

## SCHEDULE 1

### THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE

#### *POWER TO REVIEW JUDGMENTS AND DECISIONS*

##### **Review of default judgments**

**33.**—(1) A party may apply to have a default judgment against or in favour of him reviewed. An application must be made in writing and presented to the Employment Tribunal Office within 14 days of the date on which the default judgment was sent to the parties. The 14 day time limit may be extended by a chairman if he considers that it is just and equitable to do so.

(2) The application must state the reasons why the default judgment should be varied or revoked. When it is the respondent applying to have the default judgment reviewed, the application must include with it the respondent's proposed response to the claim, an application for an extension of the time limit for presenting the response and an explanation of why rules 4(1) and (4) were not complied with.

(3) A review of a default judgment shall be conducted by a chairman in public. Notice of the hearing and a copy of the application shall be sent by the Secretary to all other parties.

(4) The chairman may —

- (a) refuse the application for a review;
- (b) vary the default judgment;
- (c) revoke all or part of the default judgment;
- (d) confirm the default judgment;

and all parties to the proceedings shall be informed by the Secretary in writing of the chairman's judgment on the application.

(5) A default judgment must be revoked if the whole of the claim was satisfied before the judgment was issued or if rule 8(6) applies. A chairman may revoke or vary all or part of a default judgment if the respondent has a reasonable prospect of successfully responding to the claim or part of it.

(6) In considering the application for a review of a default judgment the chairman must have regard to whether there was good reason for the response not having been presented within the applicable time limit.

(7) If the chairman decides that the default judgment should be varied or revoked and that the respondent should be allowed to respond to the claim the Secretary shall accept the response and proceed in accordance with rule 5(2).

##### **Review of other judgments and decisions**

**34.**—(1) Parties may apply to have certain judgments and decisions made by a tribunal or a chairman reviewed under rules 34 to 36. Those judgments and decisions are —

- (a) a decision not to accept a claim, response or counterclaim;
- (b) a judgment (other than a default judgment but including an order for costs, expenses, preparation time or wasted costs); and
- (c) a decision made under rule 6(3) of Schedule 4;

and references to "decision" in rules 34 to 37 are references to the above judgments and decisions only. Other decisions or orders may not be reviewed under these rules.

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

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

- (a) the decision was wrongly made as a result of an administrative error;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (d) 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
- (e) the interests of justice require such a review.

(4) A decision not to accept a claim or response may only be reviewed on the grounds listed in paragraphs (3)(a) and (e).

(5) A tribunal or chairman may on its or his own initiative review a decision made by it or him on the grounds listed in paragraphs (3) or (4).

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

**35.**—(1) An application under rule 34 to have a decision reviewed must be made to the Employment Tribunal Office within 14 days of the date on which the decision was sent to the parties. The 14 day time limit may be extended by a chairman if he considers that it is just and equitable to do so.

(2) The application must be in writing and must identify the grounds of the application in accordance with rule 34(3), but if the decision to be reviewed was made at a hearing, an application may be made orally at that hearing.

(3) The application to have a decision reviewed shall be considered (without the need to hold a hearing) by the chairman of the tribunal which made the decision or, if that is not practicable, by —

- (a) a Regional Chairman or the Vice President;
- (b) any chairman nominated by a Regional Chairman or the Vice President; or
- (c) the President;

and that person shall refuse the application if he considers that there are no grounds for the decision to be reviewed under rule 34(3) 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 Secretary shall inform the party making the application in writing of the chairman's decision and his reasons for it. If the application for a review is not refused the decision shall be reviewed under rule 36.

#### **The review**

**36.**—(1) When a party has applied for a review and the application has not been refused after the preliminary consideration above, the decision shall be reviewed by the chairman or tribunal who made the original decision. If that is not practicable a different chairman or tribunal (as the case may be) shall be appointed by a Regional Chairman, the Vice President or the President.

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

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- (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) such notice must be sent before the expiry of 14 days from the date on which the original decision was sent to the parties.

(3) A tribunal or chairman who reviews a decision under paragraph (1) or (2) may confirm, vary or revoke the decision. If the decision is revoked, the tribunal or chairman must order the decision to be taken again. When an order is made that the original decision be taken again, if the original decision was taken by a chairman without a hearing, the new decision may be taken without hearing the parties and if the original decision was taken at a hearing, a new hearing must be held.

### **Correction of judgments, decisions or reasons**

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

(2) If a document is corrected by certificate under paragraph (1), or if a decision is revoked or varied under rules 33 or 36 or altered in any way by order of a superior court, the Secretary shall alter any entry in the Register which is so affected to conform with the certificate or order and send a copy of any entry so altered to each of the parties and, if the proceedings have been referred to the tribunal by a court, to that court.

(3) Where a document omitted from the Register under rules 32 or 49 is corrected by certificate under this rule, the Secretary shall send a copy of the corrected document to the parties; and where there are proceedings before any superior court relating to the decision or reasons in question, he shall send a copy to that court together with a copy of the entry in the Register of the decision, if it has been altered under this rule.

(4) In Scotland, the references in paragraphs (2) and (3) to superior courts shall be read as referring to appellate courts.