

2012 No. 468

EMPLOYMENT TRIBUNALS

The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2012

<i>Made</i>	- - - -	<i>21st February 2012</i>
<i>Laid before Parliament</i>		<i>24th February 2012</i>
<i>Coming into force</i>	- -	<i>6th April 2012</i>

The Secretary of State, in exercise of the powers conferred by sections 7(1), (5), 9(2)(a), 13(1)(a) and 41(4) of the Employment Tribunals Act 1996(a), makes the following Regulations. The Secretary of State has consulted with the Administrative Justice and Tribunals Council, and that Council has consulted with the Scottish Committee and the Welsh Committee, in accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(b):

Citation and commencement

1. These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2012 and shall come into force on 6th April 2012.

Amendment of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004

2.—(1) Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(c) is amended as follows.

(2) In rule 20(1) for “£500” insert “£1,000”.

(3) In rule 27(d) renumber paragraph (2) as paragraph (1) and after that paragraph insert—

“(2) Where a witness is called to give oral evidence, any witness statement of that person shall stand as that witness’s evidence in chief unless the tribunal or Employment Judge orders otherwise.”.

(4) At the end of rule 38(1) insert—

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- (a) 1996 c.17; by virtue of section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) industrial tribunals were renamed employment tribunals and references to “industrial tribunal” and “industrial tribunals” in any enactment were substituted with “employment tribunal” and “employment tribunals”.
- (b) 2007 c.15.
- (c) S.I. 2004/1861; by virtue of the Tribunals, Courts and Enforcement Act 2006 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683), article 6(1), Schedule 1, paragraphs 240 and 255(a) to (d) all references in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 to “chairman”, “a chairman” and “chairmen” were substituted with “Employment Judge”, “an Employment Judge” and “Employment Judges”. With the exception of those set out in the following footnotes, there are no other amendments to S.I. 2004/1861 which are relevant to these Regulations.
- (d) Rule 27(1) was revoked by the Employment Tribunals (Constitution and Rules of Procedure) 2008 (S.I. 2008/3240).

“(c) the paying party make a payment to a witness in respect of some or all of the expenses that witness incurs for the purposes of, or in connection with, that witness’s attendance at the tribunal.”.

(5) In rule 38(2) for “40” substitute “40(1) to (4)”.

(6) In rule 38(3), after “party” insert “, including sums paid pursuant to an order under paragraph (1)(c)”.

(7) At the end of rule 40 insert—

“(5) A tribunal or Employment Judge may make a costs order where a witness attends to give oral evidence at a hearing.”.

(8) In rules 41(1)(a), 41(3) and 45(2) for “£10,000” substitute “£20,000”.

(9) At the end of rule 61(a) insert—

“(10) Paragraph (8) shall not apply in any proceedings where—

- (a) a Minister of the Crown has given a direction, or a tribunal or an Employment Judge has made an order, under rule 54 in those proceedings; and
- (b) either the Security Service, the Secret Intelligence Service or the Government Communications Headquarters is a party to those proceedings.”.

Transitional provision

3. Regulation 2 shall not have effect in relation to a claim which is presented to an Employment Tribunal Office on or before 5th April 2012.

Norman Lamb

Parliamentary Under Secretary of State for Employment Relations, Consumer and Postal Affairs
21st February 2012

Department for Business, Innovation and Skills

(a) Rule 61(8) was substituted by the Equality Act 2006 (Dissolution of Commissions and Consequential and Transitional Provisions) Order 2007 (S.I. 2007/2602), article 4(1), Schedule 1, paragraph 7(b) and amended by the Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (S.I. 2010/2317), article 24, Schedule 8, paragraph 5(5). Rule 61(9) was inserted by S.I. 2010/2317, article 24, Schedule 8, paragraph 5(6).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004.

These Regulations increase the maximum amount which an Employment Judge or tribunal may order under a deposit, costs, expenses or preparation order and give Employment Judges and tribunals a power to order a party to pay the expenses incurred by a witness in attending a tribunal to give evidence.

These Regulations provide that any witness statements should be taken as read and stand as evidence in chief of the witness concerned unless the Employment Judge or tribunal directs otherwise. This reflects the Employment Appeal Tribunal's decision in *Mehta v Child Support Agency* UKEAT/0127/10/CEA. In Scotland witness statements are not routinely ordered by Employment Judges, but these Regulations would mean that where statements are ordered they would be taken as read.

These Regulations also provide that rule 61(8) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (on sending documents to the Commission for Equality and Human Rights) shall not apply in certain cases where either the Security Service, the Secret Intelligence Service or the Government Communications Headquarters is a party.

A full regulatory impact assessment is available and a copy can be obtained from the Department for Business, Innovation and Skills, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

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