



Statutory Document No. 887/08

THE EMPLOYMENT ACT 2006

THE EMPLOYMENT TRIBUNAL RULES 2008

Coming into operation

31st January 2009

In exercise of the powers conferred on the Department of Trade and Industry by paragraph 1 of Part II of Schedule 3 to the Employment Act 2006¹, and of all other enabling powers, the following Rules are hereby made:—

PART 1

GENERAL

1. Citation, commencement and revocation

(1) These rules may be cited as the Employment Tribunal Rules 2008 and shall come into operation on 31st January 2009.

(2) Except in relation to proceedings before the Tribunal which were commenced before 31st January 2009 the Employment Tribunal Rules 1992² are revoked.

2. Interpretation

In these rules —

"the Act" means the Employment Act 2006;

"the Chairman" means the chairperson of the Tribunal, and includes a deputy chairperson appointed under paragraph 2(2) of Part I of Schedule 3 to the Act;

"claim" means an application, complaint, reference or appeal to the Tribunal, and "claimant" has a corresponding meaning;

"the Clerk" means the person for the time being appointed pursuant to section 9 of the Tribunals Act 2006³ to act as clerk of the Tribunal, and includes an acting clerk and a person acting with the authority of the Clerk;

"costs" means fees, charges, disbursements or expenses incurred by or on behalf of a party in relation to the proceedings in question;

"the Department" means the Department of Trade and Industry;

¹ 2006 c.21

² SD 107/92

³ 2006 c.1

Price £2.50

"the DHSS" means the Department of Health and Social Security;

"electronic communication" has the same meaning as in the Electronic Transactions Act 2000⁴;

"hearing" means a pre-hearing review, review hearing, a full hearing or a sitting of the Chairman or the Tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawful to enable the Chairman or Tribunal to reach a decision on any question;

"legally represented" means having the assistance of an advocate (including where the advocate is the receiving party's employee);

"the register" means the register of claims, judgments, orders and written reasons kept in accordance with rule 26;

"the Tribunal" means the Employment Tribunal;

"writing" includes writing delivered by means of electronic communication.

3. Application of rules

(1) These rules apply in relation to all proceedings before the Tribunal which are commenced on or after 31st January 2009.

(2) Subject to the provisions of these rules, the Tribunal or Chairman may regulate its or his own procedure.

(3) Where proceedings are referred to the Tribunal by a court, these rules apply to them as if they had been started in the Tribunal by the claimant.

4. Overriding objective

(1) The overriding objective of these rules is to enable the Tribunal and the Chairman to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable —

(a) ensuring that the parties are on an equal footing;

(b) dealing with the case in ways which are proportionate to the importance of the case and the complexity of the issues;

(c) ensuring that it is dealt with expeditiously and fairly; and

(d) saving expense.

(3) The Tribunal or Chairman shall seek to give effect to the overriding objective when it or he —

(a) exercises any power given to it or him by these rules; or

(b) interprets these rules.

(4) The parties shall assist the Tribunal or the Chairman to further the overriding objective.

⁴ 2000 c.8

PART 2

STARTING A CLAIM

5. Starting a claim

(1) A claim shall be brought before the Tribunal by the claimant presenting to the Clerk the details of the claim in writing (which may, but need not, be in a form prescribed under rule 37).

(2) Those details must include all the following information —

- (a) the claimant's name;
- (b) the claimant's address;
- (c) the name (so far as known to the claimant) of each person against whom the claim is made ("respondent");
- (d) each respondent's address (so far as known to the claimant);
- (e) details of the claim (including a brief summary of the facts giving rise to it);
- (f) whether or not the claimant is or was an employee of the respondent.

(3) Two or more claimants may not present their claims in the same document.

6. Initial action on receipt of claim

(1) On receiving a claim (including a claim which is re-presented after being returned to the claimant under paragraph (2)), the Clerk shall consider what action to take under this rule.

(2) If the claim —

- (a) does not include all the information required by rule 5(2); or
- (b) is made outside a relevant time-limit imposed by a statutory provision, and does not include an application to the Tribunal to extend the time for bringing the claim (with an explanation why the claimant could not comply with the time limit),

the Clerk shall, not later than 7 days after receipt, return it to the claimant, indicating what information or other matters should be included in it, and the claim shall be treated as if it had not been presented.

(3) If the claim includes an application and explanation as mentioned in paragraph (2)(b), the Clerk shall, not later than 7 days after receipt, refer the claim to the Chairman.

(4) If it appears to the Clerk that for any reason (other than the expiry of a relevant time-limit imposed by a statutory provision) the Tribunal does not have power to consider the claim, he shall, not later than 7 days after receipt, either —

- (a) notify the claimant of his opinion, stating his reasons for it and informing the claimant that the claim will be treated as if it had not been presented unless he states in writing, not later than 21 days after the date of the notification, that he wishes to proceed with it; or

(b) refer the claim to the Chairman.

(5) Where, pursuant to a notification under paragraph (4)(a), the claimant states within the time allowed that he wishes to proceed with the claim, the Clerk shall forthwith refer the claim to the Chairman; but if the claimant fails to do so, it shall be treated as if it had not been presented.

(6) On a reference under paragraph (3), (4)(b) or (5) the Chairman shall either —

(a) decide whether —

(i) the claim should be accepted out of time, in accordance with the criteria applying to the exercise of the power to extend the time-limit; or

(ii) the Tribunal has power to consider the claim, as the case may be, without a hearing, or

(b) order that such a decision shall be made at a pre-hearing review;

and inform the Clerk in writing of his decision or order (with his reasons).

(7) Where —

(a) paragraphs (2) to (5) do not apply, or

(b) the Chairman decides under paragraph (6) that the claim should be accepted out of time, or that the Tribunal has power to consider it, or

(c) the Chairman orders that such a decision shall be made at a pre-hearing review;

the Clerk shall —

(i) send a copy of the claim to each respondent (with a copy of any order under sub-paragraph (c)), and record in writing the date on which it was sent;

(ii) inform the parties in writing of the case number of the claim (which must from then on be referred to in all correspondence relating to the claim) and the address to which notices and other communications to the Clerk must be sent;

(iii) inform the respondent in writing about how to present a response to the claim, the time limit for doing so, what may happen if a response is not entered within the time limit and that the respondent has a right to receive a copy of any judgment disposing of the claim;

(iv) where section 157 (conciliation) of the Act applies to the claim, notify the parties that the services of an industrial relations officer are available to them.

(8) Where the Chairman decides under paragraph (6) that the claim shall not be accepted out of time, or that the Tribunal has no power to consider it, —

(a) the Clerk shall as soon as reasonably practicable inform the claimant of that decision and the reasons for it in writing, together with information on how that decision may be reviewed or appealed; and

- (b) except for the purposes of paragraph (9) or any appeal to the High Court, the claim shall be treated as if it had not been presented.

(9) Any decision by the Chairman that the claim should not be accepted out of time, or that the Tribunal has no power to consider it, may be reviewed in accordance with rules 27 to 29.

(10) If the result of the review is that the claim should have been accepted, paragraph (8)(b) shall not apply to it, and the Clerk shall then accept the claim and proceed to deal with it as described in paragraph (7).

(11) A decision to accept a claim shall not bind the Tribunal or Chairman where any of the issues listed in paragraph (2)(a) or (b) or (4) falls to be determined later in the proceedings.

7. Responding to the claim

(1) If the respondent wishes to respond to the claim made against him he must present his response to the Clerk in writing (which may, but need not, be in a form prescribed under rule 37) —

- (a) within 28 days of the date on which he was sent a copy of the claim, or
- (b) within such further period as the Chairman considers reasonable, where on an application by the respondent he is satisfied —
 - (i) that it was not reasonably practicable for the response to be presented within 28 days of that date, or
 - (ii) that for any other reason it is just and equitable to extend the time.

(2) An application under paragraph (1)(b) may be made before or at the same time as a response is presented, and must explain why the respondent cannot or could not comply with the time limit.

(3) The response must include all the following information —

- (a) the respondent's name;
- (b) the respondent's address;
- (c) whether or not the respondent wishes to resist the claim in whole or in part; and
- (d) if the respondent wishes to do so, on what grounds.

8. Action on receipt of response

(1) On receiving a response (including a response which is re-presented after being returned to the respondent under paragraph (2)), the Clerk shall consider what action to take under this rule.

- (2) If the response —
 - (a) does not include all the information required by rule 7(3); or
 - (b) is made after the time specified in rule 7(1)(a), or that time as extended under rule 7(1)(b), and no application is or has been duly made to extend the time for presenting the response,

the Clerk shall, not later than 7 days after receipt, return it to the respondent, indicating what information or other matters should be included in it, and the response shall be treated as if it had not been presented.

(3) If an application is made under rule 7(1)(b), the Clerk shall, not later than 7 days after receipt, refer it to the Chairman.

- (4) On a reference under paragraph (3) the Chairman shall either —
- (a) decide whether the response should be accepted out of time without a hearing, or
 - (b) order that such a decision shall be made at a pre-hearing review;

and inform the Clerk of his decision or order in writing (with his reasons).

- (5) The Clerk shall —
- (a) inform both the claimant and the respondent of a decision under paragraph (4)(a) that the response should not be accepted out of time and the reasons for it, and
 - (b) inform the respondent of the consequences for him of that decision and how it may be reviewed or appealed.

(6) Where —

- (a) paragraphs (2) and (3) do not apply, or
- (b) the Chairman decides under paragraph (4)(a) that a response should be accepted out of time, or
- (c) the Chairman orders that such a decision shall be made at a pre-hearing

review;

the Clerk shall send a copy of the response to all other parties and record in writing the date on which he does so.

9. Taking no further part in the proceedings

A respondent who has not presented a response to a claim within the time specified in rule 7(1)(a), or that time as extended under rule 7(1)(b), shall not be entitled to take any part in the proceedings except —

- (a) to make an application under rule 28 in respect of rule 27(4)(a), (b), (c) or (f);
- (b) to be called as a witness by another person; or
- (c) to be sent a copy of a document or corrected entry in accordance with rule 24(2) or 30;

and in these rules the word "party" or "respondent" includes a respondent only in relation to his entitlement to take such a part in the proceedings, and in relation to any such part which he takes.

PART 3

CASE MANAGEMENT

10. General power to manage proceedings

(1) Subject to the following rules, the Chairman may at any time either on the application of a party or on his own initiative make an order in relation to any matter which appears to him to be appropriate. Such orders may be —

- (a) any of those listed in paragraph (2),
- (b) subject to the requirements of rule 23, any order to which that rule applies, or
- (c) such other orders as he thinks fit.

Subject to the following rules, orders may be issued as a result of the Chairman considering the papers before him in the absence of the parties, or at a hearing.

(2) Examples of orders which may be made under paragraph (1) are orders

- (a) as to the manner in which the proceedings are to be conducted, including any time limit to be observed;
- (b) that a party provide additional information;
- (c) requiring the attendance of any person in the Island either to give evidence or to produce documents or information;
- (d) requiring any person in the Island to disclose documents or information to a party, and to allow a party to inspect such material as might be ordered by the High Court;
- (e) extending any time limit, whether or not expired (subject to rules 7(1), 11(2), 16(5), 28(1) and 32(6));
- (f) requiring the provision of written answers to questions put by the Chairman or Tribunal;
- (g) adjourning the proceedings so that the parties may seek to resolve the dispute by conciliation;
- (h) staying the whole or part of any proceedings;
- (i) that part of the proceedings be dealt with separately;
- (j) that different claims be considered together;
- (k) that any person who the Chairman or Tribunal considers may be liable for the remedy claimed should be made a respondent in the proceedings;
- (l) dismissing the claim against a respondent who is no longer directly interested in the claim;
- (m) postponing or adjourning any hearing;
- (n) varying or revoking other orders;
- (o) giving notice to the parties of a pre-hearing review or the full hearing;

- (p) giving notice under rule 23;
- (q) giving leave to amend a claim or response;
- (r) that any person who the Chairman or Tribunal considers has an interest in the outcome of the proceedings may be joined as a party to the proceedings;
- (s) that a witness statement be prepared or exchanged;
- (t) that a party provide copies of documents for the use of the Chairman or Tribunal; or
- (u) as to the use of experts or interpreters in the proceedings.

(3) An order may specify the time at or within which and the place at which any act is required to be done. An order may also impose conditions and it shall inform the parties of the potential consequences of non-compliance set out in rule 13.

(4) Where a requirement has been imposed under paragraph (1), the person subject to the requirement may make an application under rule 11 for the order to be varied or revoked.

(5) An order described in paragraph (2)(d) which requires a person other than a party to grant disclosure or inspection of material may be made only when the disclosure sought is necessary in order to dispose fairly of the claim or to save expense.

(6) Any order containing a requirement described in sub-paragraph (2)(c) or (d) shall state that under paragraph 1(7) of Part II of Schedule 3 to the Act, any person who without reasonable excuse fails to comply with the requirement is liable on summary conviction to a fine not exceeding £5,000.

(7) An order as described in paragraph (2)(j) may be made only if all relevant parties have been given notice that such an order may be made and they have been given the opportunity to make oral or written representations as to why such an order should or should not be made.

(8) Any order made under this rule shall be recorded in writing and signed by the Chairman, and the Clerk shall inform all parties to the proceedings of any order made as soon as is reasonably practicable.

11. Applications in proceedings

(1) At any stage of the proceedings a party may apply for an order to be issued, varied or revoked or for a pre-hearing review to be held.

(2) An application for an order must be made not less than 10 days before the date of the hearing at which it is to be considered (if any) unless —

- (a) it is not reasonably practicable to do so, or
- (b) the Chairman or Tribunal considers that shorter notice should be allowed in the interests of justice.

The application must (unless the Chairman orders otherwise) be made in writing to the Clerk and include the case number for the proceedings and the reasons for the request. If the application is for a pre-hearing review to be held, it must identify any orders sought.

(3) The Clerk shall provide all other parties with the following information in writing —

- (a) details of the application and the reasons why it is sought;
- (b) notification that any objection to the application must be sent to the Clerk within 7 days of receiving the application, or before the date of the hearing (whichever date is the earlier);
- (c) that any objection to the application must be copied to both the Clerk and all other parties.

(4) A Chairman may refuse a party's application, and if he does so the Clerk shall inform the parties in writing of the refusal unless the application is refused at a hearing.

12. Chairman acting on his own initiative

(1) Subject to paragraph (2) and to rules 10(7) and 23(2), the Chairman may make an order on his own initiative with or without hearing the parties or giving them an opportunity to make written or oral representations. He may also decide to hold a pre-hearing review on his own initiative.

(2) Where the Chairman makes an order without giving the parties the opportunity to make representations —

- (a) a party affected by the order may apply to have it varied or revoked; and
- (b) the Clerk must send to the party affected by the order a copy of the order and a statement explaining the right to make an application under sub-paragraph (a).

(3) An application under paragraph (2)(a) must (subject to rule 10(2)(e)) be made before the time at which, or the expiry of the period within which, the order was to be complied with. The application must (unless the Chairman orders otherwise) be made in writing to the Clerk and it must include the reasons for the application. Rule 11(3) applies in relation to informing the other parties of the application.

13. Compliance with orders

(1) If a party does not comply with an order made under these rules, the Chairman or Tribunal may —

- (a) make a costs order under rule 32; or
- (b) (subject to paragraph (2) and rule 23) at a pre-hearing review or a full hearing make an order to strike out the whole or part of the claim or, as the case may be, the response and, where appropriate, order that a respondent be debarred from responding to the claim altogether.

(2) An order may also provide that unless the order is complied with, the claim or the response, as the case may be, shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 23 or hold a pre-hearing review or full hearing.

14. Conciliation

In proceedings on a claim to which section 157 (conciliation) of the Act applies, the Clerk shall send to an industrial relations officer —

- (a) a copy of the claim,
- (b) a copy of any response to it; and
- (c) except where the Clerk and the industrial relations officer have agreed otherwise, copies of all documents, orders, judgments, written reasons and notices in the proceedings.

15. Detriment or dismissal in connection with industrial action

- (1) This rule applies to proceedings on —
 - (a) a claim under section 71 of the Act that the claimant has been subjected to a detriment in contravention of section 69 of the Act, or
 - (b) a claim under section 133 of the Act that a dismissal is unfair by virtue of section 124 of the Act.
- (2) The Tribunal or Chairman may stay the proceedings where civil proceedings have been brought until such time as interim proceedings arising out of the civil proceedings have been concluded.
- (3) In this rule —
 - (a) "civil proceedings" means legal proceedings brought by any person against another person in which it is to be determined whether an act of that other person, which induced the claimant to commit an act, or each of a series of acts, is by virtue of section 11 of the Trade Unions Act 1991⁵ not actionable in tort; and
 - (b) the interim proceedings shall not be regarded as having concluded until all rights of appeal have been exhausted or the time for presenting any appeal in the course of the interim proceedings has expired.

16. Right to withdraw claim

- (1) A claimant may withdraw all or part of his claim at any time, either orally at a hearing or in writing in accordance with paragraph (2).
- (2) To withdraw a claim or part of one in writing the claimant must inform the Clerk of the claim or the parts of it which are to be withdrawn. Where there is more than one respondent the notification must specify against which respondents the claim is being withdrawn.
- (3) The Clerk shall inform all other parties of the withdrawal. Withdrawal takes effect on the date on which the Clerk (in the case of written notifications) or the Tribunal (in the case of oral notification) receives notice of it and where the whole claim is withdrawn, subject to paragraph (4), proceedings are brought to an end against the relevant respondent on that date. Withdrawal does not affect proceedings as to costs or wasted costs.

⁵ 1991 c.20

(4) Where a claim has been withdrawn, a respondent may make an application to have the proceedings against him dismissed. The application must be made by the respondent in writing to the Clerk within 21 days of the notice of the withdrawal being sent to the respondent. If the respondent's application is granted and the proceedings are dismissed those proceedings cannot be continued by the claimant (unless the decision to dismiss is successfully reviewed or appealed).

(5) The time limit in paragraph (4) may be extended by the Chairman if he considers it just and equitable to do so.

PART 4

HEARINGS

17. Hearings – general

(1) The Chairman or the Tribunal (depending on the relevant rule) may hold the following types of hearing —

- (a) a pre-hearing review under rule 19;
- (b) a full hearing under rule 20; or
- (c) a review hearing under rule 29.

(2) So far as it appears appropriate to do so, the Chairman or Tribunal shall seek to avoid formality in his or its proceedings and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts.

(3) The Chairman or Tribunal (as the case may be) shall make such enquiries of persons appearing before him or it and of witnesses as he or it considers appropriate and shall otherwise conduct the hearing in such manner as he or it considers most appropriate for the clarification of the issues and generally for the just handling of the proceedings.

(4) Unless the parties agree to shorter notice, the Clerk shall send notice of any hearing to all the parties not less than 14 days before the date fixed for the hearing and shall inform them that they have the opportunity to submit written representations and to advance oral argument.

(5) If a party wishes to submit written representations for consideration at a hearing he shall present them to the Clerk not less than 7 days before the hearing and shall at the same time send a copy to all other parties.

(6) The Tribunal or Chairman may, if it or he considers it in the interests of justice to do so, consider representations in writing which have been submitted otherwise than in accordance with paragraph (5).

(7) At a full hearing, or a pre-hearing review held in accordance with rule 19(4), the Tribunal may make any order which the Chairman has power to make under these rules, subject to compliance with any relevant notice or other procedural requirements.

(8) Notwithstanding paragraph 2(4) of Part I of Schedule 3 to the Act, the Chairman or the Tribunal may hold a hearing even though he is not the same individual, or it does not comprise any of the members, who held a previous hearing

in the same proceedings, but once a hearing has begun it shall not continue without the consent of the parties unless the Chairman is the same individual, or the Tribunal comprises at least 2 of the members, who began the hearing.

(9) For the avoidance of doubt, the Chairman or a member of the Tribunal shall not be precluded from taking part in any hearing by reason only that he has taken part in a previous hearing in the same proceedings.

(10) Subject to paragraph (11), the Tribunal or Chairman may hold a hearing and receive evidence by telephone or video link or by using any other method of direct oral communication.

(11) Where a hearing —

- (a) is required by these rules to be held in public, and
- (b) is conducted in accordance with paragraph (10),

then, subject to rule 18, it must be held in a place to which the public has access and using equipment so that the public is able to hear all persons taking part in the hearing.

18. Hearings which may be held in private

(1) A full hearing or review hearing, or part of such a hearing, may be conducted in private for the purpose of hearing from any person evidence or representations which in the opinion of the Tribunal or Chairman is likely to consist of information —

- (a) which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision;
- (b) which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence placed in him by another person; or
- (c) the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in the definition of "collective agreement" in section 173(1) of the Act, cause substantial injury to any undertaking of his or any undertaking in which he works.

(2) Where the Tribunal or Chairman decides to hold a hearing or part of one in private under paragraph (1), it or he shall give reasons for doing so.

(3) A pre-hearing review may take place in public or in private, as the Chairman or Tribunal considers appropriate in the interests of justice, except that a pre-hearing review at which —

- (a) a judgment is given; or
- (b) an order relating to a matter falling within rule 23(1) is made,

shall take place in public.

19. Conduct of pre-hearing reviews

(1) Pre-hearing reviews are interim hearings and shall be conducted by the Chairman unless paragraph (3) applies.

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

- (a) determine any interim or preliminary matter relating to the proceedings;
- (b) make any order in accordance with rules 10 and 23; and
- (c) consider any oral or written representations or evidence.

(3) A pre-hearing review shall be conducted by the Tribunal composed in accordance with paragraph 2 of Part I of Schedule 3 to the Act if the Chairman so orders —

- (a) on his own initiative, or
- (b) on a party's request in writing, made not less than 7 days before the date on which the pre-hearing review is due to take place.

(4) The Chairman shall not make an order under paragraph (3) unless he considers —

- (a) that one or more substantive issues of fact are likely to be determined at the pre-hearing review, and
- (b) that it would be desirable for the pre-hearing review to be conducted by the Tribunal.

(5) If an order is made under paragraph (3), any reference to the Chairman in relation to a pre-hearing review shall be read as a reference to the Tribunal.

(6) Despite its preliminary or interim nature, 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 full hearing is no longer necessary in those proceedings.

20. Full hearings

(1) A full hearing is held for the purpose of determining outstanding procedural or substantive issues or disposing of the proceedings. In any proceedings there may be more than one full hearing and there may be different categories of full hearing, such as a full hearing on liability, remedies or costs.

(2) A full hearing of a claim may be conducted by the Chairman where —

- (a) the claim is under section 25 (deductions from wages) or 152 (insolvency etc.) of the Act,
- (b) the parties consent, or
- (c) it appears to the Chairman that —
 - (i) the claimant does not intend to pursue the claim,
 - (ii) the respondent does not intend to contest the claim, or
 - (iii) where there are 2 or more respondents, none of them intends to contest the claim.

(3) Except as provided by paragraph (2), a full hearing of a claim shall be conducted by the Tribunal composed in accordance with paragraph 2 of Part I of Schedule 3 to the Act.

(4) Any full hearing of a claim shall take place in public, subject to rule 18.

21. Conduct of full hearing

(1) The Chairman shall fix the date, time and place of the full hearing and the Clerk shall send to each party a notice of the full hearing together with information and guidance as to procedure at the full hearing.

(2) Subject to rule 17(3), at the full hearing a party shall be entitled to give evidence, to call witnesses, to question witnesses and to address the Tribunal.

(3) The Tribunal shall require parties and witnesses who attend the full hearing to give their evidence on oath or affirmation.

(4) The Tribunal may exclude from the full hearing any person who is to appear as a witness in the proceedings until such time as he gives evidence if it considers it in the interests of justice to do so.

(5) If a party fails to attend or to be represented (for the purpose of conducting the party's case at the full hearing) at the time and place fixed for the full hearing, the Tribunal may dismiss or dispose of the proceedings in the absence of that party or may adjourn the full hearing to a later date.

(6) If the Tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (5), it shall first consider any information in its possession which has been made available to it by the parties.

(7) At a full hearing the Tribunal may exercise any powers which may be exercised by the Chairman under these rules.

PART 5

DECISIONS

22. Judgments and orders

(1) The Chairman or the Tribunal may issue the following —

(a) a "judgment", which is a final determination of the proceedings or of a particular issue in those proceedings (including a matter falling within rule 23(1)); it may include an award of compensation, a declaration or recommendation and it may also include orders for costs or wasted costs;

(b) an "order", which may be issued in relation to —

(i) interim matters (whether or not requiring a person to do or not to do something), and

(ii) a matter falling within rule 23(1).

(2) If the parties agree in writing upon the terms of any order or judgment the Chairman or Tribunal may, if he or it thinks fit, make the order or judgment.

(3) At the end of a hearing the Chairman or Tribunal, as the case may be, shall either issue any judgment or order orally or reserve the judgment or order to be given in writing at a later date.

(4) Any order or judgment of the Tribunal may be made or issued by a majority.

23. Restrictions as to certain judgments and orders

(1) This rule applies to 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;
- (e) striking out a claim or response (or part of one) for non-compliance with an order;
- (f) striking out a claim where the Chairman or Tribunal considers that it is no longer possible to have a fair full hearing in those proceedings;
- (g) making a restricted reporting order (subject to rule 31).

(2) Before the Chairman or the Tribunal makes a judgment or order to which this rule applies, the Clerk shall send notice to —

- (a) the party against whom it is proposed that the order or judgment should be made, and
- (b) where another party has made an application for the order or judgment, that party,

informing him of the order or judgment to be considered and giving him the opportunity to give reasons why the order or judgment should not, or should, be made.

(3) Paragraph (2) does not apply to —

- (a) an order described in rule 13(2), or
- (b) a temporary restricted reporting order made in accordance with rule 31.

(4) Paragraph (2) shall not be taken to require the Clerk to send such a notice to a 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, or should, be made.

(5) Where a notice required by paragraph (2) 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 Clerk).

(6) A judgment or order to which this rule applies may not be made except at a pre-hearing review or a full hearing, if one of the parties has so requested. If no such request has been made such a judgment or order may be made in the absence of the parties.

(7) A claim or response or any part of one may be struck out under these rules only on the grounds stated in paragraph (1)(b) to (f).

(8) Nothing in this rule prevents the Chairman deciding under rule 6(6)(a) or 8(4)(a) that a claim or response should not be accepted.

24. Form and content of judgments

(1) Where judgment is reserved a written judgment shall be sent to the parties as soon as practicable. All judgments (whether issued orally or in writing) shall be recorded in writing and signed by the Chairman.

(2) The Clerk shall provide a copy of the judgment to each of the parties and, where the proceedings were referred to the Tribunal by a court, to that court. The Clerk shall include guidance to the parties on how the judgment may be reviewed or appealed.

(3) Where the judgment includes an award of compensation or a determination that one party is required to pay a sum to another (excluding an order for costs or wasted costs), the document shall also contain a statement of the amount of compensation awarded, or of the sum required to be paid.

25. Reasons

(1) The Tribunal or Chairman must give reasons (either oral or written) for

—

- (a) any judgment; or
- (b) any order relating to a matter falling within rule 23(1).

(2) Reasons may be given orally at the time of issuing or making the judgment or order, but shall in any case be given in writing at that time or at a later date.

(3) Written reasons shall be signed by the Chairman and sent to all parties by the Clerk, who shall record the date on which the reasons were sent.

(4) Written reasons for a judgment shall include the following information

—

- (a) the issues which the Tribunal or Chairman has identified as being relevant to the claim;
- (b) if some identified issues were not determined, what those issues were and why they were not determined;
- (c) findings of fact relevant to the issues which have been determined;
- (d) a concise statement of the applicable law;

- (e) how the relevant findings of fact and applicable law have been applied in order to determine the issues; and
- (f) where the judgment includes an award of compensation or a determination that one party make a payment to the other, a table showing how the amount or sum has been calculated or a description of the manner in which it has been calculated.

26. The register

- (1) The Clerk shall maintain a register which shall be open to the inspection of any person without charge at all reasonable hours.
- (2) The register, or any part of it, may be kept by means of a computer.
- (3) Subject to paragraphs (4) and (5), the Clerk shall enter in the register —
 - (a) the following particulars of every claim presented to the Tribunal —
 - (i) the case number;
 - (ii) the date the claim was presented;
 - (iii) the name and address of the claimant;
 - (iv) the name and address of each respondent; and
 - (v) the subject-matter of the claim (eg. "unfair dismissal", "redundancy payment", or as the case may be);
 - (b) a copy of each of the following documents —
 - (i) any judgment;
 - (ii) any order to which rule 23(1) applies; and
 - (iii) the written reasons provided in accordance with rule 25 in relation to a judgment or order.
- (4) Written reasons for a judgment shall be omitted from the register in any case in which evidence has been heard in private and the Tribunal or Chairman so orders. In such a case —
 - (a) the Clerk shall send the reasons to each of the parties; and
 - (b) where there are proceedings before the High Court relating to the judgment in question, he shall send the reasons to the court, together with a copy of the entry in the register of the judgment to which the reasons relate.
- (5) The Tribunal, the Chairman or the Clerk shall omit from the register, or delete from the register or any judgment, document or record of the proceedings which is available to the public, any matter which is likely to lead members of the public to identify —
 - (a) any person affected by or making an allegation of the commission of a sexual offence, or
 - (b) any child or young person who is a party to, or gave evidence in, the proceedings.

27. Review of certain decisions

(1) A party may apply to have the following decisions, judgments and orders made by the Tribunal or the Chairman reviewed under rules 27 to 29 —

- (a) a decision not to accept a claim or response;
- (b) a judgment (including an order for costs or wasted costs);
- (c) an order to which rule 23(1) applies;

and references to a "decision" in rules 27 to 30 are references to those decisions, judgments and orders only.

(2) Other decisions or orders may not be reviewed under rules 27 to 30, but this does not prevent an order under rule 10 being varied or revoked by the Chairman on an application under rule 11 or on his own initiative.

(3) In relation to a decision not to accept a claim or response, only the party against whom the decision is made may apply to have the decision reviewed.

(4) Subject to paragraph (5), decisions may be reviewed on the following grounds only —

- (a) the decision was wrongly made as a result of an administrative error (including an error by a party);
- (b) the decision was based on a mistaken view of the applicable law;
- (c) a party did not receive notice of the proceedings leading to the decision;
- (d) the decision was made in the absence of a party;
- (e) new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time; or
- (f) the interests of justice require such a review.

(5) A decision not to accept a claim or response may only be reviewed on the grounds listed in paragraph (4)(a), (b) and (f).

(6) The Tribunal or Chairman may on its or his own initiative review a decision made by it or him on the grounds listed in paragraph (4).

28. Preliminary consideration of application for review

(1) An application under rule 27 to have a decision reviewed must be made to the Clerk —

- (a) within 14 days of the date on which the decision was sent to the parties, or
- (b) within such further period as the Chairman considers reasonable, if he considers that it is just and equitable to extend the time.

(2) The application must be in writing and must identify the grounds of the application in accordance with rule 27(4), but if the decision to be reviewed was made at a hearing, an application may be made orally at that hearing.

(3) The Chairman shall refuse the application if he considers that there are no grounds for the decision to be reviewed under rule 27(4) or there is no reasonable prospect of the decision being varied or revoked.

(4) If an application for a review is refused after such preliminary consideration the Clerk shall inform the party making the application in writing of the Chairman's decision and his reasons for it. Unless the application for a review is refused, the decision shall be reviewed under rule 29.

29. The review

(1) Where a party has applied for a review and the application has not been refused after the preliminary consideration above, the decision shall if practicable be reviewed by the Chairman, or the Tribunal consisting of the same persons, who made the original decision.

(2) Where no application has been made by a party and the decision is being reviewed on the initiative of the Chairman or Tribunal, the review must be carried out by the Chairman, or the Tribunal consisting of the same persons, who made the original decision and —

(a) a notice must be sent to each of the parties explaining in summary the grounds upon which it is proposed to review the decision and giving them an opportunity to give reasons why there should be no review; and

(b) the notice must be sent before the expiry of 21 days from the date on which the original decision was sent to the parties.

(3) Where the Tribunal or Chairman reviews a decision under paragraph (1) or (2), it or he may confirm, vary or revoke the decision. If the decision is revoked —

(a) the Tribunal or Chairman must order the decision to be taken again,

(b) if the original decision was taken by the Chairman without a hearing, the new decision may be taken without hearing the parties; and

(c) if the original decision was taken at a hearing, a new hearing must be held.

30. Correction of decisions or reasons

(1) Clerical mistakes in any order, judgment, decision or reasons, or errors arising in those documents from an accidental slip or omission, may at any time be corrected by certificate by the Chairman.

(2) If a document is corrected by certificate under paragraph (1), or if a decision is revoked or varied under rule 29 or altered in any way by order of the High Court, the Clerk shall alter any entry in the register which is so affected to conform with the certificate or order and send a copy of any entry so altered to each of the parties and, if the proceedings have been referred to the Tribunal by a court, to that court.

(3) Where a document omitted from the register under rule 26 is corrected by certificate under this rule, the Clerk shall send a copy of the corrected document to the parties; and where there are proceedings before the High Court relating to the

decision or reasons in question, he shall send a copy to the court together with a copy of the entry in the register of the decision, if it has been altered under this rule.

31. Restricted reporting orders

(1) A restricted reporting order may be made in any case —

- (a) which involves allegations of sexual misconduct,
- (b) to which a child or young person is a party, or
- (c) in which a child or young person gives evidence.

(2) A restricted reporting order is an order prohibiting the publication (including by electronic means) in a written publication available to the public, or the inclusion in a relevant programme for reception in the Island, of any matter likely to lead members of the public to identify any person accused, or an alleged victim, of such misconduct or that child or young person, as the case may be.

(3) A party may apply for a restricted reporting order (either temporary or full) in writing to the Clerk, or orally at a hearing, or the Tribunal or Chairman may make the order on its or his own initiative without any application having been made.

(4) A Chairman or Tribunal may make a temporary restricted reporting order without holding a hearing or sending a copy of the application to other parties.

(5) Where a temporary restricted reporting order has been made the Clerk shall inform all parties to the proceedings in writing as soon as possible of —

- (a) the fact that the order has been made; and
- (b) their right to apply to have the temporary restricted reporting order revoked or converted into a full restricted reporting order within 14 days of the temporary order having been made.

(6) If no application under paragraph (5)(b) is made within the 14 days, the temporary restricted reporting order shall lapse and cease to have any effect on the 15th day after the order was made. If such an application is made the temporary restricted reporting order shall continue to have effect until the pre-hearing review or full hearing at which the application is considered.

(7) All parties must be given an opportunity to advance oral argument at a pre-hearing review or a full hearing before the Tribunal or Chairman decides whether or not to make a full restricted reporting order (whether or not there was previously a temporary restricted reporting order in the proceedings).

(8) Any person may make an application to the Chairman or Tribunal to have a right to make representations before a full restricted reporting order is made. The Chairman or Tribunal shall allow such representations to be made where he or it considers that the applicant has a legitimate interest in whether or not the order is made.

(9) Where the Tribunal or Chairman makes a restricted reporting order —

- (a) it or he shall specify in the order the persons who may not be identified;
- (b) a full order shall remain in force until both liability and remedy have been determined in the proceedings unless it is revoked earlier; and

- (c) the Clerk shall ensure that a notice of the fact that a restricted reporting order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room in which the proceedings affected by the order are taking place.

(10) Where a restricted reporting order has been made under this rule and that complaint is being dealt with together with any other proceedings, the Tribunal or Chairman may order that the restricted reporting order applies also in relation to those other proceedings or a part of them.

(11) A Tribunal or Chairman may revoke a restricted reporting order at any time.

(12) For the purposes of this rule liability and remedy are determined in the proceedings on the date recorded as being the date on which the judgment disposing of the claim was sent to the parties, and references to a restricted reporting order include references to both a temporary and a full restricted reporting order.

(13) In this rule "relevant programme" means a programme included in a programme service within the meaning of Part I of the Broadcasting Act 1993⁶.

PART 6

COSTS

32. Costs

- (1) In this rule —
 - (a) a "costs order" means an order of the Tribunal or Chairman that a party (the "paying party") make a payment in respect of the costs incurred by another party (the "receiving party");
 - (b) "paying party" includes a respondent who has not had a response accepted in the proceedings, in relation to the conduct of any part which he has taken in the proceedings;
 - (c) "receiving party" includes the DHSS if, not being a party, it has acted as provided in rule 35.

(2) Subject to paragraphs (3) and (4), the Tribunal or Chairman shall not normally make a costs order in any proceedings.

(3) The Tribunal or Chairman may make a costs order where in its or his opinion the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably.

- (4) The Tribunal or Chairman may make a costs order —
 - (a) where it or he has postponed the day or time fixed for or adjourned a full hearing or pre-hearing review; or
 - (b) against a party who has not complied with an order.

⁶ 1993 c.12

A costs order under sub-paragraph (a) may be against or in favour of any party as respects any costs incurred as a result of the postponement or adjournment.

(5) A costs order may be made against or in favour of a respondent who has not had a response accepted in the proceedings, in relation to the conduct of any part which he has taken in the proceedings.

(6) A party may apply for a costs order to be made at any time during the proceedings. An application may be made at the end of a hearing, or in writing to the Clerk. An application for costs which is received by the Clerk later than 21 days from the issuing of the judgment determining the claim shall not be accepted or considered by the Tribunal or Chairman unless it or he considers that it is in the interests of justice to do so.

(7) In paragraph (6), the date of issuing of the judgment determining the claim is either —

- (a) the date of the full hearing if the judgment was issued orally; or
- (b) if the judgment was reserved, the date on which the written judgment was sent to the parties.

(8) No costs order shall be made unless —

- (a) the Clerk has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made, or
- (b) that party has been given an opportunity to give reasons orally to the Chairman or Tribunal as to why the order should not be made.

(9) The amount of a costs order against the paying party shall be determined in any of the following ways —

- (a) the Tribunal may specify the sum which the paying party must pay to the receiving party;
- (b) the parties may agree on a sum to be paid by the paying party to the receiving party, and if they do so the costs order shall be for the sum so agreed;
- (c) the Tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party with the amount to be paid being determined by way of assessment in the High Court in accordance with rules of court.

(10) The Tribunal or Chairman shall have regard to the paying party's ability to pay when considering whether it or he shall make a costs order or how much that order should be.

(11) The amount of a costs order made under paragraph (9)(a) may not exceed £500.

(12) Any sum due under a costs order shall be payable by the paying party and not his representative.

(13) Where the Tribunal or Chairman makes a costs order it or he shall provide written reasons for doing so if a request is made for written reasons within 14 days of the date of the costs order. This 14 day time limit may not be extended under

rule 10. The Clerk shall send a copy of the written reasons to all parties to the proceedings.

33. Personal liability of representatives for costs

(1) The Tribunal or Chairman may make a wasted costs order against a party's representative.

(2) In a wasted costs order the Tribunal or Chairman may disallow, or order the representative of a party to meet the whole or part of any wasted costs of any party, including an order that the representative repay to his client any costs which have already been paid.

(3) "Wasted costs" means any costs incurred by a party —

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal or Chairman considers it unreasonable to expect that party to pay.

(4) In this rule "representative" means a party's advocate or other representative or any employee of the representative, but it does not include a representative who is not acting in pursuit of profit with regard to those proceedings.

(5) A wasted costs order may be made in favour of a party whether or not that party is legally represented and such an order may also be made in favour of a representative's own client. A wasted costs order may not be made against a representative where that representative is an employee of a party.

(6) Before making a wasted costs order, the Tribunal or Chairman shall give the representative a reasonable opportunity to make oral or written representations as to reasons why such an order should not be made. The Tribunal or Chairman may also have regard to the representative's ability to pay when considering whether it shall make a wasted costs order or how much that order should be.

(7) Where the Tribunal or Chairman makes a wasted costs order, it or he must specify in the order the amount to be disallowed or paid.

(8) The Clerk shall inform the representative's client in writing —

- (a) of any proceedings under this rule; or
- (b) of any order made under this rule against the party's representative.

(9) Where the Tribunal or Chairman makes a wasted costs order it or he shall provide written reasons for doing so if a request is made for written reasons within 14 days of the date of the wasted costs order. This 14 day time limit may not be extended under rule 10. The Clerk shall send a copy of the written reasons to all parties to the proceedings.

PART 7

SUPPLEMENTAL

34. Power to rectify error in procedure

(1) Where there has been an error of procedure such as a failure to comply with a provision of these rules —

- (a) the error does not invalidate any step taken in the proceedings unless the Chairman or Tribunal so orders; and
- (b) the Chairman or Tribunal may make an order to remedy the error.

(2) The Chairman or Tribunal shall not allow an application to set aside any such step for an error of procedure —

- (a) unless it is made within a reasonable time; or
- (b) if the applicant has taken a step after knowledge of the error.

(3) The application shall specify the error of procedure to which the application relates.

35. Proceedings involving the Manx National Insurance Fund

The DHSS shall be entitled to appear as if it were a party and be heard at any hearing in relation to proceedings which may involve a payment out of the Manx National Insurance Fund, and in that event it shall be treated for the purposes of these rules as if it were a party.

36. Notices etc.

(1) Any notice given or document sent under these rules shall (unless the Chairman or Tribunal orders otherwise) be in writing and may be given or sent —

- (a) by post;
- (b) by fax or other means of electronic communication; or
- (c) by personal delivery.

(2) Where a notice or document has been given or sent in accordance with paragraph (1), that notice or document shall, unless the contrary is proved, be taken to have been received by the party to whom it is addressed —

- (a) in the case of a notice or document given or sent by post, on the day on which the notice or document would be delivered in the ordinary course of post;
- (b) in the case of a notice or document transmitted by fax or other means of electronic communication, on the day on which the notice or document is transmitted;
- (c) in the case of a notice or document delivered in person, on the day on which the notice or document is delivered.

(3) All notices and documents required or authorised by these rules to be sent or given to any person listed below may be sent to or delivered as follows —

- (a) in the case of a notice or document directed to the Clerk, to the office of the Tribunal;
- (b) in the case of a notice or document directed to the DHSS in proceedings to which it is not a party (or in respect of which it is treated as a party for the purposes of these rules by rule 35), to the principal office of the DHSS;
- (c) in the case of a notice or document directed to a court, to the General Registry;
- (d) in the case of a notice or document directed to a party —
 - (i) the address specified in the claim or response to which notices and documents are to be sent, or in a notice under paragraph (4); or
 - (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the Island or the United Kingdom or, if the party is a corporate body, the body's registered or principal office in the Island or the United Kingdom, or, in any case, such address or place outside the Island and the United Kingdom as the Chairman may allow;
 - (iii) in the case of a notice or document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the Island or the United Kingdom or, if the person is a corporate body, the body's registered or principal office in the Island or the United Kingdom;

and a notice or document sent or given to the authorised representative of a party shall be taken to have been sent or given to that party.

(4) A party may at any time by notice to the Clerk and to the other party or parties (and, where appropriate, to an industrial relations officer) change the address to which notices and documents are to be sent or transmitted.

(5) The Chairman may order that there shall be substituted service in such manner as he may deem fit in any case he considers appropriate.

(6) In proceedings which may involve a payment out of the Manx National Insurance Fund, the Clerk shall, where appropriate, send copies of all documents and notices to the DHSS whether or not it is a party.

37. Power to prescribe forms

- (1) The Department may prescribe forms for use —
 - (a) by claimants for the purpose of commencing proceedings in the Tribunal, and
 - (b) by respondents to a claim for the purpose of responding to a claim before the Tribunal;

and such other forms as may be expedient for use in proceedings in the Tribunal.

(2) The Department shall publish the forms prescribed under paragraph (1) in such manner as it considers appropriate in order to bring them to the attention of potential claimants and respondents and their advisers.

38. Calculation of time limits

(1) Any period of time for doing any act required or permitted to be done under any of these Rules, or under any decision, order or judgment of the Tribunal or the Chairman, shall be calculated in accordance with paragraphs (2) to (6).

(2) Where any act must or may be done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. For example, a respondent is sent a copy of a claim on 1st October. He must present a response to the Clerk within 28 days of the date on which he was sent the copy. The last day for presentation of the response is 29th October.

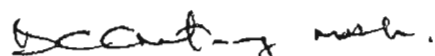
(3) Where any act must or may be done not less than a certain number of days before or after an event, the date of that event shall not be included in the calculation. For example, if a party wishes to submit representations in writing for consideration by the Tribunal at a hearing, he must present them not less than 10 days before the hearing. If the hearing is fixed for 11th October, the representations must be presented no later than 1st October.

(4) Where the Tribunal or the Chairman gives any decision, order or judgment which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(5) In rule 17(4) the requirement to send the notice of hearing to the parties not less than 14 days before the date fixed for the hearing shall not be construed as a requirement for service of the notice to have been effected not less than 14 days before the hearing date, but as a requirement for the notice to have been placed in the post not less than 14 days before that date. For example, a hearing is fixed for 15th October; the last day on which the notice may be placed in the post is 1st October.

(6) Where any act must or may have been done within a certain number of days of a document being sent to a person by the Clerk, the date when the document was sent shall, unless the contrary is proved, be regarded as the date on the letter from the Clerk which accompanied the document. For example, a respondent must present his response to a claim to the Clerk within 28 days of the date on which he was sent a copy of the claim. If the letter from the Clerk sending him a copy of the claim is dated 1st October, the last day for presentation of the response is 29th October.

MADE 6 November 2008



Minister for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules prescribe the procedure of the Employment Tribunal. They replace the Employment Tribunal Rules 1992, and apply to proceedings in the Tribunal which are started on or after 31st January 2009.

