

**Changes to legislation:** Transport Act 1985, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### SCHEDULE 4

Section 117(2).

#### CONSTITUTION, POWERS AND PROCEEDINGS OF THE TRANSPORT TRIBUNAL

##### *Constitution*

- 1 The Transport Tribunal [<sup>F1</sup>(referred to in this Schedule as “the tribunal”)] shall be a court of record and have an official seal which shall be judicially noticed.

##### Textual Amendments

- F1** Words in Sch. 4 para. 1 inserted (1.9.2009) by [The Transfer of Functions \(Transport Tribunal and Appeal Panel\) Order 2009 \(S.I. 2009/1885\)](#), art. 1(1), [Sch. 1 para. 9\(a\)](#)

- 2 (1) The tribunal shall consist of—
- (a) a president and two or more chairmen appointed by the Lord Chancellor (referred to below in this Schedule as judicial members); and
  - (b) two or more other members appointed by the Secretary of State.
- [<sup>F2</sup>(2) The president of the tribunal shall be—
- [<sup>F3</sup>(a) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis; or]
  - (b) an advocate or solicitor in Scotland of at least [<sup>F4</sup> 7 ] years’ standing.
- (2A) Each chairman shall be—
- [<sup>F5</sup>(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis; or]
  - (b) an advocate or solicitor in Scotland of at least [<sup>F6</sup> 5 ] years’ standing.]

##### Textual Amendments

- F2** Sch. 4 para. 2(2)(2A) substituted for paragraph 2(2) by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), [Sch. 10 para. 65](#)
- F3** Sch. 4 para. 2(2)(a) substituted (21.7.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 10 para. 17\(2\)\(a\)](#); S.I. 2008/1653, art. 2(d) (with arts. 34)
- F4** Word in Sch. 4 para. 2(2)(b) substituted (21.7.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 10 para. 17\(2\)\(b\)](#); S.I. 2008/1653, art. 2(d) (with arts. 34)
- F5** Sch. 4 para. 2(2A)(a) substituted (21.7.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 10 para. 17\(3\)\(a\)](#); S.I. 2008/1653, art. 2(d) (with arts. 34)
- F6** Word in Sch. 4 para. 2(2A)(b) substituted (21.7.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 10 para. 17\(3\)\(b\)](#); S.I. 2008/1653, art. 2(d) (with arts. 34)

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### *Tenure of Office*

- 3 (1) Subject to the following provisions of this paragraph <sup>F7</sup> ..., each judicial member of the tribunal shall hold office until [<sup>F8</sup>the day on which he attains the age of [<sup>F9</sup>75]] and shall then retire.
- <sup>F10</sup>(2) Where the Lord Chancellor considers it desirable in the public interest to retain a judicial member in office after he reaches that age, he may from time to time authorise that member's continuance in office until such date (not later than the date on which that member reaches seventy-five) as he thinks fit.]
- (3) The Lord Chancellor may, if he thinks fit, remove a judicial member from office on the ground of incapacity or misbehaviour.
- [<sup>F11</sup>(3A) The Lord Chancellor may remove a judicial member from office under sub-paragraph (3) only with the concurrence of the appropriate senior judge.
- (3B) The appropriate senior judge is the Lord Chief Justice of England and Wales, unless the judicial member who is to be removed exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session.]
- (4) A judicial member may at any time by notice in writing to the Lord Chancellor resign his office.
- (5) Subject to the preceding provisions of this paragraph and to paragraph 6 below, a judicial member shall hold and vacate office in accordance with such terms and conditions as may be determined by the Lord Chancellor at the time of his appointment and shall, on ceasing to hold office, be eligible for reappointment.

#### **Textual Amendments**

- F7** Words in Sch. 4 para. 3(1) omitted (10.3.2022) by virtue of Public Service Pensions and Judicial Offices Act 2022 (c. 7), s. 131(1)(4)(a), Sch. 1 para. 21(a) (with Sch. 1 para. 43)
- F8** Words in para. 3(1) substituted (31.3.1995) by 1993 c. 8, ss. 26, para. 57(2)(b) (with Sch. 7 paras.2(2), 3(2), 4); S.I. 1995/631, art. 2
- F9** Word in Sch. 4 para. 3(1) substituted (10.3.2022) by Public Service Pensions and Judicial Offices Act 2022 (c. 7), s. 131(1)(4)(a), Sch. 1 para. 21(b) (with Sch. 1 para. 43)
- F10** Sch. 4 para. 3(2) repealed and superseded (31.3.1995) by 1993 c. 8, ss. 26(4)-(6), Sch. 6 para. 57(3), Sch.9 (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, art. 2
- F11** Sch. 4 para. 3(3A)(3B) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 4 para. 179(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(r)

- 4 (1) A member of the tribunal appointed by the Secretary of State shall hold and vacate office in accordance with such terms and conditions (both as to his term of office and otherwise) as may be determined by the Secretary of State at the time of his appointment and, on ceasing to hold office, be eligible (subject to the following provisions of this paragraph) for reappointment.
- (2) Subject to sub-paragraph (3) below, a person shall not be appointed as a member of the tribunal by the Secretary of State for a term extending beyond the end of the completed year of service in which he reaches seventy.
- (3) Where the Secretary of State considers it desirable in the public interest that a person should be appointed for a term exceeding that allowed under sub-paragraph (2)

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above, that person may be appointed for such term, not extending beyond the date on which he reaches seventy-five, as the Secretary of State thinks fit.

- (4) A member appointed by the Secretary of State may at any time by notice in writing to the Secretary of State resign his office.

#### *Staff of the tribunal*

- 5 The <sup>F12</sup>Lord Chancellor] may make available to the tribunal such staff as he considers necessary for assisting the tribunal in the proper execution of their duties.

#### **Textual Amendments**

F12 Words substituted by S.I. 1989/495, art. 2(1)(2)

#### **Modifications etc. (not altering text)**

C1 Functions transferred to the Lord Chancellor by S.I. 1989/495, art. 2(1)(2)

#### *Remuneration and expenses*

- 6 There shall be paid to the members of the tribunal such remuneration <sup>F13</sup>and such allowances] as the <sup>F14</sup>Lord Chancellor] may with the consent of the Treasury determine.

#### **Textual Amendments**

F13 Words in Sch. 4 para. 6 inserted (10.3.2022 for specified purposes, 10.5.2022 in so far as not already in force) by Public Service Pensions and Judicial Offices Act 2022 (c. 7), s. 131(1)(4)(b)(ii), Sch. 2 para. 11(2)

F14 Words substituted by S.I. 1989/495, art. 2(1)(2)

#### **Modifications etc. (not altering text)**

C2 Functions transferred to the Lord Chancellor by S.I. 1989/495, art. 2(1)(2)

- 7 Any remuneration <sup>F15</sup>or allowances] payable under paragraph 6 above and any other expenses of the tribunal shall be met by the <sup>F16</sup>Lord Chancellor].

#### **Textual Amendments**

F15 Words in Sch. 4 para. 7 inserted (10.3.2022 for specified purposes, 10.5.2022 in so far as not already in force) by Public Service Pensions and Judicial Offices Act 2022 (c. 7), s. 131(1)(4)(b)(ii), Sch. 2 para. 11(3)

F16 Words substituted by S.I. 1989/495, art. 2(1)(2)

#### **Modifications etc. (not altering text)**

C3 Functions transferred to the Lord Chancellor by S.I. 1989/495, art. 2(1)(2)

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*Powers and proceedings*

- 8 (1) <sup>F17</sup>... The tribunal shall for the purpose of the exercise of any of their functions have full jurisdiction to hear and determine all matters whether of law or of fact.
- (2) As respects—
- (a) the attendance and examination of witnesses;
  - (b) the production and inspection of documents;
  - (c) the enforcement of their orders;
  - (d) the entry on and inspection of property; and
  - (e) other matters necessary or proper for the due exercise of their jurisdiction;
- the tribunal shall have, in England and Wales, all such powers, rights and privileges as are vested in the High Court, and, in Scotland, all such powers, rights and privileges as are vested in the Court of Session.
- (3) Execution may be had in England and Wales of any order of the tribunal as if it were an order of the High Court, and any order of the tribunal may be recorded for execution in the books of council and session in Scotland, and shall be enforceable accordingly.

**Textual Amendments**

**F17** Words in Sch. 4 para. 8(1) omitted (1.9.2009) by virtue of [The Transfer of Functions \(Transport Tribunal and Appeal Panel\) Order 2009 \(S.I. 2009/1885\)](#), art. 1(1), **Sch. 1 para. 9(b)**

<sup>F18</sup>9 .....

**Textual Amendments**

**F18** Sch. 4 para. 9 omitted (1.9.2009) by virtue of [The Transfer of Functions \(Transport Tribunal and Appeal Panel\) Order 2009 \(S.I. 2009/1885\)](#), art. 1(1), **Sch. 1 para. 9(c)**

- 10 (1) The president or, in his absence, such one of the other judicial members as the president or (if the president is unable for any reason to exercise the power conferred on him by this sub-paragraph) the [<sup>F19</sup>Lord Chief Justice] may direct, shall preside at any sitting of the tribunal.
- [<sup>F20</sup>(1A) Before exercising his functions under sub-paragraph (1) the Lord Chief Justice must—
- (a) consult the Lord Chancellor, and
  - (b) obtain the agreement of the Lord President of the Court of Session.]
- (2) The president or other judicial member presiding at a sitting of the tribunal in pursuance of sub-paragraph (1) above is referred to below in this paragraph as the presiding member.
- (3) If at any sitting of the tribunal the members sitting are evenly divided as to any decision, the presiding member shall have a second or casting vote; but otherwise decisions of the tribunal shall be by a majority of the members sitting.
- [<sup>F21</sup>(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under sub-paragraph (1).

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- (5) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under sub-paragraph (1A)(b).]

#### Textual Amendments

- F19** Words in Sch. 4 para. 10(1) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 179\(3\)\(a\)](#); [S.I. 2006/1014, art. 2\(a\)](#), Sch. 1 para. 11(r)
- F20** Sch. 4 para. 10(1A) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 179\(3\)\(b\)](#); [S.I. 2006/1014, art. 2\(a\)](#), Sch. 1 para. 11(r)
- F21** Sch. 4 para. 10(4)(5) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 179\(3\)\(c\)](#); [S.I. 2006/1014, art. 2\(a\)](#), Sch. 1 para. 11(r)

#### Modifications etc. (not altering text)

- C4** Functions transferred to the Lord Chancellor by [S.I. 1989/495, art. 2\(1\)\(2\)](#)

- 11 (1) Subject to paragraph 10 above, the [<sup>F22</sup>Lord Chancellor] may from time to time make general rules governing the procedure and practice of the tribunal and generally for carrying into effect the tribunal's duties and powers.
- (2) Without prejudice to the generality of sub-paragraph (1) above, rules under that sub-paragraph may provide for—
- the awarding of costs by the tribunal;
  - the reference of any question to a member of the tribunal, or to any other person appointed by them, for report after holding a local inquiry;
  - the review by the tribunal of decisions previously given by them;
  - the number of members of the tribunal to constitute a quorum;
  - enabling the tribunal to dispose of any proceedings notwithstanding that in the course of those proceedings there has been a change in the persons sitting as members of the tribunal; and
  - the right of audience before the tribunal.
- (3) Rules under sub-paragraph (1) above may also, subject to the consent of the Treasury, prescribe the scale of fees for and in connection with proceedings before the tribunal.

#### Textual Amendments

- F22** Words substituted by [S.I. 1989/495, art. 2\(1\)\(2\)](#)

#### Modifications etc. (not altering text)

- C5** Functions transferred to the Lord Chancellor by [S.I. 1989/495, art. 2\(1\)\(2\)](#)

- 12 (1) The Secretary of State shall give to the tribunal such assistance as the tribunal may reasonably require.
- (2) The Secretary of State shall place at the disposal of the tribunal any information in his possession which he considers will be of assistance to the tribunal in connection with any matter before them, and shall be entitled to appear and be heard in any proceedings before the tribunal.

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- 13 (1) Subject to sub-paragraph (2) below and to any rules made under paragraph 11 above, the tribunal may sit in any part of Great Britain in such place or places as may be convenient for the determination of the proceedings before them.
- (2) An appeal from <sup>F23</sup>a determination of any traffic commissioner in relation to a traffic area in Scotland] shall be heard in Scotland.

#### Textual Amendments

**F23** Words in Sch. 4 para. 13(2) substituted (3.7.2013) by The Local Transport Act 2008 (Traffic Commissioners) (Consequential Amendments) Order 2013 (S.I. 2013/1644), art. 1(1), Sch. 1 (with arts. 1(3), 2, 7)

#### *Appeals*

- 14 (1) Subject to sub-paragraphs (2) and (3) below, an appeal shall lie in accordance with rules made by the <sup>F24</sup>Lord Chancellor] from the tribunal to the Court of Appeal or to the Court of Session.
- (2) No appeal shall lie from the tribunal upon a question of fact or locus standi.
- (3) An appeal shall not be brought except in conformity with such rules of court as may from time to time be made in relation to such appeals by the authority having power to make rules of court for the Court of Appeal or the Court of Session (as the case may be).
- (4) On the hearing of an appeal the Court of Appeal and the Court of Session may draw all such inferences as are not inconsistent with the facts expressly found and are necessary for determining the question of law, and may make any order which the tribunal could have made, and also any such further or other order as may be just.
- (5) The costs of and incidental to an appeal shall be at the discretion of the Court, but neither the tribunal nor any member of the tribunal shall be liable to any costs by reason or in respect of any appeal.
- (6) Subject to sub-paragraph (7) below, the decision of the Court of Appeal or the Court of Session (as the case may be) shall be final.
- (7) Where there has been a difference of opinion between those Courts, either of those Courts in which a matter affected by such a difference of opinion is pending may give leave to appeal to the <sup>F25</sup>Supreme Court] on such terms as to costs as <sup>F25</sup>the Court of Appeal or Court of Session (as the case may be)] shall determine.

#### Textual Amendments

**F24** Words substituted by S.I. 1989/495, art. 2(1)(2)

**F25** Words in Sch. 4 para. 14(7) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 9 para. 42(3); S.I. 2009/1604, art. 2(d)

#### Modifications etc. (not altering text)

**C6** Functions transferred to the Lord Chancellor by S.I. 1989/495, art. 2(1)(2)

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### *Exercise of powers by Lord Chancellor*

- 15 The Lord Chancellor shall consult the Lord Advocate before exercising any of his powers under [<sup>F26</sup>paragraph 2 or 3 above].

#### **Textual Amendments**

**F26** Words substituted by [S.I. 1989/495, art. 2\(3\)](#)

#### **Modifications etc. (not altering text)**

- C7** Sch. 4 para. 15: Functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by [S.I. 1999/678, arts. 2, 3, Sch. 1](#) (with [art. 7](#))  
Sch. 4 para. 15 modified (30.6.1999) by [S.I. 1999/1748, art. 3, Sch. 1 para. 7](#)  
Sch. 4 para. 15: Transfer of certain functions (1.7.1999) by [S.I. 1999/1750, art 2, Sch. 1](#) (with [art. 7](#))

### *Annual Report*

- 16 The tribunal shall make annually a report of all their proceedings to the [<sup>F27</sup>Lord Chancellor] and it shall be laid before Parliament.

#### **Textual Amendments**

**F27** Words substituted by [S.I. 1989/495, art. 2\(1\)\(2\)](#)

#### **Modifications etc. (not altering text)**

**C8** Functions transferred to the Lord Chancellor by [S.I. 1989/495, art. 2\(1\)\(2\)](#)

### *<sup>F28</sup>Powers of First-tier Tribunal and Upper Tribunal in relation to transport appeals*

#### **Textual Amendments**

**F28** Sch. 4 paras. 17, 18 and cross-heading inserted (1.9.2009) by [The Transfer of Functions \(Transport Tribunal and Appeal Panel\) Order 2009 \(S.I. 2009/1885\), art. 1\(1\), Sch. 1 para. 9\(d\)](#)

- 17 (1) The First-tier Tribunal and the Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport.

In the case of the Upper Tribunal, this is subject to sub-paragraph (3).

- (2) On an appeal from any determination of a traffic commissioner other than an excluded determination, the Upper Tribunal is to have power—
- (a) to make such order as it thinks fit; or
  - [<sup>F29</sup>(b) to remit the matter to—
    - (i) the traffic commissioner who made the decision against which the appeal is brought; or
    - (ii) as the case may be, such other traffic commissioner as may be required by the senior traffic commissioner to deal with the appeal,



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for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate;]

and any such order is binding on the commissioner.

- (3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.
- (4) A determination of a traffic commissioner is an excluded determination for the purposes of this paragraph if it is made under—
- (a) the Goods Vehicles (Community Authorisations) Regulations 1992; or
  - (b) the Public Service Vehicles (Community Licences) Regulations 1999.

#### Textual Amendments

**F29** Sch. 4 para. 17(2)(b) substituted (3.7.2013) by [The Local Transport Act 2008 \(Traffic Commissioners\) \(Consequential Amendments\) Order 2013 \(S.I. 2013/1644\)](#), art. 1(1), **Sch. 1** (with arts. 1(3), 2, 7)

18. Paragraph 12 applies in relation to the First-tier Tribunal and the Upper Tribunal for the purpose of the exercise of any of their functions under an enactment relating to transport.]



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 6(2ZA) inserted by [2019 asp 17 s. 37\(2\)\(a\)](#)
- s. 6(7ZA) inserted by [2019 asp 17 s. 37\(2\)\(b\)](#)