

Statutory Document No. 2019/0506



*Equality Act 2017*

## **EMPLOYMENT AND EQUALITY TRIBUNAL (AMENDMENT) RULES 2019**

*Laid before Tynwald:* 21 January 2020  
*Coming into Operation:* 1 January 2020

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The Council of Ministers, after consulting the Deemsters<sup>1</sup>, makes the following Rules under paragraphs 4, 10, 12, 13, 18 and 19 of Schedule 17 to the Equality Act 2017.

### **1 Title**

These Rules are the Employment and Equality Tribunal (Amendment) Rules 2019.

### **2 Commencement**

These Rules come into operation on 1 January 2020<sup>2</sup>.

### **3 Amendment of the Employment and Equality Tribunal Rules 2018**

The Employment and Equality Tribunal Rules 2018<sup>3</sup> are amended in accordance with the Schedule.

**MADE 19 DECEMBER 2019**

**W GREENHOW**  
*Chief Secretary*

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<sup>1</sup> As required by paragraph 4 of Schedule 17 to the Equality Act 2017.

<sup>2</sup> Under section 168(3) of the Equality Act 2017, section 32 of the Legislation Act 2015 (Tynwald procedure – negative) applies to these Rules.

<sup>3</sup> SD 2018/0314.



## SCHEDULE

## AMENDMENT OF THE EMPLOYMENT AND EQUALITY TRIBUNAL RULES 2018

## Rule 3

1. The Employment and Equality Tribunal Rules 2018 are amended as follows.
2. At the beginning of rule 5(1) insert **5A** Subject to rule 5A, **5A**.
3. After Rule 5 insert —

**5A Rules of procedure for equal value claims**

The Schedule applies to modify these Rules in relation to proceedings which involve an equal value complaint (as defined in paragraph 1 of the Schedule). **5A**.

4. After Rule 46 insert —

**5A SCHEDULE**

## EMPLOYMENT AND EQUALITY TRIBUNAL (EQUAL VALUE) PROCEDURE

## Rule 5A

**1 Application of Schedule**

- (1) This Schedule applies to proceedings involving an equal value complaint and modifies Parts 1 to 7 of these Rules in relation to such proceedings.
- (2) The definitions in rule 4 apply to terms in this Schedule and in this Schedule—

“**comparator**” means the person of the opposite sex to the complainant in relation to whom the complainant alleges that his or her work is of equal value;

“**equal value complaint**” means a complaint relating to a breach of a sex equality clause or rule within the meaning of the Equality Act in a case involving work within section 57(1)(c) of that Act;

“**expert**” means a person (other than a qualified person) who gives evidence, prepares reports, presents statements, answers questions and provides assistance to the Tribunal in relation to a question as to whether one person’s work is of equal value to another’s in proceedings before the Tribunal to which section 121 of the Equality Act applies;

“**the facts relating to the question**” has the meaning in paragraph 6(1)(a);

“**qualified person**” means a person as mentioned in section 121(8) of the Equality Act;

“**the question**” means whether the complainant's work is of equal value to that of the comparator; and

“**report**” means a report required by the Tribunal to be prepared in accordance with section 121(2) of the Equality Act.

- (3) A reference in this Schedule to “a paragraph” is a reference to a paragraph in this Schedule unless otherwise provided.
- (4) A reference in this Schedule to “**these Rules**” is a reference to the Employment and Equality Tribunal Rules 2018, including this Schedule.

## 2 General power to manage proceedings

- (1) The Tribunal may (subject to paragraphs 3(1) and 6(1)) order—
  - (a) that no new facts are to be admitted in evidence by the Tribunal unless they have been disclosed to all other parties in writing before a date specified by the Tribunal (unless it was not reasonably practicable for a party to have done so);
  - (b) the parties to send copies of documents or provide information to the qualified person;
  - (c) the respondent to grant the qualified person access to the respondent's premises during a period specified in the order to allow the qualified person to conduct interviews with persons identified as relevant by the qualified person;
  - (d) when one or more experts are to give evidence in the proceedings, that those experts present to the Tribunal a joint statement of matters which are agreed between them and matters on which they disagree.
- (2) In managing the proceedings, the Tribunal must have regard to the indicative timetable in the Annex to this Schedule.

## 3 Conduct of stage 1 equal value hearing

- (1) Where there is a dispute as to whether one person's work is of equal value to another's (equal value being construed in accordance with section 57(6) of the Equality Act), the Tribunal must conduct a hearing, which is to be referred to as a “stage 1 equal value hearing”, and at that hearing must—
  - (a) strike out the complaint (or the relevant part of it) if in accordance with section 121(6) of the Equality Act the Tribunal must determine that the work of the complainant and the comparator are not of equal value;

- (b) determine the question or require a qualified person to prepare a report on the question;
  - (c) if the Tribunal has decided to require a qualified person to prepare a report on the question, fix a date for a further hearing, which is to be referred to as a “stage 2 equal value hearing”; and
  - (d) if the Tribunal has not decided to require a qualified person to prepare a report on the question, fix a date for the final hearing.
- (2) Before a complaint or part is struck out under sub-paragraph (1)(a), the Clerk must send notice to the complainant and allow the complainant to make representations to the Tribunal as to whether the evaluation contained in the study in question falls within paragraph (a) or (b) of section 121(6) of the Equality Act. The Clerk is not required to send a notice under this sub-paragraph if the complainant has been given an opportunity to make such representations orally to the Tribunal.
- (3) The Tribunal may, on the application of a party, hear evidence and submissions on the issue contained in section 61 of the Equality Act before determining whether to require a qualified person to prepare a report under sub-paragraph (1)(b).
- (4) The Clerk must give the parties reasonable notice of the date of the stage 1 equal value hearing and the notice must specify the matters that are to be, or may be, considered at the hearing and give notice of the standard orders in paragraph 4.

#### **4 Standard orders for stage 1 equal value hearing**

- (1) At a stage 1 equal value hearing the Tribunal must, unless it considers it inappropriate to do so, order that—
- (a) before the end of the period of 14 days the complainant must—
    - (i) disclose in writing to the respondent the name of any comparator, or, if the complainant is not able to name the comparator, disclose information which enables the respondent to identify the comparator; and
    - (ii) identify to the respondent in writing the period in relation to which the complainant considers that the complainant's work and that of the comparator are to be compared;
  - (b) before the end of the period of 28 days—
    - (i) where the complainant has not disclosed the name of the comparator to the respondent under sub-paragraph (a) and the respondent has been provided with sufficient detail to be able to identify the comparator, the respondent must disclose in writing the name of the comparator to the complainant;

- (ii) the parties must provide each other with written job descriptions for the complainant and any comparator; and
    - (iii) the parties must identify to each other in writing the facts which they consider to be relevant to the question;
  - (c) the respondent must grant access to the respondent's premises during a period specified in the order to allow the complainant and his or her representative to interview any comparator;
  - (d) the parties must before the end of the period of 56 days present to the Tribunal an agreed written statement specifying—
    - (i) job descriptions for the complainant and any comparator;
    - (ii) the facts which both parties consider are relevant to the question;
    - (iii) the facts on which the parties disagree (as to the fact or as to the relevance to the question) and a summary of their reasons for disagreeing;
  - (e) the parties must, at least 56 days before the final hearing, disclose to each other, to any qualified person or expert and to the Tribunal written statements of any facts on which they intend to rely in evidence at the final hearing; and
  - (f) the parties must, at least 28 days before the final hearing, present to the Tribunal a statement of facts and issues on which the parties are in agreement, a statement of facts and issues on which the parties disagree and a summary of their reasons for disagreeing.
- (2) The Tribunal may add to, vary or omit any of the standard orders in subparagraph (1).

## **5 Involvement of a qualified person in fact finding**

Where the Tribunal has decided to require a qualified person to prepare a report on the question, it may at any stage of the proceedings, on its own initiative or on the application of a party, order the qualified person to assist the Tribunal in establishing the facts on which the qualified person may rely in preparing the report.

## **6 Conduct of stage 2 equal value hearing**

- (1) At a stage 2 equal value hearing the Tribunal must—
  - (a) make a determination of facts on which the parties cannot agree which relate to the question and must require the qualified person to prepare the report on the basis of facts which have (at any stage of the proceedings) either been agreed between the parties or

determined by the Tribunal (referred to as “the facts relating to the question”); and

- (b) fix a date for the full hearing.
- (2) Subject to sub-paragraph (3), the facts relating to the question must, in relation to the question, be the only facts on which the Tribunal is to rely at the full hearing.
- (3) At any stage of the proceedings the qualified person may make an application to the Tribunal for some or all of the facts relating to the question to be amended, supplemented or omitted.
- (4) The Clerk must give the parties reasonable notice of the date of the stage 2 equal value hearing and the notice must draw the attention of the parties to this paragraph and give notice of the standard orders in paragraph 7.

## **7 Standard orders for stage 2 equal value hearing**

- (1) At a stage 2 equal value hearing the Tribunal must, unless it considers it inappropriate to do so, order that—
  - (a) by a specified date the qualified person must prepare his or her report on the question and must send copies of it to the parties and to the Tribunal; and
  - (b) the qualified person must prepare his or her report on the question on the basis only of the facts relating to the question.
- (2) The Tribunal may add to, vary or omit any of the standard orders in sub-paragraph (1).

## **8 Full hearing**

- (1) Where a qualified person has prepared a report, unless the Tribunal determines that the report is not based on the facts relating to the question, the report of the qualified person must be admitted in evidence.
- (2) If the Tribunal does not admit the report of a qualified person in accordance with sub-paragraph (1), it may determine the question itself or require another qualified person to prepare a report on the question.
- (3) The Tribunal may refuse to admit evidence of facts or hear submissions on issues which have not been disclosed to the other party as required by these Rules or any order (unless it was not reasonably practicable for a party to have done so).

## 9 Duties and powers of the qualified person

- (1) When the Tribunal makes an order under paragraph 3(1)(b) or 5, it must inform that qualified person of the duties and powers under this paragraph.
- (2) The qualified person has a duty to the Tribunal to—
  - (a) assist it in furthering the overriding objective set out in rule 7 of these Rules;
  - (b) comply with the requirements of these Rules and any orders made by the Tribunal;
  - (c) keep the Tribunal informed of any delay in complying with any order (with the exception of minor or insignificant delays in compliance);
  - (d) comply with any timetable imposed by the Tribunal in so far as this is reasonably practicable;
  - (e) when requested, inform the Tribunal of progress in the preparation of the report;
  - (f) prepare a report on the question based on the facts relating to the question and send it to the Tribunal and the parties; and
  - (g) attend hearings.
- (3) The qualified person may make an application for any order or for a hearing to be held as if he or she were a party to the proceedings.
- (4) At any stage of the proceedings the Tribunal may, after giving the qualified person the opportunity to make representations, withdraw the requirement on the qualified person to prepare a report. If it does so, the Tribunal may itself determine the question, or it may require a different qualified person to prepare the report.
- (5) When sub-paragraph (4) applies, the qualified person who is no longer required to prepare the report must provide the Tribunal with all documentation and work in progress relating to the proceedings by a specified date. Such documentation and work in progress must be in a form which the Tribunal is able to use and may be used in relation to those proceedings by the Tribunal or by another qualified person.

## 10 Use of expert evidence

- (1) The Tribunal must restrict expert evidence to that which it considers is reasonably required to resolve the proceedings.
- (2) An expert has a duty to assist the Tribunal on matters within the expert's expertise. This duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.



- (3) No party may call an expert or put in evidence an expert's report without the permission of the Tribunal. No expert's report is to be put in evidence unless it has been disclosed to all other parties and any qualified person at least 28 days before the final hearing.
- (4) In proceedings in which a qualified person has been required to prepare a report on the question, the Tribunal must not admit evidence of an expert on the question unless such evidence is based on the facts relating to the question. Unless the Tribunal considers it inappropriate to do so, any such expert report must be disclosed to all parties and to the Tribunal on the same date on which the qualified person is required to send his or her report to the parties and to the Tribunal.
- (5) If an expert does not comply with these Rules or an order made by the Tribunal, the Tribunal may order that the evidence of that expert is not to be admitted.
- (6) Where two or more parties wish to submit expert evidence on a particular issue, the Tribunal may order that the evidence on that issue is to be given by one joint expert only and if the parties wishing to instruct the joint expert cannot agree an expert, the Tribunal may select an expert.

## **11 Written questions to qualified persons and experts**

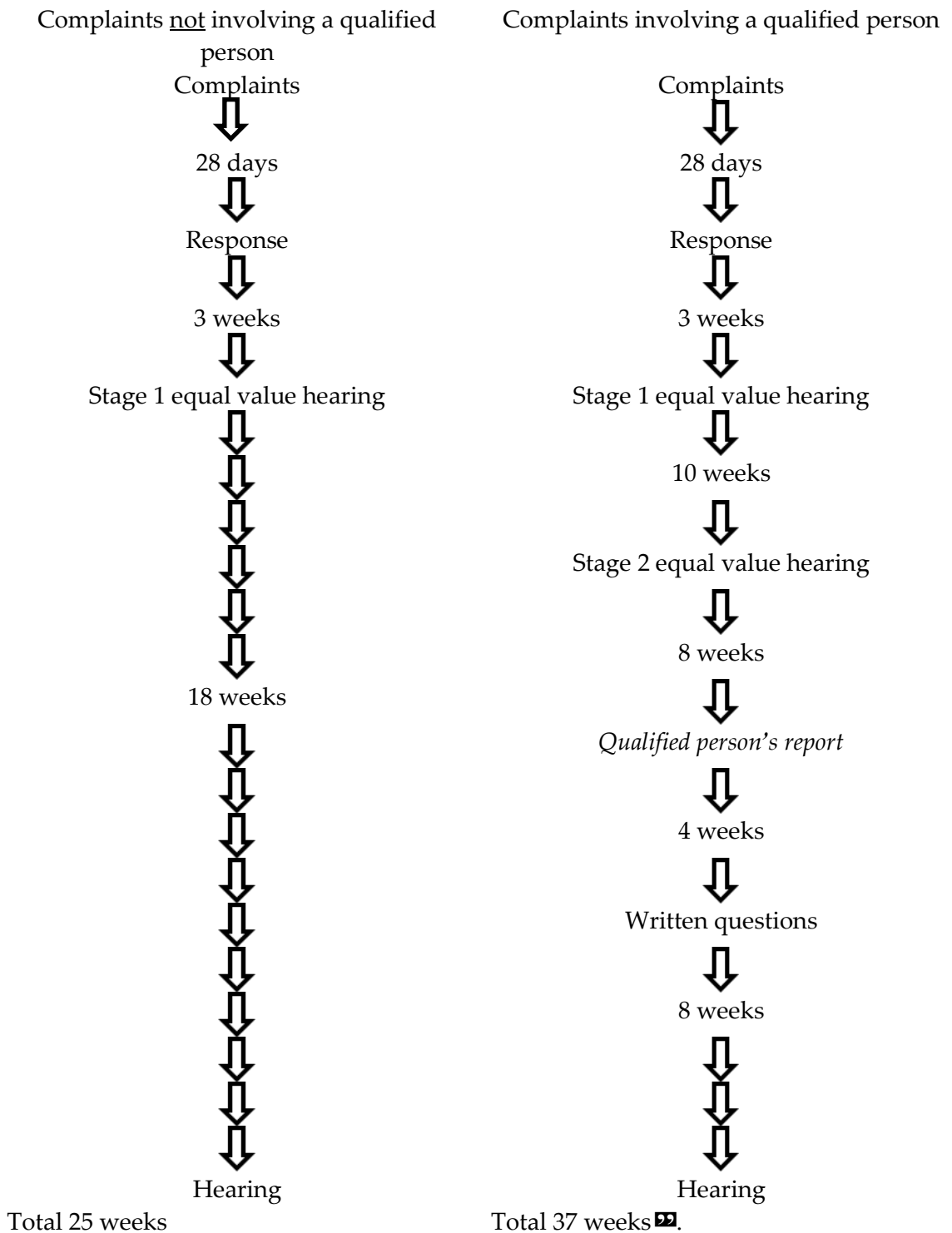
- (1) When a qualified person has prepared a report, a party or an expert involved in the proceedings may put written questions about the report to the qualified person.
- (2) When an expert has prepared a report, a party, a qualified person or any other expert involved in the proceedings may put written questions about the report to the expert.
- (3) Unless the Tribunal agrees otherwise, written questions under subparagraph (1) or (2)—
  - (a) may be put once only;
  - (b) must be put within 28 days of the date on which the parties were sent the report;
  - (c) must be for the purpose only of clarifying the factual basis of the report; and
  - (d) must be copied to all other parties, the qualified person and experts involved in the proceedings at the same time as they are sent to the qualified person or expert who prepared the report.
- (4) A qualified person or expert must answer written questions within 28 days of receipt and the answers are to be treated as part of the qualified person's or expert's report.
- (5) Where a party has put a written question to an expert instructed by another party and the expert does not answer that question within 28

days, the Tribunal may order that the party instructing that expert may not rely on the evidence of that expert.

## **12 Procedural matters**

- (1) Where a qualified person has been required to prepare a report, the Tribunal must send that qualified person notice of any hearing, application, order or judgment in the proceedings as if the qualified person were a party to those proceedings and when these Rules or an order requires a party to provide information to another party, such information must also be provided to the qualified person.
- (2) There may be more than one stage 1 or stage 2 equal value hearing in any case.
- (3) Any power conferred on the Chairperson by Parts 1 to 7 of these Rules may (subject to the provisions of this Schedule) in an equal value complaint be carried out by the Tribunal or the Chairperson.

Annex  
The indicative timetable



*EXPLANATORY NOTE**(This note is not part of the Rules)*

These Rules amend the Employment and Equality Tribunal Rules 2018 to set out the procedure for bringing work of equal value complaints before the Employment and Equality Tribunal.