

**EXPLANATORY MEMORANDUM TO**  
**THE EMPLOYMENT APPEAL TRIBUNAL (AMENDMENT) RULES 2022**

**2022 No. 932**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by The Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 These Rules amend the Employment Appeal Tribunal Rules 1993 ("the 1993 Rules"), which govern procedure in the Employment Appeal Tribunal ("the Appeal Tribunal").

2.2 These Rules amend Rule 29 of the 1993 Rules to provide that a hearing before the Appeal Tribunal may be conducted by means of electronic communication. This instrument is being made to support the Appeal Tribunal to ensure that cases are dealt with justly, including ensuring cases are dealt with expeditiously and fairly.

**3. Matters of special interest to Parliament**

3.1 None.

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is England, Wales, and Scotland.

4.2 The territorial application of this instrument is England, Wales, and Scotland.

**5. European Convention on Human Rights**

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

**6. Legislative Context**

6.1 Section 30 of the Employment Tribunals Act 1996 ("the 1996 Act") provides for rules to be made by the Lord Chancellor governing the practice and procedure to be followed by the Appeal Tribunal.

6.2 Rule 2A of the 1993 Rules provides that the overriding objectives of the Rules is to enable the Appeal Tribunal to deal with cases justly. Dealing with cases justly includes the Appeal Tribunal, as far as practicable, ensuring that the parties are on equal footing, that cases are dealt with proportionately, expeditiously, fairly and saving expense.

6.3 To ensure that the Appeal Tribunal continued to meet the overriding objective during the Covid-19 pandemic, the Employment Appeal Tribunal (Coronavirus) (Amendment) Rules 2020 ("the Coronavirus Amendment Rules") amended the 1993

Rules to include a temporary rule to allow the Appeal Tribunal to conduct hearings, in whole or in part, by means of electronic communication.

- 6.4 The Coronavirus Amendment Rules contained provision for its expiry on the same day as the expiry of section 55(b) of the Coronavirus Act 2020 ("the Coronavirus Act").
- 6.5 The Police, Crime, Sentencing and Courts Act 2022 (Commencement No.2) Regulations 2022 ("the PCSC Commencement Regs"), brings into force section 201(2) of the Police, Crime, Sentencing and Courts Act 2022 ("the PCSC Act"), which repeals section 55 of and Schedule 25 to the Coronavirus Act.
- 6.6 Section 55 of and Schedule 25 to the Coronavirus Act make provision for specified courts and tribunals to be able to transmit proceedings, which are held entirely remotely to observers, to maintain open justice in such cases. These provisions are replaced by a more comprehensive scheme for transmission of proceedings for which sections 198 and 199 of the PCSC Act make provision. The PCSC Commencement Regs, commences section 201(2) for all purposes, except certain provisions in the Tribunal Procedure Rules and the Coronavirus Amendment Rules.
- 6.7 The effect of section 201(2) not being commenced for the provisions contained in the Coronavirus Amendment Rules is that the temporary provisions will continue in force until midnight on the 24th September 2022, by virtue of the Coronavirus Act 2020 (Delay in Expiry: Inquests, Courts and Tribunals, and Statutory Sick Pay) (England and Wales and Northern Ireland) Regulations 2022.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Appeal Tribunal is responsible for handling appeals against decisions made by the Employment Tribunal.
- 7.2 In response to the COVID-19 pandemic, the 1993 Rules were temporarily amended by the Coronavirus Amendment Rules to provide that the Appeal Tribunal may conduct hearings by means of electronic communication, aligning its powers with the Employment Tribunal.
- 7.3 These Rules will permanently provide the Appeal Tribunal with the same power to conduct hearings by means of electronic communication that it currently has by virtue of the temporary rules under the Coronavirus Amendment Rules.
- 7.4 While the ability to conduct hearings by means of electronic communication was introduced to address the impact of the COVID-19 pandemic, they are now an important tool for the Appeal Tribunal to manage and reduce its outstanding caseload and to meet the overriding objective.
- 7.5 The Appeal Tribunal now conducts between one quarter and one half of appeals remotely. This provides the Appeal Tribunal judiciary with flexibility to schedule hearings without being restricted to a physical location. It provides greater convenience for Appeal Tribunal participants, reduce the cost of hearings and reduces pressure on court room space. It also reduces the risk a hearing being cancelled at short notice if, for example, a party or representative to the hearing begins isolating due to a diagnosis of COVID. These benefits would be lost if the Appeal Tribunal were unable to conduct remote hearings.

- 7.6 In December 2021, Her Majesty's Courts and Tribunals Service published an evaluation of remote hearings during the pandemic. This concluded that public users attending remote hearings were slightly more likely to be satisfied with the overall experience of their hearing than in-person users. Legal representatives were positive about remote hearings. Around half of judges felt that remote hearings were effective at creating an environment comparable to in-person hearings.
- 7.7 An oral hearing via electronic communication will only be conducted if the Appeal Tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the Appeal Tribunal hears and see any witness as seen by the Appeal Tribunal.
- 7.8 Presently, an oral hearing before the Appeal Tribunal must take place in public, unless the Tribunal members consider it necessary to proceed with a private hearing as set out in the 1993 Rules.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 No consolidation is taking place.

## **10. Consultation outcome**

- 10.1 In accordance with Section 30(1) of the Employment Tribunals Act 1996, the Lord Chancellor has consulted with the Lord President of the Court of Session in order to make these rules.
- 10.2 We have consulted with the President of the Appeal Tribunal.
- 10.3 As these Rules make permanent an existing temporary rule that has been in use for more than two years, will only be used when it is just and equitable to do so, and contains safeguards to ensure that members of the public can see and hear any witness, and will bring the powers of the Appeal Tribunal to conduct remote hearings in line with the Employment Tribunal and other civil jurisdictions, no public consultation was required.

## **11. Guidance**

- 11.1 This Order does not attract the need for guidance but general information about tribunals can be found on the Ministry of Justice website at:  
<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about>.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact is expected to be minimal and well below the threshold of £5 million per annum at which an assessment must be prepared.

**13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

**14. Monitoring & review**

14.1 The Ministry of Justice will keep these Rules under review.

**15. Contact**

15.1 Robin Rimmer at the Ministry of Justice Telephone: 07866 146 449 or email: [robin.rimmer@justice.gov.uk](mailto:robin.rimmer@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Kate Gregory-Smith, Deputy Director for Courts, Tribunals and Transparency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under Secretary of State Lord Bellamy QC can confirm that this Explanatory Memorandum meets the required standard.