

2020 No. 1003

EMPLOYMENT TRIBUNALS

The Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020

<i>Made</i>	- - - -	<i>16th September 2020</i>
<i>Laid before Parliament</i>		<i>17th September 2020</i>
<i>Coming into force</i>		
	<i>for the purpose of regulations 19, 20, 21 and 22(2)</i>	<i>1st December 2020</i>
	<i>for all other purposes</i>	<i>8th October 2020</i>

The Secretary of State, in exercise of the powers conferred by sections 1(1), 4(6), (6A) and (6B), 7(1), (3), (3ZA) and (3AA), 7A(2), 18A(11) and (12), and 41(4) of the Employment Tribunals Act 1996(a), makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020.

(2) Regulations 19, 20, 21 and 22(2) come into force on 1st December 2020 and the remainder of these Regulations come into force on 8th October 2020.

Amendments to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

2. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013(b) are amended as set out in regulations 3 and 4.

3. In regulation 8 (panels of members for tribunals)—

(a) 1996 c.17; by virtue of the Employment Rights (Dispute Resolution) Act 1998 (c.8) industrial tribunals were renamed employment tribunals and references to “industrial tribunal” and “industrial tribunals” in any enactment were substituted with “employment tribunal” and “employment tribunals”. Section 4(6) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c.8) and the Tribunals, Courts and Enforcement Act 2007 (c.15); section 4(6A) and (6B) were inserted by the Employment Rights (Dispute Resolution) Act 1998 (c.8) and amended by the Tribunals, Courts and Enforcement Act 2007 (c.15); section 7(3) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c.8), the Employment Act 2002 (c.22), the Equality Act 2010 (Consequential Amendments, Savings and Supplementary Provisions) Order 2010 (S.I. 2010/2279) and the Crime and Courts Act 2013 (c.22); section 7(3ZA) was inserted by the Employment Act 2002 (c.22) and amended by the Enterprise and Regulatory Reform Act 2013 (c.24); section 7(3AA) was inserted by the Employment Act 2008 (c.24); and section 18A was inserted by the Enterprise and Regulatory Reform Act 2013 (c.24).

(b) S.I. 2013/1237, to which there are amendments not relevant to these Regulations.

- (a) for paragraph (2)(a) substitute—
- “(a) a panel of Employment Judges who—
- (i) satisfy the criteria set out in regulation 5(2) and are appointed by the appointing office holder; or
- (ii) are able to act as Employment Judges by virtue of paragraph (2A) or (2B);”;
- (b) after paragraph (2) insert—
- “(2A) A relevant tribunal judge(a) may act as an Employment Judge if the conditions in paragraph (2C) are satisfied.
- (2B) A relevant judge may act as an Employment Judge if the conditions in paragraph (2C) are satisfied and—
- (a) the relevant judge consents; and
- (b) unless the relevant judge is the Lord Chief Justice of England and Wales, the appropriate consent has been given.
- (2C) The conditions are—
- (a) the judge is nominated by the Senior President of Tribunals; and
- (b) the President who is responsible for the panel the judge will act as a member of consents to the judge acting in a particular case.
- (2D) The relevant President must consult the other President before consenting under paragraph (2C)(b) to any individual judge acting for the first time as a member of the panel for which the relevant President is responsible.
- (2E) A person who has been appointed to one panel of Employment Judges may act as a member of the other panel of Employment Judges if—
- (a) the person is nominated by the Senior President of Tribunals; and
- (b) the Presidents responsible for both panels consent to the person acting for such period as the Presidents shall specify.
- (2F) Consent under paragraph (2E)(b) can be withdrawn at any time by either President.
- (2G) In paragraph (2B)(b) “the appropriate consent” means—
- (a) the consent of the Lord Chief Justice of England and Wales where the relevant judge is—
- (i) the Master of the Rolls or an ordinary judge of the Court of Appeal in England and Wales;
- (ii) the President of the Queen’s Bench Division or Family Division, or the Chancellor, of the High Court in England and Wales;
- (iii) a puisne judge of the High Court in England and Wales;
- (iv) a circuit judge;
- (v) a district judge in England and Wales;
- (vi) a District Judge (Magistrates’ Courts);
- (vii) a deputy judge of the High Court in England and Wales;
- (viii) a Recorder;
- (ix) a Deputy District Judge (Magistrates’ Courts);
- (x) a deputy district judge appointed under section 8 of the County Courts Act 1984(b) or section 102 of the Senior Courts Act 1981(c);

(a) See section 5D(4)(a) of the Employment Tribunals Act 1996 (c.17) for the definition of a “relevant tribunal judge”.

(b) 1984 c. 28, as amended by the Tribunals, Courts and Enforcement Act 2007 (c.15) and the Crime and Courts Act 2013 (c.22).

(c) 1981 c.54, as amended by the Tribunals, Courts and Enforcement Act 2007 (c.15) and the Crime and Courts Act 2013 (c.22).

- (xi) the holder of an office listed in the first column of the table in section 89(3C) of the Senior Courts Act 1981(a) (senior High Court Masters etc);
 - (xii) the holder of an office listed in column 1 of Part 2 of Schedule 2 to that Act(b) (High Court Masters etc); or
 - (xiii) the Judge Advocate General or a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951(c) (assistants to the Judge Advocate General);
- (b) the consent of the Lord President where the relevant judge is—
- (i) a sheriff; or
 - (ii) a summary sheriff;
- (c) the consent of the Lord Chief Justice of Northern Ireland where the relevant judge is—
- (i) a Lord Justice of Appeal in Northern Ireland;
 - (ii) a puisne judge of the High Court in Northern Ireland;
 - (iii) a county court judge in Northern Ireland; or
 - (iv) a district judge in Northern Ireland.
- (2H) In this regulation “relevant judge” means a person who—
- (a) is the Lord Chief Justice of England and Wales, the Master of the Rolls or an ordinary judge of the Court of Appeal in England and Wales (including the vice-president, if any, of either division of that Court);
 - (b) is the President of the Queen’s Bench Division or Family Division, or the Chancellor, of the High Court in England and Wales;
 - (c) is a Lord Justice of Appeal in Northern Ireland;
 - (d) is a puisne judge of the High Court in England and Wales or Northern Ireland;
 - (e) is a circuit judge;
 - (f) is a sheriff in Scotland;
 - (g) is a summary sheriff;
 - (h) is a county court judge in Northern Ireland;
 - (i) is a district judge in England and Wales or Northern Ireland;
 - (j) is a District Judge (Magistrates’ Courts);
 - (k) is a deputy judge of the High Court in England and Wales;
 - (l) is a Recorder;
 - (m) is a Deputy District Judge (Magistrates’ Courts);

(a) 1981 c.54, as amended by the Constitutional Reform Act 2005 (c.4), the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c.33) and the Alteration of Judicial Titles (Registrar in Bankruptcy of the High Court) Order 2018 (S.I. 2018/130).

(b) 1981 c. 54, as repealed in part by the Access to Justice Act 1999 (c.22).

(c) 1951 c.46, as amended by the Armed Forces Act 1996 (c.46), the Armed Forces Act 2001 (c.19) and the Tribunals, Courts and Enforcement Act 2007 (c.15).

- (n) is a deputy district judge appointed under section 8 of the County Courts Act 1984(a) or section 102 of the Senior Courts Act 1981(b);
- (o) holds an office listed in the first column of the table in section 89(3C) of the Senior Courts Act 1981(c) (senior High Court Masters etc);
- (p) holds an office listed in column 1 of Part 2 of Schedule 2 to that Act(d) (High Court Masters etc); or
- (q) is the Judge Advocate General or a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951(e) (assistants to the Judge Advocate General).

(2I) References in paragraph (2H)(d) to (j) to office-holders do not include deputies or temporary office-holders.”.

4. After regulation 10 insert—

“10A Legal officers

(1) The Lord Chancellor may appoint legal officers who may, in accordance with section 4(6B) of the Employment Tribunals Act(f), carry out such functions set out in regulation 10B as the Senior President of Tribunals shall authorise in a practice direction.

(2) Within 14 days after the date on which a Tribunal sends notice of a decision made by a legal officer to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by an Employment Judge.

(3) The Senior President of Tribunals must consult both Presidents before making a practice direction under paragraph (1).

10B Responsibilities of legal officers

(1) In this regulation any reference to a rule is a reference to the Rules of Procedure in Schedule 1.

(2) For the purpose of any determination made under regulation 10B(3) any rule mentioned in regulation 10B(3) must be read as though reference to the Tribunal or an Employment Judge includes reference to a legal officer.

(3) The following are the matters that, subject to being authorised by a practice direction of the Senior President of Tribunals, may be determined by a legal officer—

- (a) a referral under rules 12(1)(c), (e) or (f);
- (b) an application under rule 20;
- (c) an application under rule 30—
 - (i) for an extension of time to comply with a case management order;
 - (ii) to which all parties agree, to amend a claim or response;
 - (iii) for additional information about another party’s claim or defence;
 - (iv) for different claims to be considered together;

(a) 1984 c.28, as amended by the Tribunals, Courts and Enforcement Act 2007 (c.15) and the Crime and Courts Act 2013 (c.22).

(b) 1981 c.54, as amended by the Constitutional Reform Act 2005 (c.4), the Tribunals, Courts and Enforcement Act 2007 c.15) and the Crime and Courts Act 2013 (c.22).

(c) 1981 c.54, as amended by the Constitutional Reform Act 2005 (c.4), the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c.33) and the Alteration of Judicial Titles (Registrar in Bankruptcy of the High Court) Order 2018 (S.I. 2018/130).

(d) 1981 c.54, as repealed in part by the Access to Justice Act 1999 (c.22).

(e) 1951 c.46, as amended by the Armed Forces Act 1996 (c.46), the Armed Forces Act 2001 (c.19) and the Tribunals, Courts and Enforcement Act 2007 (c.15).

(f) 1996 c.17. Section 4(6B) of the Employment Tribunals Act 1996 (c.17) was inserted by the Employment Rights (Dispute Resolution) Act 1998 (c.8).

- (d) an application under rule 30A—
 - (i) which is made more than 7 days before the date on which the hearing begins; and
 - (ii) to which all parties consent;
- (e) an application to which all parties agree for an order under rule 36(1);
- (f) an application under rule 54 to which all parties agree, where the hearing sought would only determine matters under rule 53(1)(a);
- (g) confirmation of a stay (or in Scotland sist) of the proceedings in the event of a respondent’s compulsory liquidation or administration; and
- (h) whether to dismiss a claim under rule 52.”

Amendments to Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

5. Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013(a) are amended as set out in regulations 6 to 17.

6. In rule 9 for “are based on the same set of facts” substitute “give rise to common or related issues of fact or law or if it is otherwise reasonable for their claims to be made on the same claim form”.

7. In rule 12—

(a) after paragraph (d) insert—

“(da) one which institutes relevant proceedings and the early conciliation number on the claim form is not the same as the early conciliation number on the early conciliation certificate;”;

(b) after paragraph (2) insert—

“(2ZA) The claim shall be rejected if the Judge considers that the claim is of a kind described in sub-paragraph (da) of paragraph (1) unless the Judge considers that the claimant made an error in relation to an early conciliation number and it would not be in the interests of justice to reject the claim.”;

(c) at paragraph (2A) for “a minor” substitute “an”.

8. In rule 16—

(a) in paragraph (2) for the words after “more than one respondent if” substitute “the responses give rise to common or related issues of fact or law or if it is otherwise reasonable for the responses to be made on a single response form.”;

(b) in paragraph (3) for the words after “if the claims” substitute “give rise to common or related issues of fact or law or if it is otherwise reasonable for the responses to be made on a single response form.”.

9. In rule 19—

(a) in paragraph (3) for “the Employment Judge” substitute “an Employment Judge”;

(b) in paragraph (4) for the first reference to “the Judge” substitute “a Judge”.

10. In rule 21 at the end of paragraph (2) insert—

“Where a Judge has directed that a preliminary issue requires to be determined at a hearing, a judgment may be issued by a Judge under this rule after that issue has been determined without a further hearing.”.

(a) S.I. 2013/1237, to which there are amendments not relevant to these Regulations.

11. In rule 26 paragraph 2 omit “, which may deal with the listing of a preliminary or final hearing,”.

12. At the end of rule 32 insert “Where an order is made under this rule, the Tribunal shall notify the parties in writing that the order has been made, and the name of the person required to attend the hearing.”.

13. In rule 44—

- (a) after “rules 50 and 94,” insert “and the provisions in this rule regarding hearings by electronic communication,”;
- (b) at the end of rule 44 insert “Where a hearing is conducted by electronic communication under rule 46, inspection of the witness statement may be otherwise than during the course of a hearing.”.

14. In rule 46 after “the Tribunal hears and” insert “, so far as practicable,”.

15. In rule 54 for the words after “on its own initiative” substitute “at any time”.

16. At the end of rule 58 insert—

“Notice of a final hearing may be given before the date that the response is to be presented under rule 16(1), provided the date of the hearing is no sooner than 14 days after the date on which the response form is to be presented to the Tribunal in accordance with rule 16(1).”.

17. In rule 67 after “Subject to rules 50 and 94,” insert “and with the exception of judgments for withdrawn claims under rule 52,”.

Amendments to the Schedule to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014

18. The Schedule to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014(a) are amended as set out in regulations 19 to 21.

19. In rule 2 at paragraph (3) for the words after “or may” insert “, at any point during the period for early conciliation, contact the prospective claimant to correct errors or obtain any missing information.”.

20. In rule 6—

- (a) at paragraph (1) for “one calendar month” substitute “six weeks”;
- (b) omit paragraphs (2) and (3).

21. In rule 7—

- (a) at paragraph (1) omit “, or during any extension of that period,”;
- (b) at paragraph (2) omit “, including any extension of that period,”.

Transitional provisions

22.—(1) Subject to paragraph (2), these Regulations apply in relation to all proceedings to which they relate.

(2) The amendments to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014(b) made by these Regulations apply when the requirement for early conciliation is satisfied in accordance with rule 1 of the Schedule to the Employment Tribunals

(a) S.I. 2014/254, as amended by the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2014 (S.I. 2014/847).

(b) S.I. 2014/254, to which there are amendments not relevant to these Regulations.

(Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014(a) on or after 1st December 2020.

16th September 2020

Paul Scully
Minister for Small Businesses, Consumers and Labour Markets
Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the 2013 Regulations”) and the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 (“the 2014 Regulations”). Regulations 19, 20, 21 and 22(2) come into force on 1st December 2020 and the remainder of these Regulations come into force on 8th October 2020.

The amendments make procedural changes to tribunal and early conciliation practice, including in relation to the cross-deployment of judges to Employment Tribunals, the functions of legal officers, correcting errors on the early conciliation form and the claim form, the conduct of electronic hearings, the listing of short-track cases, the recording of judgments on the Register, and the time limit for early conciliation.

Regulation 3 amends regulation 8 of the 2013 Regulations to allow for the cross-deployment of judges to the Employment Tribunals.

Regulation 4 adds a new regulation 10A to the 2013 Regulations to provide for legal officers who may carry out the functions listed under a new regulation 10B (subject to those functions being authorised by the Senior President of Tribunals in a practice direction).

Schedule 1 of the 2013 Regulations is amended as follows—

- Regulation 6 amends rule 9 to provide for two or more claimants to make their claims on the same claim form if their claims give rise to common or related issues of fact or law or if it is otherwise reasonable for their claims to be made on a single claim form.
- Regulation 7 amends rule 12 to allow a judge to accept a claim form with an error in relation to the claimant or respondent name where it would not be in the interests of justice to reject the claim. Regulation 7 also adds a new rule 12(2ZA) to allow a judge to accept a claim form with an error in relation to an early conciliation number where it would not be in the interests of justice to reject the claim.
- Regulation 8 amends rule 16 to allow a response form to include the response of more than one respondent or the response to more than one claim if the responses or the claims give rise to common or related issues of fact or law or if it is otherwise reasonable for the responses to be made on a single response form.
- Regulation 9 amends rule 19 to allow any Employment Judge to reconsider a rejected claim or response.
- Regulation 10 amends rule 21 to provide that where a judge has directed that a preliminary issue requires to be determined at a hearing, a judgment may be issued without a further hearing.
- Regulations 11, 15 and 16 amend rules 26, 54 and 58 respectively, to provide for the listing of short-track cases for a hearing upon receipt of the claim form.
- Regulation 13 amends rule 44 to provide that, where a hearing is conducted by electronic communication, inspection of witness statements may be otherwise than during the course of a hearing.

(a) S.I. 2014/254.

- Regulation 14 amends rule 46 to provide for parties or member of the public attending the hearing to see any witness as seen by the Tribunal so far as practicable.
- Regulation 17 amends rule 67 to provide that judgments for withdrawn claims are exempted from the requirement to record on the Register.

The Schedule to the 2014 Regulations is amended as follows—

- Regulation 19 amends rule 2 to provide for the correction of errors on the early conciliation form.
- Regulations 20 and 21 amend rules 6 and 7 respectively, to provide a six-week period for early conciliation and remove the option to extend the early conciliation period by a conciliation officer.

Regulation 22 provides for transitional arrangements in relation to the period for early conciliation.

The primary impact of these changes is to reduce unnecessary bureaucracy in providing access to justice through the employment tribunal system. The estimated familiarisation costs to business, and the ongoing costs and benefits to business from these reforms are expected to be well below the threshold of £5 million a year required for the production of a full impact assessment.

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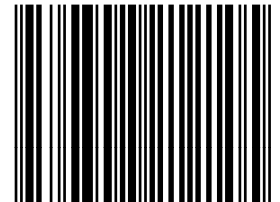
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