The Employment Tribunal Rules 2008

A CONSULTATION DOCUMENT ON THE DRAFT RULES
ISSUED BY THE DEPARTMENT OF TRADE AND INDUSTRY
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1. **Introduction**

As part of work to modernise the Isle of Man's employment law framework
the Department intends to replace the Employment Tribunal Rules 1992.
Whilst the existing Rules have served the Employment Tribunal well, a
number of desirable amendments and additions have been identified in recent
years. To this end, the enabling powers for the making of Tribunal Rules,
contained in Schedule 3 to the Employment Act 2006, were updated.

The current British rules are contained in the Employment Tribunals
(Constitution and Rules of Procedure) Regulations 2004. These replaced the
Employment Tribunals (Constitution and Rules of Procedure) Regulations
2001. The 2004 Rules are notably far longer and more complex than the
earlier Rules (61 rules as opposed to 23). Whether to take the (Isle of Man)
Employment Tribunal Rules 1992 or the most recent British rules as a model
was a difficult choice. On balance the Department considered that the 2004
rules were preferable as a model, as they are more comprehensive and deal
with a number of issues on which the 1992 rules are silent. Whilst the 2004
rules have been widely criticised in certain respects, it was nevertheless
considered preferable to edit them, rather than enlarge on the 1992 rules. The
approach has therefore been to take Schedule 1 to the British 2004 Rules, with
so much of the regulations as are relevant, and revise it in a form which is
more appropriate to the Isle of Man and its employment laws, discarding or
modifying those provisions which appear unnecessary or undesirable. Overall,
the Isle of Man Rules have departed quite radically from the British Rules.

The scheme and terminology of the British 2004 Rules to some extent follow
the new Civil Procedure Rules 1998 e.g. the inclusion of an "overriding
objective" (Rule 3) and the use of less technical terms such as "claimant", and
"response". Not least because new rules of court, now being drafted, will also
be based on the 1998 Rules, it is desirable to do the same in the Isle of Man.
2. **About the consultation**

Submissions are welcomed from anyone who thinks they may be affected by any of the proposals.

Submissions regarding the draft Rules should be sent by post or e mail to:

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Please note that the Department will assume, unless you tell us otherwise, that you do not object to your response or the name of your organisation (or your own name if you are responding as an individual) being made public. If you want all or any part of your reply to be treated as confidential, then please indicate this clearly in your reply.

**The consultation period ends on 4th July.**

Following consultation, the Department will:

- review comments received from consultees;
- publish a document on the DTI website summarising the main points made;
- amend the draft Rules as necessary; and
- lay the final Rules before Tynwald.
3. **Main points of the new Rules**

The Department has striven to adopt a pragmatic, common sense approach in the drafting of the new Rules and to keep them at the simplest workable level. Some key changes to the existing Rules are set out in this section.

The new Rules make provision for different categories of hearing, including a new category of “pre-hearing review”. The new provision will be particularly useful in that it will permit the Tribunal to determine any interim or preliminary matter relating to the proceedings including jurisdictional issues such as whether:

- the applicant is an employee;
- the applicant has sufficient length of service to bring the claim;
- the claim has been brought within the applicable time limit.

Questions of jurisdiction can also be dealt with when deciding whether to admit a claim or response. A key advantage of the new approach is that it permits the parties to deal with an initial point without having to prepare for the case as a whole.

Other changes include the following:

- there is a new pre-acceptance procedure for bringing and responding to claims;
- there are improved case management arrangements;
- a fixed limit to the amount of costs that can be awarded by the Tribunal is imposed;
- there is a new provision for paid representatives to be able to incur a costs award in specified circumstances on account of their conduct;
- There are new powers for the Chairman of the Tribunal to act alone in certain prescribed circumstances.

The new Rules have also been recast so that they follow a more logical structure and are expressed in plain English terms, in order to make the system easier to use.
4. **Guidance Notes on the Draft Rules**

These guidance notes relate to the draft Rules. They have been prepared by the Department in order to assist the reader in understanding the Rules. They do not purport to be a complete or definitive statement of the law.

**PART 1: GENERAL**

4.1 **Rule 1: Citation, commencement and revocation**

Rule 1 provides for the Rules to come into force on a prescribed date ("the commencement date") and revokes the 1992 Rules, except in relation to any proceedings commenced before the new Rules come into operation.

4.2 **Rule 2: Interpretation**

Rule 2 defines various terms that are used throughout the Rules.

4.3 **Rule 3: Application of rules**

Rule 3 applies the Rules to all proceedings before the Employment Tribunal ("the Tribunal") commenced on or after the commencement date and allows the Tribunal or Chairman to regulate its or her own procedure. Where proceedings are referred to the Tribunal by a court (for example, proceedings relating to equal pay may be referred under section 35(4) of the Employment (Sex Discrimination) Act 2000), the Rules are to apply as if they had been started in the Tribunal.

4.4 **Rule 4: Overriding objective**

This Rule sets out the overriding objective of the Rules, which is to enable the Tribunal and Chairman to deal with cases justly. This is defined as ensuring that, as far as is practicable, parties to cases are on an equal footing; cases should be dealt with expeditiously and fairly; and in ways which are proportionate to the complexity of the issues. Dealing with cases justly also means, as far as possible, saving expense. Rule 4 (3) charges the Tribunal or Chairman to give effect to the overriding objective when exercising power under the Rules, or when interpreting them. In turn, parties to cases are also expected to assist the Tribunal or Chairman to further the overriding objective of the Rules.

**PART 2: STARTING A CLAIM**

4.5 **Rule 5: Starting a claim**

Rule 5 sets out how a claimant should bring a claim to the Tribunal. This must be in writing (use of a form prescribed under Rule 37 being optional) and contain all the relevant required information, which is listed at Rule 5(2). This includes details about the claimant and respondent and other information. Rule 5(3) prohibits two or more claimants from presenting their claims in the same document (though the Chairman has power under Rule 10(2)(j) to consolidate claims where she considers this to be appropriate).
4.6 **Rule 6: Initial action on receipt of claim**

Rule 6 addresses the way in which the Clerk is to deal with a claim when he receives it.

Under Rule 6(2) the Clerk is required to consider in the first instance whether or not the claim should be accepted. He must refuse it —

- if it does not include all the information required by Rule 5(2), or
- if it is presented out of time and does not include an application for an extension of time and state the reasons why it could not be presented in time.

In either case the Clerk will return the claim to the claimant, indicating what information or other matters should be included in it.

Under Rule 6(3), where a claim is made outside the relevant time limit but contains an application for an extension of time, it will be referred to the Chairman.

Under Rule 6(4), if it appears to the Clerk that for any reason other than the expiry of a time limit (e.g. because it is outside the Tribunal's jurisdiction), the Tribunal does not have the power to consider the claim, the Clerk will either advise the claimant, giving him the option to confirm within 21 days that he wishes to proceed with the claim, or refer it to the Chairman. If the claimant subsequently confirms that he wishes to proceed with the claim, the Clerk will refer it to the Chairman.

Where a claim is referred to the Chairman, under Rule 6(6) the Chairman will either decide without a hearing whether or not it can be accepted, or else order that the decision be made at a pre-hearing review. Whatever she decides, the Chairman will notify the Clerk of her decision, in writing, with reasons.

Where the claim is accepted or there is to be a pre-hearing review to determine that matter, Rule 6(7) sets out the steps the Clerk must take to progress the claim. These include: sending a copy of the claim to each respondent (recording in writing when it was sent); informing the parties of the case number and the address to which all related correspondence should be sent; informing the respondent how to respond to the claim, the deadline for doing so, and the consequences of not responding. The Clerk must also advise the respondent of his right to receive a copy of any judgment of the case. Rule 6(7) additionally provides that, where relevant, the parties are to be made aware of the availability of the services of an industrial relations officer.

Where the Chairman decides that a claim should not be accepted, she will record her decision and reasons in writing. The Clerk will then inform the claimant in writing both of the decision and of the reasons for the claim not being accepted. The claimant will also be advised as to how the decision can be reviewed or appealed.

A decision to accept a claim does not bind the Chairman or Tribunal where any of the issues fall to be determined later in the proceedings.
4.7 **Rule 7: Responding to the claim**

Rule 7 sets out the procedure for responding to a claim which has been accepted by the Tribunal. The respondent must ensure that any response to the claim reaches the Clerk within 28 days of the date on which he was sent a copy of the claim. The response must be in writing (the use of a prescribed form being optional), give the required information specified in Rule 7(3), including an indication of whether or not the respondent intends to resist the claim, and if so, on what grounds.

There is provision for a respondent to seek an extension of the 28 day time limit for the submission of the response. The Chairman has an express power to extend the time, on an application by the respondent before or at the same time as a response is lodged. The application must state the reasons why the response cannot or could not be presented in time.

4.8 **Rule 8: Action on receipt of response**

The Clerk will consider whether or not a response to a claim should be accepted. The procedure is similar to that under Rule 6.

Where the Chairman decides not to accept the response, the Clerk will inform the claimant and the respondent of the decision and the reasons for it and, in addition, inform the respondent as to how the decision can be reviewed or appealed.

Where the claim is accepted or there is to be a pre-hearing review to determine the matter, Rule 8(6) requires the Clerk to send a copy of the response to all other parties, recording in writing when it was sent.

4.9 **Rule 9: Taking no further part in the proceedings**

Under this Rule, a respondent who has not responded, or whose response has not been accepted, will not be allowed to take any part in the case. The only exceptions to this will be where he is seeking to have a judgment reviewed under Rule 28 on certain grounds (see Rule 27(4)(a), (b), (c) and (f)); or where he is called as a witness by somebody else; or where the Tribunal is sending the respondent a copy of a decision or judgment, or corrected entry.

**PART 3: CASE MANAGEMENT**

4.10 **Rule 10: General power to manage proceedings**

Rule 10 deals with the Chairman’s ability to manage Tribunal proceedings, and specifically provides her with the power to give directions to the parties, either on the application of a party or on her own initiative, with a view to ensuring the smooth and efficient conduct of the case. The Chairman can issue an order on any matter she thinks fit, having considered the relevant papers, either in the absence of the parties or at a hearing.

Rule 10(2) lists examples of orders the Chairman might give, although others are open to her also.

Rule 10(3) deals with issues of time and place with regard to any actions required by an order. An order can impose conditions on the parties and must
inform them of the possible consequences of non-compliance. These are set out in Rule 13 and include the issuing of costs orders, or the striking out of a claim or response as appropriate. Under Rule 10(4) the person subject to a requirement may apply for the order to be varied or revoked.

Rule 10(7) states that where the Chairman proposes to issue an order to have different claims considered together, she can do so only if all relevant parties have been advised of this intention and have been given the opportunity to explain, either orally or in writing, why they think such an order should or should not be made.

Under Rule 10(8), orders must be recorded in writing and signed by the Chairman. It is the duty of the Clerk to inform the parties of any order as soon as reasonably practicable.

4.11 Rule 11: Applications in proceedings

During a case, parties can make written applications to the Clerk for particular orders to be issued by the Chairman or for a pre-hearing review to be held. Such requests can also be made orally at a hearing. Reasons for making the application must be provided. Parties can also apply for orders to be varied or revoked. Where the application is for a pre-hearing review it must specify the type of order sought. Under Rule 11(3), the Clerk must provide details of the application to all parties, together with the reasons why the order is being sought. Objections to the application must similarly be copied to the Clerk and all other parties. Under Rule 11(4), where the Chairman refuses the application for an order, the Clerk will inform the other parties in writing of the refusal unless the application is refused at a hearing.

4.12 Rule 12: Chairman acting on own initiative

The Chairman can undertake a range of actions on her own initiative. These include making an order without reference to the parties, or holding a pre-hearing review. However, where an order is made in such circumstances, the Clerk has to send a copy of the order to the party affected by it. That party must also be informed of his right to apply to have the order varied or set aside. Where a party chooses to exercise this right, he must do so before the time period expires within which the order has to be complied with. Any application to vary or set aside an order must be submitted in writing to the Clerk and include reasons.

4.13 Rule 13: Compliance with orders

Rule 13 sets out the consequences of non-compliance with an order made under the Rules. These include the issuing of a costs order under rule 32, or, subject to Rule 23, the striking out of a claim or response, as appropriate. Rule 13(2) specifies that an order can provide that a claim or response be summarily struck out if the order is not complied with.

4.14 Rule 14: Conciliation

In those cases where the Manx Industrial Relations Service has power under section 157 of the Employment Act 2006 to promote a settlement, this Rule requires the Clerk to send to an industrial relations officer a copy of the claim,
a copy of any response to it, and 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.

4.15 Rule 15: Detriment or dismissal in connection with industrial action

This Rule gives the Tribunal or Chairman the power to stay Tribunal proceedings in cases where a claim has been brought claiming unfair dismissal or detriment arising from a claimant’s participation in official, lawfully organised industrial action (“protected industrial action”). This deals with the case where industrial action is taken, and the employer takes the union to court for an injunction on the ground that the action is unlawful (e.g. because a proper ballot has not been held). Until that question is decided, the Tribunal cannot know whether the action is “protected” for the purpose of Employment Act 2006 s. 69 or 124, so it is allowed to stay the proceedings until the interim civil proceedings have been concluded.

4.16 Rule 16: Right to withdraw claim

A claimant has the right to withdraw all or part of a claim at any time. This can be done either by the claimant doing so orally at a hearing, or by informing the Clerk in writing through a notice of withdrawal. The notice must make clear whether the whole claim or just part of it is being withdrawn, and also, where there is more than one respondent, against which respondent(s) the case is being withdrawn. The Clerk will then inform all the other parties of the withdrawal.

Rule 16(3) makes clear that a withdrawal takes place from the date the Clerk or (in the case of oral notification) the Tribunal receives notice of it, and if the whole claim is withdrawn, proceedings against the respondent end on that date. The withdrawal does not, however, affect proceedings as far as the provisions on costs, and wasted costs awards are concerned.

If a claim is withdrawn, this does not necessarily mean that it cannot be “re-activated”. Under Rule 16(4), a respondent can, where a claim has been withdrawn, also apply to have the proceedings dismissed. The respondent has 21 days to do this from the date the withdrawal notice was sent to him, unless given an extension of time by the Chairman. Once dismissed, a claim cannot be re-activated unless the decision to dismiss it is successfully reviewed or appealed.

PART 4: HEARINGS

4.17 Rule 17: Hearings – general

Rule 17(1) lists the three different types of hearing open to the Chairman or (as the case may be) the Tribunal. These are: a pre-hearing review; a full hearing; and a review hearing. Rule 17(2) - (7) provides that a hearing can take place only where the Clerk has notified the parties, giving them the opportunity to make written submissions or to put their case orally at the hearing if they wish to do so and sets out various general and self-explanatory provisions in relation to such hearings.
Rule 17(8) provides for different Chairmen, and differently constituted Tribunals, to hold successive hearings in respect of the same matter. However, once a hearing has begun it cannot 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.

Rule 17(9) clarifies that the Chairman or a member of the Tribunal can take part in successive hearings regarding the same matter.

Rule 17(9) and (10) enables the Tribunal or Chairman to hold a hearing or receive evidence by telephone or a video link, provided that, in the case of a hearing which is required to be in public, the public can hear everyone taking part.

4.18 Rule 18: Hearings which may be held in private

In certain circumstances, if the Tribunal or Chairman so decides, hearings (or part of them) can be held in private. These circumstances are listed in Rule 18 (1) (a) to (c) and are:

- where the submission of evidence might contravene a statutory prohibition;
- where the information contained in the evidence was communicated in confidence; or
- where disclosure would damage the business or organisation in which the person giving evidence works.

Rule 18(2) provides that a decision by the Tribunal or Chairman to hold a hearing in private must be supported by reasons. Rule 18(3) provides that a pre-hearing review may be held in public or in private except where a judgment is given or an order under Rule 23(1) is made in either of which cases it shall take place in public.

4.19 Rule 19: Conduct of pre-hearing reviews

Rule 19(2) lists the types of matter the Chairman can consider at a pre-hearing review. These include: determining interim or preliminary matters; issuing orders in accordance with Rules 10 and 23; and considering any oral or written evidence.

Usually, a pre-hearing review will be conducted by the Chairman sitting alone. However, the Chairman can order that the Tribunal will conduct a pre-hearing review, either on her own initiative or on a party's application, if she considers:

- that at least one substantive issue of fact is likely to be determined; and
- that it would be desirable for the pre-hearing review to be conducted by the Tribunal.

Rule 19(6) defines the scope of the pre-hearing review and confirms that although its primary purpose is to determine matters of a preliminary nature, the Chairman can nevertheless, at this review stage, make judgments or rulings that may result in proceedings being struck out or dismissed, with the result that a full hearing then becomes unnecessary.
4.20 Rule 20: Full hearings

This Rule defines a full hearing as a hearing that determines any matter not already disposed of in earlier hearings or disposes of the proceedings altogether. There may be more than one hearing in any particular proceedings, and there may be different types of hearing (e.g. on liability, remedies, or costs). Subject to Rule 18 (when proceedings can be held in private), hearings must be held in public and be heard by the Tribunal consisting of a Chairman and two members.

4.21 Conduct of full hearing

The date, time and place of full hearings are fixed by the Chairman and the parties are then sent a notice by the Clerk. Parties are entitled to give evidence, to question witnesses and to address the Tribunal. Any evidence must be given on oath or affirmation. The Tribunal can exclude witnesses from a hearing until they are required to give evidence, if it considers this to be in the interests of justice.

Where a party or representative fails to attend the hearing, the Tribunal has the power under Rule 21(5) to dismiss the proceedings in the absence of the party, or to adjourn the hearing. Where the Tribunal wishes to dismiss the case, Rule 21(6) requires it first to consider any information in its possession provided by the parties. Rule 21(7) allows the Tribunal to exercise the same powers as can be exercised by the Chairman under these Rules.

PART 5: DECISIONS

4.22 Rule 22: Judgments and orders

Rule 22(1) defines the two types of decisions that the Chairman or Tribunal can issue. These are a “judgment”, i.e. a final determination of the proceedings, or of a particular issue within the proceedings (e.g. a compensation award, a declaration or recommendation, or an order for costs or wasted costs); and an “order”, relating to interim matters, whether or not requiring somebody to do or not to do something, or a matter falling within Rule 23(1).

Rule 23(2) enables the Chairman or Tribunal to make an order in terms agreed by the parties.

Rule 22(3) deals with the delivery of decisions. A decision (whether a judgement or an order) can be either given orally at the hearing or reserved (to be issued in writing at a later date).

Rule 22 (4) enables the Tribunal to decide a case by a majority.

4.23 Rule 23: Restrictions as to certain judgments and orders

This Rule applies certain restrictions to the Chairman or the Tribunal’s powers to make certain judgments and orders which are in the nature of final judgments.

Rule 23(1) lists the types of judgments or orders that the restrictions apply to. They are decisions:
• as to whether a party is entitled to bring or contest the case;
• to strike out or amend all or part of a claim or response because it is scandalous or vexatious or has no real prospect of success;
• to strike out or amend all or part of a claim or response because the case has been conducted in a scandalous, unreasonable or vexatious way;
• to strike out a claim because it has not been actively pursued;
• to strike out a claim or response because a party has failed to comply with an order;
• to strike out a claim where it is no longer possible to have a fair hearing;
• to make a restricted reporting order under Rule 31.

Rule 23(2) gives a party against whom the Chairman or the Tribunal is about to make a judgment or order the right to provide reasons why it should not be made, unless that party has already been given an opportunity to do so. Under Rule 23 (6) a judgment or order may not be made except at a pre-hearing review or a full hearing, if one of the parties has so requested.

Rule 23(7) provides that a claim or response or any part of one may be struck out only on the grounds stated above. Rule 23(8) provides that the Rule does not preclude the Chairman from deciding under Rule 6(6)(a) or 8(4)(a) that a claim or response should not be accepted.

4.24 Rule 24: Form and content of judgments

This Rule requires that all judgments, whether issued orally or in writing, must be recorded in writing and signed by the Chairman. Where a judgment has been reserved (i.e. not delivered orally at a hearing), a written judgment will be sent to the parties as soon as possible. It is the duty of the Clerk to provide copies of judgments to the parties and (where appropriate) to the court that referred the case to the Tribunal. Guidance on how to have the judgment reviewed or appealed must be included with the judgment. Where appropriate, the judgment must contain details of any award or the sum required to be paid.

4.25 Rule 25: Reasons

Rule 25(1) requires that reasons must be given by the Tribunal or Chairman for any judgment or an order relating to a matter within Rule 23(1). Reasons can be given orally at the time of issuing the judgment or order, but they must in any case be given in writing, signed by the Chairman and sent to the parties by the Clerk.

Rule 25 (5) lists the information that must be contained in written reasons for a judgment:
• the issues identified as relevant to the claim;
• any issues not determined (and why);
• any findings of fact relevant to the issues that have been determined;
• a concise statement of the applicable law;
• how the relevant findings of fact and applicable law have been applied in order to determine the issues;
• if the judgment includes an award of compensation or an order for payment, a calculation of the amount.

4.26 Rule 26: The register

The Clerk is required to enter in a public register various documents including a copy of any judgment, and a copy of any written reasons provided in accordance with Rule 25 in relation to any judgment.

Rule 26(4) provides that reasons will not be entered in the register where evidence has been heard in private and the Tribunal or Chairman (as the case may be) so decides. In such circumstances the Clerk will send the reasons to each of the parties and, if there is an appeal to the High Court, to that court, together with a copy of the entry in the register of the judgment to which the reasons relate.

Rule 26(5) provides for the omission from the register of any matter which is likely to identify any person affected by or making an allegation of the commission of a sexual offence, or any person under 17 who is a party to, or gave evidence in, the proceedings.

4.27 Rule 27: Review of certain decisions

Rule 27(1) sets out the circumstances where parties to a case can apply to have certain Tribunal decisions reviewed under Rules 27 to 29. Reviewable decisions are:
• a decision not to accept a claim or response under Rule 6 or 8;
• a judgment (including an order for costs or wasted costs);
• an order in the nature of a final judgment to which Rule 23 applies.

Under Rule 27(2) a procedural order under Rule 10 may be varied or revoked by the Chairman on an application under Rule 11 or on her own initiative.

Rule 27 (4) describes the grounds on which decisions can be reviewed:
• administrative error;
• where the decision was based on a mistaken view of the applicable law;
• where a party did not receive notice of the proceedings;
• where a decision was made in the absence of a party;
• where new evidence has emerged since the end of the hearing;
• where the interests of justice require a review.

The Tribunal or Chairman can decide to institute a review of a decision on its or her own initiative on any of these grounds.

The “review” of a decision is a useful mechanism, particularly as the Chairman has such wide powers to act on her own initiative. Although it could protract a case, it should also reduce the need for appeals to the High Court.
4.28 **Rule 28: Preliminary consideration of application for review**

An application for a review under Rule 27 must be made in writing to the Clerk, stating the grounds. The application must be submitted within 14 days of the relevant decision being sent to the parties (or within such further period as the Chairman considers just and equitable). Alternatively, if the decision was made at a hearing, a review application can be made orally at that hearing. The review application will be rejected if it is considered that there are no grounds for a review, or where there is no reasonable prospect of the decision being varied or revoked. A successful review application will lead to a review under the terms of Rule 29. In the case of a rejection, the Clerk will inform the party of the Chairman’s decision in writing, providing reasons.

4.29 **Rule 29: The review**

Reviews are normally undertaken by the Chairman or Tribunal that made the original decision. This will always be the case where the review is undertaken on the Chairman's or Tribunal's own initiative, and a notice must be sent to the parties no more than 21 days after the original decision explaining why the review is to take place, and giving an opportunity for reasons to be provided as to why there should be no review.

Decisions can be confirmed, varied or revoked at a review. If revoked, the Tribunal or Chairman must order the decision to be taken again. If the original decision was made at a hearing, the new one must be made at a hearing as well. If the original decision was taken by the Chairman without a hearing, the new decision can also be made by the Chairman in the absence of the parties.

4.30 **Rule 30: Correction of decisions or reasons**

Rule 30 sets out the procedures for correcting an order, judgment, decision or reasons.

Clerical mistakes can be corrected by certificate by the Chairman. In this instance, or where a decision has been revoked or varied under Rule 29 or altered by the High Court, it is the duty of the Clerk to amend any register entry accordingly and send a copy of it to the parties, and (where appropriate) to the court which referred the case to the Tribunal.

Where, under Rule 26, a document is not entered in the register and is then corrected by certificate, the Clerk will 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 will 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.

4.31 **Rule 31: Restricted reporting orders**

Rule 31 (1) explains the circumstances in which the Tribunal can make an order restricting the reporting in the media of Tribunal proceedings (a "restricted reporting order" or RRO). These are in any case:

- where there is an allegation which involves sexual misconduct;
- to which a child or young person is a party; or
• in which a child or young person gives evidence.

A RRO can be made by the Chairman or Tribunal on her or its own initiative, or where a written application has been made to the Clerk. An application can also be made orally at a hearing.

RROs can be of two types – temporary or full. The Chairman or the Tribunal can make a temporary RRO without holding a hearing or sending a copy of the application (if any) to other parties. In these circumstances the Clerk informs all parties of the making of the order as soon as possible, explaining their right to apply to have the RRO revoked, or to have it converted into a full RRO. It can be converted only if an application is made within 14 days of the making of the temporary RRO. Where there is no such application, the temporary RRO lapses on the 15th day after it is made.

Where there is an application, the temporary RRO continues in force until the hearing where the application for a full RRO is considered. This may be at a pre-hearing review or a full hearing, at which all parties will be allowed to submit their own oral arguments, before a decision is made by the Tribunal or the Chairman whether or not to order a full RRO for the duration of the case.

Rule 31(9) relates to the conditions attaching to a RRO. It must specify which persons must not be identified. The Clerk must ensure that a notice publicising the existence of a RRO is exhibited on the Tribunal notice board, and is posted on the door of the room where the proceedings involving the RRO are taking place.

A full RRO will remain in force – unless revoked earlier – until the Tribunal has not only made a decision on the case but also determined the amount of any award or payment.

Rule 31(10) empowers the Tribunal or the Chairman to extend the scope of an RRO to other related proceedings if that is judged appropriate.

A RRO can be revoked at any time by the Tribunal or the Chairman.

PART 6: COSTS

4.32 Rule 32: Costs

This Rule sets out the circumstances where the Tribunal or the Chairman can make a "costs order", that is, an order requiring a claimant or respondent to make a payment in respect of costs incurred by another party (including the DHSS).

Rule 32(2) states the general principle that a costs order will not normally be made in any proceedings.

Under Rule 32(3) the Tribunal or the Chairman may consider making a costs order against a party who has, in its or her opinion acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing or (either personally or through a representative) conducting the proceedings.
Under Rule 32(4) the Tribunal or the Chairman can also make a costs order for costs incurred as a result of a full hearing or a pre-hearing review being postponed or adjourned, against a party who has not complied with an order.

Under Rule 32(5) a costs order can be made against or in favour of a respondent who has not had a response accepted, relating to any part that he has taken in the proceedings.

Under Rule 32(6) an application for a costs order can be made at any time during proceedings. It can be made orally at the end of a hearing, or in writing to the Clerk. If the application is received later than 21 days from the judgment, it will be considered only if the Tribunal or the Chairman considers that it is in the interests of justice to do so. Under Rule 32(7) the date of the judgment is either the date of the relevant hearing, if the judgment was issued orally, or the date on which the written judgment was sent to the parties, if it was reserved.

Under Rule 32(8) a costs order cannot be made unless the party against whom it is to be made is sent notice by the Clerk, giving him the opportunity to make representations as to why it should not be made, unless the party has already been given the opportunity to respond orally to the Chairman or Tribunal.

Rule 32(9) sets out three ways in which a costs order against a party can be determined:

- the Tribunal may specify the sum payable, where that sum is no greater than £500 inclusive of VAT and disbursements (see Rule 32(11));
- the parties may agree the sum payable between themselves;
- the Tribunal may order the costs to be determined by way of detailed assessment in the High Court in accordance with the procedure set out in the rules of court. (This may be appropriate e.g. where misconduct by one party has caused another to incur costs exceeding £500).

Rule 32(10) requires the Tribunal or Chairman to take into account a party's ability to pay when determining whether or not to make a costs order against him and in setting the amount.

Rule 32(12) makes it clear that a costs order is payable by the party against whom it is made, and not by the party’s representative.

Rule 32(13) requires the Tribunal or Chairman to provide written reasons for making a costs order, if requested to do so. A request must normally be made within 14 days after the costs order is made.

4.33 Rule 33: Personal liability of representatives for costs

Under Rule 33(1) and (2), in some circumstances the Tribunal or the Chairman may make an order (a “wasted costs order”) against a party’s representative, requiring the representative to pay the costs incurred by any party (including his own client) as a result of the representative's misconduct. The order may prevent the representative recovering the costs from his client, or require him to repay costs already paid by the client, or require him to meet the whole or part of any costs incurred by another party.

Rule 33(3) defines "wasted costs" as any costs incurred by a party:
as a result of any improper, unreasonable or negligent act or omission on
the part of any representative; or
where there has been such an act or omission after the costs were incurred
and the Tribunal or Chairman considers it unreasonable for that party to
pay them.

Rule 33(4) defines “representative” as excluding anyone who is not acting for
profit with regard to the proceedings, but under Rule 33(5) an order cannot be
made against a representative who is the employee of a party (in that case a
costs order would be made against the party under Rule 32).

Under Rule 33(6) a representative must be given a reasonable opportunity to
make oral or written representations before a wasted costs order is made
against him. The Tribunal or the Chairman may take into account the
representative’s ability to pay.

Rule 33(7) requires a wasted costs order to specify the amount to be
disallowed or paid.

Under Rule 33(8) the Clerk must inform the representative’s client in writing
of any proceedings under this rule, or of any order made under this rule
against the representative.

Rule 33(9) requires the Tribunal or Chairman to provide written reasons for
making a wasted costs order, if requested to do so. A request must normally be
made within 14 days after the costs order is made.

PART 7: SUPPLEMENTAL

4.34 Rule 34: Power to rectify error in procedure

Rule 34 provides that where there has been a procedural failure, this does not
invalidate any step taken in the proceedings unless the Chairman or the
Tribunal so orders; but the Chairman or Tribunal may make an order to
remedy the error.

An application to set aside an error of procedure cannot be made except within
a reasonable time, or where the applicant has acted after becoming aware of
the error. The application must specify the procedural error.

4.35 Rule 35: Proceedings involving the Manx National Insurance Fund

This Rule sets out the right of the DHSS to appear as if it were a party and be
heard at any hearing of a case involving payment from the Manx National
Insurance Fund.

4.36 Rule 36: Notices etc.

This Rule sets out the arrangements to be followed by the Tribunal when
issuing notices or other documents. Notices can be sent by post, fax or other
means of electronic communication, or by personal delivery. They are taken as
having been received (unless the contrary is proved) either when delivered “in
the ordinary course of post”, or on the day of transmission (in the case of fax
or other electronic communication), or on the day of delivery (in the case of personal delivery).

Rule 36(3) provides a list of offices to which notices or documents relating to Tribunal cases should be sent. If a notice is sent to a party’s representative, it is deemed to have been sent to the party itself.

Rule 36(4) allows a party to advise the Clerk, the other parties and any Industrial Relations Officer involved in the proceedings of a change of the address to which notices relating to the case are to be sent.

Rule 36(5) enables the Chairman to take a decision to vary the way in which notices are served on parties, in order to ensure that documents reach the intended recipient.

In cases where a payment from the Manx National Insurance Fund is likely to be involved, the Clerk is required, where appropriate, to send copies of all documents to the DHSS, whether or not it is a party to the proceedings.

4.37 **Rule 37: Power to prescribe forms**

Rule 37 (1) allows the Department to prescribe forms including Claim and Response forms which may be used in proceedings, and Rule 37(2) requires the Department to publish any prescribed forms in such a manner as it considers appropriate to bring them to the attention of all prospective Tribunal users and their advisers.

4.38 **Rule 38: Calculation of time limits**

This Rule clarifies the position as regards the periods of time specified in the Rules for the carrying out of any act required or permitted under the Rules to progress the case.

Rule 38(2) and (3) provide examples of how time limits are to be calculated. Rule 38(2) makes clear that where a party is required to do something within a certain period of time following a particular event, the date of the event itself is not to be included in the calculation. Similarly, where a party wishes, or is required, to do something a certain number of days before or after an event, the date of the event itself is not to be included in the calculation.

Rule 38(4) states that where the Tribunal or Chairman imposes a time limit on a party for the doing of any act, the deadline set should be expressed as a calendar date. Rule 38(5) makes clear that any notice of a hearing sent to the parties should be posted not less than 14 days before the hearing date.

Rule 38(6) states that 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.