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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**TRIBUNALS AND INQUIRIES**

**The Employment Tribunals and the Employment Appeal  
Tribunal Fees Order 2013**

*Made* - - - - - \*\*\*  
*Coming into force* - - - - - \*\*\*

The Lord Chancellor makes the following Order with the consent of the Treasury in exercise of the powers conferred by sections 42(1)(d) and (2) and 49(3) of the Tribunals, Courts and Enforcement Act 2007(a).

The Lord Chancellor has consulted the Senior President of Tribunals and the Administrative Justice and Tribunals Council in accordance with section 42(5) before making this Order.

In accordance with section 49(5), a draft of this Order was laid before and has been approved by a resolution of each House of Parliament.

**PART 1**

**General**

**Citation and commencement**

1. This Order may be cited as the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 and shall come into force on the day after the date on which it is made.

**Interpretation**

2. In this Order—

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“appellant” means a person who appeals to the Employment Appeal Tribunal against a decision of an employment tribunal;

“claim” means any proceedings brought before an employment tribunal and includes an appeal, application, complaint, reference or question, and “claimant” shall be construed accordingly;

“claim form” means the form by means of which a person presents a claim;

“employer’s contract claim” means a claim brought by an employer in accordance with articles 4 and 8 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994(a) or articles 4 and 8 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994(b);

“fee group” means—

- (a) in relation to the payment of the issue fee, the group of persons named as claimants in the claim form at the time the claim was presented;
- (b) subject to article 12(2), in relation to the payment of a hearing fee, the group of persons each of whom—
  - (i) were named as claimants in the claim form at the time the claim was presented; and
  - (ii) are named as claimants in the notification of the listing of the final hearing.

“final hearing” means the first hearing at which an employment tribunal will determine liability, remedy or costs;

“notice of appeal” means the notice referred to in rule 3(1)(a) of the Employment Appeal Tribunal Rules 1993(c); and

“single claimant” means a claimant who is the only claimant named in the claim form.

### **Matters in relation to which fees are payable**

3. Fees are payable in respect of any claim presented to an employment tribunal, or an appeal to the Employment Appeal Tribunal, as provided for in this Order.

## **PART 2**

### **Fees in employment tribunals**

#### **Fee charging occasions**

4.—(1) A fee is payable by a single claimant or a fee group—

- (a) when a claim form is presented to an employment tribunal (“the issue fee”); and
- (b) on a date specified in a notice accompanying the notification of the listing of a final hearing of the claim (“the hearing fee”).

(2) A fee is payable by the party making an application listed in column 1 of Schedule 1 on a date specified by the Lord Chancellor in a notice following the making of the application.

(3) A fee of £600 is payable by the respondent on a date specified in a notice accompanying a notification of listing for judicial mediation.

#### **Fees payable**

5. Table 1 in Schedule 2 has effect for the purpose of defining expressions used in Table 2 in that Schedule.

6. The issue fee and hearing fee payable by a single claimant in respect of a claim listed in Table 2 in Schedule 2 (“a type A claim”) is the amount specified in column 2 of Table 3 in Schedule 2.

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(a) S.I. 1994/1623, as amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 2004/752 and S.I.2011/1133.

(b) S.I.1994/1624, as amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 2004/752 and S.I.2011/1133.

(c) S.I 1993/2854 as amended by S.I.1996/3216, section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I.2001/1128, S.I.2004/2526, S.I.2004/3426, S.I.2005/1871, section 59(5) of, and paragraph 5 of Part 3 of Schedule 11 to, the Constitutional Reform Act 2005 (c.4), and S.I.2010/1088.

7. The issue fee and hearing fee payable by a single claimant in respect of any claim other than one listed in Table 2 in Schedule 2 (“a type B claim”) is the amount specified in column 3 of Table 3 in Schedule 2.

8. Subject to articles 9 and 10, the issue fee and hearing fee payable by a fee group is the amount calculated by reference to Table 4 in Schedule 2.

9. Subject to article 10, where, on the date on which a fee is payable in accordance with article 4, the claim form contains—

- (a) one or more type A claim and one or more type B claim, the total amount of the fees payable in respect of all the claims is the fee specified in respect of a type B claim; or
- (b) more than one claim of the same type, then the total amount of the fees payable in respect of all the claims is the amount specified in Table 3 or, in the case of a fee group, Table 4 in Schedule 2 for that type of claim.

10. Any fee payable by a fee group under article 8 or 9—

- (a) must not exceed an amount equal to the sum of the fees which the members of the fee group would have been liable to pay as single claimants; and
- (b) where one or more members of the group is entitled to remission in accordance with Schedule 3, must not exceed an amount equal to the sum of the fees which the members of the fee group would be liable to pay as single claimants, taking into account any remission which would have been granted to individual members of the group if they were single claimants.

11.—(1) The fee payable in relation to an application listed in column 1 of Schedule 1, irrespective of the number of claims or of claimants named in the application is the amount specified in the relevant part of column 2 of Schedule 1.

(2) Where an application referred to in paragraph (1) is made in respect of one or more type A claims and one or more type B claims, the amount of the fee payable in respect of the application is the amount specified in column 2 of Schedule 1 in respect of a type B claim.

### **Fee group – failure to pay fee**

12.—(1) Where a fee payable by a fee group remains unpaid after the date specified in accordance with article 4, a member of that fee group may, before the date on which the claim to which the fee relates is liable to be struck out for non payment, notify the Lord Chancellor of that member’s decision no longer to be part of the group.

(2) Where a notice is received by the Lord Chancellor before the date on which the claim is liable to be struck out, the member of the fee group who has given the notification shall be treated as a single claimant for the purposes of the claim to which the notice referred to in paragraph (1) relates.

## **PART 3**

### **Fees in the Employment Appeal Tribunal**

#### **Fees payable**

13. A fee of £400 is payable by an appellant on the date specified in a notice issued by the Lord Chancellor, following the receipt by the Employment Appeal Tribunal of a notice of appeal.

14. A fee of £1200 is payable by an appellant on the date specified in a notice issued by the Lord Chancellor, following a direction by the Employment Appeal Tribunal that a matter proceed to an oral hearing at which the appeal is to be finally disposed of.

## PART 4

### Transitional arrangements, remission etc

#### Transitional arrangements

15. No fee is payable in respect of a claim where the claim form was presented before the date this Order comes into force.

16. No fee is payable in respect of proceedings in the Employment Appeal Tribunal where a notice of appeal was received by that Tribunal before the date on which this Order comes into force.

#### Remission provisions

17.—(1) Schedule 3 applies for the purposes of determining whether a person is entitled to a remission or part remission of any fee otherwise payable under this Order.

(2) Where an application for remission is made by a member of a fee group, Schedule 3 is to have effect for the purposes of determining whether or not the member of the group would be entitled to remission (whether wholly or in part) if that person was a single claimant.

18. The Lord Chancellor may disregard an application for remission by a member of a fee group if the amount of the fee payable by the fee group would not be altered in consequence of the application being granted.

#### International obligations

19. Where by any Convention, treaty or other instrument entered into by Her Majesty with any foreign power it is provided that no fee is required to be paid in respect of any proceedings, the fees specified in this Order are not payable in respect of those proceedings.

Signed by authority of the Lord Chancellor

Date

*Name*  
Parliamentary Under Secretary of State  
Ministry of Justice

We consent,

Date

*Name*  
*Name*  
Two of the Lords Commissioners of Her Majesty's Treasury

## SCHEDULE 1

Articles 4 and 11

### Employment tribunals – other fees

#### Fee(s) payable by applicant

<i>Column 1</i>	<i>Column 2</i>	
<i>Type of application</i>	<i>Type A claim</i>	<i>Type B claim</i>
Reconsideration of a default judgment	£100	£100
Reconsideration of a judgment following a final hearing	£100	£350

Dismissal following withdrawal	£60	£60
An employer's contract claim made by way of application as part of the response to the employee's contract claim	£160	-

## SCHEDULE 2

Articles 4 to 9

### Employment tribunals – issue and hearing fee

**Table 1 - abbreviations used in Table 2 in this Schedule**

CAR	Civil Aviation (Working Time) Regulations 2004(a)
CCBR	Companies (Cross-Border Mergers) Regulations 2007(b)
CEC	Colleges of Education (Compensation) Regulations 1975(c)
COMAH	Control of Major Accident Hazards Regulations 1999(d)
EA 2006	Equality Act 2006(e)
EA 2010	Equality Act 2010(f)
EAA	Employment Agencies Act 1973(g)
ECSR	European Cooperative Society (Involvement of Employees) Regulations 2006(h)
EJOs	Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994(i); and Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994(j)
EOR	Ecclesiastical Offices (Terms of Service) Regulations 2009(k)
ELLR	European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009(l)
ERA	Employment Rights Act 1996(m)
ETA	Employment Tribunals Act 1996(n)
FVR	Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004(o)
HSCE	Health and Safety (Consultation with Employees) Regulations 1996(p)
HSWA	Health and Safety at Work etc Act 1974(q)

- (a) S.I. 2004/756 as amended by S.I. 2008/960 and S.I. 2010/1226.  
(b) S.I. 2007/ 2974 as amended by S.I. 2008/583, S.I. 2009/3348, S.I. 2010/93, S.I. 2011/1606; S.I. 2009/317 and SI 2011/245.  
(c) S.I. 1975/1092 as amended by S.I. 1981/1088 and section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8).  
(d) S.I. 1999/743 as amended by section 328(7) of the Greater London Authority Act 1999 (c.29), S.I. 2002/2469, S.I. 2005/1088, S.I. 2008/960, S.I. 2008/1087 and S.I. 2009/1595.  
(e) 2006 c.3  
(f) 2010 c.15  
(g) 1973 c.35  
(h) S.I. 2006/2059 as amended by S.I. 2009/3348 and S.I. 2010/93.  
(i) S.I. 1994/1623 as amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 2004/752 and S.I.S.I.2011/1133.  
(j) S.I. 1994.1624, as amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 2004/752 and S.I. 2011/1133.  
(k) S.I. 2009/2108 as amended by S.I. 2010/2407 and S.I. 2010/2848.  
(l) S.I. 2009/2401 as amended by S.I. 2010/93.  
(m) 1996 c.18  
(n) 1996 c.17  
(o) 2004/1713 as amended by S.I. 2009/3348.  
(p) S.I.1996/1513 as amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 1999/3242 and S.S.I. 2006/457.  
(q) 1974 c.37

ICR	Information and Consultation of Employees Regulations 2004(a)
ITA	Industrial Training Act 1982(b)
MSR	Merchant Shipping (Working Time: Inland Waterways) Regulations 2003(c)
NMWA	National Minimum Wage Act 1998(d)
OPR	Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006(e)
OPS(CO)R	Occupational Pension Schemes (Contracting-Out) Regulations 1996(f)
OPS(DI)R	Occupational Pensions Schemes (Disclosure of Information) Regulations 1996(g)
PSA	Pension Schemes Act 1993(h)
REACHER	REACH Enforcement Regulations 2008(i)
RTR	Road Transport (Working Time) Regulations 2005(j)
SRSC	Safety Representatives and Safety Committees Regulations 1977(k)
TULR(C)A	Trade Union and Labour Relations (Consolidation) Act 1992(l)
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006(m)
WTR	Working Time Regulations 1998(n)

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- (a) S.I.2004/3426 as amended by S.I. 2006/514, S.I. 2006/2405, S.I. 2009/3348 and S.I. 2010/93.
- (b) 1982 c.10
- (c) S.I.2003/3049 as amended by S.I. 2006/3223 and S.I. 2009/3348.
- (d) 1998 c.39
- (e) S.I. 2006/349 as amended by S.I. 2006/778, S.I. 2007/814, S.I. 2007/3014, S.I. 2009/615, S.I. 2009/3348, S.I. 2010/499, S.I. 2011/672 and S.I. 2012/692.
- (f) S.I. 1996/1172 as amended by S.I. 1996/1577, S.I. 1997/786, S.I. 1997/819, S.I. 1997/3038, S.I. 1998/1397, section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 1999/3198, S.I. 2000/2975, S.I. 2001/943, S.I. 2002/681, S.I. 2005/706, S.I. 2005/2050, S.I. 2005/3377, S.I. 2006/744, S.I. 2006/778, S.I. 2006/1337, S.I. 2007/60, S.I. 2007/814, S.I. 2007/834, S.I. 2007/1154, S.I. 2007/3014, S.I. 2008/2301, S.I. 2009/598, S.I. 2009/615, S.I. 2009/846, S.I. 2009/2930, S.I. 2010/499, S.I. 2011/1245, S.I. 2011/1246, S.I. 2011/1294, S.I. 2012/542, S.I. 2012/1817; modified by S.I. 1996/1977 and S.I. 2012/687.
- (g) S.I. 1996/1655 as amended by S.I. 1997/786, S.I. 1997/3038, section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 1999/3198, S.I. 2000/1403, S.I. 2000/2691, S.I. 2002/459, S.I. 2002/1383, S.I. 2005/704, S.I. 2005/706, S.I. 2005/2877, S.I. 2005/3377, section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c.11), S.I. 2006/467, S.I. 2006/1733, S.I. 2007/60, S.I. 2007/814, S.I. 2008/649, S.I. 2008/2301, S.I. 2009/598, S.I. 2009/615, S.I. 2009/1906, S.I. 2010/2659, S.I. 2011/1245, S.I. 2011/1246, S.I. 2012/1811, S.I. 2012/1817 and modified by S.I. 2011/673.
- (h) 1993 c.48
- (i) S.I. 2008/2852 as amended by S.I. 2009/716, S.I. 2010/1513, S.I. 2011/3058 and S.I. 2012/632.
- (j) S.I. 2005/639 as amended by S.I. 2007/853 and S.I. 2012/991.
- (k) S.I. 1977/500 as amended by S.I. 1992/2051, S.I. 1996/1513, section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), S.I. 1999/860, S.I. 1999/2024, S.I.1999/3242, S.I. 2005/1541, S.I. 2006/594, S.I. 2008/960, S.I. 2012/199 and S.I. 2006/457.
- (l) 1992 c.52
- (m) S.I. 2006/246 as amended by S.R. 2006/177, S.I. 2009/592, S.I. 2010/93; modified by section 2 of and paragraph 2 of Schedule 2 to the Ordnance Factories and Military Services Act 1984 (c.59), section 1(4) to (9) of the Dockyard Services Act 1986 (c.52), section 2 of the Atomic Weapons Establishment Act 1991 (c.41) and by section 9 of the Export and Investment Guarantees Act 1991 (c.67).
- (n) S.I. 1998/1833 as amended by S.I. 1999/3242, S.I. 1999/3372, S.I. 2001/3256, S.I. 2002/3128, S.I. 2003/1684, S.I. 2003/3049, S.I. 2004/1713, S.I. 2004/2516, S.I. 2005/2241, S.I. 2006/99, S.I. 2006/557, S.I. 2006/594, S.I. 2006/2389, S.I. 2007/2079, S.I. 2008/960, S.I. 2008/1660, S.I. 2008/1696, S.I. 2009/1567, S.I. 2009/2766, S.I. 2009/3348 and S.I. 2011/1133.

**Table 2****Type A claims**

<i>Column 1 Description of claim</i>	<i>Column 2 Provision identifying the rights of the claimant</i>	<i>Column 3 Provision conferring jurisdiction on tribunal</i>
Application by the Secretary of State to prohibit a person from running an Employment Agency	Sections 3A EAA(a)	Sections 3A EAA
Application by a person subject to a prohibition order to vary or set it aside	Section 3C EAA	Section 3C EAA
Appeal against improvement or prohibition notice	Section 24 HSWA(b)	Section 24 HSWA
Appeal against assessment of training levy	Section 12 ITA(c)	Section 12 ITA
Complaint of deduction of unauthorised subscriptions	Section 68 TULR(C)A(d)	Section 68A TULR(C)A(e)
Complaint relating to failure to deduct or refuse to deduct an amount to a political fund	Section 86 TULR(C)A	Section 87 TULR(C)A(f)
Complaint that an employer has failed to permit time off for carrying out trade union duties	Section 168 TULR(C)A(g)	Section 168 TULR(C)A
Complaint that an employer has failed to permit time off for union learning representatives	Section 168A TULR(C)A(h)	Section 168A TULR(C)A

(a) 1973 c.35; sections 3A and 3C were inserted by section 35 of, and paragraph 1(3) of Schedule 10 to, the Deregulation and Contracting Out Act 1994 (c.40) which was amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

(b) 1974 c.37; section 24 amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

(c) 1982 c.10; section 12 was amended by section 22(4) of, and paragraph 11 of Schedule 4 to, the Employment Act 1989 (c.8) and sections 25(6) and 29 of, and paragraphs 1 and 4 of Schedule 1 to, the Further Education and Training Act 2007(c.25) and section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

(d) 1992 c.52; section 68 was substituted first by section 15 of the Trade Union Reform and Employment Rights Act 1993 (c.19) which was then substituted by article 2(1) of S.I. 1998/1529.

(e) Section 68A was inserted by section 15 of the Trade Union Reform and Employment Rights Act 1993 (c.19) and amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), S.I.1998/1529 and section 240 of, and paragraph 56(1) and (4) of Schedule 1 to, the Employment Rights Act 1996 (c.18).

(f) Section 87 was substituted by section 6 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

(g) Section 168 was amended by S.I.1995/1925, S.I.2006/246 and section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

(h) Section 168A was inserted by section 43 of the Employment Act 2002 (c.10).

Complaint that an employer has failed to pay for time off for union learning representatives	Section 169 TULR(C)A(a)	Section 169 TULR(C)A
Complaint that an employer has failed to permit time off for trade union activities	Section 170 TULR(C)A(b)	Section 170 TULR(C)A
Complaint that employer has failed, wholly or in part, to pay remuneration under a protective award	Section 190 TULR(C)A(c)	Section 192 TULR(C)A(d)
Complaint that the Secretary of State has not paid, or has paid less than, the amount of relevant contributions which should have been paid into a pension scheme	Section 124 PSA(e)	Section 126 PSA
Breach of contract, except where the employer's contract claim is made by way of application as part of the employer's response to the employee's contract claim (as to which, see instead article 4 and Schedule 1 to this Order)		Section 3 ETA(f); Articles 3 and 4 of each of the EJOs
Reference to determine what particulars ought to be included in a statement of employment particulars or changes to particulars	Sections 1 and 4 ERA	Section 11 ERA(g)
Reference to determine what particulars ought to be included in an itemised pay statement	Section 8 ERA	Section 11 ERA
Complaint of unauthorised deductions from wages	Section 13 ERA	Section 23 ERA(h)
Complaint that employer has received unauthorised payments	Section 15 ERA	Section 23 ERA

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- (a) Section 169 was amended by section 43 of the Employment Act 2002 (c.10) and section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).
- (b) Section 170 was amended by section 43 of the Employment Act 2002 (c.10) and section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).
- (c) Section 190 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), sections 34 and 51 of, and Schedule 10 to, the Trade Union Reform and Employment Rights Act 1993 (c.19) and by section 240 of, and paragraph 56(1) and (14) of Schedule 1 to, the Employment Rights Act 1996 (c.18).
- (d) Section 192 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by S.I. 1998/1658.
- (e) 1993 c.48; section 124 was amended by section 90 of the Pensions Act 1995 (c.26), section 240 of, and paragraph 61(1) and (3) of Schedule 1 to, the Employment Rights Act 1996 (c.18) and by section 319(1) of, and paragraphs 9 and 20 of Schedule 12 to the Pensions Act 2004 (c.35).
- (f) 1996 c.18; section 3 was amended by sections 35, 36 and 54 of, and Schedule 8 to, the Employment Act 2002 (c.10).
- (g) 1996 c.18; section 11 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by S.I. 2011/1133.
- (h) Section 23 was amended by sections 1(2) and 15 of, and paragraph 18 of Schedule 1 to, the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by S.I. 2011/1133.

Complaint that employer has failed to pay guaranteed payment	Section 28 ERA	Section 34 ERA(a)
Complaint that employer has failed to permit time off for public duties	Section 50 ERA(b)	Section 51 ERA(c)
Complaint that employer has refused to permit, or has failed to pay for, time off to look for work or arrange training	Sections 52 and 53 ERA	Section 54 ERA(d)
Complaint that employer has refused to allow, or has failed to pay for, time off for ante-natal care	Sections 55(e), 56, 57ZA and 57ZB(f) ERA	Sections 57(g) and 57ZC (h)ERA
Complaint that employer has refused to allow time off for dependants	Section 57A ERA(i)	Section 57B ERA(j)
Complaint that employer has failed to allow, or to pay for, time off for trustee of pension scheme	Sections 58(k) and 59 ERA	Section 60 ERA(l)

- (a) Section 34 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by S.I. 2011/1133.
- (b) Section 50 was amended by section 134(1) of, and paragraph 88 of Schedule 9 to, the Police Act 1997 (c.50), S.I. 2000/90, S.I. 2000/1737, S.I. 2000/2463, section 60(2) of the Standards in Scotland's Schools etc Act 2000 (c.6), S.I. 2001/2237, S.I. 2002/808, S.I.2002/2469, section 34 of, and paragraphs 99 and 100 of Schedule 4 to, the Health and Social Care (Community Health and Standards) Act 2003 (c.43), sections 59 and 174 of, and paragraphs 84 and 86 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c.15), section 2 of, and paragraphs 177 and 179 of Schedule 1 to, the National Health Service (Consequential Provisions) Act 2006 (c.43), section 52 of, and paragraph 31 of Schedule 14 and Part 1(B) of Schedule 15 to, the Police and Justice Act 2006 (c.48), S.I. 2007/961, S.I. 2007/1837 section 39 of, and paragraph 8 of Schedule 3 to, the Offender Management Act 2007 (c.21), S.I. 2010/1080, S.I. 2010/1158, S.I.2011/2581, section 99 of, and paragraph 219 of Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c.13 ), section 11 of, and paragraph 24 of Schedule 2 to the Education Act 2011 (c.21) and sections 55, 179, 249 and 277 of, and paragraphs 72 and 74 of Schedule 5, paragraphs 68 and 69 of Schedule 14, paragraph 6 of Schedule 17, paragraph 6 of Schedule 19 to, the Health and Social Care Act 2012 (c.7).
- (c) Section 51 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by S.I. 2011/1133.
- (d) Section 54 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by S.I. 2011/1133.
- (e) Section 55 was amended by S.I. 2002/53 and S.I. 2004/1771.
- (f) Sections 57ZA and 57ZB were inserted by S.I.2010/93.
- (g) Section 57 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by S.I. 2011/1133.
- (h) Section 57ZC was inserted by S.I.2010/93.
- (i) Section 57A was inserted by section 8 of, and Part II of Schedule 4 to, the Employment Relations Act 1999 (c.26) and amended by section 261 of, and paragraph 151 of Schedule 27 to, the Civil Partnership Act 2004 (c.33).
- (j) Section 57B was inserted by section 8 of, and Part II of Schedule 4 to, the Employment Relations Act 1999 (c.26) amended by S.I.2011/133.
- (k) Section 58 was amended by section 18 of, and paragraph 19 of Schedule 2 to, the Welfare Reform and Pensions Act 1999 (c.30), section 320 of, and Part 1 of Schedule 13 to, the Pensions Act 2004 (c.35) and section 44 of, and paragraph 12 of Schedule 3 to, the Teaching and Higher Education Act 1998 (c.30).
- (l) Section 60 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

Complaint that employer has failed to allow, or to pay for, time off for employee representative	Sections 61(a) and 62 ERA	Section 63 ERA(b)
Complaint that employer has failed to allow, or to pay for, time off for young people in Wales and Scotland	Section 63A(c) and 63B(d) ERA	Section 63C ERA(e)
Complaint that employer has failed to pay for time off on medical or maternity grounds	Sections 64(f), 68(g) and 68C(h) ERA	Sections 70(i) and 70A(j) ERA
Complaint that employer has failed to allow time off for studies or training or the refusal is based on incorrect facts	Section 63D to 63H ERA(k)	Section 63I ERA(l)
Complaint that employer has unreasonably failed to provide a written statement of reasons for dismissal or the particulars are inadequate or untrue	Section 92 ERA(m)	Section 93 ERA(n)
Reference in respect of a right to redundancy payment	Section 135 ERA	Sections 163(o) and 177(p) ERA
Reference related to payment out of National Insurance Fund	Section 166 ERA(q)	Section 170 ERA
References related to payments equivalent to redundancy payments	Sections 167, 168 and 177 ERA	Section 177 ERA

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- (a) Section 61 was amended by S.I. 1999/1925 and S.I.2006/246.
- (b) Section 63 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and S.I. 2011/1133.
- (c) Section 63A was inserted by section 32 of the Teaching and Higher Education Act 1998 (c.30) and amended by section 39 of the Education and Skills Act 2008 (c.25) and by section 149 of, and paragraphs 1 and 50 of Schedule 9 to the Learning and Skills Act 2000 (c.21).
- (d) Section 63B was inserted by section 33 of the Teaching and Higher Education Act 1998 (c.30).
- (e) Section 63C was inserted by section 33 of the Teaching and Higher Education Act 1998 (c.30) and amended by S.I.2011/1133.
- (f) Section 64 was amended by S.I.1999/3232.
- (g) Section 68 was modified in its application by S.I.2003/1964 and S.I.2006/1073.
- (h) Section 68C was inserted by S.I.2010/93.
- (i) Section 70 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and S.I. 2011/1133. It has also been modified in its application by S.I.2003/1964 and S.I.2006/1073.
- (j) Section 70A was inserted by S.I.2010/93.
- (k) Sections 63D to 63H were inserted by section 40 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22).
- (l) Section 63I was inserted by section 40 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) and amended by S.I.2011/1133.
- (m) Section 92 was substituted in part by S.I.2002/2034 and amended by section 9 of, and paragraphs 5 and 12 of Schedule 4 to, the Employment Relations Act 1999 (c.26), sections 53 and 57 of, and paragraph 28 of Schedule 1 and paragraphs 24 and 31 of Schedule 7 to, the Education Act 2002 (c.32) and S.I. 2012/989. It has also been modified in its application by S.I.2003/1964 and S.I. 2006/1073.
- (n) Section 93 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8). It has also been modified in its application by S.I.2003/1964 and S.I. 2006/1073.
- (o) Section 163 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by section 7 of the Employment Act 2008 (c.24).
- (p) Section 177 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).
- (q) Section 170 was amended by section 1(2) of the of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

Complaint that the Secretary of State has failed to make any, or insufficient, payment of out the National Insurance Fund	Section 182 ERA	Section 188 ERA(a)
Appeal against a notice of underpayment	Section 19C NMWA(b)	Section 19C NMWA
Appeal against a notice issued by the Commission for Equality and Human Rights where the notice relates to an unlawful act	Section 21 EA 2006(c)	Section 21 EA 2006
Complaint that prospective employer made enquiries about disability or health	Section 60 EA 2010	Section 120 EA 2010
Application in relation to the effect of a non-discrimination rule in an occupational pension scheme	Section 61 EA 2010	Section 120 EA 2010
Complaint in relation to a breach of a sex equality clause	Section 66 EA 2010	Section 127 EA 2010
Complaint in relation to a breach of, or application in relation to the effect of, a sex equality rule in an occupational pension scheme	Section 67 EA 2010	Section 127 EA 2010
Complaint in relation to a breach of a maternity equality clause	Section 73 EA 2010	Section 127 EA 2010
Complaint in relation to a breach of, or application in relation to the effect of, a maternity equality rule in an occupational pension scheme	Section 75 EA 2010	Section 127 EA 2010
Complaint in relation to terms prohibiting discussions about pay	Section 77 EA 2010	Section 120 EA 2010
Complaint that a term in a collective agreement is void or unenforceable	Section 145 EA 2010	Section 146 EA 2010
Appeal of decision of compensating authority	Regulation 42 CEC	Regulation 42 CEC
Complaint that employer has failed to pay for remunerated time off for safety representative	Regulation 4(2) of, and Schedule 2 to, the SRSC	Regulation 11 SRSC

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- (a) Section 188 was amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).
- (b) 1998 c.39; section 19C inserted by section 46 of the Employment Relations Act 2004 (c.24) and substituted by section 9 of the Employment Act 2008 (c.24).
- (c) 2006 c.3; section 21 amended by section 211(1) of, and paragraphs 61 and 67 of Schedule 26 to the Equality Act 2010 (c.15) (as amended by S.I.2010/2279).

Reference that there has been a failure to consult with employee representatives about contracting out of pension scheme	Regulation 4 OPS(CO)R and regulation 9 of OPS(DI)R	Regulation 4 OPS(CO)R and regulation 9 of OPS(DI)R
Complaint that employer has failed to pay for time off to carry out Safety Representative duties or undertake training	Regulation 7 of, and Schedule 1 to, the HSCE	Schedule 2 to the HSCE
Complaint that employer has refused to allow annual leave, compensation, payment, compensatory rest	Regulations 13, 13A, 14, 16, 24, 24A, 27 and 27A WTR	Regulation 30 WTR
Appeal against improvement or prohibition notice	Paragraph 6 of Schedule 3 to WTR	Paragraph 6 of Schedule 3 to WTR
Appeal against improvement or prohibition notice	Regulation 18 COMAH	Regulation 18 COMAH
Complaint in relation to refusal of annual leave or to make payment	Regulation 11 MSR	Regulation 18 MSR
Complaint in relation to refusal to provide paid annual leave	Regulation 4 CAR	Regulation 18 CAR
Complaint in relation to failure to provide free health assessments	Regulation 5 CAR	Regulation 18 CAR
Complaint in relation to refusal of annual leave or to make payment	Regulation 11 FVR	Regulation 19 FVR
Complaint that employer has refused to allow or failed to pay for time off for information and consultation or negotiating representatives	Regulations 27 and 28 ICR	Regulation 29 ICR
Appeal against improvement notice	Paragraph 6(2) of Schedule 2 to the RTR	Paragraph 6(2) of Schedule 2 to the RTR
Complaint in relation to failure of employer to inform or consult	Regulation 13 TUPE	Regulation 15 TUPE
Complaint that employer has failed to allow, or pay for, time off for functions as employee representative	Paragraphs 2 and 3 of the Schedule to OPR	Paragraph 4 of the Schedule to OPR
Complaint that employer has failed to allow, or pay for, time off for members of special negotiating body	Regulations 28 and 29 ECSR	Regulation 30 ECSR
Complaint that employer has failed to allow, or pay for, time off for members of special negotiating body	Regulations 43 and 44 CCBR	Regulation 45 CCBR
Appeal against notice from Health and Safety Executive or a local authority	Regulation 21 and Part 2 of Schedule 8 to REACHER	Regulation 21 and Part 2 of Schedule 8 to REACHER

Reference to determine what particulars ought to be included in an itemised statement of stipend	Regulation 6 EOR	Regulation 9 EOR
Reference to determine what particulars ought to be included in a statement of particulars or changes to particulars	Regulations 3 and 6 EOR	Regulation 9 EOR
Complaint that employer has failed to allow, or pay for, time off for members of special negotiating body	Regulations 26 and 27 ELLR	Regulation 28 ELLR

**Table 3**

**Amount of fee - claim made by a single claimant**

<i>Column 1</i> <i>Fee type</i>	<i>Column 2</i> <i>Type A claim</i>	<i>Column 3</i> <i>Type B claim</i>
1. Issue fee	£160	£250
2. Hearing fee	£230	£950

**Table 4 Amount of fee – fee group**

**Part A - Type A claim**

<i>Column 1</i> <i>Type of fee</i>	<i>Column 2</i> <i>Number of claimants/amount of fee</i>		
	<i>2-10</i>	<i>11-200</i>	<i>Over 200</i>
Issue fee	£320	£640	£960
Hearing fee	£460	£920	£1380

**Part B – type B claim**

<i>Column 1</i> <i>Type of fee</i>	<i>Column 2</i> <i>Number of claimants/ amount of fee</i>		
	<i>2-10</i>	<i>11-200</i>	<i>Over 200</i>
Issue fee	£500	£1,000	£1,500
Hearing fee	£1900	£3,800	£5,700

**SCHEDULE 3**

Article 17

**Remissions and Part Remissions**

**Interpretation**

1.—(1) In this Schedule—

“child” means a child or young person in respect of whom a party is entitled to receive child benefit in accordance with section 141, and regulations made under section 142, of the Social Security Contributions and Benefits Act 1992(a);

(a) 1992 c.4

“child care costs” has the meaning given in Part 3 of the Criminal Legal Aid (Financial Resources) Regulations 2013(a);

“couple” has the meaning given in section 3(5A) of the Tax Credits Act 2002(b);

“disposable monthly income” has the meaning given in paragraph 5;

“excluded benefits” means—

(a) any of the following benefits payable under the Social Security Contributions and Benefits Act 1992—

(i) attendance allowance paid under section 64;

(ii) severe disablement allowance;

(iii) carer’s allowance;

(iv) disability living allowance;

(v) constant attendance allowance paid under section 104 as an increase to a disablement pension;

(vi) council tax benefit;

(vii) any payment made out of the social fund;

(viii) housing benefit;

(b) any direct payment made under the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009(c), the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011(d), or section 12B(1) of the Social Work (Scotland) Act 1968(e);

(c) a back to work bonus payable under section 26 of the Jobseekers Act 1995(f);

(d) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(g);

(e) any pension paid under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pension Order 2006(h);

(f) any payment made from the Independent Living Funds; and

(g) any financial support paid under an agreement for the care of a foster child;

“gross annual income” means total annual income, for the 12 months preceding the application for remission or part remission, from all sources other than receipt of any of the excluded benefits;

“gross monthly income” means total monthly income, for the month in which the application for remission or part remission is made, from all sources other than receipt of any of the excluded benefits;

“the Independent Living Funds” means any payment made from the funds listed at regulation 20(2)(b) of the Criminal Legal Aid (Financial Resources) Regulations 2013;

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(a) S.I. 2013/471

(b) 2002 c.21. Section 3(5A) was inserted by paragraph 144 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

(c) S.I. 2009/1887

(d) S.I. 2011/831

(e) 1968 c. 49; section 12B was inserted by section 4 of the Community Care (Direct Payments) Act 1996 (c. 30). Subsection (1) was amended by section 7 of the Community Care and Health (Scotland) Act 2002 (asp 5) and section 70 of the Regulation of Care (Scotland) Act 2001 (asp 8).

(f) 1995 c.18. Section 26 has been amended but none of those amendments are relevant to this Order.

(g) S.I. 1983/686 as amended by S.I. 1983/1164, S.I. 1983/1540, S.I. 1984/1289, S.I. 1984/1675, S.I. 1985/1313, S.I. 1986/628, S.I. 1987/191, S.I. 1988/367, S.I. 1988/2260, section 123 of, and paragraph 3 of Schedule 8 to, the Criminal Justice Act 1988 (c.33), S.I. 1989/415, S.I. 1990/1300, S.I. 1991/708, S.I. 1992/702, S.I. 1992/3226, S.I. 1993/480, S.I. 1994/715, S.I. 1994/2021, S.I. 1995/445, S.I. 1997/812, S.I. 1999/262, S.I. 2001/420, S.I. 2002/672, S.I. 2004/717, S.I. 2005/655, S.I. 2005/3031, S.I. 2006/765, S.I. 2007/646, S.I. 2008/592, S.I. 2008/2683, S.I. 2009/438, S.I. 2010/283, S.I. 2010/1172, S.I. 2011/811, S.I. 2011/1740, S.I. 2012/670 and modified by S.I. 2005/3137.

(h) S.I. 2006/606 amended S.I. 2006/1455, S.I. 2007/909, S.I. 2008/679, S.I. 2008/2683, S.I. 2009/706, S.I. 2010/240, S.I. 2011/235, S.I. 2011/1740 and S.I. 2012/359.

“partner” means a person with whom the party lives as a couple and includes a person with whom the party is not currently living but from whom the party is not living separate and apart;

“party” means the individual who would, but for this Schedule, be liable to pay the fee required under this Order.

(2) Paragraphs 2, 3 and 4 do not apply to a party for whom civil legal services, for which a certificate has been issued under the Civil Legal Aid (Procedure) Regulations 2012(a), have been made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(b) for the purposes of the proceedings.

#### **Full remission of fees—qualifying benefits**

2.—(1) No fee is payable under this Order if, at the time when a fee would otherwise be payable, the party is in receipt of a qualifying benefit.

(2) The following are qualifying benefits for the purposes of sub-paragraph (1)—

- (a) income support under the Social Security Contributions and Benefits Act 1992;
- (b) working tax credit, provided that no child tax credit is being paid to the party;
- (c) income-based jobseeker’s allowance under the Jobseekers Act 1995;
- (d) guarantee credit under the State Pension Credit Act 2002(c); and
- (e) income-related employment and support allowance under the Welfare Reform Act 2007(d).

#### **Full remission of fees—gross annual income**

3.—(1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the party has the number of children specified in column 1 of the following table and—

- (a) if the party is single, the gross annual income of the party does not exceed the amount set out in the appropriate row of column 2; or
- (b) if the party is one of a couple, the gross annual income of the couple does not exceed the amount set out in the appropriate row of column 3.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Number of children of party</i>	<i>Single</i>	<i>Couple</i>
no children	£13,000	£18,000
1 child	£15,930	£20,930
2 children	£18,860	£23,860
3 children	£21,790	£26,790
4 children	£24,720	£29,720

(2) If the party has more than 4 children then the relevant amount of gross annual income is the amount specified in the table for 4 children plus the sum of £2,930 for each additional child.

#### **Full and part remission of fees—disposable monthly income**

4.—(1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the disposable monthly income of the party is £50 or less.

(2) The maximum amount of fee payable is—

- 
- (a) S.I. 2012/3098
  - (b) 2012 c. 10
  - (c) 2002 c.16
  - (d) 2007 c.5

- (a) if the disposable monthly income of the party is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of the party's disposable monthly income up to a maximum of £50; and
- (b) if the disposable monthly income is more than £210, an amount equal to £50 plus one-half of every £10 over £200 of the party's disposable monthly income.

(3) Where the fee that would otherwise be payable under this Order is greater than the maximum fee which a party is required to pay as calculated in sub-paragraph (2), the fee will be remitted to the amount payable under that sub-paragraph.

### **Disposable monthly income**

5.—(1) A party's disposable monthly income is the gross monthly income of the party for the month in which the fee becomes payable ("the period") less the deductions referred to in sub-paragraphs (2) and (3).

(2) There are to be deducted from the gross monthly income—

- (a) income tax paid or payable in respect of the period;
- (b) any contributions estimated to have been paid under Part 1 of the Social Security Contributions and Benefits Act 1992 in respect of the period;
- (c) either—
  - (i) monthly rent or monthly payment in respect of a mortgage debt or hereditary security, payable in respect of the only or main dwelling of the party, less any housing benefit paid under the Social Security Contributions and Benefits Act 1992; or
  - (ii) the monthly cost of the living accommodation of the party;
- (d) any child care costs paid or payable in respect of the period;
- (e) if the party is making bona fide payments for the maintenance of a child who is not a member of the household of the party, the amount of such payments paid or payable in respect of the period; and
- (f) any amount paid or payable by the party, in respect of the period, in pursuance of a court order.

(3) There will be deducted from the gross monthly income an amount representing the cost of living expenses in respect of the period being—

- (a) £315; plus
- (b) £244 for each child of the party; plus
- (c) £159, if the party has a partner.

### **Resources of partners**

6.—(1) For the purpose of determining whether a party is entitled to the remission or part remission of a fee in accordance with this Schedule, the income of a partner, if any, is to be included as income of the party.

(2) The receipt by a partner of a qualifying benefit does not entitle a party to remission of a fee.

### **Application for remission or part remission of fees**

7.—(1) A party is only relieved by paragraphs 2 to 4 of liability to pay a fee if that party makes an application for remission in accordance with this paragraph.

(2) An application for remission or part remission of a fee must be made to the Lord Chancellor at the time when the fee would otherwise be payable.

(3) Where a claim for full remission of fees is made, the party must provide documentary evidence of, as the case may be—

- (a) entitlement to a qualifying benefit; or
  - (b) gross annual income and, if applicable, the children included for the purposes of paragraph 3.
- (4) Where a claim for full or part remission of fees under paragraph 4 is made, the party must provide documentary evidence of—
- (a) such of the party's gross monthly income as is derived from—
    - (i) employment;
    - (ii) rental or other income received from persons living with the party by reason of their residence in the party's home;
    - (iii) a pension; or
    - (iv) a state benefit, not being an excluded benefit; and
  - (b) any expenditure being deducted from the gross monthly income in accordance with paragraph 5(2).

### **Remission in exceptional circumstances**

**8.** A fee specified in this Order may be reduced or remitted where the Lord Chancellor is satisfied there are exceptional circumstances which justify doing so.

### **Time for payment following remission application**

**9.**—(1) Where a person applies for remission on or before the date on which a fee is payable, the date for payment of the fee specified in article 4 is disappplied.

(2) Where the Lord Chancellor refuses remission or grants part remission of a fee, the amount of the fee which remains unremitted must be paid within such period as may be notified in writing by the Lord Chancellor to the party or the fee group (as the case may be).

### **Refunds**

**10.**—(1) Subject to sub-paragraph (3), where a party has not provided the documentary evidence required by paragraph 7 and a fee has been paid at a time when, under paragraph 2, 3 or 4, it was not payable, the fee must be refunded if documentary evidence relating to the time when the fee became payable is provided at a later date.

(2) Subject to sub-paragraph (3), where a fee has been paid at a time where the Lord Chancellor, if all the circumstances had been known, would have reduced or remitted the fee under paragraph 8, the fee or the amount by which the fee would have been reduced, as the case may be, must be refunded.

(3) No refund shall be made under this paragraph unless the party who paid the fee applies within 6 months of paying the fee.

(4) The Lord Chancellor may extend the period of 6 months mentioned in sub-paragraph (3) if the Lord Chancellor considers that there is a good reason for an application being made after the end of the period of 6 months.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order introduces fees for claims made to an employment tribunal and appeals to the Employment Appeal Tribunal.

Part 2 makes provision for fees to be payable when a claim is presented to an employment tribunal and following notification of listing for the final hearing. The amount of the fee depends upon the type of the claim and the number of claimants. Different fees apply to single claimants and to groups of claimants, called “fee groups”. “Type A claims” are listed in Table 2 of Schedule 2 to the Order. All other claims are called “Type B claims”, for the purposes of calculating the amount of the fee payable. The amount of the fees payable by single claimants are listed in Table 3 of Schedule 2 and the amount payable by fee groups of different sizes are listed in Table 4 of Schedule 2.

Fees are also payable in an employment tribunal by the party making an application of the type mentioned in Schedule 1 to this Order and a fee of £600 is payable by a respondent when the parties agree to judicial mediation.

In addition, article 12 allows a claimant in an employment tribunal to opt out of a fee group and continue as a single claimant if the fee group they were previously included in has failed to pay the appropriate fee and might be struck out for non-payment of that fee.

Part 3 deals with fees in the Employment Appeal Tribunal. A fee of £400 is payable by an appellant following receipt of a notice of appeal by the Employment Appeal Tribunal. A fee of £1200 is payable by an appellant following notification of a direction by the Employment Appeal Tribunal for an oral hearing to dispose finally of proceedings.

Part 4 makes transitional arrangements and provides for fee remission in some circumstances.

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