

SCHEDULE 1

THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE

MISCELLANEOUS

ACAS

93.—(1) Where proceedings concern an enactment which provides for conciliation, the Tribunal shall—

- (a) send a copy of the claim form and the response to an ACAS conciliation officer; and
 - (b) inform the parties that the services of an ACAS conciliation officer are available to them.
- (2) Subject to rules 50 and 94, a representative of ACAS may attend any preliminary hearing.

National security proceedings

94.—(1) Where in relation to particular Crown employment proceedings a Minister considers that it would be expedient in the interests of national security, the Minister may direct a Tribunal to—

- (a) conduct all or part of the proceedings in private;
- (b) exclude a person from all or part of the proceedings;
- (c) take steps to conceal the identity of a witness in the proceedings.

(2) Where the Tribunal considers it expedient in the interests of national security, it may order—

- (a) in relation to particular proceedings (including Crown employment proceedings), anything which can be required to be done under paragraph (1);
- (b) a person not to disclose any document (or the contents of any document), where provided for the purposes of the proceedings, to any other person (save for any specified person).

Any order made must be kept under review by the Tribunal.

(3) Where the Tribunal considers that it may be necessary to make an order under paragraph (2) in relation to particular proceedings (including Crown employment proceedings), the Tribunal may consider any material provided by a party (or where a Minister is not a party, by a Minister) without providing that material to any other person. Such material shall be used by the Tribunal solely for the purposes of deciding whether to make that order (unless that material is subsequently used as evidence in the proceedings by a party).

(4) Where a Minister considers that it would be appropriate for the Tribunal to make an order under paragraph (2), the Minister may make an application for such an order.

(5) Where a Minister has made an application under paragraph (4), the Tribunal may order—

- (a) in relation to the part of the proceedings preceding the outcome of the application, anything which can be required to be done under paragraph (1);
- (b) a person not to disclose any document (or the contents of any document) to any other person (save for any specified person), where provided for the purposes of the proceedings preceding the outcome of the application.

(6) Where a Minister has made an application under paragraph (4) for an order to exclude any person from all or part of the proceedings, the Tribunal shall not send a copy of the response to that person, pending the decision on the application.

(7) If before the expiry of the time limit in rule 16 a Minister makes a direction under paragraph (1) or makes an application under paragraph (4), the Minister may apply for an extension of the time limit in rule 16.

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(8) A direction under paragraph (1) or an application under paragraph (4) may be made irrespective of whether or not the Minister is a party.

(9) Where the Tribunal decides not to make an order under paragraph (2), rule 6 of Schedule 2 shall apply to the reasons given by the Tribunal under rule 62 for that decision, save that the reasons will not be entered on the Register.

(10) The Tribunal must ensure that in exercising its functions, information is not disclosed contrary to the interests of national security.

Interim relief proceedings

95. When a Tribunal hears an application for interim relief (or for its variation or revocation) under section 161 or section 165 of the Trade Union and Labour Relations (Consolidation) Act 1992(1) or under section 128 or section 131 of the Employment Rights Act 1996(2), rules 53 to 56 apply to the hearing and the Tribunal shall not hear oral evidence unless it directs otherwise.

Proceedings involving the National Insurance Fund

96. The Secretary of State shall be entitled to appear and be heard at any hearing in relation to proceedings which may involve a payment out of the National Insurance Fund and shall be treated as a party for the purposes of these Rules.

Collective agreements

97. Where a claim includes a complaint under section 146(1) of the Equality Act relating to a term of a collective agreement, the following persons, whether or not identified in the claim, shall be regarded as the persons against whom a remedy is claimed and shall be treated as respondents for the purposes of these Rules—

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

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

Devolution issues

98.—(1) Where a devolution issue arises, the Tribunal shall as soon as practicable send notice of that fact and a copy of the claim form and response to the Advocate General for Scotland and the Lord Advocate, where it is a Scottish devolution issue, or to the Attorney General and the Counsel General to the Welsh Assembly Government, where it is a Welsh devolution issue, unless they are a party to the proceedings.

(2) A person to whom notice is sent may be treated as a party to the proceedings, so far as the proceedings relate to the devolution issue, if that person sends notice to the Tribunal within 14 days of receiving a notice under paragraph (1).

(3) Any notices sent under paragraph (1) or (2) must at the same time be sent to the parties.

(1) 1992 c. 52. Section 161 was amended by the Employment Relations Act 2004 (c. 24), Schedule 1, paragraph 12. Section 165 was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2).

(2) 1996 c. 17. Section 128 was amended by S.I. 2010/493. Section 131 was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2).

(4) “Devolution issue” has the meaning given to it in paragraph 1 of Schedule 6 to the Scotland Act 1998⁽³⁾ (for the purposes of a Scottish devolution issue), and in paragraph 1 of Schedule 9 to the Government of Wales Act 2006⁽⁴⁾ (for the purposes of a Welsh devolution issue).

Transfer of proceedings between Scotland and England & Wales

99.—(1) The President (England and Wales) or a Regional Employment Judge may at any time, on their own initiative or on the application of a party, with the consent of the President (Scotland), transfer to a tribunal office in Scotland any proceedings started in England and Wales which could (in accordance with rule 8(3)) have been started in Scotland and which in that person’s opinion would more conveniently be determined there.

(2) The President (Scotland) or the Vice President may at any time, on their own initiative or on the application of a party, with the consent of the President (England and Wales), transfer to a tribunal office in England and Wales any proceedings started in Scotland which could (in accordance with rule 8(2)) have been started in England and Wales and in that person’s opinion would more conveniently be determined there.

References to the Court of Justice of the European Union

100. Where a Tribunal decides to refer a question to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union⁽⁵⁾, a copy of that decision shall be sent to the registrar of that court.

Transfer of proceedings from a court

101. Where proceedings are referred to a Tribunal by a court, these Rules apply as if the proceedings had been presented by the claimant.

Vexatious litigants

102. The Tribunal may provide any information or documents requested by the Attorney General, the Solicitor General or the Lord Advocate for the purpose of preparing an application or considering whether to make an application under section 42 of the Senior Courts Act 1981⁽⁶⁾, section 1 of the Vexatious Actions (Scotland) Act 1898⁽⁷⁾ or section 33 of the Employment Tribunals Act.

Information to the Commission for Equality and Human Rights

103. The Tribunal shall send to the Commission for Equality and Human Rights copies of all judgments and written reasons relating to complaints under section 120, 127 or 146 of the Equality Act. That obligation shall not apply in any proceedings where a Minister of the Crown has given a direction, or a Tribunal has made an order, under rule 94; and either the Security Service, the Secret Intelligence Service or the Government Communications Headquarters is a party to the proceedings.

Application of this Schedule to levy appeals

104. For the purposes of a levy appeal, references in this Schedule to a claim or claimant shall be read as references to a levy appeal or to an appellant in a levy appeal respectively.

(3) 1998 c. 46.

(4) 2006 c. 32.

(5) OJC 83, 30.03.10 p.47.

(6) 1981 c. 54.

(7) 1898 c. 35.

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Application of this Schedule to appeals against improvement and prohibition notices

105.—(1) A person (“the appellant”) may appeal an improvement notice or a prohibition notice by presenting a claim to a tribunal office—

- (a) before the end of the period of 21 days beginning with the date of the service on the appellant of the notice which is the subject of the appeal; or
- (b) within such further period as the Tribunal considers reasonable where it is satisfied that it was not reasonably practicable for an appeal to be presented within that time.

(2) For the purposes of an appeal against an improvement notice or a prohibition notice, this Schedule shall be treated as modified in the following ways—

- (a) references to a claim or claimant shall be read as references to an appeal or to an appellant in an appeal respectively;
- (b) references to a respondent shall be read as references to the inspector appointed under section 19(1) of the Health and Safety Act who issued the notice which is the subject of the appeal.

Application of this Schedule to appeals against unlawful act notices

106. For the purposes of an appeal against an unlawful act notice, this Schedule shall be treated as modified in the following ways—

- (a) references in this Schedule to a claim or claimant shall be read as references to a notice of appeal or to an appellant in an appeal against an unlawful act notice respectively;
- (b) references to a respondent shall be read as references to the Commission for Equality and Human Rights.