Tribunal Procedure Committee

March 2025

Consultation on potential further changes to the Employment Tribunal Procedure Rules 2024.

Questionnaire

We would welcome responses to the following questions set out in the consultation paper. Please return the completed questionnaire by **19 May 2025** to one of the following:

a. Email: tpcsecretariat@justice.gov.uk

b. Post: Tribunal Procedure Committee
Administration of Justice Directorate
Policy, Communications and Analysis Group
Ministry of Justice
Post Point: Area 5.20
102 Petty France
London
SW1H 9AJ

Respondent name	Emma-Jane Gunda, Compliance Officer on behalf of The Faculty of Advocates.
Organisation	The Faculty of Advocates

Question 1: Do you agree with the proposed changes to rule 4 and the proposed rule 52(1)(f)? If not, why not?

Comments to Question 1:

No. The presidential guidance referred to does not extend to Scotland. That was presumably the result of a conscious decision by the president not to issue guidance which mirrored the position in England & Wales. There is a concern that the proposed change would empower Employment Judges in Scotland to do something for which there is no presidential guidance. The TPC should be mindful of the fact Scotland is a distinct legal jurisdiction to England & Wales and sensitive to codifying changes which only reflect the underlying position in the larger jurisdiction.

DRAs are something of an unknown quantity to many of the advocates practicing in this area. Although many advocates do maintain a cross-border practice, this tends to make up a smaller portion of case holdings. DRAs should (in principle) make little difference in cases where parties are represented (as the views expressed by the judge should not be radically different from the advice given). The rules as they stand reflect the position in Scotland and we do not believe they should be altered.

Question 2: Do you agree with the proposed changes to rule 13(1)(b) and rule 18(1)? If not why, not?

Comments to Question 2:

Rule 18(1)(b)(iii):
There is no objection in principle to the need for clarity. There are some concerns as to the use of the definite article (“the grounds”), and we believe this should be removed and the amendment should instead simply read “and, if so, grounds on which the respondent resists the claim”. The use of the definite article sets a higher bar for responses than it does for claims (which will only be rejected where it contains “no grounds”) and may hamper the flexibility of the respondent to provide further particularization of their response throughout the lifecycle of the claim (as the inclusion of further or better specified grounds would imply the original claim form did not contain “the grounds”).

Question 3: Do you agree with the proposed amendment to rule 26? If not, why not?

Comments to Question 3:

Yes, although we question the necessity of adding in the proposed Rule 26(2)(d). Rule 6 already enables the Tribunal to take "such actions as it considers just" in the event of non-compliance with the Rules, which in our view would encapsulate the proposed new Rule. Further, we note that Rule 22(2) only requires judgement to be issued "to the extent a determination can be made". We question whether, in the context of competing contractual claims, a determination could be made on only a counterclaim and so question whether this arises in practice. Additionally, Rule 22(3) allows the non-compliant party (here the Claimant) to participate in any hearing to the extent permitted to do so by the Tribunal. That seems to operate in a similar fashion to the proposed additional rule. In the context of competing claims, and the significant discretionary powers already available to the Tribunal, we wonder if the Rules as currently drafted give rise to any issues which need resolved.

Question 4: Do you agree with the proposed rule 30(4)? If not, why not?

Comments to Question 4:

Yes, although again we question the necessity of codifying this. Directing parties to prepare a draft order is, in our view, well within the case management powers afforded to the Tribunal under Rule 30(1). We also note that the Consultation proceeds on the basis of English and Welsh practice and a comparison with the Civil Procedure Rules. Being asked by the bench to supply a draft order is not a common practice in Scotland, and we query again whether sufficient heed is being paid to the different jurisdictions the Employment Tribunals operate within, particularly given that we do not see the proposed rule being necessary.

Question 5: Do you agree with the proposed change to rule 65? If not, why not?

Comments to Question 5:

Yes, we agree with the proposed change to rule 65 as it appears to be a necessary change to close a loophole in the rules to ensure that Employment Judges are not having to write further reconsideration decisions that have already been previously decided**.**