
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the sixth commencement regulations made under the Judicial Review and Courts Act 2022 (c. 35) (“the Act”). These Regulations bring into force section 34(1), (2), (4) and (5), and paragraphs 1, 4 to 12, 14 to 17, 23, 24 and 26 to 28 of Schedule 5 to the Act.

Section 34(1), (2) and (4) amends the Employment Tribunals Act 1996 (c. 17) (“the ETA”) to make provision for there to be Employment Tribunal Procedure Rules (“Procedure Rules”) that govern the practice and procedure of employment tribunals. This power replaces the power of the Secretary of State to make employment tribunal procedure regulations and instead provides that Procedure Rules are to be made by the Tribunal Procedure Committee (“the TPC”).

Section 34(5) of the Act introduces Schedule 5, which contains further provision in connection with Procedure Rules.

Part 1 of Schedule 5 to the Act relates to the making and content of Procedure Rules. Paragraph 1 inserts into the ETA a new Schedule A1, which sets out what Procedure Rules may contain, the objectives of the TPC when making Procedure Rules, and the process for making Procedure Rules.

Part 2 of Schedule 5 to the Act makes related amendments to the ETA and other legislation.

Paragraph 4 provides that anyone making Procedure Rules or practice directions must when making provision in relation to mediation have regard to the principles that, (a) mediation should take place only by agreement between the parties in dispute, and (b) the outcome of mediation, or the failure to mediate, should not affect the outcome of the proceedings. It also provides that practice directions may make provision for members to act as mediators in relation to disputed matters.

Paragraph 5 makes provision for preliminary hearings in employment tribunals. This includes defining when a hearing in an employment tribunal is a preliminary hearing, provides that Procedure Rules may authorise employment tribunals to carry out preliminary hearings and may also enable such powers prescribed by Procedure Rules to be exercised in connection with such hearings.

Paragraph 6 replaces the Secretary of State’s power to make, by employment tribunal regulations, provision in relation to proceedings concerning issues of national security, with a power for the Lord Chancellor by regulations to make such provisions.

Paragraph 7 repeals section 10A of the ETA as this provision is now covered by the general provisions in respect to what Procedure Rules may contain.

Paragraphs 8, 9, 11, 12, 14(a), 16 and 17 replace references to matters being provided, regulated or permitted by or under Employment Tribunal Procedure Regulations with “Procedure Rules” as regulating those matters.

Paragraphs 10 and 14(b) introduce the term “reconsider” as an equivalent to the term “review” to account for equivalent terminology used in employment tribunals and the Employment Appeal Tribunal.

Paragraph 15 amends reference to employment tribunal procedure regulations making provision requiring that a person bringing a claim is required to contact ACAS before instituting proceedings, to refer instead to regulations made by the Secretary of State.

Paragraph 23 amends the heading of Part 3 to the ETA to refer to “General and supplementary”.

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

Paragraph 24 inserts a new section 37QB into the ETA, providing the Lord Chancellor the power to amend, repeal or revoke any enactment in order to facilitate the making of Procedure Rules, or in consequence of section 37QA, Schedule A1, or Procedure Rules.

Paragraph 26 repeals the definitions of “Appeal Tribunal procedure rules” and “employment tribunal procedure regulations” and inserts definitions for “Procedure Rules” and the “Tribunal Procedure Committee”.

Paragraph 27 inserts a new section 163(6) into the Employment Rights Act 1996 (c. 18) to provide that where in accordance with Procedure Rules an employment tribunal determines a complaint related to unfair dismissal in the same proceedings as a question around eligibility for or the amount of a redundancy payment, the provision setting out that the employee shall not, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy have no effect insofar as it relates to the unfair dismissal proceedings.

Paragraph 28 amends section 8(2) of the Tribunals, Courts and Enforcement Act 2007 (c. 15) to provide that the Senior President of Tribunals cannot delegate the functions set out in paragraph 2 of Schedule A1 to the ETA.

An impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is foreseen.