

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4964 GIBRALTAR Wednesday 1st June 2022

LEGAL NOTICE NO.136 OF 2022.

EMPLOYMENT ACT

EMPLOYMENT TRIBUNAL (CONSTITUTION AND PROCEDURE) (AMENDMENT) RULES 2022

In exercise of the powers conferred upon him under section 12 of the Employment Act, and of all other powers enabling him in that behalf, the Minister hereby makes the following rules.

Title.

1. These Rules may be cited as the Employment Tribunal (Constitution and Procedure) (Amendment) Rules 2022.

Commencement.

2. These Rules come into operation on the day of publication.

Amendment to the Employment Tribunal (Constitution and Procedure) Rules 2016.

3.(1) The Employment Tribunal (Constitution and Procedure) Rules 2016 are amended in accordance with the provisions of this rule.

(2) In Rule 5–

(a) For the title of Rule 5, substitute–

“Appointment and Revocation of Chairpersons and Mediators.”

(b) For Rule 5(3), substitute–

“(3) Upon receipt of a claim the secretary shall allocate the claim to the next available Mediator. Upon the Mediator issuing a conciliation certificate, the secretary shall allocate the claim to the President. If the President is unable to preside over the claim, the secretary shall allocate the claim to the next available Chairperson.”

(c) After Rule 5(3) insert a new Rule 5(4) as follows–

“(4) Any Chairperson or Mediator appointed under subrule (2) shall hold the position for a term of three years from the date of appointment, unless that Chairperson or Mediator dies, resigns in accordance with subrule (6), or his appointment is revoked under subrule (7) or (8).”

(d) After the new Rule 5(4) insert a new Rule 5(5) as follows—

“(5) A Chairperson or Mediator may be re-appointed in accordance with subrule (2).”.

(e) After the new Rule 5(5) insert a new Rule 5(6) as follows—

“(6) A person appointed as Chairperson or Mediator may resign by delivering a letter to that effect to the Minister provided that he shall not remove himself as a Chairperson or Mediator until after the expiration of three months from the time when he delivers the resignation letter to the Minister.”.

(f) After the new Rule 5(6) insert a new Rule 5(7) as follows—

“(7) The Minister, after consultation with the Judicial Service Commission, may only revoke the appointment of a Chairperson or a Mediator on the following grounds:

- (a) for neglect of duty;
- (b) for material breach of any term, condition or provision of any letter of appointment;
- (c) for incapacity or inability to perform the duties of Chairperson or Mediator by reason of illness or otherwise;
- (d) for incompetence;
- (e) if the person becomes bankrupt or insolvent; and
- (f) for conviction of a criminal offence.”.

(g) After the new Rule 5(7) insert a new Rule 5(8) as follows—

“(8) The appointment of a Chairperson or a Mediator may also be revoked if a complaint is sustained under Rule 88.”.

(h) After the new Rule 5(8) insert a new Rule 5(9) as follows—

“(9) The Minister, after consultation with the Judicial Service Commission, may only suspend a Chairperson or a Mediator pending an investigation or inquiry relating to a ground or grounds under subrule (7) or relating to a complaint under Rule 88.”.

(i) After the new Rule 5(9) insert a new Rule 5(10) as follows–

“(10) A Chairperson or a Mediator whose appointment has expired may be eligible for re-appointment except where–

- (a) the appointment has been revoked by virtue of subrule (7) or (8); or
- (b) the appointment would have expired but for his resignation by virtue of subrule (6).”.

(3) After Rule 5 insert a new Rule 5A as follows–

“Appointment of a secretary.

5A. The Minister may by notice in the Gazette appoint a secretary to the Tribunal.”.

(4) After Rule 87 insert a new Rule 88 as follows–

“Complaints.

88.(1) The Judicial Officers (Complaints) Regulations 2016 shall apply *mutatis mutandis* in so far as they may be applicable and with such modifications as the circumstances may require, provided that any reference to:

- (a) the “complaints officer” shall be construed as by reference to a person who shall be appointed by the Minister to be the complaints officer for the purpose of these Rules;
- (b) the “Supreme Court Registry” shall be construed as by reference to the Department of Employment;
- (c) the “Chief Justice” shall be construed as by reference to the Director of Employment;
- (d) the “President” shall be construed as by reference to the President as defined in these Rules;
- (e) the “Judicial Service Commission” shall be construed as by reference to a board comprised of three heads of different Government departments and Chief Executive Officers of different statutory authorities or agencies or their appointed representatives all of whom shall be appointed by the Minister;
- (f) a “nominated judge” or similar reference shall be construed as by reference to a head of a Government department or the Chief Executive Officer of a statutory authority or agency or their appointed representative who shall be appointed by the Minister provided that he has not been appointed to a board under subrule (1)(e);

- (g) an “investigating judge” shall be construed as by reference to a head of a Government department or the Chief Executive Officer of a statutory authority or agency or their appointed representative who shall be appointed by the Minister provided that he has not been appointed to a board under subrule (1)(e) or to carry out the functions of a “nominated judge” under subrule (1)(f);
- (h) the “Governor” shall be construed as by reference to the Minister;
- (i) a “Justice of the Peace”, “Justice of Appeal”, “Puisne Judge” or “Stipendiary Magistrate” is inapplicable;
- (j) a holder of a “judicial office” shall be construed as by reference to “junior judicial office”;
- (k) “senior judicial office” and “Schedule 1” is inapplicable;
- (l) a holder of a “junior judicial office” shall be construed as by reference to a Chairperson and a Mediator;
- (m) “judicial decision” shall be construed as by reference to a judgment as defined in these Rules; and
- (n) “judicial case management” shall be construed as by reference to a case management order as defined in these Rules.”.

Dated: 1st June 2022.

S LINARES,
Minister with responsibility for Employment.

EXPLANATORY MEMORANDUM

These Rules amend the Employment Tribunal (Constitution and Procedure) Rules 2016 by granting the Minister the power by notice in the Gazette to appoint a secretary to the Tribunal.

These Rules insert a provision to permit the Minister to revoke the appointment of a Chairperson or a Mediator on the prescribed grounds.

Further, these Rules insert a provision for the application of the Judicial Officers (Complaints) Regulations 2016 to apply *mutatis mutandis* under these Rules.