

## SCHEDULE 3

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

## PART I

### *—ordinary cases*

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

2. After rule 10 of Schedule 1, insert—

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

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

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

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

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

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

The Secretary shall send a copy of the requirement to each of the parties together with a notice informing them that a party who unreasonably delays the preparation of the expert’s report may have an award of costs made against him, which may include an award in respect of the expert’s fees, or have his originating application or notice of appearance struck out.

(5) The requirement shall stipulate that the expert shall—

- (a) take account of all such information supplied and all such representations made to him as have a bearing on the question;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) In forming its view on the matters contained in paragraph (18)(a), (b) and (c) the tribunal shall take account of any representations of the parties thereon and may in that connection, subject to rule 11(2A) and (2B), permit any party to give evidence upon, to call witnesses and to question any witness upon any matter relevant thereto.

(20) The tribunal may, at any time after it has received the report of an expert, require that expert (or, if that is impracticable, another expert) to explain any matter contained in

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that report or, having regard to such matters as may be set out in the requirement, to give further consideration to the question.

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

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

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

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

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