



# EMPLOYMENT AND EQUALITY TRIBUNAL RULES 2018

## Index

Rule	Page
<b>PART 1 – GENERAL</b>	
1 Title .....	3
2 Commencement .....	3
3 Revocation .....	3
4 Interpretation.....	3
5 Application of rules .....	4
6 Transitional provision.....	5
7 Overriding objective.....	5
<b>PART 2 – STARTING A COMPLAINT</b>	
8 Starting a complaint .....	5
9 Initial action on receipt of complaint .....	6
10 Protected disclosure claims: notification to a regulator .....	8
11 Responding to the complaint.....	8
12 Action on receipt of response.....	8
13 Taking no further part in the proceedings .....	9
14 Decision where claim is uncontested etc.....	10
<b>PART 3 – CASE MANAGEMENT</b>	
15 General power to manage proceedings.....	11
16 Applications in proceedings .....	13
17 Postponements .....	13
18 Lead cases .....	14
19 Chairperson acting on own initiative .....	15
20 Compliance with orders .....	15
21 Conciliation.....	16
22 Detriment or dismissal in connection with industrial action .....	16
23 Withdrawal of complaint.....	16
<b>PART 4 – HEARINGS</b>	
24 Hearings – general.....	17
25 Hearings which may be held in private .....	18

26	Conduct of pre-hearing reviews .....	19
27	Full hearings.....	20
28	Conduct of full hearing .....	21
<b>PART 5 – DECISIONS</b>		<b>21</b>
29	Judgments and orders .....	21
30	Restrictions as to certain judgments and orders .....	22
31	Form and content of judgments .....	23
32	Reasons .....	24
33	Privacy and restrictions on disclosure .....	24
34	The Register.....	26
35	National security .....	27
36	Review of certain decisions.....	28
37	Preliminary consideration of application for review .....	29
38	The review.....	29
39	Correction of decisions or reasons .....	30
<b>PART 6 – COSTS</b>		<b>30</b>
40	Costs and preparation time.....	30
41	Personal liability of representatives for costs.....	33
<b>PART 7 – SUPPLEMENTAL</b>		<b>35</b>
42	Power to rectify error in procedure .....	35
43	Proceedings involving the Manx National Insurance Fund .....	35
44	Notices etc. ....	35
45	Power to prescribe forms .....	37
46	Calculation of time limits .....	37

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*Equality Act 2017*

# EMPLOYMENT AND EQUALITY TRIBUNAL RULES 2018

*Laid before Tynwald:* 15 January 2019  
*Coming into Operation:* 1 January 2019

The Council of Ministers, after consulting the Deemsters<sup>1</sup>, makes the following Rules under paragraphs 4 to 30 of Schedule 17 to the Equality Act 2017.

## PART 1 – GENERAL

### 1 Title

These Rules are the Employment and Equality Tribunal Rules 2018.

### 2 Commencement

These Rules come into operation on 1 January 2019.

### 3 Revocation

Subject to rule 6, the Employment Tribunal Rules 2008<sup>2</sup> are revoked.

### 4 Interpretation

In these Rules —

“**the Chairperson**” means the chairperson of the Tribunal, and includes a deputy chairperson of the Tribunal;

“**the Clerk**” means the person for the time being appointed pursuant to section 9 of the Tribunals Act 2006 to act as clerk of the Tribunal, and includes an acting clerk and a person acting with the authority of the Clerk;

“**complaint**” includes a claim, reference, application or appeal to the Tribunal and “**complainant**” has a corresponding meaning;

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

<sup>2</sup> SD 887/08

“**costs**” means fees, charges, disbursements or expenses incurred by or on behalf of a party in relation to the proceedings in question, including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing;

“**electronic communication**” has the same meaning as in the Electronic Transactions Act 2000;

“**the Employment Act**” means the Employment Act 2006;

“**employment proceedings**” means proceedings before the Tribunal in which it has jurisdiction by virtue of section 110, 111 or 118 of the Equality Act;

“**the Equality Act**” means the Equality Act 2017;

“**hearing**” means a pre-hearing review, a review hearing, a full hearing or a sitting of the Chairperson or the Tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawful to enable the Chairperson 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);

“**present**” means deliver (by any means permitted under Rule 44) to the office of the Tribunals' Centralised Administration;

“**the Register**” means the register of complaints, judgments, orders and written reasons kept in accordance with rule 34;

“**relevant officer**” has the meaning given by section 102(1) of the Equality Act;

“**respondent**”, in relation to a complaint, means the person or persons against whom the complaint is made;

“**the Tribunal**” means the Employment and Equality Tribunal;

“**wasted costs order**” has the meaning given by rule 41(2) and “**wasted costs**” has the meaning given by rule 41(3); and

“**writing**” includes writing delivered by means of electronic communication.

## 5 Application of rules

- (1) These Rules apply in relation to all proceedings before the Tribunal which are started after the coming into operation of these Rules (see rules 2 and 6).
- (2) Subject to the provisions of these Rules, the Tribunal or Chairperson may regulate its, his or her own procedure.
- (3) Where proceedings are referred to the Tribunal by the High Court, these Rules apply to those proceedings as if they had been started in the Tribunal by the complainant.

## **6 Transitional provision**

- (1) The Employment Tribunal Rules 2008 continue to apply to proceedings which immediately before the coming into operation of these Rules are pending before the Employment Tribunal (and are transferred to the Tribunal by section 103(6)(a) of the Equality Act).
- (2) Accordingly, in their application to those proceedings, references in those Rules to the Employment Tribunal shall be construed as references to the Tribunal.

## **7 Overriding objective**

- (1) The overriding objective of these Rules is to enable the Tribunal and the Chairperson 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 and complexity of the issues;
  - (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
  - (d) avoiding delay, so far as compatible with proper consideration of the issues; and
  - (e) saving expense.
- (3) The Tribunal or Chairperson must seek to give effect to the overriding objective when it, he or she —
  - (a) exercises any power given to it, him or her by these Rules; or
  - (b) interprets these Rules.
- (4) The parties must assist the Tribunal or the Chairperson to further the overriding objective.

## **PART 2 — STARTING A COMPLAINT**

### **8 Starting a complaint**

- (1) A complaint shall be brought before the Tribunal by the complainant presenting to the Clerk the details of the complaint in writing in a form prescribed under rule 45.
- (2) Those details must include all of the following information —
  - (a) the complainant's name;
  - (b) the complainant's address;
  - (c) the name (so far as known to the complainant) of each person against whom the complaint is made (the respondent);

- (d) each respondent's address (so far as known to the complainant);
  - (e) details of the complaint (including a brief summary of the facts giving rise to it); and
  - (f) whether or not the complainant is or was an employee of the respondent.
- (3) Two or more complainants may not present their complaints in the same document.

## 9 Initial action on receipt of complaint

- (1) On receiving a complaint (including a complaint which is re-presented after being returned to the complainant under paragraph (2)), the Clerk must consider what action to take under this rule.
- (2) If the complaint —
- (a) is not in the prescribed form; or
  - (b) does not include all the information required by rule 8(2); or
  - (c) 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 complaint (with an explanation why the complainant could not comply with the time limit),
- the Clerk must, not later than 14 days after receipt, return it to the complainant, indicating in what form it should be or what information or other matters should be included in it, and the complaint shall be treated as if it had not been presented.
- (3) If the complaint includes an application and explanation as mentioned in paragraph (2)(c), the Clerk must, not later than 14 days after receipt, refer the complaint to the Chairperson.
- (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 complaint, he or she must, not later than 14 days after receipt, refer the complaint to the Chairperson.
- (5) On a reference under paragraph (3) or (4) the Chairperson must either —
- (a) decide whether —
    - (i) the complaint 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 complaint, 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 or her decision or order (with his or her reasons).

- (6) Where —
- (a) none of paragraphs (2) to (4) apply;
  - (b) the Chairperson decides under paragraph (5) that the complaint should be accepted out of time, or that the Tribunal has power to consider it; or
  - (c) the Chairperson orders that such a decision shall be made at a pre-hearing review;
- the Clerk must —
- (i) send a copy of the complaint 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 complaint (which must from then on be referred to in all correspondence relating to the complaint) 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 complaint, 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 complaint;
  - (iv) where section 104 (conciliation) of the Equality Act applies to the complaint, notify the parties that the services of a relevant officer are available to them.
- (7) Where the Chairperson decides under paragraph (5) that the complaint shall not be accepted out of time, or that the Tribunal has no power to consider it, —
- (a) the Clerk must as soon as reasonably practicable inform the complainant 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 (8) or any appeal to the High Court, the complaint shall be treated as if it had not been presented.
- (8) Any decision by the Chairperson that the complaint should not be accepted out of time, or that the Tribunal has no power to consider it, may be reviewed in accordance with rules 36 to 38.
- (9) If the result of the review is that the complaint should have been accepted, paragraph (7)(b) shall not apply to it, and the Clerk must then accept the complaint and proceed to deal with it as described in paragraph (6).

- (10) A decision to accept a complaint shall not bind the Tribunal or Chairperson where any of the issues listed in paragraph (2)(a) to (c) or (4) falls to be determined later in the proceedings.

## **10 Protected disclosure claims: notification to a regulator**

If a complaint alleges that the complainant has made a protected disclosure, the Chairperson or Tribunal may, with the consent of the complainant, send a copy of the complaint to a regulator listed in Schedule 1 to the Public Interest Disclosure (Prescribed Persons) Order 2016.

“Protected disclosure” has the meaning given to it by section 49 of the Employment Act.

## **11 Responding to the complaint**

- (1) If the respondent wishes to respond to the complaint made against him or her, he or she must present his or her response to the Clerk in writing in a form prescribed under rule 45 –
- (a) within 28 days of the date on which he or she was sent a copy of the complaint; or
  - (b) within such further period as the Chairperson considers reasonable, where on an application by the respondent he or she 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; and
  - (c) whether or not the respondent wishes to resist the complaint in whole or in part and if so, on what grounds.

## **12 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 must consider what action to take under this rule.
- (2) If the response –
- (a) is not in the prescribed form; or

- (b) does not include all the information required by rule 11(3); or
  - (c) is made after the time specified in rule 11(1)(a), or that time as extended under rule 11(1)(b), and no application is or has been duly made to extend the time for presenting the response,
- the Clerk must, not later than 14 days after receipt, return it to the respondent, indicating in what form it should be or 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 11(1)(b), the Clerk must, not later than 14 days after receipt, refer it to the Chairperson.
  - (4) On a reference under paragraph (3) the Chairperson must 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 or her decision or order in writing (with his or her reasons).
  - (5) The Clerk must –
    - (a) inform both the complainant 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 or her of that decision and how it may be reviewed or appealed.
  - (6) Where –
    - (a) neither paragraph (2) nor paragraph (3) applies;
    - (b) the Chairperson decides under paragraph (4)(a) that a response should be accepted out of time; or
    - (c) the Chairperson orders that such a decision shall be made at a pre-hearing review;

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

### **13 Taking no further part in the proceedings**

- (1) A respondent who has not presented a response to a complaint within the time specified in rule 11(1)(a), or that time as extended under rule 11(1)(b), shall not be entitled to take any part in the proceedings except –
  - (a) to make an application under rule 36 in respect of rule 36(4)(a), (b), (c) or (f);
  - (b) to be called as a witness by the Chairperson, Tribunal or another person; or

- (c) to be provided with a copy of a document or sent a corrected entry in accordance with rule 31(3) or 39.
- (2) Paragraph (1) does not preclude the Tribunal or Chairperson directing that such a respondent be permitted to take part in the proceedings to such extent or for such purposes as may be specified in the direction, if it appears to the Tribunal or Chairperson to be in the interests of justice to do so.
- (3) Accordingly in these rules the word "party" or "respondent" includes a respondent only —
  - (a) in relation to his or her entitlement to take such a part in the proceedings as is mentioned in paragraph (1), and in relation to any such part which he or she takes; or
  - (b) in accordance with a direction under paragraph (2).

#### **14 Decision where claim is uncontested etc**

- (1) This rule applies where —
  - (a) the time limit in rule 11 has expired and no response has been presented; or
  - (b) it has been decided that any response received should not be accepted and either —
    - (i) no application for a review under rule 36 is outstanding;
    - (ii) the time-limit in rule 37 has expired and no such application has been made; or
    - (iii) the respondent has stated that no part of the claim is contested.
- (2) The Chairperson may, on his or her own initiative or on an application by the complainant —
  - (a) decide whether on the available material (which may include further information which the parties are required by the Chairperson to provide), the claim can properly be determined in whole or in part; and
  - (b) to the extent that a determination can be made, issue a judgment accordingly.
- (3) A decision under paragraph (2)(a) must be recorded in writing and signed by the Chairperson, and the Clerk must inform all parties to the proceedings of the decision as soon as is reasonably practicable.

## PART 3 – CASE MANAGEMENT

### 15 General power to manage proceedings

- (1) Subject to the following rules, the Chairperson may at any time either on the application of a party or on his or her own initiative, make an order in relation to any matter which appears to him or her to be appropriate. Such orders may be –
- (a) any of those listed in paragraph (2);
  - (b) subject to the requirements of rule 30, any order to which that rule applies; or
  - (c) such other orders as he or she thinks fit.

Subject to express provisions in the following rules, orders may be issued as a result of the Chairperson considering the papers before him or her 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 11(1), 16(2), 37(1) and 40(7));
  - (f) requiring the provision of written answers to questions put by the Chairperson 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) striking out or amending all or part of a complaint or response on the grounds that it is scandalous or vexatious or has no real prospect of success;
  - (j) that part of the proceedings be dealt with separately;
  - (k) that different complaints be considered together;
  - (l) that any person who the Chairperson or Tribunal considers may be liable for the remedy claimed should be made a respondent in the proceedings;

- (m) dismissing the complaint against a respondent who is no longer directly interested in the complaint;
  - (n) postponing or adjourning any hearing;
  - (o) varying or revoking other orders;
  - (p) giving notice to the parties of a pre-hearing review or a full hearing;
  - (q) giving notice under rule 30;
  - (r) giving leave to amend a complaint or response;
  - (s) that any person who the Chairperson or Tribunal considers has an interest in the outcome of the proceedings may be joined as a party to the proceedings;
  - (t) that a witness statement be prepared or exchanged;
  - (u) that a party provide copies of documents for the use of the Chairperson or Tribunal; and
  - (v) 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 must inform the parties of the potential consequences of non-compliance as set out in rule 20.
- (4) Where a requirement has been imposed under paragraph (1), the person subject to the requirement may make an application under rule 16 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 complaint or to save expense.
- (6) In employment proceedings any order containing a requirement described in paragraph (2)(c) or (d) must state that, under paragraph 31 of Schedule 17 to the Equality 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) In proceedings other than employment proceedings any order containing a requirement described in paragraph (2)(c) or (d) must state that, under rule 20, any person who without reasonable excuse fails to comply with the requirement may be fined or committed for contempt by the High Court.
- (8) An order as described in paragraph (2)(k) may be made only if all relevant parties have been given notice that such an order may be made and the opportunity to make oral or written representations as to why such an order should or should not be made.

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

## 16 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 Chairperson or Tribunal considers that shorter notice should be allowed in the interests of justice.

The application must (unless the Chairperson 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 must 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); and
  - (c) that any objection to the application must be copied to both the Clerk and all other parties.
- (4) The Chairperson may refuse a party's application, and if he or she does so the Clerk must inform the parties in writing of the refusal unless the application is refused at a hearing.

## 17 Postponements

- (1) An application by a party for the postponement of a hearing must be made, and communicated to the other parties, as soon as possible after the need for a postponement becomes known.
- (2) Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Chairperson or Tribunal may only order the postponement where –
- (a) all other parties consent to the postponement and –
    - (i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or
    - (ii) it is otherwise in accordance with the overriding objective;

- (b) the application was necessitated by an act or omission of another party, the Chairperson or Tribunal; or
  - (c) there are exceptional circumstances.
- (3) Where two or more postponements of a hearing have been ordered in the same proceedings on the application of the same party and that party makes an application for a further postponement, a postponement may be made on that application only where —
  - (a) all other parties consent to the postponement and—
    - (i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or
    - (ii) it is otherwise in accordance with the overriding objective;
  - (b) the application was necessitated by an act or omission of another party, the Chairperson or the Tribunal; or
  - (c) there are exceptional circumstances.
- (4) For the purposes of this rule —
  - (a) references to postponement of a hearing include any adjournment which causes the hearing to be held or continued on a later date; and
  - (b) “exceptional circumstances” may include ill health relating to an existing long term health condition or disability.

## 18 Lead cases

- (1) Where the Chairperson or Tribunal considers that two or more complaints give rise to common or related issues of fact or law, he, she or it may make an order specifying one or more of those complaints as a lead case and staying the other complaints (“the related cases”).
- (2) When the Chairperson or Tribunal makes a decision in respect of the common or related issues the Clerk must send a copy of that decision to each party in each of the related cases and, subject to paragraph (3), that decision shall be binding on each of those parties.
- (3) Within 28 days after the date on which a copy of the decision was sent to a party under paragraph (2), that party may apply in writing for an order that the decision does not apply to, and is not binding on the parties to, a particular related case.
- (4) If a lead case is withdrawn before the Chairperson or Tribunal makes a decision in respect of the common or related issues, he, she or it shall make an order as to whether —
  - (a) another claim is to be specified as a lead case; and
  - (b) any order affecting the related cases should be set aside or varied.

## 19 Chairperson acting on own initiative

- (1) Subject to paragraph (2) and to rules 15(8) and 30(2), the Chairperson may make an order on his or her own initiative with or without hearing the parties or giving them an opportunity to make written or oral representations. He or she may also decide to hold a pre-hearing review on his or her own initiative.
- (2) Where the Chairperson 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 15(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 Chairperson orders otherwise) be made in writing to the Clerk and it must include the reasons for the application. Rule 16(3) applies in relation to informing the other parties of the application.

## 20 Compliance with orders

- (1) If a party does not comply with an order made under these rules, the Chairperson or Tribunal may –
  - (a) make a costs order or preparation time order under rule 40; or
  - (b) (subject to paragraph (2) and rule 30) at a pre-hearing review or a full hearing make an order to strike out the whole or part of the complaint or, as the case may be, the response and, where appropriate, order that a respondent be debarred from responding to the complaint altogether.
- (2) An order may also provide that unless the order is complied with, the complaint 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 30 or hold a pre-hearing review or full hearing.
- (3) In proceedings other than employment proceedings, if an order contains a requirement described in rule 15(2)(c) or (d) and any person without reasonable excuse fails to comply with the requirement, the Tribunal may certify the failure to the High Court.
- (4) Where a failure is so certified, the High Court may inquire into it and, after hearing any witness who may be produced against or on behalf of the person charged with the failure, and after hearing any statement that may be offered in defence, deal with him or her in any manner in which

it could deal with him or her if the act or omission had occurred in relation to the Court.

## **21 Conciliation**

In proceedings on a complaint to which section 104 (conciliation) of the Equality Act applies, the Clerk must send to a relevant officer —

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

## **22 Detriment or dismissal in connection with industrial action**

- (1) This rule applies to proceedings on —
  - (a) a complaint under section 71 (complaints to Tribunal) of the Employment Act that the complainant has been subjected to a detriment in contravention of section 69 (protected industrial action) of that Act; or
  - (b) a complaint under section 133 (complaints to Tribunal) of that Act that a dismissal is unfair by virtue of section 124 (dismissal in connection with protected industrial action) of that Act.
- (2) The Tribunal or Chairperson 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 complainant to commit an act, or each of a series of acts, is by virtue of section 11 (acts in furtherance etc. of trade disputes not actionable in tort) of the Trade Unions Act 1991 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.

## **23 Withdrawal of complaint**

- (1) Where a complainant informs the Tribunal, either in writing or in the course of a hearing, that a complaint, or part of it, is withdrawn, the

- complaint, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.
- (2) The Clerk must inform all the other parties of the withdrawal.
  - (3) Where a claim, or part of it, has been withdrawn under paragraph (1), the Tribunal shall, without the need for further application by either party, issue a judgment dismissing it (which means that the complainant may not commence a further complaint against the respondent raising the same, or substantially the same, issue) unless —
    - (a) the complainant has expressed at the time of withdrawal a wish to reserve the right to make such a further complaint and the Tribunal is satisfied that there would be a legitimate reason for doing so; or
    - (b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.
  - (4) The functions of the Tribunal under this Rule may be exercised by the Chairperson.

## PART 4 — HEARINGS

### 24 Hearings – general

- (1) The Chairperson or the Tribunal may (depending on the relevant rule) hold the following types of hearing —
  - (a) a pre-hearing review under rule 26;
  - (b) a full hearing under rule 27; or
  - (c) a review hearing under rule 38.
- (2) So far as it appears appropriate to do so, the Chairperson or Tribunal must seek to avoid formality in his, her 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 Chairperson or Tribunal (as the case may be) must make such enquiries of persons appearing before him, her or it and of witnesses as he, she or it considers appropriate and must otherwise conduct the hearing in such manner as he, she 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 must send notice of any hearing to all the parties not less than 14 days before the date fixed for the hearing and must 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 or she must present them to the Clerk not less than 7 days

before the hearing and must at the same time send a copy to all other parties.

- (6) The Tribunal or Chairperson may, if it, he or she 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 26(3), the Tribunal may make any order which the Chairperson has power to make under these rules, subject to compliance with any relevant notice or other procedural requirements.
- (8) Notwithstanding paragraph 2(4) (constitution of Tribunal) of Schedule 17 to the Equality Act, the Chairperson or the Tribunal may hold a hearing even though he or she 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 Chairperson 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 Chairperson or a member of the Tribunal shall not be precluded from taking part in any hearing by reason only that he or she has taken part in a previous hearing in the same proceedings.
- (10) Subject to paragraph (11), the Tribunal or Chairperson 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 (1), 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.

## 25 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 Chairperson is likely to consist of information —
  - (a) which he or she could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision;
  - (b) which has been communicated to him or her in confidence, or which he or she has otherwise obtained in consequence of the confidence placed in him or her 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 Employment Act, cause substantial injury to any undertaking of his or hers or any undertaking in which he or she works.
- (2) Where the Tribunal or Chairperson decides to hold a hearing or part of one in private under paragraph (1), it, he or she must give reasons for doing so.
- (3) Subject to paragraph (4), a pre-hearing review may take place in public or in private, as the Chairperson or Tribunal considers appropriate in the interests of justice.
- (4) A pre-hearing review at which —
  - (a) a judgment is given; or
  - (b) an order relating to a matter falling within rule 30(1) is made;must take place in public.

## **26 Conduct of pre-hearing reviews**

- (1) Pre-hearing reviews are interim hearings and must be conducted by the Chairperson unless paragraph (3) applies.
- (2) At a pre-hearing review the Chairperson 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 15 and 30; and
  - (c) consider any oral or written representations or evidence.
- (3) A pre-hearing review must be conducted by the Tribunal composed in accordance with paragraph 2 of Schedule 17 to the Equality Act if the Chairperson so orders —
  - (a) on his or her 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 Chairperson must not make an order under paragraph (3) unless he or she 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 Chairperson 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 Chairperson 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.

## 27 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 complaint may be conducted by the Chairperson sitting alone where –
- (a) the complaint is under section 25 (deductions from wages) or 152 (insolvency etc.) of the Employment Act;
  - (b) the complaint is in respect of a failure to comply with the Annual Leave Regulations 2007<sup>3</sup>;
  - (c) the complaint is in respect of a failure to issue written particulars of employment under section 8 or 10 of the Employment Act;
  - (d) the complaint is in respect of a failure to issue a pay statement that complies with section 14 or 15 of that Act;
  - (e) the complaint is in respect of a redundancy payment under the Redundancy Payments Act 1990;
  - (f) the complaint is in respect of the right to be accompanied at a disciplinary hearing or a hearing in respect of a grievance under Part VIII of the Employment Act;
  - (g) the parties consent; or
  - (h) it appears to the Chairperson that –
    - (i) the complainant does not intend to pursue the complaint;
    - (ii) the respondent does not intend to contest the complaint or is debarred from doing so under rule 13; or
    - (iii) where there are 2 or more respondents, none of them intends to contest the complaint.
- (3) Except as provided by paragraph (2), a full hearing of a complaint must be conducted by the Tribunal composed in accordance with paragraph 2 of Schedule 17 to the Equality Act.
- (4) Any full hearing of a complaint must take place in public, subject to rule 25(1).

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<sup>3</sup> SD 102/2007

## 28 Conduct of full hearing

- (1) The Chairperson must fix the date, time and place of the full hearing and the Clerk must send to each party a notice of the full hearing together with information and guidance as to the procedure at the full hearing.
- (2) Subject to rule 24(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 must 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 or she gives evidence if it considers it in the interests of justice to do so.
- (5) The Tribunal may impose limits on the time that a party may take in presenting evidence, questioning witnesses or making submissions, and may prevent the party from proceeding beyond any time so allotted.
- (6) 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.
- (7) If the Tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (6), it must first consider any information in its possession which has been made available to it by the parties.
- (8) At a full hearing the Tribunal may exercise any powers which may be exercised by the Chairperson under these rules.

## PART 5 – DECISIONS

### 29 Judgments and orders

- (1) The Chairperson 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 30(1)); (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 30(1).
- (2) A judgment may include –

- (a) any remedy which the Tribunal may grant under section 109 (goods and services), 114 (work etc.), 115 (occupational pension schemes), 122 (breach of equality clause), 123 (pensions cases) or 124 (claims for pension arrears), as the case may be, of the Equality Act;
  - (b) an order for costs, preparation time or wasted costs.
- (3) If the parties agree in writing upon the terms of any order or judgment the Chairperson or Tribunal may, if he, she or it thinks fit, make the order or judgment.
- (4) At the end of a hearing the Chairperson or Tribunal, as the case may be, must either issue any judgment or order orally or reserve the judgment or order to be given in writing at a later date.
- (5) Any order or judgment of the Tribunal may be made or issued by a majority.

### **30 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 complaint or response on the grounds that it is scandalous or vexatious or has no real prospect of success;
  - (c) striking out any complaint 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 complainant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
  - (d) striking out a complaint which has not been actively pursued;
  - (e) striking out a complaint or response (or part of one) for non-compliance with an order;
  - (f) striking out a complaint where the Chairperson or Tribunal considers that it is no longer possible to have a fair full hearing in those proceedings; or
  - (g) making a restricted reporting order (subject to rule 33).
- (2) Before the Chairperson or the Tribunal makes a judgment or order to which this rule applies, the Clerk must 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 or her of the order or judgment to be considered and giving him or her 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 20(2); or
  - (b) a restricted reporting order made in accordance with rule 33.
- (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 Chairperson 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 complaint 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 –
  - (a) the address specified in the complaint as the address to which notices are to be sent; or
  - (b) where a replacement for that address has been notified to the Clerk, the last address so notified.
- (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 complaint 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 Chairperson deciding under rule 9(5)(a) or 12(4)(a) that a complaint or response should not be accepted.

### **31 Form and content of judgments**

- (1) Where judgment is reserved a written judgment must be sent to the parties as soon as practicable.
- (2) All judgments (whether issued orally or in writing) must be recorded in writing and signed by the Chairperson.
- (3) The Clerk must 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 must include guidance to the parties on how the judgment may be reviewed or appealed.
- (4) 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, preparation time or wasted costs), the document must also contain a statement of the amount of compensation awarded, or of the sum required to be paid.

## 32 Reasons

- (1) The Tribunal or the Chairperson must give reasons for its, his or her decision on any disputed issue, whether substantive or procedural (including any decision on review or for orders for costs, preparation time or wasted costs).
- (2) In the case of a decision given in writing the reasons must also be given in writing. In the case of a decision announced at a hearing the reasons may be given orally at the hearing or reserved to be given in writing later (which may, but need not, be as part of the written record of the decision). Written reasons shall be signed by the Chairperson.
- (3) Where reasons have been given orally, the Chairperson must announce that written reasons will not be provided unless they are asked for by any party at the hearing itself or by a written request presented by any party within 14 days of the sending of the written record of the decision. The written record of the decision must repeat that information. If no such request is received, the Tribunal must provide written reasons only if requested to do so by the High Court.
- (4) The reasons given for any decision must be proportionate to the significance of the issue, (and for decisions other than judgments may be very short).
- (5) In the case of a judgment the reasons must —
  - (a) identify the issues which the Tribunal has determined;
  - (b) state the findings of fact made in relation to those issues;
  - (c) concisely identify the relevant law; and
  - (d) state how that law has been applied to those findings in order to decide the issues.
- (6) Where a judgment includes a financial award the reasons must identify, by means of a table or otherwise, how the amount to be paid has been calculated.

## 33 Privacy and restrictions on disclosure

- (1) The Tribunal or the Chairperson may at any stage of the proceedings, on its, his or her own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it, he or she considers necessary —
  - (a) in the interests of justice;
  - (b) in order to protect the Convention rights of any person;
  - (c) in the circumstances specified in paragraph 28 (confidential information) of Schedule 17 to the Equality Act; or
  - (d) in the interests of national security.

- (2) In considering whether to make an order under this rule, the Tribunal or Chairperson shall give full weight to the principle of open justice and to the Convention right to freedom of expression.
- (3) Such orders may include—
- (a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;
  - (b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;
  - (c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public; or
  - (d) a restricted reporting order in accordance with paragraphs (4) to (6).
- (4) A restricted reporting order is an order prohibiting, until the issue of the final judgment in the proceedings (unless previously revoked), —
- (a) the publication in the Island in a written publication available to the public; or
  - (b) the inclusion in a relevant programme for reception in the Island; of any matter likely to lead members of the public to identify the complainant or such other person (if any) as may be named in the order.
- (5) A restricted reporting order may not be made except in proceedings —
- (a) which involve allegations of sexual misconduct;
  - (b) to which a child or young person is a party;
  - (c) in which a child or young person gives evidence; or
  - (d) which relate to disability and in which evidence of an intimate and significantly embarrassing nature is likely to be heard.
- (6) Where a restricted reporting order is made —
- (a) it must specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person's identification;
  - (b) it must specify the duration of the order;
  - (c) the Clerk must ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the noticeboard 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; and
  - (d) the Tribunal or Chairperson may order that it applies also to any other proceedings being heard as part of the same hearing.

- (7) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be amended or revoked, either on the basis of written representations or, if requested, at a hearing.
- (8) In this rule –
- "child or young person" means a person who, in the opinion of the Tribunal or Chairperson, is under the age of 17 years;
- "Convention rights" has the meaning given by section 1 of the Human Rights Act 2001; and
- "relevant programme" means a programme included in a programme service within the meaning of Part I of the Broadcasting Act 1993.

### 34 The Register

- (1) The Clerk must maintain a Register which must 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, and all or part of it may be published on a website.
- (3) Subject to paragraphs (4) and (5), the Clerk must enter in the Register –
- (a) the following particulars of every complaint presented to the Tribunal –
- (i) the case number;
  - (ii) the date the complaint was presented;
  - (iii) the name and address of the complainant;
  - (iv) the name and address of each respondent; and
  - (v) the subject-matter of the complaint (e.g. "unfair dismissal", "redundancy payment", or as the case may be); and
- (b) a copy of each of the following documents –
- (i) any judgment;
  - (ii) any order to which rule 30(1) applies; and
  - (iii) the written reasons provided in accordance with rule 32 in relation to a judgment or order.
- (4) Written reasons for a judgment must be omitted from the Register in any case in which evidence has been heard in private and the Tribunal or Chairperson so orders. In such a case –
- (a) the Clerk must 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 or she must 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 Chairperson or the Clerk must 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;
  - (b) any child or young person who is a party to, or gave evidence in, the proceedings; or
  - (c) any person with a disability, in respect of whom evidence of an intimate and significantly embarrassing nature was heard.
- (6) Where a direction is given under rule 35(3)(d), the written reasons must not be entered in the Register, and the further document (if any) required to be prepared in accordance with the direction must be entered instead.

### **35 National security**

- (1) The Chief Minister, if he or she considers it expedient in the interests of national security, may direct the Tribunal –
  - (a) to sit in private for all or part of particular Crown employment proceedings;
  - (b) to exclude the complainant from all or part of particular Crown employment proceedings;
  - (c) to exclude the complainant's representatives from all or part of particular Crown employment proceedings;
  - (d) to take steps to conceal the identity of a particular witness in particular Crown employment proceedings; or
  - (e) to take steps to keep secret all or part of the reasons for its decision in particular Crown employment proceedings.
- (2) The Tribunal, if it considers it expedient in the interests of national security, may do in relation to particular proceedings before it anything of a kind which it can be required to do by direction under paragraph (1) in relation to particular Crown employment proceedings.
- (3) In any case where a person has been excluded by virtue of paragraph (1)(b) or (c) or (2) –
  - (a) the Tribunal must permit that person to make a statement to the Tribunal before the commencement of the proceedings, or the part of the proceedings, from which he or she is excluded;
  - (b) the Tribunal may request the President of the Isle of Man Law Society to appoint a person to represent the interests of the complainant;
  - (c) the Clerk shall send a copy of the written reasons for a judgment to the Chief Minister and allow 21 days for him or her to give a

- direction under sub-paragraph (d) before sending them to any party or entering them onto the Register;
- (d) if the Chief Minister considers it expedient in the interests of national security, he or she may direct that the written reasons shall not be disclosed to specified persons and —
    - (i) require the Tribunal to prepare a further document which sets out the reasons for the decision, but omits specified information; or
    - (ii) direct that no further document setting out the reasons for the decision should be prepared; and
  - (e) without prejudice to sub-paragraph (d), if the Tribunal considers it expedient in the interests of national security, it may by order take steps to keep secret all or part of the written reasons.
- (4) In this rule "Crown employment proceedings" has the meaning given by paragraph 25(8) of Schedule 17 to the Equality Act.

### **36 Review of certain decisions**

- (1) A party may apply to have the following decisions, judgments and orders made by the Tribunal or the Chairperson reviewed under this rule and rules 37 and 38 —
- (a) a decision not to accept a complaint or response;
  - (b) a judgment (including an order for costs, preparation time or wasted costs);
  - (c) an order to which rule 30(1) applies;
- and references to a "decision" in this rule and rules 37 and 38 are references to those decisions, judgments and orders only.
- (2) Other decisions or orders may not be reviewed under this rule and rules 37 and 38, but this does not prevent an order under rule 15 being varied or revoked by the Chairperson on an application under rule 16 or on his or her own initiative.
- (3) In relation to a decision not to accept a complaint 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 complaint or response may only be reviewed on the grounds listed in paragraph (4)(a), (b) and (f).
- (6) The Tribunal or Chairperson may on its, his or his own initiative review a decision made by it, him or her on the grounds listed in paragraph (4).

### **37 Preliminary consideration of application for review**

- (1) An application under rule 36 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 Chairperson considers reasonable, if he or she 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 36(4), but if the decision to be reviewed was made at a hearing, an application may be made orally at that hearing.
- (3) The Chairperson must refuse the application if he or she considers that there are no grounds for the decision to be reviewed under rule 36(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 must inform the party making the application in writing of the Chairperson's decision and his or her reasons for it. Unless the application for a review is refused, the decision must be reviewed under rule 38.

### **38 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 must if practicable be reviewed by the Chairperson, 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 Chairperson or Tribunal, the review must be carried out by the Chairperson, 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 Chairperson reviews a decision under paragraph (1) or (2), it, he or she may confirm, vary or revoke the decision.
- (4) If the decision is revoked –
- (a) the Tribunal or Chairperson must order the decision to be taken again;
  - (b) if the original decision was taken by the Chairperson 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.

### **39 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 Chairperson.
- (2) If a document is corrected by certificate under paragraph (1), or if a decision is revoked or varied under rule 38 or altered in any way by order of the High Court, the Clerk must 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 34 is corrected by certificate under this rule, the Clerk must 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 or she must 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.

## **PART 6 – COSTS**

### **40 Costs and preparation time**

- (1) In this rule and rule 41 –
  - (a) "costs order" means an order of the Tribunal that the paying party make a payment to –

- (i) the receiving party in respect of costs incurred by the receiving party while legally represented or represented by a lay representative;
    - (ii) another party or a witness in respect of expenses incurred or to be incurred for the purpose of or in connection with an individual's attendance as a witness at the Tribunal;
  - (b) "lay representative" means a person, other than an advocate, who for reward assists a party in the proceedings, but does not include an employee of the party;
  - (c) "paying party" means a party by whom a payment is to be made under a costs order or a preparation time order, and includes a respondent who has not had a response accepted in the proceedings, in relation to the conduct of any part which he or she has taken in the proceedings;
  - (d) "preparation time" means time spent by the receiving party (including by any employees or advisers) in working on the case, except time spent at any final hearing;
  - (e) "preparation time order" means an order of the Tribunal that the paying party make a payment to another party in respect of the receiving party's preparation time while not legally represented;
  - (f) "receiving party" means a party to whom a payment is to be made under a costs order or a preparation time order, and includes the Treasury if, not being a party, it has acted as provided in rule 43; and
  - (g) a reference to the Tribunal includes a reference to the Chairperson sitting alone.
- (2) Subject to paragraphs (3) and (4), the Tribunal must not normally make a costs order or preparation time order in any proceedings.
- (3) The Tribunal may make a costs order or a preparation time order, and must consider whether to do so, where —
- (a) in its opinion —
    - (i) the paying party has in bringing or defending the proceedings, or he or she or his or her representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably;
    - (ii) the paying party's complaint or response had no real prospect of success; or
    - (iii) the paying party has made a false or exaggerated allegation in his or her complaint or response or in evidence in support of it;
  - (b) the paying party has been in breach of any order;

- (c) a hearing has been postponed or adjourned on the application of the paying party; or
  - (d) the Chairperson has decided under rule 9(5) or rule 12(4) that the paying party's complaint or response should not be accepted and the decision has been confirmed on a review under rule 38.
- (4) A costs order or preparation time order under paragraph (3)(c) may be against or in favour of any party as respects any costs incurred or time spent, as the case may be, as a result of the postponement or adjournment.
- (5) A costs order or preparation time 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 or she has taken in the proceedings.
- (6) A party may apply for a costs order or preparation time 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.
- (7) An application for a costs order or preparation time order which is received by the Clerk later than 21 days from the issuing of the judgment determining the complaint must not be accepted or considered by the Tribunal unless it considers that it is in the interests of justice to do so.
- (8) In paragraph (7), the date of issuing of the judgment determining the complaint 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.
- (9) No costs order or preparation time order shall be made unless –
  - (a) the Clerk has sent notice to the party against whom the order may be made giving him or her 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 Tribunal as to why the order should not be made.
- (10) A costs order may –
  - (a) order the paying party to pay to the receiving party a specified amount, not exceeding £2,000, in respect of the costs of the receiving party;
  - (b) 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 detailed assessment in the High Court in accordance with rules of court, or by the Chairperson applying the same principles;

- (c) order the paying party to pay another party or a witness, as appropriate, a specified amount in respect of expenses necessarily and reasonably incurred or to be incurred for the purpose of or in connection with an individual's attendance as a witness at the Tribunal; or
  - (d) if the paying party and the receiving party agree as to the amount payable, be made in that amount.
- (11) Where the Tribunal determines to make a preparation time order, it must decide the number of hours in respect of which the order should be made, on the basis of –
- (a) information provided by the receiving party on time spent falling within paragraph (1)(d); and
  - (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and the documentation required.
- (12) The amount of a preparation time order shall (subject to paragraph 13) be the number of hours assessed under paragraph (11) multiplied by an hourly rate of as follows –
- (a) where the receiving party can prove financial loss, the amount he or she can prove he or she has lost in that time; or
  - (b) where the receiving party cannot prove financial loss, an amount at the rate of £25;
- subject in either case to a maximum of £2,000.
- (13) The Tribunal may have regard to the paying party's ability to pay when considering whether it make a costs order or preparation time order or how much that order should be.
- (14) The Tribunal may order that the sum payable under a costs order or preparation time order be paid by instalments.
- (15) Any sum due under a costs order or preparation time order shall be payable by the paying party and not his or her representative.
- (16) Where the Tribunal makes a costs order or preparation time order it must provide written reasons for doing so if a request is made for written reasons within 14 days of the date of the relevant order.

This 14 day time limit may not be extended under rule 15. The Clerk must send a copy of the written reasons to all parties to the proceedings.

#### **41 Personal liability of representatives for costs**

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

- (2) A "wasted costs order" is an order disallowing, or ordering 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 or her client any costs which have already been paid.
- (3) In paragraph (2) "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 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 must 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 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 makes a wasted costs order, it must specify in the order the amount to be disallowed or paid.
- (8) The Clerk must 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 makes a wasted costs order it must 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 15. The Clerk must send a copy of the written reasons to all parties to the proceedings.

## PART 7— SUPPLEMENTAL

### 42 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 Chairperson or Tribunal so orders; and
  - (b) the Chairperson or Tribunal may make an order to remedy the error.
- (2) The Chairperson or Tribunal must 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 must specify the error of procedure to which the application relates.

### 43 Proceedings involving the Manx National Insurance Fund

The Treasury 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.

### 44 Notices etc.

- (1) Any notice given or document sent under these rules must (unless the Chairperson or Tribunal orders otherwise) be in writing and may be given or sent —
  - (a) by post;
  - (b) by email 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 means of electronic communication, on the day on which the notice or document is transmitted; or

- (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 Tribunals' Centralised Administration;
- (b) in the case of a notice or document directed to the Treasury 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 43), to the principal office of the Treasury;
- (c) in the case of a notice or document directed to a court, to the General Registry; or
- (d) in the case of a notice or document directed to a party –
- (i) the address specified in the complaint or response to which notices and documents are to be sent, or in a notice under paragraph (4);
- (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 Chairperson may allow; or
- (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 or her 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 a relevant officer) change the address to which notices and documents are to be sent or transmitted.
- (5) The Chairperson may order that there shall be substituted service in such manner as he or she may think fit in any case he or she considers appropriate.
- (6) In proceedings which may involve a payment out of the Manx National Insurance Fund, the Clerk must, where appropriate, send copies of all documents and notices to the Treasury whether or not it is a party.

**45 Power to prescribe forms**

- (1) The Chief Registrar, after consultation with the Chairperson, must prescribe forms for use —
  - (a) by complainants for the purpose of presenting complaints to the Tribunal; and
  - (b) by respondents to a complaint for the purpose of responding to a complaint before the Tribunal;and may prescribe such other forms as may be expedient for use in proceedings in the Tribunal.
- (2) The Chief Registrar must publish the forms prescribed under paragraph (1) in such manner as he or she considers appropriate in order to bring them to the attention of potential complainants and respondents and their advisers.

**46 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 Chairperson, 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 complaint on 1st October. He or she must present a response to the Clerk within 28 days of the date on which he or she 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 or she 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 Chairperson gives any decision, order or judgment which imposes a time limit for doing any act, the last date for compliance must, wherever practicable, be expressed as a calendar date.
- (5) In rule 24(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 a response to a complaint to the Clerk within 28 days of the date on which he or she was sent a copy of the complaint. If the letter from the Clerk sending him or her a copy of the complaint is dated 1st October, the last day for presentation of the response is 29th October.*

- (7) Where a document sent to the Clerk is delivered at a time when the office of the Tribunals' Centralised Administration is closed, it shall be regarded as delivered at the time when the office is next open for business.

**MADE 17 DECEMBER 2018**

**W GREENHOW**  
*Chief Secretary*

*EXPLANATORY NOTE*

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

These Rules make provision with respect to proceedings before the Employment and Equality Tribunal, which is established by the Equality Act 2017.