

## SCHEDULES

### SCHEDULE 13

Section 132(4).

#### THE FINANCIAL SERVICES AND MARKETS TRIBUNAL

##### PART I

##### GENERAL

##### *Interpretation*

- 1 In this Schedule—
- “panel of chairmen” means the panel established under paragraph 3(1);
  - “lay panel” means the panel established under paragraph 3(4);
  - “rules” means rules made by the Lord Chancellor under section 132.

##### PART II

##### THE TRIBUNAL

##### *President*

- 2
- (1) The Lord Chancellor must appoint one of the members of the panel of chairmen to preside over the discharge of the Tribunal’s functions.
  - (2) The member so appointed is to be known as the President of the Financial Services and Markets Tribunal (but is referred to in this Act as “the President”).
  - (3) The Lord Chancellor may appoint one of the members of the panel of chairmen to be Deputy President.
  - (4) The Deputy President is to have such functions in relation to the Tribunal as the President may assign to him.
  - (5) The Lord Chancellor may not appoint a person to be the President or Deputy President unless that person—
    - (a) has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
    - (b) is an advocate or solicitor in Scotland of at least ten years' standing; or
    - (c) is—
      - (i) a member of the Bar of Northern Ireland of at least ten years' standing; or
      - (ii) a solicitor of the Supreme Court of Northern Ireland of at least ten years' standing.

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*Status: This is the original version (as it was originally enacted).*

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- (6) If the President (or Deputy President) ceases to be a member of the panel of chairmen, he also ceases to be the President (or Deputy President).
- (7) The functions of the President may, if he is absent or is otherwise unable to act, be discharged—
  - (a) by the Deputy President; or
  - (b) if there is no Deputy President or he too is absent or otherwise unable to act, by a person appointed for that purpose from the panel of chairmen by the Lord Chancellor.

#### *Panels*

- 3 (1) The Lord Chancellor must appoint a panel of persons for the purposes of serving as chairmen of the Tribunal.
- (2) A person is qualified for membership of the panel of chairmen if—
  - (a) he has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (b) he is an advocate or solicitor in Scotland of at least seven years' standing; or
  - (c) he is—
    - (i) a member of the Bar of Northern Ireland of at least seven years' standing; or
    - (ii) a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing.
- (3) The panel of chairmen must include at least one member who is a person of the kind mentioned in sub-paragraph (2)(b).
- (4) The Lord Chancellor must also appoint a panel of persons who appear to him to be qualified by experience or otherwise to deal with matters of the kind that may be referred to the Tribunal.

#### *Terms of office etc*

- 4 (1) Subject to the provisions of this Schedule, each member of the panel of chairmen and the lay panel is to hold and vacate office in accordance with the terms of his appointment.
- (2) The Lord Chancellor may remove a member of either panel (including the President) on the ground of incapacity or misbehaviour.
- (3) A member of either panel—
  - (a) may at any time resign office by notice in writing to the Lord Chancellor;
  - (b) is eligible for re-appointment if he ceases to hold office.

#### *Remuneration and expenses*

- 5 The Lord Chancellor may pay to any person, in respect of his service—
  - (a) as a member of the Tribunal (including service as the President or Deputy President), or
  - (b) as a person appointed under paragraph 7(4),
 such remuneration and allowances as he may determine.

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### *Staff*

- 6
- (1) The Lord Chancellor may appoint such staff for the Tribunal as he may determine.
  - (2) The remuneration of the Tribunal's staff is to be defrayed by the Lord Chancellor.
  - (3) Such expenses of the Tribunal as the Lord Chancellor may determine are to be defrayed by the Lord Chancellor.

## **PART III**

### CONSTITUTION OF TRIBUNAL

- 7
- (1) On a reference to the Tribunal, the persons to act as members of the Tribunal for the purposes of the reference are to be selected from the panel of chairmen or the lay panel in accordance with arrangements made by the President for the purposes of this paragraph ("the standing arrangements").
  - (2) The standing arrangements must provide for at least one member to be selected from the panel of chairmen.
  - (3) If while a reference is being dealt with, a person serving as member of the Tribunal in respect of the reference becomes unable to act, the reference may be dealt with by—
    - (a) the other members selected in respect of that reference; or
    - (b) if it is being dealt with by a single member, such other member of the panel of chairmen as may be selected in accordance with the standing arrangements for the purposes of the reference.
  - (4) If it appears to the Tribunal that a matter before it involves a question of fact of special difficulty, it may appoint one or more experts to provide assistance.

## **PART IV**

### TRIBUNAL PROCEDURE

- 8
- For the purpose of dealing with references, or any matter preliminary or incidental to a reference, the Tribunal must sit at such times and in such place or places as the Lord Chancellor may direct.
- 9
- Rules made by the Lord Chancellor under section 132 may, in particular, include provision—
- (a) as to the manner in which references are to be instituted;
  - (b) for the holding of hearings in private in such circumstances as may be specified in the rules;
  - (c) as to the persons who may appear on behalf of the parties;
  - (d) for a member of the panel of chairmen to hear and determine interlocutory matters arising on a reference;
  - (e) for the suspension of decisions of the Authority which have taken effect;
  - (f) as to the withdrawal of references;
  - (g) as to the registration, publication and proof of decisions and orders.

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*Practice directions*

- 10 The President of the Tribunal may give directions as to the practice and procedure to be followed by the Tribunal in relation to references to it.

*Evidence*

- 11 (1) The Tribunal may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any document in his custody or under his control which the Tribunal considers it necessary to examine.
- (2) The Tribunal may—
- (a) take evidence on oath and for that purpose administer oaths; or
  - (b) instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matters in respect of which he is examined.
- (3) A person who without reasonable excuse—
- (a) refuses or fails—
    - (i) to attend following the issue of a summons by the Tribunal, or
    - (ii) to give evidence, or
  - (b) alters, suppresses, conceals or destroys, or refuses to produce a document which he may be required to produce for the purposes of proceedings before the Tribunal,
- is guilty of an offence.
- (4) A person guilty of an offence under sub-paragraph (3)(a) is liable on summary conviction to a fine not exceeding the statutory maximum.
- (5) A person guilty of an offence under sub-paragraph (3)(b) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

*Decisions of Tribunal*

- 12 (1) A decision of the Tribunal may be taken by a majority.
- (2) The decision must—
- (a) state whether it was unanimous or taken by a majority;
  - (b) be recorded in a document which—
    - (i) contains a statement of the reasons for the decision; and
    - (ii) is signed and dated by the member of the panel of chairmen dealing with the reference.
- (3) The Tribunal must—
- (a) inform each party of its decision; and
  - (b) as soon as reasonably practicable, send to each party and, if different, to any authorised person concerned, a copy of the document mentioned in sub-paragraph (2).
- (4) The Tribunal must send the Treasury a copy of its decision.

### *Costs*

- 13 (1) If the Tribunal considers that a party to any proceedings on a reference has acted vexatiously, frivolously or unreasonably it may order that party to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings.
- (2) If, in any proceedings on a reference, the Tribunal considers that a decision of the Authority which is the subject of the reference was unreasonable it may order the Authority to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings.