

## 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>(1)</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;

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(1) 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).

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- (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;

- (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

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- (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(2).

### **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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(2) 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).

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

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

(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



- (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

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(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;

- (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.

*Status: This is the original version (as it was originally made).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

### **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.

### **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(4); 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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(4) [S.I.2001/1171](#).

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## 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—

- (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.