

Subsidiary Legislation made under s.12.

**EMPLOYMENT TRIBUNAL (CONSTITUTION AND
PROCEDURE) RULES 2016**

(LN. 2016/200)

Commencement **13.10.2016**

Amending enactments	Relevant current provisions	Commencement date
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In exercise of the powers conferred on him by section 12 of the Employment Act, and all other enabling powers, the Minister has made the following Rules—

INTRODUCTORY AND GENERAL**Title and application.**

1.(1) These Rules may be cited as the Employment Tribunal (Constitution and Procedure) Rules 2016 and shall come into operation on their date of publication.

(2) Wherever they occur in any enactment, for the words “Industrial Tribunal Rules” substitute “Employment Tribunal Rules”.

Interpretation.

2.(1) In these Rules—

“Chairperson” means a chairperson appointed in accordance with section 14C of the Employment Act”;

“claim” means any proceedings before the Employment Tribunal making a complaint;

“claimant” means the person bringing the claim;

“complaint” means anything that is referred to as a claim, complaint, reference, application or appeal in any enactment which confers jurisdiction on the Employment Tribunal;

“conciliation certificate” means the certificate issued by the Mediator if rule 25(8) or (9) applies;

“Constitutional rights” means the rights and fundamental freedoms set out in the Gibraltar Constitution Order 2006;

“electronic communication” means e-mail and any other form of electronic communication;

“employee’s contract claim” means a claim brought by an employee in accordance with sections 3 and 6 of the Employment Tribunal (Extension of Jurisdiction) Order 2016;

“employer’s contract claim” means a claim brought by an employer in accordance with sections 4 and 7 of the Employment Tribunal (Extension of Jurisdiction) Order 2016;

“Employment Tribunal” or “Tribunal” means an employment tribunal established under section 12 of the Employment Act including the office which carries out administrative functions in support of the Tribunal, and in relation to any proceedings means the Tribunal responsible for the proceedings in question, whether performing administrative or judicial functions;

“Government employment proceedings” means proceedings where the employer is–

- (i) an individual appointed under any enactment by a Minister or the Government, or
- (ii) a body any of whose members are so appointed;

“Health and Safety Regulations” means the Management of Health and Safety at Work Regulations, 1996;

“improvement notice” means a notice under regulation 18 of the Health and Safety Regulations;

“levy appeal” means an appeal against an assessment to a levy imposed under regulation 3 of the Training (Levy) Regulations 2001;

“Mediator” means a Chairperson, the Director for Employment, or any other person selected by the Judicial Services Commission and appointed by the Minister as a mediator for the purposes of these Rules by notice in the Gazette on the basis of their experience and knowledge of employment law and practice;

“Preliminary Issue” means, as regards any complaint, any substantive issue which may determine liability (for example, an issue as to jurisdiction or as to whether an employee was dismissed);

“prescribed form” means any appropriate form prescribed by the Minister in the Employment Tribunal (Forms) Regulations 2016;

“present” means deliver (by any means permitted under rule 70) to the Tribunal;

“President” means a Chairperson who is appointed by the Minister as the president of the Tribunal by notice in the Gazette;

“prohibition notice” means a notice under regulation 19 of the Health and Safety Regulations;

“Register” means the register of judgments and written reasons kept by the Tribunal;

“representative” means a party’s legal or lay representative or any employee of such representative;

“respondent” means the person or persons against whom the claim is made;

“response” means a response to any claim; and

“writing” includes writing sent by means of email.

- (a) a “case management order”, being an interim order or decision of any kind in relation to the conduct of proceedings, not including the determination of any issue which would be the subject of a judgment; or
- (b) a “judgment”, being a decision, made at any stage of the proceedings (but not including a decision under rules 14 or 19), which finally determines–
 - (i) a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs); or
 - (ii) any issue which may potentially dispose of a claim, or part of a claim, irrespective of whether the issue actually results in the disposal (for example, an issue whether a claim should be struck out or a jurisdictional issue).

Establishment.

2A. There is hereby established an Employment Tribunal.

Overriding objective.

3.(1) The overriding objective of these Rules is to enable the Employment Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes, so far as practicable–

- (a) ensuring that the parties are on an equal footing;

- (b) dealing with cases in ways which are proportionate to the complexity and importance 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) A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by these Rules.

(4) The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

Alternative dispute resolution.

4. A Tribunal shall wherever practicable and appropriate encourage the use by the parties of a Mediator, or other means of resolving their disputes by agreement.

Appointment of Chairpersons and Mediators.

5.(1) The Judicial Services Commission shall invite applications from individuals with qualifications and experience who wish to preside as Chairpersons or Mediators.

(2) Upon selection of a Chairperson or Mediator by the Judicial Services Commission, the Minister shall appoint that Chairperson or Mediator by notice in the Gazette.

(3) Upon receipt of a claim the secretary shall allocate the claim to the next available Mediator and Chairperson to preside over that claim.

Time.

6.(1) Unless otherwise specified by the Tribunal, an act required by these Rules, a practice direction or an order of a Tribunal to be done on or by a particular day may be done at any time before midnight on that day. If there is an issue as to whether the act has been done by that time, the party claiming to have done it shall prove compliance.

(2) Where the Tribunal imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(3) Where time is specified by reference to the date when a document is sent to a person by the Tribunal, the date when the document was sent shall, unless the contrary is proved, be regarded as the date endorsed on the document as the date of sending or, if there is no such endorsement, the date shown on the letter accompanying the document.

Extending or shortening time.

7. The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.

Irregularities and non-compliance.

8. A failure to comply with any provision of these Rules (except rule 10(1), 15(1), 22 or 24) or any order of the Tribunal does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include all or any of the following—

- (a) waiving or varying the requirement;
- (b) striking out the claim or the response, in whole or in part, in accordance with rule 36;
- (c) barring or restricting a party's participation in the proceedings;
- (d) awarding costs in accordance with rules 60 to 69.

Guidance by the President of Chairpersons.

9. The President may publish guidance as to matters of practice and as to how the powers conferred by these Rules may be exercised. Any such guidance shall be published by the President in an appropriate manner to bring it to the attention of Chairpersons, claimants, respondents and their advisers. The Employment Tribunal shall have regard to any such guidance, but it shall not be bound by it.

STARTING A CLAIM

Presenting the claim.

10.(1) A claim shall be started by presenting a completed claim form (using a prescribed form) in accordance with all relevant enactments.

(2) A claim may be presented if–

- (a) the respondent, or one of the respondents, resides or carries on business in Gibraltar;
- (b) one or more of the acts or omissions complained of took place in Gibraltar; or
- (c) the claim relates to a contract under which the work is or has been performed partly in Gibraltar.

Multiple claimants.

11. Two or more claimants may make their claims on the same claim form if their claims are based on the same set of facts. Where two or more claimants wrongly include claims on the same claim form, this shall be treated as an irregularity falling under rule 8.

Rejection: form not used, failure to supply minimum information or form filed out of time.

12.(1) The Tribunal shall reject a claim if–

- (a) it is not made on a prescribed form;
- (b) it does not contain all of the following information–
 - (i) each claimant’s name;
 - (ii) each claimant’s address;
 - (iii) each respondent’s name; and
 - (iv) each respondent’s address; or
- (c) it is not made within the relevant time period.

(2) If the Tribunal rejects a claim under this rule, the form shall be returned to the claimant within 21 days of presentation, with a notice of rejection explaining why it has been rejected. The notice shall contain information about how to apply for a reconsideration of the rejection.

Sending claim form to respondent.

13. The Tribunal shall send a copy of the claim form, together with a prescribed response form, to each respondent with a notice which includes information on–

- (a) whether any part of the claim has been rejected by the Tribunal and, if so, a copy of the notice of rejection;
- (b) if no part of the claim has been rejected, how to submit a response to the claim, the time limit for doing so and what will happen if a response is not received by the Tribunal within that time limit.

Reconsideration of rejection.

14.(1) A claimant whose claim has been rejected (in whole or in part) under rule 12 may apply for a reconsideration on the basis that either–

- (a) the decision to reject was wrong; or
- (b) the notified defect can be rectified.

(2) The application shall be in writing and presented to the Tribunal within 21 days of the date that the notice of rejection was sent. It shall explain why the decision is said to have been wrong or rectify the defect and if the claimant wishes to request a hearing this shall be requested in the application.

(3) If the claimant does not request a hearing, or a Chairperson decides, on considering the application, that the claim shall be accepted in full, the Chairperson shall determine the application without a hearing within 21 days of delivery of an application under subrule (2). Otherwise the application shall be considered at a hearing attended by the claimant and the respondent may, but need not, attend and participate in the hearing.

(4) If the Chairperson decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified (and the Chairperson may extend time under rule 7).

THE RESPONSE TO THE CLAIM

Response.

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15.(1) The response to a claim, if any, shall be on a prescribed form and presented to the Tribunal within 21 days of the date that the copy of the claim form was sent by the Tribunal.

(2) A response form may include the response of more than one respondent if they are responding to a single claim and either they all resist the claim on the same grounds or they all do not resist the claim.

(3) A response form may include the response to more than one claim if the claims are based on the same set of facts and either the respondent resists all of the claims on the same grounds or the respondent does not resist any of the claims.

Rejection: form not used or failure to supply minimum information.

16.(1) The Tribunal shall reject a response if–

- (a) it is not made on a prescribed form; or
- (b) it does not contain all of the following information–
 - (i) the respondent's full name;
 - (ii) the respondent's address;
 - (iii) whether the respondent wishes to resist any part of the claim.

(2) A rejected response form shall be returned to the respondent with a notice of rejection explaining why it has been rejected. The notice shall explain what steps may be taken by the respondent, including the need (if appropriate) to apply for an extension of time, and how to apply for a reconsideration of the rejection.

Rejection: form presented late.

17.(1) A response shall be rejected by the Tribunal if it is received outside the time limit in rule 15(1) (or any extension of that limit granted within the original limit) unless an application for extension has already been made under rule 20 or the response includes or is accompanied by such an application (in which case the response shall not be rejected pending the outcome of the application).

(2) A rejected response form shall be returned to the respondent together with a notice of rejection explaining that the response has been presented

late. The notice shall explain how the respondent can apply for an extension of time and how to apply for a reconsideration of the rejection.

Sending response to claimants.

18. The Tribunal shall send a copy of the response to each claimant with a notice which includes information on whether any part of the response has been rejected by the Tribunal and, if so, a copy of the notice of rejection.

Reconsideration of rejection under rule 16.

19.(1) A respondent whose response has been rejected under rule 16 may apply for a reconsideration on the basis that the decision to reject was wrong or on the basis that any notified defect resulting in the rejection can be rectified.

(2) The application shall be in writing and presented to the Tribunal within 21 days of the date that the notice of rejection was sent. It shall explain why the decision is said to have been wrong or rectify the defect and it shall state whether the respondent requests a hearing.

(3) If the respondent does not request a hearing, or the Chairperson decides, on considering the application, that the response shall be accepted in full, the Chairperson shall determine the application without a hearing. Otherwise the application shall be considered at a hearing attended by the respondent and the claimant may, but need not, attend and participate in the hearing.

(4) If the Chairperson decides that the original rejection was correct but that the defect has been rectified, the response shall be treated as presented on the date of the application under subrule (2) (and the Chairperson may extend time under rule 7).

Applications for extension of time for presenting response.

20.(1) An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reasons why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible and if the respondent wishes to request a hearing this shall be requested in the application.

(2) The claimant may within 7 days of receipt of the application deliver to the Tribunal reasons in writing explaining why the application is opposed.

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(3) A Chairperson may determine the application without a hearing.

(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21(2) shall be set aside.

Effect of non-presentation or rejection of response, or case not contested.

21.(1) Where on the expiry of the time limit in rule 15(1) no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, subrules (2) and (3) shall apply.

(2) A Chairperson shall decide whether on the available material (which may include further information which the parties are required by a Chairperson to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Chairperson shall issue a judgment accordingly. Otherwise, a hearing shall be fixed.

(3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Chairperson.

EMPLOYER'S CONTRACT CLAIM**Making an employer's contract claim.**

22.(1) Any employer's contract claim shall be made as part of the response, presented in accordance with rule 15, to a claim which includes an employee's contract claim.

(2) An employer's contract claim may be rejected by the Tribunal on the basis that the Tribunal has no jurisdiction to consider the employer's contract claim or the employer's contract claim is in a form which cannot be sensibly be responded to or is otherwise an abuse of process, in which case notice of the rejection shall be sent to the respondent explaining why it has been rejected. The notice shall contain information about how to apply for a reconsideration of the rejection and rule 14 shall apply with any necessary changes.

Notification of employer's contract claim.

23. When the Tribunal sends the response to the claimants it shall notify the claimants that the response includes an employer's contract claim and

include information on how to submit a response to the claim, the time limit for doing so, and what will happen if a response is not received by the Tribunal within that time limit.

Responding to an employer's contract claim.

24. A claimant's response to an employer's contract claim shall be presented to the Tribunal within 21 days of the date that the response was sent to the claimant. If no response is presented within that time limit, rules 20 and 21 shall apply with any necessary changes.

CONCILIATION

Conciliation by Mediator.

25.(1) Where the Tribunal accepts a claim and response, it shall deliver copies of all of the accepted documents to a Mediator.

(2) For up to one calendar month commencing with the date on which the Tribunal delivers accepted documents to a Mediator, the Mediator shall endeavour to promote a settlement between the claimant and the respondent.

(3) The period for conciliation may be extended by a Mediator, provided that the claimant and respondent consent to the extension and the Mediator considers that there is a reasonable prospect of achieving a settlement before the expiry of the extended period.

(4) An extension under subrule (3) of the period for conciliation may only occur once and may be for up to a maximum of 2 months.

(5) Upon receipt of accepted documents from the Tribunal, the Mediator shall make reasonable attempts to contact the claimant.

(6) If the claimant consents to the Mediator contacting the respondent, the Mediator shall make reasonable attempts to contact the respondent.

(7) If the Mediator is unable to make contact with the claimant or respondent the Mediator shall conclude that settlement is not possible.

(8) If at any point during the period for conciliation, or during any extension of that period, the Mediator concludes that a settlement of a dispute, or part of it, is not possible, the Mediator shall issue a conciliation certificate.

(9) If the period for conciliation, including any extension of that period, expires without a settlement having been reached, the Mediator shall issue a conciliation certificate.

(10) A conciliation certificate shall contain–

- (a) the name and address of the claimant and respondent;
- (b) the date on which the Tribunal sent to the Mediator a copy of the accepted documents;
- (c) a confirmation from the Mediator whether the Mediator has had contact with the claimant and/or respondent; and
- (d) the date of issue of the conciliation certificate, which will be the date that the certificate is signed by the Mediator.

(11) Where the Mediator issues a conciliation certificate, the Mediator shall send a copy to the Tribunal on that day. The Tribunal will forward a copy of the conciliation certificate to the parties and to the Chairperson.

(12) Once a Mediator has received accepted documents from the Tribunal, the Mediator shall not preside as Chairperson of that case should the case proceed to hearing.

(13) A Mediator who is acting as Mediator in relation to a disputed matter that is the subject of a claim form and response that have been submitted to the Tribunal, may only decide matters in the case with the consent of the parties.

(14) Each party's representatives shall not be present during any discussions before the Mediator during the period for conciliation.

(15) All discussions between the parties before the Mediator shall be confidential and without prejudice to each of the parties.

INITIAL CONSIDERATION OF CLAIM FORM AND RESPONSE

Initial consideration.

26.(1) Upon the issue of a conciliation certificate by the Mediator, the Chairperson shall consider all of the documents held by the Tribunal in relation to the claim, to confirm whether there are arguable complaints and defences within the jurisdiction of the Tribunal (and for that purpose the Chairperson may order a party to provide further information).

(2) Except in a case where an order is made under rules 27 or 28, the Chairperson shall make a notice, direction or case management order (unless made already), which may deal with the listing of a preliminary or final hearing, and may propose other forms of dispute resolution.

(3) The Chairperson shall consider all the documents under subrule (1) without receipt of a conciliation certificate where—

- (a) another claimant (“A”) has complied with that requirement in relation to the same dispute and the claimant wishes to institute proceedings on the same claim form as A; or
- (b) where the requirement is complied with by another person instituting proceedings relating to the same matter.

(4) Where a claimant benefits from the exemption in subrule (3), the requirement for a conciliation certificate shall be treated as complied with for the purposes of any provision extending the time limit in relation to that matter.

Dismissal of claim (or part).

27.(1) If the Chairperson considers either that the Tribunal has no jurisdiction to consider the claim, or part of it, or that the claim, or part of it, has no reasonable prospect of success, is in a form which cannot sensibly be responded to or is otherwise an abuse of the process, the Tribunal shall send a notice to the parties—

- (a) ordering that the claim, or the part in question, shall be dismissed on such date as is specified in the notice; and
- (b) setting out the Chairperson’s reasons for the order; and
- (c) specifying the consequences of the dismissal of the claim in accordance with subrule 5 below,

unless before that date the claimant has presented written representations explaining why the claim (or part) should not be dismissed.

(2) If no such representations are received within the specified time, the claim, or part of it, shall be dismissed from the date specified without any further order (although the Tribunal shall write to the parties to notify them of the dismissal of the claim).

(3) If representations are received within the specified time they shall be considered by the Chairperson, who shall either permit the claim (or part) to

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proceed or fix a hearing for the purpose of deciding whether it should be permitted to do so. The respondent may, but need not, attend and participate in the hearing.

(4) If any part of the claim is permitted to proceed the Chairperson shall make a notice, direction or case management order (unless made already), which may deal with the listing of a preliminary or final hearing, and may propose other forms of dispute resolution.

(5) Where a claim, or part of it, is dismissed, the result shall be as if no claim, or part of it, had been presented.

Dismissal of response (or part).

28.(1) If the Chairperson considers that the response to the claim, or part of it, has no reasonable prospect of success, is in a form which cannot sensibly be responded to or is otherwise an abuse of the process the Tribunal shall send a notice to the parties—

- (a) ordering that the response, or the part in question, shall be dismissed on such date as is specified in the notice; and
- (b) setting out the Chairperson's reasons for the order; and
- (c) specifying the consequences of the dismissal of the response in accordance with subrule (5) below,

unless before that date the respondent has presented written representations explaining why the response (or part) should not be dismissed.

(2) If no such representations are received within the specified time, the response shall be dismissed from the date specified without any further order (although the Tribunal shall write to the parties to notify them of the dismissal of the response).

(3) If representations are received within the specified time they shall be considered by the Chairperson, who shall either permit the response (or part) to stand or fix a hearing for the purpose of deciding whether it should be permitted to do so. The claimant may, but need not, attend and participate in the hearing.

(4) If any part of the response is permitted to stand, the Chairperson shall make a notice, direction or case management order (unless made already), which may deal with the listing of a preliminary or final hearing, and may propose other forms of dispute resolution.

(5) Where a response, or part of it, is dismissed, the effect shall be as if no response, or part of it, had been presented, as set out in rule 21.

CASE MANAGEMENT ORDERS AND OTHER POWERS

Case management orders.

29.(1) The Tribunal may at any stage of the proceedings, on its own initiative or on application at a hearing or in writing to the Tribunal, make a case management order.

(2) The particular powers identified in the following rules do not restrict that general power.

(3) A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.

(4) Where a party applies in writing, they shall notify the other parties that any objections to the application should be sent to the Tribunal as soon as possible.

Disclosure of documents and information.

30. The Tribunal may order any person to disclose documents or information to a party (by providing copies or otherwise) or to allow a party to inspect such material as might be ordered by the Supreme Court.

Requirement to attend to give evidence.

31. The Tribunal may order any person to attend a hearing to give evidence, produce documents, or produce information.

Evidence from other EU Member States.

32. The Tribunal may use the procedures for obtaining evidence prescribed in Council Regulation (EC) No. 1026/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

Addition, substitution and removal of parties.

33. The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues

between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings and may remove any party.

Other persons.

34. The Tribunal may permit any person to participate in proceedings, on such terms as may be specified, in respect of any matter in which that person has a legitimate interest.

Lead cases.

35.(1) Where a Tribunal considers that two or more claims give rise to common or related issues of fact and/or law, the Tribunal may on its own initiative, or on the application of a party, make an order specifying one or more of those claims as a lead case and staying the other claims (“the related cases”).

(2) When the Tribunal makes a decision in respect of the common or related issues it shall send a copy of that decision to each party in each of the related cases and, subject to subrule (3), that decision shall be binding on each of those parties.

(3) Within 28 days after the date on which the Tribunal sent a copy of the decision to a party under subrule (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 or for any other reason does not proceed before the Tribunal makes a decision in respect of the common or related issues, it shall make an order as to—

- (a) whether another claim is to be specified as a lead case; and
- (b) whether any order affecting the related cases should be set aside or varied.

Striking out.

36.(1) At any stage of the proceedings, the Tribunal may, either on its own initiative or on the application of a party, strike out all or part of a claim or response on any of the following grounds—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;

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- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing and/or, if requested by the party, at a hearing and the other party may, but need not, attend and participate in the hearing.

(3) Where a claim is struck out, the effect shall be as if no claim had been presented.

(4) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21.

Unless orders.

37.(1) An order may specify that if it is not complied with by the date specified, the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties of the order for dismissal.

(2) A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the Tribunal in writing, within 21 days of the date that the order was sent, to have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing, the Tribunal may determine it on the basis of written representations.

(3) Where a claim is dismissed under this rule, the effect shall be as if no claim form had been presented.

(4) Where a response is dismissed under this rule, the effect shall be as if no response had been presented, as set out in rule 21.

RULES COMMON TO ALL KINDS OF HEARING

General.

38.(1) The Tribunal may regulate its own procedure and shall conduct hearings in the manner it considers fair, having regard to the principles contained in the overriding objective. The following rules do not restrict that general power.

(2) The Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence.

(3) The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

Written representations.

39. The Tribunal may, at its discretion, consider any written representations from a party, including a party who does not propose to attend the hearing, if they are delivered to the Tribunal and to all other parties not less than 14 days before the hearing.

Witnesses.

40.(1) Where a witness is called to give oral evidence, any witness statement of that person ordered by the Tribunal shall stand as that witness's evidence in chief unless the Tribunal orders otherwise.

(2) Witnesses shall be required to give their oral evidence on oath, affirmation or declaration.

(3) The Tribunal may exclude from the hearing any person who is to appear as a witness in the proceedings until such time as that person gives evidence if it considers it in the interests of justice to do so.

Inspection of witness statements.

41. Subject to rules 44 and 77, any witness statement which stands as evidence in chief shall be available for inspection during the course of the hearing by members of the public attending the hearing unless the Tribunal decides that all or any part of the statement is not to be admitted as evidence, in which case the statement or that part shall not be available for inspection.

Timetabling.

42. A 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.

Non-attendance.

43. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

Privacy and restrictions on disclosure.

44.(1) A Tribunal may at any stage of the proceedings, on its 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 considers necessary in the interests of justice or in order to protect the Constitutional rights of any person or to safeguard national security.

(2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Constitutional 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 anonymisation or redaction 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;
- (d) a restricted reporting order prohibiting the publication of identifying material.

(4) 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 revoked

or discharged, either on the basis of written representations or, if requested, at a hearing.

- (5) Where a restricted reporting order is made under subrule (3)(d)–
- (a) it shall 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 shall specify the duration of the order;
 - (c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on any notice board outside the venue 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 may order that it applies also to any other proceedings being heard as part of the same hearing.

WITHDRAWAL

End of claim.

45. Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make relating to costs.

Dismissal following withdrawal.

46. Where a claim, or part of it, has been withdrawn under rule 45, the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless–

- (a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so; or
- (b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.

PRELIMINARY HEARINGS

Scope of preliminary hearings.

47.(1) A preliminary hearing is a hearing at which the Tribunal may do one or more of the following–

- (a) conduct a preliminary consideration of the claim with the parties and make a case management order (including an order relating to the conduct of the final hearing);
- (b) determine any Preliminary Issue;
- (c) determine any interim issue which does not finally dispose of and is not capable of finally disposing of any claim or part of claim;
- (d) consider whether a claim or response, or any part, should be struck out under rule 36;
- (e) explore the possibility of settlement or alternative dispute resolution.

(2) There may be more than one preliminary hearing in any case.

(3) A Tribunal conducting a preliminary hearing may order that it be treated as a final hearing, or vice versa, if the Tribunal is satisfied that neither party shall be materially prejudiced by the change.

Fixing of preliminary hearings.

48.(1) A preliminary hearing may be directed at any time by the Tribunal on its own initiative or as the result of an application by a party.

(2) The Tribunal shall give the parties reasonable notice of the date of a preliminary hearing and in the case of a hearing involving any Preliminary Issues at least 21 days' notice shall be given and the notice shall specify the Preliminary Issues that are to be, or may be, decided at the hearing.

FINAL HEARING

Scope of final hearing.

49.(1) A final hearing is a hearing at which the Tribunal may determine the claim or such parts as remain outstanding.

(2) There may be different final hearings for different issues (for example, liability, remedy or costs).

Notice of final hearing.

50. The Tribunal shall give the parties not less than 21 days' notice of the date of a final hearing.

DECISIONS AND REASONS**Decisions made without a hearing.**

51. Decisions made without a hearing shall be communicated in writing to the parties, identifying the Chairperson who has made the decision.

Decisions made at or following a hearing.

52.(1) Where there is a preliminary hearing the Tribunal may either announce its decision in relation to any issue at the hearing or reserve it to be sent to the parties as soon as practicable in writing provided that it is sent no later than 3 months from the date of the last day of the hearing.

(2) Where there is a final hearing the Tribunal may either announce its decision at the hearing or reserve it to be delivered to the parties as soon as practicable in writing provided that it is sent no later than 3 months from the date of the last hearing.

(3) If the decision is announced at the hearing, a copy of the original written record (in the form of a judgment if appropriate) signed by the Chairperson shall be provided to the parties (and, where the proceedings were referred to the Tribunal by a court, to that court) as soon as practicable and no later than 3 months from the date of the hearing at which the decision was announced.

Reasons.

53.(1) The Tribunal shall give reasons for its decision on any disputed issue, whether substantive or procedural (including any decision on an application for reconsideration or for an order relating to costs).

(2) In the case of a decision given in writing the reasons shall also be given in writing.

(3) 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).

(4) Where reasons have been given orally, the Chairperson shall announce that reasons in writing will not be provided unless they are requested by any party at the hearing itself or in writing within 21 days of sending the written record of the decision. The written record of the decision shall repeat that information. If no such request is received, the Tribunal shall provide written reasons only if requested to do so by a court.

(5) Written reasons shall be signed by the Chairperson.

(6) The reasons given for any decision shall be proportionate to the significance of the issue and may be short.

(7) The reasons shall—

- (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.

(8) Where the judgment includes a financial award the reasons shall identify, by means of a table or otherwise, how the award has been calculated.

Consent orders and judgments.

54. If the parties agree upon the terms of any order or judgment and this agreement is communicated to the Tribunal, the Tribunal may, if it thinks fit, make such order or judgment, in which case it shall be identified as having been made by consent.

When a judgment or order takes effect.

55. A judgment or order takes effect from the day when it is given or made, or on such later date as specified by the Tribunal.

Time for compliance.

56. A party shall comply with a judgment or order for the payment of an amount of money within 21 days of the date of the judgment or order, unless—

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- (a) the judgment, order, or any of these Rules, specifies a different date for compliance; or
- (b) the Tribunal has stayed the proceedings or judgment.

The Register.

57. Subject to rules 44 and 77, copies of any order, decision, judgment and written reasons of the Tribunal shall be entered in the Register.

Copies of judgment for referring court.

58. Where the proceedings were referred to the Tribunal by a court a copy of any order, decision, judgment and written reasons of the Tribunal shall be provided to that court.

Correction of clerical mistakes and accidental slips.

59. A Chairperson may at any time correct any clerical mistake or other accidental slip or omission in any order, decision, judgment, written reasons or other document produced by a Tribunal. If such a correction is made, any published version of the document shall also be corrected. If any document is corrected under this rule, a copy of the corrected version, signed by the Chairperson, shall be sent to all the parties and entered in the Register, if applicable.

**COSTS ORDERS, PREPARATION TIME ORDERS AND WASTED
COSTS ORDERS**

Definitions.

60.(1) “Costs” means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing).

(2) “Legally represented” means represented by and/or having the assistance of a person who is entitled to practise in Gibraltar as a barrister or solicitor.

(3) “Represented by a lay representative” means represented by and/or having the assistance of a person not entitled to practise in Gibraltar as a barrister or solicitor (including an employee of a party).

(4) “Preparation time” means time spent by the receiving party (including by any employees or advisers) in working on the case, except for any time spent in respect of a final hearing.

Costs orders and preparation time orders.

61.(1) A costs order is an order that a party (“the paying party”) make a payment to–

- (a) another party (“the receiving party”) in respect of the costs that the receiving party has incurred whilst legally represented or whilst represented by a lay representative, as the case may be;
- (b) 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.

(2) A preparation time order is an order that a party (“the paying party”) make a payment to another party (“the receiving party”) in respect of the receiving party’s preparation time while not legally represented.

(3) A costs order under subrule (1)(a) and a preparation time order under subrule (2) may not both be made in favour of the same party in the same proceedings.

(4) A Tribunal may, if it wishes, decide in the course of the proceedings that a party is entitled to one order or the other but defer until a later stage in the proceedings deciding which kind of order to make.

When a costs order or a preparation time order may be made.

62.(1) A Tribunal may on its own initiative or on application make a costs order or a preparation time order, where it considers that–

- (a) a party (or that party’s representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or
- (b) any claim or response has no reasonable prospect of success.

(2) A Tribunal may also make a costs order or a preparation time order–

- (a) where a party has been in breach of any order or any of these Rules;
- (b) where a hearing has been adjourned or postponed on the application of or as a result of the conduct of a party.

(3) A Tribunal may make a costs order of the kind described in rule 61(1)(b) on the application of a party or the witness in question, or on its own initiative, where a witness has attended or has been ordered to attend to give oral evidence at a hearing.

Costs order procedure.

63.(1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which an order, decision or judgment finally determining the proceedings in respect of that party was sent to the parties.

(2) No costs order or preparation time order may be made unless the paying party has had a reasonable opportunity to make representations (in writing, at a hearing, or both as the Tribunal may order).

The amount of a costs order.

64.(1) A costs order may—

- (a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, 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 carried out by the Supreme Court in accordance with the Civil Procedure Rules as applied by section 38A of the Supreme Court Act, or by a 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 necessary and reasonably incurred expenses (of the kind described in rule 61(1)(b)); or
- (d) if the paying party and the receiving party agree as to the amount payable, be made in that amount.

(2) The amount of a costs order under subrules (1)(b) to (d) may exceed £20,000.

(3) Where a costs order includes an amount in respect of fees charged by a lay representative, the hourly rate applicable for the fees of the lay representative shall be no higher than the rate under rule 65(2).

The amount of a preparation time order.

65.(1) The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of—

- (a) information provided by the receiving party on time spent falling within rule 61(2); 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, but not limited to, the complexity of the proceedings, the number of witnesses and the documentation involved.

(2) The hourly rate is £33 and increases on 1 January each year with the general index of retail prices for Gibraltar.

(3) The amount of a preparation time order shall be the product of the number of hours assessed under subrule (1) and the hourly rate under subrule (2).

When a wasted costs order may be made.

66.(1) A Tribunal may make a wasted costs order against a legal representative or a lay representative in favour of any party ("the receiving party") where that party has incurred costs—

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of the 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 the receiving party to bear; and

costs so incurred are described as "wasted costs".

(2) A wasted costs order may be made in favour of a party irrespective of whether the party seeking the wasted costs order is legally represented and a wasted costs order may also be made against a representative in favour of their own client.

(3) A wasted costs order may not be made against a representative in favour of a receiving party where that representative is acting in his capacity as an employee of the receiving party.

Effect of a wasted costs order.

67. A wasted costs order may order the representative to pay the whole or part of any wasted costs of the receiving party, or disallow any costs otherwise payable to the representative, including an order that the representative repay any costs which have already been paid. The amount to be paid, disallowed or repaid shall in each case be specified in the order.

Procedure.

68.(1) A wasted costs order may be made by the Tribunal on its own initiative or on the application of any party. A party may apply for a wasted costs order at any stage up to 28 days after the date on which an order, decision or judgment finally determining the proceedings in respect of that party was sent to the parties.

(2) No wasted costs order shall be made unless the representative has had a reasonable opportunity to make representations (in writing and/or at a hearing, as the Tribunal may order).

(3) The Tribunal shall inform the representative's client in writing of any proceedings under this rule and of any order, decision or judgment made against the representative.

Ability to pay.

69. In deciding whether to make a costs, preparation time or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

DELIVERY OF DOCUMENTS**Delivery to the Tribunal.**

70.(1) Documents may be delivered to the Tribunal—

- (a) by post;
- (b) by direct delivery (including personal delivery and delivery by hand or same day courier or messenger service); or
- (c) by electronic communication.

(2) The Tribunal may from time to time notify of any change of address.

Delivery to parties.

71.(1) Documents may be delivered to a party (whether by the Tribunal or by another party)–

- (a) by post;
- (b) by direct delivery (including personal delivery and delivery by hand or same day courier or messenger service); or
- (c) by electronic communication.

(2) Documents shall be sent to a party at the address given in the claim form or response (which shall be the address of the party's representative, if one is named), or to a different address as notified in writing by the party in question.

(3) If both a postal address and one or more electronic addresses have been given in the claim form or response, any of them may be used unless the party has indicated in writing that a particular address should or should not be used.

Delivery to non-parties.

72. Documents shall be sent to non-parties at any address for service which they may have notified or otherwise at any known address or place of business in Gibraltar or, if the party is a corporate body, at its registered office in Gibraltar or, if permitted by the Tribunal, at any address outside Gibraltar.

Substituted service.

73. Where no address for service in accordance with rules 71 or 72 as the case may be is known or it appears that service at any such address has not and/or is unlikely to come to the attention of the addressee, the Chairperson may order that there shall be alternative or substituted service in such manner as appears appropriate.

Date of delivery.

74. Where a document has been sent in accordance with rules 70 or 71, it shall, unless the contrary is proved, be taken to have been received by the addressee–

- (a) if sent by the Royal Gibraltar Post Office, 1 clear working day after the day on which it was posted;

- (b) if sent by international post, 10 clear working days after the day on which it was posted or such other reasonable time as may be determined by the Tribunal;
- (c) if delivered directly, on the day of delivery;
- (d) if sent by electronic communication, on the day of transmission.

Irregular service.

75. A Tribunal may treat any document as delivered to a person, notwithstanding any non-compliance with rules 71 and 72 if satisfied that the document in question, or its substance, has in fact come to the attention of that person.

Applications and correspondence with the Tribunal and other parties.

76.(1) Where a party sends any communication to the Tribunal it shall also send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise).

(2) Subject to any case management or other order, decision, judgment and to any of these Rules, in respect of any hearing, the Tribunal shall consider any application in writing, any written representations or any other communication in writing from a party, including a party who does not propose to attend the hearing, if delivered to the Tribunal and to all other parties not less than 14 days before the hearing.

(3) The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.

MISCELLANEOUS**National security proceedings.**

77.(1) Where a Minister considers that it would be expedient in the interests of national security, a Minister may direct a Tribunal to—

- (a) conduct all or part of the proceedings in private;
- (b) exclude a person from all or part of the proceedings;
- (c) take steps to conceal the identity of any witness in the proceedings.

(2) Where the Tribunal considers it expedient in the interests of national security, it may order—

- (a) anything which can be required to be done under subrule (1);
- (b) a person not to disclose to any other person (save for any specified persons) any document (or the contents of any document) provided for the purposes of the proceedings

(3) Any order made by the Tribunal under subrule (2) shall be kept under review by the Tribunal.

(4) Where the Tribunal considers that it may be necessary to make an order under subrule (2), the Tribunal may consider any material provided by a party (or where a Minister is not a party, by a Minister) without providing that material to any other person. Such material shall be used by the Tribunal solely for the purposes of deciding whether to make that order (unless that material is subsequently used as evidence in the proceedings by a party).

(5) Where a Minister considers that it would be appropriate for the Tribunal to make an order under subrule (2), the Minister may make an application for such an order.

(6) Where a Minister has made an application under subrule (5), the Tribunal may order in relation to the part of the proceedings preceding the outcome of the application, anything which can be required to be done under subrule (2).

(7) Where a Minister has made an application under subrule (5) for an order to exclude any person from all or part of the proceedings, the Tribunal shall not send a copy of any document to that person, pending the decision on the application.

(8) If before the expiry of the time limit in rule 15(1) a Minister makes a direction under subrule (1) or makes an application under subrule (5), the Minister may apply for an extension of the time limit.

(9) A direction under subrule (1) or an application under subrule (5) may be made irrespective of whether or not the Minister is a party.

(10) Where the Tribunal decides not to make an order under subrule (2), the Tribunal shall send to the Minister a copy of any written reasons given under rule 53 unless the Tribunal considers it expedient in the interests of

national security to order that all or part of the written reasons be edited for anonymity or kept secret or disclosed only to specified persons.

(11) The Tribunal shall ensure that in exercising its functions, information is not disclosed contrary to the interests of national security.

Collective agreements.

78.(1) Where a claim includes a complaint under section 63(4) of the Equal Opportunities Act 2006 relating to a term of a collective agreement, the following persons, whether or not identified in the claim, shall be regarded as the persons against whom a remedy is claimed and shall be treated as respondents for the purposes of these Rules—

- (a) the claimant's employer (or prospective employer); and
- (b) every organisation of employers and organisation of workers, and every association of or representative of such organisations, which, if the terms were to be varied voluntarily, would be likely, in the opinion of a Chairperson, to negotiate the variation.

(2) An organisation or association shall not be treated as a respondent if the Chairperson, having made such enquiries of the claimant and such other enquiries as the Chairperson thinks fit, is of the opinion that it is not reasonably practicable to identify the organisation or association.

References to the Court of Justice of the European Union.

79. Where a Tribunal decides to refer a question to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union, a copy of that decision shall be sent to the registrar of that court.

Transfer of proceedings from a court.

80. Where proceedings are referred to a Tribunal by a court, these Rules apply as if the proceedings had been presented by the claimant.

Information to the Equal Opportunities Commission.

81. The Tribunal shall send to the Equal Opportunities Commission copies of all judgments and written reasons relating to complaints under the Equal Opportunities Act 2006.

Levy appeals.

82.(1) For the purposes of a levy appeal, references in these Rules to a claim or claimant shall be read as references to a levy appeal or to an appellant in a levy appeal respectively.

Appeals against improvement and prohibition notices.

83.(1) A person (“the appellant”) may appeal an improvement notice or a prohibition notice by presenting a claim to a Tribunal—

- (a) before the end of the period of 21 days from the date of its service on the appellant which is the subject of the appeal; or
- (b) within such further period as the Tribunal considers reasonable where it is satisfied that it was not reasonably practicable for an appeal to be presented within that time.

(2) For the purposes of an appeal against an improvement notice or a prohibition notice, these Rules shall be treated as modified in the following ways—

- (a) references to a claim or claimant shall be read as references to an appeal or to an appellant in an appeal respectively;
- (b) references to a respondent shall be read as references to the inspector appointed under section 77 of the Factories Act who issued the notice which is the subject of the appeal.

Conciliation: recovery of sums payable under compromises.

84.(1) Subrules (2) to (5) apply if—

- (a) a Mediator issues a conciliation certificate in writing stating that a compromise has been reached in the case, and
- (b) all of the terms of the compromise are set out in one or more relevant documents (that may include the conciliation certificate).

(2) Any sum payable by a person under the terms of the compromise (a “compromise sum”) shall, subject to subrules (3) to (6), be recoverable by execution issued from the Supreme Court as if the sum were payable under an order of the Supreme Court.

(3) A compromise sum is not recoverable under subrule (2) if—

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- (a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from them under the general law of contract; and
- (b) that declaration is made.

(4) If rules of court so provide, a compromise sum is not recoverable under subrule (2) during the period—

- (a) beginning with the issue of the conciliation certificate; and
- (b) ending at such time as may be specified in, or determined under, rules of court.

(5) If the terms of the compromise provide for the person to whom a compromise sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by them under subrule (2) only if the Tribunal or the Supreme Court so orders.

(6) Once an application has been made for a declaration under subrule (3) in relation to a sum, no further reliance may be placed on subrule (2) for the recovery of the sum while the application is pending.

(7) An application for a declaration under subrule (3) may be made to the Tribunal or the Supreme Court.

(8) Rules of court may make provision as to the time within which an application to the Supreme Court for a declaration under subrule (3) is to be made.

(9) Nothing in this rule shall be taken to prejudice any rights or remedies that a person has apart from this rule.

(10) In this rule “compromise” (except in the phrase “compromise sum”) means a settlement, or compromise, to avoid proceedings or bring proceedings to an end.

Repeal.

85. The Industrial Tribunal Rules are repealed.

Savings and transitional provisions.

86.(1) Notwithstanding the repeal of the Industrial Tribunal Rules (the repealed Rules), any complaint filed under the repealed Rules prior to the date of commencement of these Rules, which on the date of the

commencement of these Rules has not been determined, shall be determined in accordance with the provisions of the repealed Rules.

(2) Proceedings for an offence under the repealed Rules that had commenced before the commencement of these Rules shall continue under the repealed Rules as if they had not been repealed.

Enforcement.

87.(1) When the whole or any part of any sum ordered or awarded by the Tribunal has not been paid within 28 days of being ordered or awarded, or within such further time as the Tribunal may have allowed for payment, any person in whose favour the order or award was made may call upon the Tribunal to transmit the copies of the order or award to the Small Claims Court or the Supreme Court as applicable.

(2) Upon transmission in accordance with the provisions of subrule (1), the order or award shall be registered as an order or award of the Small Claims Court or the Supreme Court as applicable and may be enforced as if it had been a judgment of that Court.

(3) In this rule a reference to an order or award of a Tribunal–

- (a) does not include an order or award which, on being reviewed, has been revoked by the Tribunal, and
- (b) in relation to an order or award which on being reviewed, has been varied by the Tribunal, shall be construed as a reference to the order or award as so varied.