
STATUTORY INSTRUMENTS

2001 No. 1170

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

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;
- (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(1);

“the 1976 Act” means the Race Relations Act 1976(2);

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992(3);

“the 1995 Act” means the Disability Discrimination Act 1995(4);

“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);

(1) 1975 c. 65.
(2) 1976 c. 74.
(3) 1992 c. 52.
(4) 1995 c. 50.

“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;

“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⁽⁵⁾;

“the 1986 Act” means the Sex Discrimination Act 1986⁽⁶⁾;

“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;

(5) 1970 c. 41; section 2A was inserted by the Equal Pay (Amendment) Regulations 1983 (S.I.1983/1794).

(6) 1986 c. 59.

“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(7);

“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;

“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(8);

“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) 1982 c. 10.

(8) 1999 c. 17.

(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—

- (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⁽⁹⁾; 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.

(9) 1990 c. 41.

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—

- (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.

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

23rd March 2001