

SCHEDULE 1

THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE

PRE-HEARING REVIEWS

Conduct of pre-hearing reviews

18.—(1) Pre-hearing reviews are interim hearings and shall be conducted by a chairman unless the circumstances in paragraph (3) are applicable. Subject to rule 16, they shall take place in public.

(2) At a pre-hearing review the chairman may carry out a preliminary consideration of the proceedings and he may —

- (a) determine any interim or preliminary matter relating to the proceedings;
- (b) issue any order in accordance with rule 10 or do anything else which may be done at a case management discussion;
- (c) order that a deposit be paid in accordance with rule 20 without hearing evidence;
- (d) consider any oral or written representations or evidence;
- (e) deal with an application for interim relief made under section 161 of TULR(C)A or section 128 of the Employment Rights Act.

(3) Pre-hearing reviews shall be conducted by a tribunal composed in accordance with section 4(1) and (2) of the Employment Tribunals Act if —

- (a) a party has made a request in writing not less than 10 days before the date on which the pre-hearing review is due to take place that the pre-hearing review be conducted by a tribunal instead of a chairman; and
- (b) a chairman considers that one or more substantive issues of fact are likely to be determined at the pre-hearing review, that it would be desirable for the pre-hearing review to be conducted by a tribunal and he has issued an order that the pre-hearing review be conducted by a tribunal.

(4) If an order is made under paragraph (3), any reference to a chairman in relation to a pre-hearing review shall be read as a reference to a tribunal.

(5) Notwithstanding the preliminary or interim nature of a pre-hearing review, at a pre-hearing review the chairman may give judgment on any preliminary issue of substance relating to the proceedings. Judgments or orders made at a pre-hearing review may result in the proceedings being struck out or dismissed or otherwise determined with the result that a Hearing is no longer necessary in those proceedings.

(6) Before a judgment or order listed in paragraph (7) is made, notice must be given in accordance with rule 19. The judgments or order listed in paragraph (7) must be made at a pre-hearing review or a Hearing if one of the parties has so requested. If no such request has been made such judgments or order may be made in the absence of the parties.

(7) Subject to paragraph (6), a chairman or tribunal may make a judgment or order: —

- (a) as to the entitlement of any party to bring or contest particular proceedings;
- (b) striking out or amending all or part of any claim or response on the grounds that it is scandalous, or vexatious or has no reasonable prospect of success;
- (c) striking out any claim or response (or part of one) on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (d) striking out a claim which has not been actively pursued;

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

- (e) striking out a claim or response (or part of one) for non-compliance with an order or practice direction;
- (f) striking out a claim where the chairman or tribunal considers that it is no longer possible to have a fair Hearing in those proceedings;
- (g) making a restricted reporting order (subject to rule 50).

(8) A claim or response or any part of one may be struck out under these rules only on the grounds stated in sub-paragraphs (7)(b) to (f).

(9) If at a pre-hearing review a requirement to pay a deposit under rule 20 has been considered, the chairman who conducted that pre-hearing review shall not be a member of the tribunal at the Hearing in relation to those proceedings.

Notice requirements

19.—(1) Before a chairman or a tribunal makes a judgment or order described in rule 18(7), except where the order is one described in rule 13(2) or it is a temporary restricted reporting order made in accordance with rule 50, the Secretary shall send notice to the party against whom it is proposed that the order or judgment should be made. The notice shall inform him of the order or judgment to be considered and give him the opportunity to give reasons why the order or judgment should not be made. This paragraph shall not be taken to require the Secretary to send such notice to that party if that party has been given an opportunity to give reasons orally to the chairman or the tribunal as to why the order should not be made.

(2) Where a notice required by paragraph (1) is sent in relation to an order to strike out a claim which has not been actively pursued, unless the contrary is proved, the notice shall be treated as if it were received by the addressee if it has been sent to the address specified in the claim as the address to which notices are to be sent (or to any subsequent replacement for that address which has been notified to the Employment Tribunal Office).