

4.—(1) The President or a Regional Chairman shall fix the date, time and place of the hearing of the appeal and the Secretary shall not less than 14 days (or such shorter time as may be agreed by him with the parties) before the date so fixed send to each party a notice of hearing together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.

(2) Where the President or a Regional Chairman so directs, the Secretary shall also send notice of the hearing to such persons as may be directed, but the requirements as to the period of notice contained in paragraph (1) shall not apply to any such notices.

### **The hearing**

5.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with section 4(1) and (2) of the 1996 Act.

(2) Subject to paragraph (3), any hearing of or in connection with an appeal shall take place in public.

(3) A tribunal may sit in private—

(a) for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

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

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

(iii) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of the 1992 Act, cause substantial injury to any undertaking of his or in which he works; or

(b) if it considers it expedient in the interests of national security.

(4) A member of the Council on Tribunals or of its Scottish Committee shall be entitled to attend any hearing taking place in private in his capacity as member.

### **Written representations**

6. If a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the appeal, that party shall send such representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy thereof to the other party.

### **Procedure at hearing**

7.—(1) At any hearing of or in connection with an appeal a party shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2) If a party shall fail to appear or to be represented at the time and place fixed for the hearing of an appeal, the tribunal may dispose of the appeal in the absence of that party or may adjourn the hearing to a later date; provided that before disposing of an appeal in the absence of a party the tribunal shall consider any written representations submitted by that party in pursuance of rule 6.

(3) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

### **Devolution issues**

8.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform the relevant authority thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time—

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send the relevant authority a copy of the notice of appeal.

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

### **Decision of tribunal**

9.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) The clerk shall transmit the document signed by the chairman to the Secretary who shall enter it in the Register and shall send a copy of the entry to each of the parties.

(4) The reasons for the decision shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs.

(5) In any appeal appearing to involve allegations of a sexual offence, the document referred to in paragraph (3) shall be entered on the Register with such deletions or amendments as have been made in accordance with rule 12(3).

(6) The chairman shall have power by certificate to correct in the document recording the tribunal's decision clerical mistakes or errors arising therein from any accidental slip or omission.

(7) The clerk shall send a copy of any document so corrected and the certificate of the chairman to the Secretary who shall as soon as practicable make such corrections as may be necessary in the Register and shall send a copy of the corrected entry or of the corrected reasons, as the case may be, to each of the parties.

(8) If any decision is—

- (a) corrected under paragraph (6),
- (b) reviewed, revoked or varied under rule 10, or
- (c) altered in any way by order of an appellate court,

the Secretary shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties.

### **Review of tribunal's decision**

**10.**—(1) A tribunal shall have power on the application of a party to review and revoke or vary by certificate any of its decisions on the grounds that—

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

(2) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing stating the grounds in full.

(3) An application for the purposes of paragraph (1) may be refused by the chairman of the tribunal which decided the case, by the President or by a Regional Chairman if in his opinion it has no reasonable prospect of success and he shall state the reasons for his opinion.

(4) If such an application is not refused under paragraph (3), it shall be heard by the tribunal and if it is granted the tribunal shall either vary its decision or revoke its decision and order a re-hearing.

(5) The clerk shall send to the Secretary the certificate of the chairman as to any revocation or variation of the tribunal's decision under this rule. The Secretary shall as soon as practicable make such correction as may be necessary in the Register and shall send a copy of the entry to each of the parties.

### **Expenses**

**11.**—(1) A tribunal may make an order that a party shall pay to the other party either a specified sum in respect of the expenses of or in connection with an appeal incurred by that other party or, in default of agreement, the taxed amount of those expenses.

(2) Any expenses required by an order under this rule to be taxed may be taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order, and thereafter the tribunal may issue an order for payment of the amount as taxed.

### **Miscellaneous powers**

**12.**—(1) Subject to the provisions of these rules, a tribunal may regulate its own procedure.

(2) A tribunal may—

- (a) postpone the day or time fixed for, or adjourn, any hearing;
- (b) before granting an application under rule 3 or 10 require the party making the application to give notice thereof to the other party;
- (c) either on the application of any person or of its own motion, direct any other person to be sisted as a party to the appeal (giving such consequential directions as it considers necessary), but may do so only after having given to the person proposed to be sisted a reasonable opportunity of making written or oral objections;
- (d) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;
- (e) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;

(f) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

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

(4) Any act required or authorised by these rules to be done by a tribunal may be done by a chairman except—

- (a) the hearing of an appeal under rule 5;
- (b) an act required or authorised to be so done by rule 7 or 9 which the rule implies is to be done by the tribunal which is hearing or has heard the appeal;
- (c) the hearing of an application under rule 10(1), and the variation or revocation of a decision, and ordering of a re-hearing, under rule 10(4).

(5) Any functions of the Secretary may be performed by an Assistant Secretary.

### **Restricted reporting orders**

**13.**—(1) In any appeal which involves allegations of sexual misconduct the tribunal may at any time before promulgation of its decision, either on the application of a party made by notice to the Secretary or of its own motion, make a restricted reporting order.

(2) The tribunal shall not make a restricted reporting order unless it has given each party an opportunity to advance oral argument at a hearing, if they so wish.

(3) Where a tribunal makes a restricted reporting order—

- (a) it shall specify in the order the persons who may not be identified;
- (b) the order shall remain in force until the promulgation of the decision of the tribunal on the appeal to which it relates unless revoked earlier; and
- (c) the Assistant Secretary shall ensure that a notice of that fact is displayed on the notice board of the tribunal with any list of the proceedings taking place before the employment tribunal, and on the door of the room in which the proceedings affected by the order are taking place.

(4) A tribunal may revoke a restricted reporting order at any time if it thinks fit.

(5) For the purposes of this rule “promulgation” occurs on the date recorded as being the date on which the document recording the determination of the appeal was sent to the parties.

### **Notices, etc**

**14.**—(1) Any notice given under these rules shall be in writing and all notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraphs (3) and (4)) or delivered to or at—

- (a) in the case of a document directed to the Secretary, the Office of the Tribunals or such other office as may be notified by the Secretary to the parties;
- (b) in the case of a notice or document directed to the Advocate General for Scotland pursuant to rule 8, the Officer of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ;
- (c) in the case of a notice or document directed to the Lord Advocate pursuant to rule 8, the Legal Secretariat to the Lord Advocate, 25 Chambers Street, Edinburgh, EH1 1LA;

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- (d) in the case of a document directed to a party, his address for service specified in the notice of appeal or in a notice under paragraph (2) or (if no address for service is so specified or if a notice sent to such an address has been returned), his last known address or place of business in the United Kingdom or, if the party is a corporation, the corporation's registered or principal office;
- (e) in the case of a 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 such a person is a corporation, the corporation's registered or principal office;

and if sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(2) A party may at any time by notice to the Secretary and to the other party change his address for service under these rules.

(3) Where a notice of appeal is not delivered, it shall be sent by the recorded delivery service.

(4) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this rule, the President or a Regional Chairman may make an order for substituted service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this rule.

## SCHEDULE 7

Regulation 15

### REVOCATIONS

<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>References</i>
The Employment Tribunals (Constitution and Procedure) (Scotland) Regulations 1993	S.I. <a href="#">1993/2688</a> .
The Employment Tribunals (Constitution and Rules of Procedure) (Scotland) (Amendment) Regulations 1994	S.I. <a href="#">1994/538</a> .
The Employment Tribunals (Constitution and Rules of Procedure) (Scotland) (Amendment) Regulations 1996	S.I. <a href="#">1996/1758</a> .
The Employment Tribunals (Constitution and Rules of Procedure) (Scotland) (Amendment) Regulations 2000	S.I. <a href="#">2000/1988</a> .



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations re-enact the Employment Tribunals (Constitution and Procedure) (Scotland) Regulations 1993 (the “1993 Regulations”) with amendments. In addition to minor and drafting amendments, re-numbering and the updating of statutory and other references, these Regulations make the following changes of substance.

Regulation 2 contains new provisions in paragraphs (6) to (10) setting out how time limits in the Regulations and in documents issued under them are to be calculated. Examples are given for interpretation of the general rules. Regulations 3 and 5 are amended to enable the President of the Employment Tribunals (Scotland) and the panel of tribunal chairmen to be persons legally qualified not only in Scotland but in England and Wales or Northern Ireland. Regulations 6 and 7 are new and provide for the selection of panels of tribunal chairmen and members to hear national security cases and for modifications of section 4 of the Employment Tribunals Act 1996 (the “1996 Act”) (composition of a tribunal) in such cases. Regulation 9 (composition of tribunals) is amended so that the tribunal is to be composed of a chairman and members taken from the specialist national security panels in cases involving national security.

Regulation 10 is new and inserts an overriding objective into the rules of procedure. Regulation 14 contains a transitional provision stating that the new regulations apply in respect of all cases, irrespective of when they were commenced. Regulation 15 revokes the instruments listed in Schedule 7, namely the 1993 Regulations and the instruments which amended them.

Schedule 1 contains the rules of procedure which apply to all employment tribunal proceedings in the absence of other provision. Rules 1 and 3 are amended to make it clear that more than one originating application or notice of appearance may be presented in a single document. Paragraphs (3) and (4) of rule 3 are omitted.

Rule 4 of Schedule 1 is a consolidation and simplification of rules 4 and 16 of Schedule 1 to the 1993 Regulations, now headed “case management”. Paragraph (3) is new and provides that directions may relate in particular to evidence, including witness statements. Failure to comply with a direction may now lead to the penalties in paragraph (8). In rule 7(4) of Schedule 1 (pre-hearing review), the maximum amount of the deposit which may be imposed following a pre-hearing review has been increased from £150 to £500. Rule 8 of Schedule 1 is new and contains the powers available to the Minister or the tribunal in national security cases to direct or order that the tribunal sit in private, that the applicant or his representative be excluded or that witnesses' identities be concealed. Where one of those powers is exercised, or where the Minister addresses the tribunal with a view to it exercising one of those powers, the modifications to Schedule 1 set out in Schedule 2 apply. Rule 8 also imposes a general duty on the tribunal concerning disclosure of information contrary to the interests of national security. Rule 9 of Schedule 1 is new and provides that tribunal proceedings for unfair dismissal may be adjourned pending the outcome of interlocutory civil proceedings under section 219 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (protection from certain tort liabilities).

Rule 14(1) of Schedule 1 (expenses) is amended to make it clear that the unreasonable behaviour of a party's representative may be taken into account when awarding expenses against that party. The tribunal is also now under a duty to consider an award of expenses in the circumstances described in rule 14(1), and these include circumstances where proceedings which have no reasonable prospect of success have been pursued. In rule 14(3), the maximum amount of expenses which a tribunal may award without taxation is increased from £500 to £10,000. In rule 15(2) of Schedule 1 (miscellaneous

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

powers), the term “frivolous” has been replaced with “misconceived” (defined in regulation 2(2)) and “unreasonable” in sub-paragraphs (c) and (d) respectively. Those paragraphs permit the tribunal to strike out applications or notices of appearance in certain circumstances.

Rule 18 of Schedule 1 is new and provides for the Secretary of the Office of Tribunals to give notice to the Advocate General for Scotland and the Lord Advocate in any proceedings in which a devolution issue arises, so that they may take part in the proceedings so far as they relate to the devolution issue. Rule 23 (notices etc.) is amended to provide for their addresses for service of notices. There are corresponding new rules and amendments on devolution issues in Schedule 4 at rules 11 and 16, Schedule 5 at rules 10 and 15, and Schedule 6 at rules 8 and 14.

Schedule 2 is new and contains the modifications and insertions which apply to Schedule 1 when a power under rule 8(1), (2) or (3) is exercised (national security). It provides for the Advocate General for Scotland to appoint a special advocate to represent the applicant’s interests in the event of his, or his representative’s exclusion (rule 7A). Provision is also made for dealing with the reasons for the tribunal’s decision in national security cases (rule 7B).

Part I of Schedule 3 contains modifications of the rules in Schedule 1 which apply in equal value cases. Only those paragraphs of the modified rules which are different from those in Schedule 1 are now specified in Schedule 3. In cases involving an equal value claim and in which a power under rule 8(1), (2) or (3) of Schedule 1 is exercised, the rules in Schedule 1 are modified in accordance with both Schedule 2 and Part I of Schedule 3, but they are subject to the modifications in Part II of Schedule 3.

The rules for use in proceedings involving appeals against the imposition of industrial levy notices issued under the Industrial Training Act 1982 (c. 10) are now in Schedule 4. The rules for use in proceedings involving appeals against improvement or prohibition notices issued under the Health and Safety at Work etc. Act 1974 (c. 37) are now in Schedule 5. The rules for use in proceedings involving appeals against non-discrimination notices issued under the Sex Discrimination Act 1975 (c. 65) and the Race Relations Act 1976 (c. 74) are now in Schedule 6. Appeals against such notices issued by the Disability Rights Commission under the Disability Discrimination Act 1995 (c. 50) are now included in Schedule 6.

A regulatory impact assessment of the costs and benefits that will result from these Regulations will be available in the Libraries of the Houses of Parliament when the Regulations are laid before Parliament, and from Lorraine Hamid, Employment Relations Directorate, 1 Victoria Street, London, SW1H 0ET.