

April 2024

Tribunal Procedure Committee

Consultation on possible changes to the Employment Tribunal Rules

Introduction

1. The Tribunal Procedure Committee (“the TPC”) is the body that makes Rules that govern practice and procedure in the First-tier Tribunal and in the Upper Tribunal. The TPC is established under section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007 (“the TCEA”).
2. The Employment Tribunals and Employment Appeal Tribunal fall outside this unified tribunal system. Industrial Tribunals were created by the Industrial Training Act 1964. Their original jurisdiction was over appeals from the imposition of a levy by an industrial training board. The scope of their jurisdiction has increased significantly since then. The Employment Tribunals (as renamed in 1998) are now the main judicial forum for deciding disputes between workers and employers, including claims for unauthorised deductions of wages, unfair dismissal, discrimination, whistleblowing, redundancy and equal pay. Employment Tribunals also have jurisdiction over certain types of statutory appeal, such as appeals against health and safety improvement and prohibition notices. There are two different territorial jurisdictions: England & Wales, and Scotland.
3. More information about the Employment Tribunals is available at: <https://www.gov.uk/courts-tribunals/employment-tribunal>.
4. Appeals from the Employment Tribunals are generally heard by the Employment Appeal Tribunal. It also has a first instance jurisdiction over certain claims. More information about the Employment Appeal Tribunal is available at: <https://www.gov.uk/courts-tribunals/employment-appeal-tribunal>.
5. Historically, responsibility for procedural Rules within the Employment Tribunals has been held by the Department for Business & Trade and its predecessor departments. Responsibility for procedural Rules in the Employment Appeal Tribunal rests with the Lord Chancellor.
6. The Judicial Review and Courts Act 2022 made a number of amendments to the Employment Tribunals Act 1996, intended to transfer responsibility for making procedural Rules for the Employment Tribunals and Employment Appeal Tribunal to the TPC. In summary these provisions:
 - a. Amend sections 7 and 30 to provide that Procedural Rules are to govern the practice and procedure to be followed in the Employment Tribunals and the Employment Appeal Tribunal, respectively (*section 34(2) and (3)*);

- b. Insert a new section 37QA to provide that Procedural Rules are to be made by the TPC (*section 34(4)*), and
 - c. Insert a new Schedule A1 which makes further provision about what Procedural Rules may provide (*section 34(5) and Schedule 5, Part 1(1)*).
7. Schedule A1 requires that the TPC must exercise its power to make Procedural Rules with a view to securing—
 - a. that justice is done in proceedings before the tribunal;
 - b. that the tribunal system is accessible and fair;
 - c. that proceedings are handled quickly and efficiently;
 - d. that Procedural Rules are both simple and simply expressed, and
 - e. that Procedural Rules, where appropriate, confer responsibility on members of the tribunal for ensuring that proceedings before the tribunal are handled quickly and efficiently.
8. These requirements in Schedule A1 mirror those in section 22(4) of the TCEA that apply in relation to the other tribunals where the TPC is responsible for Rules.
9. When making Rules, the TPC seeks, among other things, to:
 - a. make the Rules as simple and streamlined as possible;
 - b. avoid unnecessarily technical language;
 - c. enable tribunals to continue to operate tried and tested procedures which have been shown to work well; and
 - d. adopt common Rules across tribunals where appropriate.
10. The TPC also has due regard to the public sector equality duty contained in section 149 of the Equality Act 2010 when making Rules.
11. Further information on the TPC can be found at our website:
<https://www.gov.uk/government/organisations/tribunal-procedure-committee>

Employment Tribunals Rules of Procedure

12. The Procedural Rules that apply in the Employment Tribunals are contained in the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (“the 2013 Regulations). They apply in both jurisdictions.
13. Most of the regulations deal with matters outside Procedural Rules. These include the establishment of the Employment Tribunals and some aspects of panel composition, together with the creation of judicial posts such as the President of Employment Tribunals in England & Wales, and the President of Employment Tribunals in Scotland.
14. The bulk of the Procedure Rules are contained in Schedule 1 to the 2013 regulations, which set out the Employment Tribunals Rules of Procedure. There are then additional

Rules in Schedule 2 (which deals with national security proceedings) and Schedule 3 (which deals with proceedings involving an equal pay claim based on work of equal value).

15. The form of the Regulations is therefore different to the approach taken within the Unified Tribunal structure, where matters of establishment, panel composition, etc are addressed in the TCEA (and regulations made under that Act), while the Procedural Rules are found in separate statutory instruments (made in accordance with Section 22 and Schedule 5, Part 3 of the TCEA).
16. A copy of the Employment Tribunal Rules, as amended, is available at:

<https://www.gov.uk/government/publications/employment-tribunal-procedure-Rules>

Employment Appeal Tribunal Rules

17. The Procedural Rules that apply in the Employment Appeal Tribunal are the Employment Appeal Tribunal Rules 1993.
18. A copy of the Employment Appeal Tribunal Rules, as amended, is available at:

<https://www.judiciary.uk/wp-content/uploads/2023/06/Employment-Appeal-Tribunal-Rules-1993-as-amended.pdf>

Background to this Consultation

19. The provisions relating to the transfer to the TPC of responsibility for rule-making have not yet been brought into force. The TPC has been told, however, that the government intends to bring those elements relating to the Employment Tribunals into force later in 2024. This is therefore a prospective consultation, setting out the Rules the TPC anticipates making after that transfer.
20. The focus of this consultation is on the Rules changes that will be required to give effect to the transfer and to move from the current Rules to Rules produced by the TPC. In broad terms, the TPC intends to do this by making new Rules that will, in substance, replicate the existing ones. The TPC expects these changes to come into force in Autumn 2024.
21. The TPC anticipates making a small number of significant changes, which are set out below. The drafting process will also require minor changes, such as removing redundant references and definitions, but these will not have any impact on the substance of the Rules.

22. Before setting out the detail of this consultation, it is useful to touch on a number of other matters that are relevant to the Employment Tribunals and Employment Appeal Tribunal Rules.

The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2024

23. On 13th March 2024 the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2024 were laid before Parliament. These Regulations make amendments to the existing Employment Tribunals Rules. These changes come into force on 6th April 2024, before responsibility for the Rules is transferred to the TPC.

24. The key amendments are as follows:

- a. A new Rule 15(2) that allows the Tribunal to direct that a new 28-day time limit applies for presentation of a response to a claim when a claim form is sent by the Tribunal to an address other than that provided on the claim form.
- b. An amendment to Rule 16 that allows a Practice Direction to prescribe how a response to a claim is presented (equivalent to the existing Rule 8(1) which makes identical provision in relation to the presentation of claims).
- c. An amendment to Rule 86 allowing the Tribunal to send the claim form to an additional address as well as that provided on the claim form.

Consultation on Introducing fees in the Employment Tribunals and the Employment Appeal Tribunal

25. On 29th January 2024 the government published a consultation on introducing fees in the Employment Tribunals and the Employment Appeal Tribunal. That consultation document can be found at: <https://www.gov.uk/government/consultations/introducing-fees-in-the-employment-tribunals-and-the-employment-appeal-tribunal>

26. The TPC has no role in any decision relating to the introduction of tribunal fees.

27. The TPC will consider appropriate Rules changes arising from any decision in relation to fees following the outcome of the government's consultation. The TPC's preliminary view is that the fees regime proposed by the government would not require an immediate change to the Rules, because the Rules relating to the previous fees regime are still in place.

28. Depending on the nature of any Rule changes the government's decision on fees may require, the work involved and any appropriate consultation, the TPC's indicative timetable set out below for other work might need to be adjusted.

The Employment Tribunals and Employment Appeal Tribunal (Composition of Tribunal) Regulations 2024

29. The Employment Tribunals and Employment Appeal Tribunal (Composition of Tribunal) Regulations 2024 make changes to the Rules of the Employment Tribunals and Employment Appeal Tribunal. Broadly, these replace references to specific roles within the Rules, such as ‘an Employment Judge’, with references to ‘the Tribunal’. This takes account of the fact that the Regulations allow for the Senior President of Tribunals to determine the composition of Employment Tribunals through Practice Direction.
30. These changes have not yet taken effect, because they will only apply once the Senior President of Tribunals has issued a relevant Practice Direction under the Regulations. The TPC is proceeding on the understanding that the Senior President of Tribunals intends to issue such a Practice Direction before the TPC expects to make Rules.
31. As with other Tribunals within the unified tribunal structure, the TPC does not have a role in determining panel composition, which is a matter for the Senior President of Tribunals.

Outline of the TPC’s future work on Employment Tribunals Rules and Employment Appeal Tribunal Rules over the next two years.

32. Following the transfer of responsibility and the initial remaking of the Rules, the TPC then anticipates further changes to the Employment Tribunals Rules, occurring over two tranches of work. Recent changes to the Employment Tribunals Rules have focused only on those changes viewed as most important or most urgent. The TPC’s view is that there are a number of areas where changes to the existing Rules should be considered.
33. The first tranche envisaged by the TPC, which is hoped will result in changes effective in April 2025, is likely to include consultation on the following possible changes:
- a. An amendment to Rule 3 to make express reference to the practice of holding preliminary hearings in the form of dispute resolution appointments, the subject of Presidential Guidance issued in July 2023;
 - b. An amendment to Rules 10-12 to clarify them in light of decisions of the Employment Appeal Tribunal on what information is required to be provided on a claim form and what the effect of any missing information is;
 - c. An amendment to Rule 13 to provide that where a minor defect is rectified the claim is treated as presented on the date it was originally presented. This would avoid administrative delays creating time limit issues;
 - d. An amendment to Rule 17 to require a response form to contain the grounds on which a claim is defended;
 - e. An amendment to Rules 23 - 25 about an employer’s contract claims to enable the Tribunal to waive the requirement for a notice and a response from the employee before the hearing can proceed;

- f. A new Rule creating a requirement for represented parties seeking an order to provide a draft of the order they want the Tribunal to make;
- g. An amendment to Rule 42 to clarify the position in relation to written representations in light of *Ibeziako v York Teaching Hospitals NHS Foundation Trust* [2021] UKEAT 2019-145;
- h. An amendment to Rule 50 to make clear that the Tribunal has power to order that addresses or personal details be redacted from claim and response forms and to bring the Rule in line with current case law;
- i. An amendment to Rule 56 to provide that case management hearings should be held in public unless there is good reason to keep them in private, in common with other jurisdictions, and in furtherance of the principle of open justice;
- j. An amendment to Rule 60 to make clear that legal officer judgments and orders can also be made without a hearing;
- k. An amendment to Rule 61 removing the requirement for each judgment or written record of a decision to be signed by the Employment Judge;
- l. An amendment to the reconsideration provisions to make clear that the decision to sift out a reconsideration application is an order, not a further judgment, and
- m. An amendment to the costs / expenses Rules to recognise the power to make pro bono costs orders pursuant to section 48 of the Judicial Review and Courts Act 2022.

34. The second tranche of changes, expected to take effect in October 2025, will be the subject of further consultation and may include the following:

- a. Redrafting of the provisions relating to judgments under Rule 21;
- b. An expansion of Rule 29 to give examples of specific case management powers which exist;
- c. A new Rule specifying the basis on which a claim or response form can be amended;
- d. Redrafting of Rule 38 on “unless orders”;
- e. Redrafting of Rule 39 on deposit orders, and
- f. Refinement of Rule 37 relating to striking out a claim or response form.

35. Responsibility for the Employment Appeal Tribunal Rules is not expected to transfer to the TPC at the same time as responsibility for the Employment Tribunals Rules. The TPC anticipates that it will be transferred at a later date, once some of the urgent work required on the Employment Tribunals Rules has been completed and the TPC is in a position to consider changes to the Employment Appeal Tribunal Rules.

36. At that stage the TPC expects to embark on a full update of the Employment Appeal Tribunal Rules. Although these have been amended since their introduction in 1993, there has been no equivalent of the Review of Employment Tribunals Rules of Procedure by Mr Justice Underhill (as he then was) which led to the 2013 Employment Tribunals Rules or the similar exercises that have occurred as other Tribunals have been incorporated into the structure of the First-tier Tribunal and Upper Tribunal.

This Consultation

Transfer of Rule-making power

37. As set out above, the current Employment Tribunals Rules are contained in Schedules to the 2013 Regulations. The amended Employment Tribunals Act 1996 does not provide for any regulation-making power and the TPC will not therefore, at any stage, be able to amend or revoke the 2013 Regulations, including its Schedules.
38. The TPC therefore expects that, following this consultation, it will coordinate with the Lord Chancellor, who will make a statutory instrument revoking the relevant parts of the 2013 Regulations at the same time that the TPC will make Rules. This will mean that the Employment Tribunals Rules 2013 will be revoked, but replaced immediately by the TPC's Rules.
39. The TPC does not anticipate making significant changes in relation to most of the existing Rules. On balance the TPC believes the existing Rules are working well. A fundamental rewriting of the Rules would be time-consuming and create significant disruption for Employment Tribunal users and the Tribunals themselves. The time required for such an exercise would also delay making changes which the TPC believes are both desirable and urgent.
40. The TPC therefore intends to largely re-make the Employment Tribunal Rules in their existing form at the point of transfer, in effect simply moving them from the Schedules to the 2013 Regulations to become TPC Rules.
41. Those parts of the 2013 Regulations that do not relate to procedural Rules will remain in place. Those regulations will remain the responsibility of the Department for Business & Trade.

Question 1: Do you agree with the TPC's proposed approach to the remaking of the Rules? If not, why not?

Schedules 2 & 3

42. The TPC has also considered how to approach the Rules currently found in Schedules 2 and 3.
43. Although the TPC considered seeking to incorporate Schedules 2 and 3 into the main body of the Rules, its preliminary view is that those Schedules should be retained in their existing form. As noted above, the TPC believes that, broadly, the Rules are working well. Significantly re-writing Schedules 2 and 3 would create disruption and additional administrative cost for both users of the Tribunals and the Employment Tribunals themselves. The TPC does not believe that any advantages of doing so would outweigh the costs at this time.

Question 2: Do you agree with the TPC's proposed approach to Schedules 2 & 3? If not, why not?

Procedural requirements currently contained in regulations

44. Although the vast majority of the Employment Tribunal Rules are contained in the Schedules to the 2013 Regulations, there are two points where Procedural Rules are found in the body of the 2013 Regulations: concerning legal officers and concerning prescribed forms. Regulations 10A and 10B provide for legal officers and their responsibilities. Regulation 12 provides for the Secretary of State to have power to prescribe forms to start proceedings in the Employment Tribunals and to respond to a claim.
45. Since, upon the transfer of responsibility for Rules, these will be matters for the TPC, rather than the Department for Business & Trade, they will need to be removed from the 2013 Regulations and placed in Rules. The TPC therefore expects that, at the point of transfer, these regulations will be revoked and the TPC will make equivalent Rules. The TPC is, however, seeking views about possible amendments to these Rules, which are set out below.

Legal officers

46. In the Employment Tribunals, staff who exercise some judicial functions (as distinct from staff with purely administrative responsibilities) are referred to as legal officers. Regulation 10A currently allows for the appointment of legal officers by the Lord Chancellor:

Legal officers

10A

- (1) The Lord Chancellor may appoint legal officers who may, in accordance with section 4(6B) of the Employment Tribunals Act, carry out such functions set out in regulation 10B as the Senior President of Tribunals shall authorise in a practice direction.
- (2) Within 14 days after the date on which a Tribunal sends notice of a decision made by a legal officers to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by an Employment Judge.
- (3) The Senior President of Tribunals must consult both Presidents before making a practice direction under paragraph (1).

47. Regulation 10B defines the responsibilities and powers of legal officers:

Responsibilities of legal officers

10B

- (1) In this regulation any reference to a Rule is a reference to the Rules of Procedure in Schedule 1.
- (2) For the purpose of any determination made under regulation 10B(3) any Rule mentioned in regulation 10B(3) must be read as though reference to the Tribunal or an Employment Judge includes reference to a legal officer.
- (3) The following are the matters that, subject to being authorised by a practice direction of the Senior President of Tribunals, may be determined by a legal officer—
 - (a) a referral under Rules 12(1)(c), (e) or (f);
 - (b) an application under Rule 20;
 - (c) an application under Rule 30—
 - (i) for an extension of time to comply with a case management order;
 - (ii) to which all parties agree, to amend a claim or response;
 - (iii) for additional information about another party's claim or defence;
 - (iv) for different claims to be considered together;
 - (d) an application under Rule 30A—
 - (i) which is made more than 7 days before the date on which the hearing begins; and
 - (ii) to which all parties consent;
 - (e) an application to which all parties agree for an order under Rule 36(1);
 - (f) an application under Rule 54 to which all parties agree, where the hearing sought would only determine matters under Rule 53(1)(a);
 - (g) confirmation of a stay (or in Scotland a sist) of the proceedings in the event of a respondent's compulsory liquidation or administration; and
 - (h) whether to dismiss a claim under Rule 52.

48. The Senior President of Tribunals has issued a Practice Direction authorising legal officers to undertake all the matters delegated by regulation 10B. That Practice Direction is available here:

<https://www.judiciary.uk/guidance-and-resources/practice-direction-authorising-legal-officers-of-the-employment-tribunals-england-and-wales-and-employment-tribunals-scotland-to-carry-out-specified-functions/>

49. Similar provisions exist in both the First-tier Tribunal and Upper Tribunal Rules, which all contain a Rule on delegation to staff. These follow a similar form. The example below is drawn from the First-tier Tribunal (Social Entitlement Chamber) Rules:

4 Delegation to staff

- (1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) or section 2(1) of the Courts Act 2003 (court officers, staff and services) may, if authorised by the Senior President of Tribunals under paragraph 3(3) of Schedule 5 to the 2007 Act, carry out functions of a judicial nature permitted or required to be done by the Tribunal.
 - (2) ...
 - (3) Within 14 days after the date on which the Tribunal sends notice of a decision made by a member of staff under paragraph (1) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge.
50. The regime currently applicable to the Employment Tribunals is therefore more restrictive than that in other Tribunals. Most significantly, the Senior President of Tribunal's powers of delegation are constrained by regulation 10B(3). In addition, in relation to the Employment Tribunals, the Senior President can only exercise that power through a Practice Direction, while the power of delegation elsewhere can be exercised through other means (and, in practice, is exercised through Practice Statements).
51. The TPC's preliminary view is that these greater restrictions in relation to the Employment Tribunals are not justified. In practice, they create obstacles to the appropriate deployment of legal officers within the Employment Tribunals. At present, changing how legal officers are used would require an amendment to regulation 10B, followed by the issuing of a Practice Direction. Although the Presidents of Employment Tribunals have wished to expand the use of legal officers for some time, the requirement for an amendment to the 2013 Regulations has prevented this. The TPC would expect that, in the future, Rules amendments could be made more quickly through the TPC, although any change to the Rules is likely to require at least six months.
52. The TPC is therefore considering making two changes in a new Rule relating to delegation to legal officers. The first possible change is to extend the Senior President of Tribunals' power to delegate so that any judicial function may be delegated to a legal officer, subject to a right for any decision of a legal officer to be considered afresh by a Judge. This would harmonise the approach within the Employment Tribunals with that in other Tribunals. It would also allow for a more flexible use of legal officers.
53. The second proposed change is to remove the requirement that the Senior President of Tribunals exercise this power to delegate through a Practice Direction. In practice, the

TPC anticipates that this would mean delegation would occur through a Practice Statement, as it does in other Tribunals.

54. The main distinction between a Practice Direction and Practice Statement in this context is that the Senior President of Tribunals is required to obtain the Lord Chancellor's approval before issuing a Practice Direction (see section 7A Employment Tribunals Act 1996). There is no similar requirement in relation to a Practice Statement.
55. Retaining the requirement that delegation occur through a Practice Direction would therefore include a further step before extending the use of delegation by the Senior President of Tribunals. It could be argued that this might act as a check on the use of delegation by the Senior President of Tribunals, and that the greater procedural formality of a Practice Direction might foster careful thought about its future use.
56. However, the TPC is not aware of any significant criticism of the way that the Senior President of Tribunals uses the power of delegation to staff in other Tribunals through Practice Statements without these safeguards.
57. Making those changes would produce a Rule as follows:

Delegation to staff

- (1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) or section 2(1) of the Courts Act 2003 (court officers, staff and services) may, if authorised by the Senior President of Tribunals under paragraph 2(3) of Schedule A1 to the Employment Tribunals Act, carry out functions of a judicial nature permitted or required to be done by the Tribunal.
- (2) Within 14 days after the date on which the Tribunal sends notice of a decision made by a member of staff under paragraph (1) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge.
58. Since the Presidents of the Employment Tribunals wish to expand the use of legal officers within the Employment Tribunals, the TPC believes that it is likely that, if the Rule is amended as above, the Senior President of Tribunals' authorisation will grant a wider delegation than regulation 10B currently permits.
59. In particular, the TPC expects that the Senior President of Tribunals would be asked to authorise legal officers to deal with the following:
- a. A range of early conciliation issues under current Rule 12 going beyond those authorised by the current regulation;
 - b. Directing re-service of a claim form with a new 28 day time limit;
 - c. Extending or shortening time limits specified in the Rules or in a Tribunal decision, such as extending time to present a response to a claim or extending time to comply with case management orders made by the Tribunal to exchange documents, agree a bundle or provide witness statements;

- d. Requiring parties to provide further information about a claim or response, without an application having been made;
- e. Ordering different claims to be combined and heard together, where no application to do so has been made.
- f. Granting applications to amend a claim or response, where no party has objected to the amendment, and
- g. Postponing hearings where a Rule 21 judgment is to be issued.

60. The TPC notes that there will remain significant limits on the powers of legal officers. In particular, the Rules will continue to provide that any party may apply for any decision taken by a legal officer to be considered afresh by a judge. Should concerns be raised about the operation of this Rule the TPC can review it, as it does in relation to similar Rules in the First-tier Tribunal and Upper Tribunal.

Question 3: Do you agree that the Rules should give the Senior President power to delegate any judicial function under the Rules to staff, subject to a fresh consideration by a Judge? If not, why not?

Question 4: Should the Rules require that the Senior President of Tribunals' power of delegation be exercised through a Practice Direction? If so, why?

Question 5: Do you have any other comment on this draft Rule?

Prescribed forms

61. Regulation 12 of the 2013 Regulations allows the Secretary of State to prescribe forms to start and respond to claims to the Employment Tribunals.

- (1) The Secretary of State may prescribe—
 - (a) one or more versions of a form which shall be used by claimants to start proceedings in a Tribunal;
 - (b) one or more versions of a form which shall be used by respondents to respond to a claim before a Tribunal; and
 - (c) that the provision of certain information on the prescribed forms is mandatory.

- (2) It is not necessary to use a form prescribed under paragraph (1) if the proceedings are—
 - (a) referred to a Tribunal by a court;
 - (b) proceedings in which a Tribunal will be exercising its appellate jurisdiction;
 - or
 - (c) proceedings brought by an employer under section 11 of the Employment Rights Act 1996.

(3) The Secretary of State shall publish the prescribed forms in an appropriate manner to bring them to the attention of prospective claimants, respondents and their advisers.

62. The effect of this provision and the prescription of forms by the Secretary of State, is that in the Employment Tribunals claims or responses may only be presented on the forms prescribed by the Secretary of State.
63. It is unusual for there to be a statutorily prescribed form for initiating or responding to a matter in the First-tier Tribunal or Upper Tribunal. The Rules require certain information to be provided and forms are produced by HMCTS to facilitate that. But their use is not required by the Rules or by any other statute or statutory instrument. The statutory requirement in the Employment Tribunals, however, is well established and generally valued. The TPC does not therefore propose any change to the current position.
64. In practice, almost all claim forms are now presented to the Employment Tribunals through the online system. Once an online form is used, the distinction between a form that is mandated by regulation and one that is not has little practical meaning. Any online form is, in practice, mandatory because only what is provided by the online system is available. It will remain possible to submit physical claim forms by post. But the widespread use of the online form means that the distinction between a statutorily prescribed paper form and one that is simply provided by HMCTS to facilitate claims being presented will have limited impact in practice.
65. The TPC anticipates replicating the existing regulation 12 as a new Rule within the remade Rules. The TPC does, however, wish to consult on a possible change to move the power to prescribe forms from the Secretary of State to the Presidents of Employment Tribunals.
66. The TPC's preliminary view is that, once the Secretary of State no longer has responsibility for the Rules in the Employment Tribunal, retaining the power to prescribe the forms used in the Employment Tribunal would be anomalous.
67. The Presidents already have power under Rule 8 to specify in a Practice Direction how the prescribed form shall be presented to the Employment Tribunals in order to commence a claim. Enabling such a Practice Direction also to prescribe the form itself appears appropriate.

Question 6: Do you agree with the TPC's proposal to remake regulation 12, while moving the power to prescribe the claim and response forms from the Secretary of State to the Presidents of Employment Tribunals in each jurisdiction? If not, why not?

Rule 99 Transfer of Proceedings between Scotland and England & Wales

68. The Employment Tribunals in Scotland and the Employment Tribunals in England and Wales are separate jurisdictions. Rule 8 prescribes when a claim may be presented in

each jurisdiction. Broadly, that can be done if the respondent resides or carries on business in that jurisdiction, one or more of the acts or omissions complained of took place in the jurisdiction, or the claim relates to a contract under which the work has been performed partly in that jurisdiction. Many cases could therefore be commenced in either jurisdiction.

69. Rule 99 governs the transfer of cases between the two jurisdictions. It currently provides as follows:

(1) The President (England and Wales) or a Regional Employment Judge may at any time, on their own initiative or on the application of a party, with the consent of the President (Scotland), transfer to a Tribunal office in Scotland any proceeding started in England and Wales which could (in accordance with Rule 8(3)) have been started in Scotland and which in that person's opinion would more conveniently be determined there.

(2) The President (Scotland) or the Vice President may at any time, on their own initiative or on the application of a party, with the consent of the President (England and Wales), transfer to a Tribunal office in England and Wales any proceeding started in Scotland which could (in accordance with Rule 8(2)) have been started in England and Wales and in that person's opinion would more conveniently be determined there.

70. The TPC is considering an amendment to this Rule to provide that the transfer into either jurisdiction can be done with the consent of the receiving jurisdiction's President or Vice President. At the moment only the President may consent to the transfer. This is unnecessary and can create operational delays when the President is on leave or unavailable.

Question 7: Do you agree with the proposed changes to Rule 99? If not, why not?

How to Respond

Contact Details

Please reply using the response questionnaire template.

Please send your response by **26 June 2024** by email to:

Email: tpcsecretariat@justice.gov.uk

Extra copies of this consultation document can be obtained using the above contact details or online at: [Possible changes to the Employment Tribunal Rules - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/possible-changes-to-the-employment-tribunal-rules)