

SCHEDULES

SCHEDULE 5

Section 22

PROCEDURE IN FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL

PART 1

TRIBUNAL PROCEDURE RULES

Introductory

- 1 (1) This Part of this Schedule makes further provision about the content of Tribunal Procedure Rules.
- (2) The generality of section 22(1) is not to be taken to be prejudiced by—
 - (a) the following paragraphs of this Part of this Schedule, or
 - (b) any other provision (including future provision) authorising or requiring the making of provision by Tribunal Procedure Rules.
- (3) In the following paragraphs of this Part of this Schedule “Rules” means Tribunal Procedure Rules.

Concurrent functions

- 2 Rules may make provision as to who is to decide, or as to how to decide, which of the First-tier Tribunal and Upper Tribunal is to exercise, in relation to any particular matter, a function that is exercisable by the two tribunals on the basis that the question as to which of them is to exercise the function is to be determined by, or under, Rules.

Delegation of functions to staff

- 3 (1) Rules may provide for functions—
 - (a) of the First-tier Tribunal, or
 - (b) of the Upper Tribunal,to be exercised by staff appointed under section 40(1).
- (2) In making provision of the kind mentioned in sub-paragraph (1) in relation to a function, Rules may (in particular)—
 - (a) provide for the function to be exercisable by a member of staff only if the member of staff is, or is of a description, specified in exercise of a discretion conferred by Rules;
 - (b) provide for the function to be exercisable by a member of staff only if the member of staff is approved, or is of a description approved, for the purpose by a person specified in Rules.

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Time limits

- 4 Rules may make provision for time limits as respects initiating, or taking any step in, proceedings before the First-tier Tribunal or the Upper Tribunal.

Repeat applications

- 5 Rules may make provision restricting the making of fresh applications where a previous application in relation to the same matter has been made.

Tribunal acting of its own initiative

- 6 Rules may make provision about the circumstances in which the First-tier Tribunal, or the Upper Tribunal, may exercise its powers of its own initiative.

Hearings

- 7 Rules may—
- (a) make provision for dealing with matters without a hearing;
 - (b) make provision as respects allowing or requiring a hearing to be in private or as respects allowing or requiring a hearing to be in public.

Proceedings without notice

- 8 Rules may make provision for proceedings to take place, in circumstances described in Rules, at the request of one party even though the other, or another, party has had no notice.

Representation

- 9 Rules may make provision conferring additional rights of audience before the First-tier Tribunal or the Upper Tribunal.

Evidence, witnesses and attendance

- 10 (1) Rules may make provision about evidence (including evidence on oath and administration of oaths).
- (2) Rules may modify any rules of evidence provided for elsewhere, so far as they would apply to proceedings before the First-tier Tribunal or Upper Tribunal.
- (3) Rules may make provision, where the First-tier Tribunal has required a person—
- (a) to attend at any place for the purpose of giving evidence,
 - (b) otherwise to make himself available to give evidence,
 - (c) to swear an oath in connection with the giving of evidence,
 - (d) to give evidence as a witness,
 - (e) to produce a document, or
 - (f) to facilitate the inspection of a document or any other thing (including any premises),
- for the Upper Tribunal to deal with non-compliance with the requirement as though the requirement had been imposed by the Upper Tribunal.

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- (4) Rules may make provision for the payment of expenses and allowances to persons giving evidence, producing documents, attending proceedings or required to attend proceedings.

Use of information

- 11 (1) Rules may make provision for the disclosure or non-disclosure of information received during the course of proceedings before the First-tier Tribunal or Upper Tribunal.
- (2) Rules may make provision for imposing reporting restrictions in circumstances described in Rules.

Costs and expenses

- 12 (1) Rules may make provision for regulating matters relating to costs, or (in Scotland) expenses, of proceedings before the First-tier Tribunal or Upper Tribunal.
- (2) The provision mentioned in sub-paragraph (1) includes (in particular)—
- (a) provision prescribing scales of costs or expenses;
 - (b) provision for enabling costs to undergo detailed assessment in England and Wales by a county court or the High Court;
 - (c) provision for taxation in Scotland of accounts of expenses by an Auditor of Court;
 - (d) provision for enabling costs to be taxed in Northern Ireland in a county court or the High Court;
 - (e) provision for costs or expenses—
 - (i) not to be allowed in respect of items of a description specified in Rules;
 - (ii) not to be allowed in proceedings of a description so specified;
 - (f) provision for other exceptions to either or both of subsections (1) and (2) of section 29.

Set-off and interest

- 13 (1) Rules may make provision for a party to proceedings to deduct, from amounts payable by him, amounts payable to him.
- (2) Rules may make provision for interest on sums awarded (including provision conferring a discretion or provision in accordance with which interest is to be calculated).

Arbitration

- 14 Rules may provide for Part 1 of the Arbitration Act 1996 (c. 23) (which extends to England and Wales, and Northern Ireland, but not Scotland) not to apply, or not to apply except so far as is specified in Rules, where the First-tier Tribunal, or Upper Tribunal, acts as arbitrator.

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Correction of errors and setting-aside of decisions on procedural grounds

- 15 (1) Rules may make provision for the correction of accidental errors in a decision or record of a decision.
- (2) Rules may make provision for the setting aside of a decision in proceedings before the First-tier Tribunal or Upper Tribunal—
- (a) where a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party's representative,
 - (b) where a document relating to the proceedings was not sent to the First-tier Tribunal or Upper Tribunal at an appropriate time,
 - (c) where a party to the proceedings, or a party's representative, was not present at a hearing related to the proceedings, or
 - (d) where there has been any other procedural irregularity in the proceedings.
- (3) Sub-paragraphs (1) and (2) shall not be taken to prejudice, or to be prejudiced by, any power to correct errors or set aside decisions that is exercisable apart from rules made by virtue of those sub-paragraphs.

Ancillary powers

- 16 Rules may confer on the First-tier Tribunal, or the Upper Tribunal, such ancillary powers as are necessary for the proper discharge of its functions.

Rules may refer to practice directions

- 17 Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions under section 23.

Presumptions

- 18 Rules may make provision in the form of presumptions (including, in particular, presumptions as to service or notification).

Differential provision

- 19 Rules may make different provision for different purposes or different areas.

PART 2

TRIBUNAL PROCEDURE COMMITTEE

Membership

- 20 The Tribunal Procedure Committee is to consist of—
- (a) the Senior President of Tribunals or a person nominated by him,
 - (b) the persons currently appointed by the Lord Chancellor under paragraph 21,
 - (c) the persons currently appointed by the Lord Chief Justice of England and Wales under paragraph 22,

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- (d) the person currently appointed by the Lord President of the Court of Session under paragraph 23, and
- (e) any person currently appointed under paragraph 24 at the request of the Senior President of Tribunals.

Lord Chancellor's appointees

- 21 (1) The Lord Chancellor must appoint—
- (a) three persons each of whom must be a person with experience of—
 - (i) practice in tribunals, or
 - (ii) advising persons involved in tribunal proceedings, and
 - (b) one person nominated by the Administrative Justice and Tribunals Council.
- (2) Before making an appointment under sub-paragraph (1), the Lord Chancellor must consult the Lord Chief Justice of England and Wales.
- (3) Until the Administrative Justice and Tribunals Council first has ten members appointed under paragraph 1(2) of Schedule 7, the reference to that council in sub-paragraph (1)(b) is to be read as a reference to the Council on Tribunals; and if, when the Administrative Justice and Tribunals Council first has ten members so appointed, the person appointed under sub-paragraph (1)(b) is a nominee of the Council on Tribunals, that person ceases to be a member of the Tribunal Procedure Committee at that time.

Lord Chief Justice's appointees

- 22 (1) The Lord Chief Justice of England and Wales must appoint—
- (a) one of the judges of the First-tier Tribunal,
 - (b) one of the judges of the Upper Tribunal, and
 - (c) one person who is a member of the First-tier Tribunal, or is a member of the Upper Tribunal, but is not a judge of the First-tier Tribunal and is not a judge of the Upper Tribunal.
- (2) Before making an appointment under sub-paragraph (1), the Lord Chief Justice of England and Wales must consult the Lord Chancellor.

Lord President's appointee

- 23 (1) The Lord President of the Court of Session must appoint one person with experience in and knowledge of the Scottish legal system.
- (2) Before making an appointment under sub-paragraph (1), the Lord President of the Court of Session must consult the Lord Chancellor.

Persons appointed at request of Senior President of Tribunals

- 24 (1) At the request of the Senior President of Tribunals, an appropriate senior judge may appoint a person or persons with experience in and knowledge of—
- (a) a particular issue, or
 - (b) a particular subject area in relation to which the First-tier Tribunal or the Upper Tribunal has, or is likely to have, jurisdiction,
- for the purpose of assisting the Committee with regard to that issue or subject area.

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- (2) In sub-paragraph (1) “an appropriate senior judge” means any of—
- (a) the Lord Chief Justice of England and Wales,
 - (b) the Lord President of the Court of Session, and
 - (c) the Lord Chief Justice of Northern Ireland.
- (3) The total number of persons appointed at any time under sub-paragraph (1) must not exceed four.
- (4) Before making an appointment under sub-paragraph (1), the person making the appointment must consult the Lord Chancellor.
- (5) The terms of appointment of a person appointed under sub-paragraph (1) may (in particular) authorise him to act as a member of the Committee only in relation to matters specified by those terms.

Power to amend paragraphs 20 to 24

- 25 (1) The Lord Chancellor may by order—
- (a) amend any of paragraphs 20, 21(1), 22(1), 23(1) and 24(1), and
 - (b) make consequential amendments in any other provision of paragraphs 21 to 24 or in paragraph 28(7).
- (2) The making of an order under this paragraph—
- (a) requires the concurrence of the Lord Chief Justice of England and Wales,
 - (b) if the order amends paragraph 23(1), requires also the concurrence of the Lord President of the Court of Session, and
 - (c) if the order amends paragraph 24(1), requires also the concurrence of the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland.

Committee members' expenses

- 26 The Lord Chancellor may reimburse members of the Tribunal Procedure Committee their travelling and out-of-pocket expenses.

PART 3

MAKING OF TRIBUNAL PROCEDURE RULES BY TRIBUNAL PROCEDURE COMMITTEE

Meaning of “Rules” and “the Committee”

- 27 In the following provisions of this Part of this Schedule—
- “the Committee” means the Tribunal Procedure Committee;
- “Rules” means Tribunal Procedure Rules.

Process for making Rules

- 28 (1) Before the Committee makes Rules, the Committee must—
- (a) consult such persons (including such of the Chamber Presidents) as it considers appropriate,

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- (b) consult the Lord President of the Court of Session if the Rules contain provision relating to proceedings in Scotland, and
 - (c) meet (unless it is inexpedient to do so).
- (2) Rules made by the Committee must be—
 - (a) signed by a majority of the members of the Committee, and
 - (b) submitted to the Lord Chancellor.
- (3) The Lord Chancellor may allow or disallow Rules so made.
- (4) If the Lord Chancellor disallows Rules so made, he must give the Committee written reasons for doing so.
- (5) Rules so made and allowed—
 - (a) come into force on such day as the Lord Chancellor directs, and
 - (b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 (c. 36) applies as if the instrument contained rules made by a Minister of the Crown.
- (6) A statutory instrument containing Rules made by the Committee is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In the case of a member of the Committee appointed under paragraph 24, the terms of his appointment may (in particular) provide that, for the purposes of subparagraph (2)(a), he is to count as a member of the Committee only in relation to matters specified in those terms.

Power of Lord Chancellor to require Rules to be made

- 29
- (1) This paragraph applies if the Lord Chancellor gives the Committee written notice that he thinks it is expedient for Rules to include provision that would achieve a purpose specified in the notice.
 - (2) The Committee must make such Rules, in accordance with paragraph 28, as it considers necessary to achieve the specified purpose.
 - (3) Those Rules must be made—
 - (a) within such period as may be specified by the Lord Chancellor in the notice, or
 - (b) if no period is so specified, within a reasonable period after the Lord Chancellor gives the notice to the Committee.

PART 4

POWER TO AMEND LEGISLATION IN CONNECTION WITH TRIBUNAL PROCEDURE RULES

Lord Chancellor's power

- 30
- (1) The Lord Chancellor may by order amend, repeal or revoke any enactment to the extent he considers necessary or desirable—
 - (a) in order to facilitate the making of Tribunal Procedure Rules, or
 - (b) in consequence of—
 - (i) section 22,

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- (ii) Part 1 or 3 of this Schedule, or
- (iii) Tribunal Procedure Rules.

(2) In this paragraph “enactment” means any enactment whenever passed or made, including an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act [1978 \(c. 30\)](#)).