
STATUTORY INSTRUMENTS

2013 No. 1693

EMPLOYMENT TRIBUNALS

The Employment Appeal Tribunal (Amendment) Rules 2013

<i>Made</i>	- - - -	<i>9th July 2013</i>
<i>Laid before Parliament</i>		<i>10th July 2013</i>
<i>Coming into force</i>	- -	<i>29th July 2013</i>

The Lord Chancellor, in exercise of the powers conferred by sections 30 and 34 of the Employment Tribunals Act 1996(1) makes the following Rules.

The Lord Chancellor has consulted with the Lord President of the Court of Session in accordance with section 30(1) of the Employment Tribunals Act 1996 before making these Rules.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Employment Appeal Tribunal (Amendment) Rules 2013 and shall come into force on 29th July 2013.

(2) In these Rules, any reference to a rule or to the Schedule is a reference to a rule in, or to the Schedule to, the Employment Appeal Tribunal Rules 1993(2).

Amendments to the Employment Appeal Tribunal Rules 1993

2. In rule 2, in the definition of “national security proceedings”(3), for “regulation 2 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004”, substitute “regulation 3 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013”.

3. In rule 3(4)—

- (a) in paragraph (7), for “paragraphs (8) and (10)”, substitute “paragraph (10)”;
- (b) after paragraph (7), insert—

(1) 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”. Section 30(2)(b) was amended by regulation 35(4) of the Transnational Information and Consultation of Employees Regulations 1999 (S.I. 1999/3323). Section 34 was substituted by section 23 of the Employment Act 2002 (c. 22).

(2) S.I. 1993/2854 amended by S.I. 1996/3216, 2001/1128, 2004/2526, 2004/3426, 2005/1871, 2007/2974, 2010/1088.

(3) Inserted by S.I. 2004/2526.

(4) As amended by S.I. 2001/1128, 2004/2526, 2004/3426, 2007/2974.

“(7ZA) Where a judge or the Registrar has taken a decision under paragraph (7), and also considers that the notice of appeal or document provided under paragraph (5) or (6) is totally without merit, the judge or Registrar may order that the appellant or special advocate is not entitled to have the matter heard before a judge under paragraph (10), with such order to be included as part of the notice issued under paragraph (7).”;

- (c) in paragraph (7A), after “paragraph (7)”, insert “, (7ZA)”;
- (d) omit paragraphs (8) and (9);
- (e) in paragraph (10), for “Where”, substitute “Subject to paragraph (7ZA), where”.

4. In rule 6(5)—

- (a) in paragraph (12)—
 - (i) before “respondent’s”, insert “the”;
 - (ii) for “appellant”, substitute “respondent”;
 - (iii) for “paragraphs (14) and (16)”, substitute “paragraph (16)”;
- (b) after paragraph (12), insert—

“(12A) Where a judge or the Registrar has taken a decision under paragraph (12), and also considers that the statement of grounds of cross-appeal contained in the respondent’s answer or document provided under paragraph (7) or (8) is totally without merit, the judge or Registrar may order that the respondent is not entitled to have the matter heard before a judge under paragraph (16), with such order to be included as part of the notice issued under paragraph (12).”;

- (c) in paragraph (13), after “paragraph (12)”, insert “, (12A)”;
- (d) omit paragraphs (14) and (15);
- (e) in paragraph (16), for “Where”, substitute “Subject to paragraph (12A), where”.

5. After rule 17 insert—

“Non-payment of fee

17A.—(1) The Registrar must strike out an appeal, and must notify each party that the appeal has been struck out, where—

- (a) upon receipt of a notice of appeal, or following a direction by the Appeal Tribunal that a matter proceed to an oral hearing, the Lord Chancellor has issued a notice to an appellant specifying that a fee is payable; and
- (b) the appellant has not paid the fee or presented a remission application on or before the date specified in that notice.

(2) Where an appeal has been struck out under paragraph (1), the appeal may be reinstated by the Registrar if—

- (a) the appellant applies to have the appeal reinstated; and
- (b) the fee specified in the Lord Chancellor’s notice has been paid or a remission application has been presented and accepted.

(3) The Registrar must strike out an appeal, and must notify each party that the appeal has been struck out, where—

- (a) after consideration of a remission application the Lord Chancellor has issued a notice to an appellant specifying that a fee is payable; and

- (b) the appellant has not paid the fee on or before the date specified in that notice.
 - (4) Where an appeal has been struck out under paragraph (3) the appeal may be reinstated by the Registrar if—
 - (a) the appellant applies to have the appeal reinstated; and
 - (b) the fee specified in the Lord Chancellor’s notice has been paid.
 - (5) An application for reinstatement under paragraph (2) or (4) is deemed to be an interim application for the purposes of rule 20.”
- 6.—(1) Rule 26(6) is to be renumbered as paragraph (1) of that rule.
- (2) After paragraph (1) as so renumbered, insert—
- “(2) An order made by the Appeal Tribunal under paragraph (1) may include, but is not limited to, an order that all or part of an appeal or answer is to be struck out.
 - (3) An appeal or answer, or part of an appeal or answer, may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing, or if requested by the party, at a hearing.”
7. In rule 34A(7)—
- (a) after paragraph (2), insert—
 - “(2A) If the Appeal Tribunal allows an appeal, in full or in part, it may make a costs order against the respondent specifying the respondent pay to the appellant an amount no greater than any fee paid by the appellant under a notice issued by the Lord Chancellor.”;
 - (b) in paragraph (3), after “(2)”, insert “or (2A)”.
8. In rule 34C(4)(8), omit the words following “or any employee of such representative”.
9. In the Schedule, in Form 1(9), after “**Date:**” insert—
- “Once you have submitted an appeal you will be asked to pay a fee or you can apply for a fee remission. If you fail to do so on or before the date such fee is due, your appeal will be struck out.”**

Signed by authority of the Lord Chancellor

9th July 2013

Helen Grant
Parliamentary Under Secretary of State
Ministry of Justice

(6) As amended by S.I. 2001/1128, 2004/2526, 2004/3426, 2007/2974, 2010/1088.
(7) Inserted by S.I. 2004/2526.
(8) Inserted by S.I. 2004/2526.
(9) Substituted by S.I. 2005/1871.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Employment Appeal Tribunal Rules 1993 (“the 1993 Rules”). The main changes are as follows.

Rules 3 and 6 of the 1993 Rules are amended to remove a party’s right to an extension of time to provide a fresh notice of appeal (or cross-appeal) where the judge or registrar has decided that the original notice or cross-appeal disclosed no reasonable grounds or amounted to an abuse of Appeal Tribunal process. It also removes a party’s right to have the decision reviewed at a hearing where the notice or cross-appeal is considered to be totally without merit.

A new rule 17A is inserted into the 1993 Rules. It introduces a procedure for striking out an appeal on the grounds of non-payment, or failure to seek remission, of a fee payable in respect of the Appeal Tribunal proceedings. It also provides for an application to the registrar to reinstate the proceedings and an appeal from the registrar’s reinstatement decision.

Rule 26 of the 1993 Rules is amended to clarify the power of the Appeal Tribunal to strike out an appeal or answer where a party has failed to comply with an order or direction of the Appeal Tribunal. A party must be allowed to make representations as to why the appeal or answer should not be struck out.

Rule 34A of the 1993 Rules is amended to add to the circumstances in which the Appeal Tribunal may award costs against an unsuccessful party. It provides for the reimbursement of any fee paid by the successful party in the Appeal Tribunal proceedings.

Rule 34C(4) of the 1993 Rules is amended to remove the exception which prevents a wasted costs order being made against an unpaid representative.

A full regulatory impact assessment has not been produced for this instrument as there will be negligible impact on the costs of business and the voluntary sector arising out of these Rules themselves. An impact assessment was undertaken on the effect of the introduction of fees in the employment tribunals and Appeal Tribunal and was attached to the Employment Tribunals and the Employment Appeal Tribunals Fees Order 2013 Explanatory Memorandum, published at: www.legislation.gov.uk.