

SCHEDULE 1

THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE

PREPARATION TIME ORDERS

General power to make preparation time orders

42.—(1) Subject to paragraph (2) and in the circumstances described in rules 43, 44 and 47 a tribunal or chairman may make an order (“a preparation time order”) that a party (“the paying party”) make a payment in respect of the preparation time of another party (“the receiving party”).

(2) A preparation time order may be made under rules 43, 44 or 47 only where the receiving party has not been legally represented at a Hearing or, in proceedings which are determined without a Hearing, if the receiving party has not been legally represented when the proceedings are determined. (See: rules 38 to 41 on when a costs order may be made; rule 38(5) for the definition of legally represented; and rule 46 on the restriction on making a costs order and a preparation time order in the same proceedings).

(3) For the purposes of these rules preparation time shall mean time spent by —

(a) the receiving party or his employees carrying out preparatory work directly relating to the proceedings; and

(b) the receiving party’s legal or other advisers relating to the conduct of the proceedings;

up to but not including time spent at any Hearing.

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

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

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

(a) the date of the Hearing if the judgment was issued orally; or,

(b) if the judgment was reserved, the date on which the written judgment was sent to the parties.

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

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

When a preparation time order must be made

43.—(1) Subject to rule 42(2), a tribunal must make a preparation time order against a respondent where in proceedings for unfair dismissal a Hearing has been postponed or adjourned and —

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- (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the Hearing; and
 - (b) the postponement or adjournment of that Hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed, or of comparable or suitable employment.
- (2) A preparation time order made under paragraph (1) shall relate to any preparation time spent as a result of the postponement or adjournment of the Hearing.

When a preparation time order may be made

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

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

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

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

Calculation of a preparation time order

45.—(1) In order to calculate the amount of preparation time the tribunal or chairman shall make an assessment of the number of hours spent on preparation time on the basis of —

- (a) information on time spent provided by the receiving party; and
- (b) the tribunal or chairman's own assessment of what it or he considers to be a reasonable and proportionate amount of time to spend on such preparatory work and with reference to, for example, matters such as the complexity of the proceedings, the number of witnesses and documentation required.

(2) Once the tribunal or chairman has assessed the number of hours spent on preparation time in accordance with paragraph (1), it or he shall calculate the amount of the award to be paid to the receiving party by applying an hourly rate of £25.00 to that figure (or such other figure calculated in accordance with paragraph (4)). No preparation time order made under these rules may exceed the sum of £10,000.

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

(4) For the year commencing on 6th April 2006, the hourly rate of £25 shall be increased by the sum of £1.00 and for each subsequent year commencing on 6 April, the hourly rate for the previous year shall also be increased by the sum of £1.00.

Restriction on making costs or expenses orders and preparation time orders

46.—(1) A tribunal or chairman may not make a preparation time order and a costs order in favour of the same party in the same proceedings. However where a preparation time order is made

in favour of a party in proceedings, the tribunal or chairman may make a costs order in favour of another party or in favour of the Secretary of State under rule 38(1)(b) in the same proceedings.

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

Costs, expenses or preparation time orders when a deposit has been taken

47.—(1) When: —

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

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

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

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

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