

SCHEDULES

SCHEDULE 7

Section 44

ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

PART 1

MEMBERS AND COMMITTEES

Membership

- 1 (1) The Council is to consist of—
 - (a) the Parliamentary Commissioner for Administration, and
 - (b) not more than fifteen nor fewer than ten appointed members.
- (2) Of the appointed members—
 - (a) either two or three are to be appointed by the Scottish Ministers with the concurrence of the Lord Chancellor and the Welsh Ministers,
 - (b) either one or two are to be appointed by the Welsh Ministers with the concurrence of the Lord Chancellor and the Scottish Ministers, and
 - (c) the others are to be appointed by the Lord Chancellor with the concurrence of the Scottish Ministers and the Welsh Ministers.

Chairman of the Council

- 2 (1) After consultation with the Scottish Ministers and the Welsh Ministers, the Lord Chancellor must nominate one of the appointed members to be chairman of the Council.
- (2) The chairman of the Council is to hold and vacate that office in accordance with the terms of his nomination, but—
 - (a) may resign that office by giving written notice to the Lord Chancellor, and
 - (b) ceases to be chairman if he ceases to be a person who is a member of the Council by virtue of appointment under paragraph 1(2).

Term of office of appointed members of Council

- 3 (1) Subject to the following provisions of this paragraph, a person appointed under paragraph 1(2) is to hold and vacate office in accordance with the terms of his appointment.
- (2) A person appointed under paragraph 1(2)(a) may resign by giving written notice to the Scottish Ministers.
- (3) A person appointed under paragraph 1(2)(b) may resign by giving written notice to the Welsh Ministers.

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- (4) A person appointed under paragraph 1(2)(c) may resign by giving written notice to the Lord Chancellor.
- (5) The Lord Chancellor may remove a person appointed under paragraph 1(2) on the ground of inability or misbehaviour.
- (6) The power of the Lord Chancellor under sub-paragraph (5) to remove a person who was appointed under paragraph 1(2)(a) may be exercised only with the concurrence of the Scottish Ministers.
- (7) The power of the Lord Chancellor under sub-paragraph (5) to remove a person who was appointed under paragraph 1(2)(b) may be exercised only with the concurrence of the Welsh Ministers.

Scottish Committee

- 4 (1) There is to be a Scottish Committee of the Council (referred to in this Schedule as “the Scottish Committee”) for the purpose of exercising the functions conferred on it by any statutory provision.
- (2) The Scottish Committee is to consist of—
 - (a) the Parliamentary Commissioner for Administration,
 - (b) the Scottish Public Services Ombudsman,
 - (c) the members of the Council appointed under paragraph 1(2)(a), and
 - (d) either three or four other persons, not being members of the Council, appointed by the Scottish Ministers.

Chairman of the Scottish Committee

- 5 (1) The Scottish Ministers must nominate one of the members mentioned in paragraph 4(2)(c) to be chairman of the Scottish Committee.
- (2) The chairman of the Scottish Committee is to hold and vacate that office in accordance with the terms of his nomination, but—
 - (a) may resign that office by giving written notice to the Scottish Ministers, and
 - (b) ceases to be chairman if he ceases to be a person who is a member of the Council by virtue of appointment under paragraph 1(2)(a).

Term of office of appointed members of Scottish Committee

- 6 (1) Subject to the following provisions of this paragraph, a person appointed under paragraph 4(2)(d) is to hold and vacate office in accordance with the terms of his appointment.
- (2) The person may resign by giving written notice to the Scottish Ministers.
- (3) The Scottish Ministers may remove the person on the ground of inability or misbehaviour.

Welsh Committee

- 7 (1) There is to be a Welsh Committee of the Council (referred to in this Schedule as “the Welsh Committee”) for the purpose of exercising the functions conferred on it by any statutory provision.
- (2) The Welsh Committee is to consist of—
- (a) the Parliamentary Commissioner for Administration,
 - (b) the Public Services Ombudsman for Wales,
 - (c) the members of the Council appointed under paragraph 1(2)(b), and
 - (d) either two or three other persons, not being members of the Council, appointed by the Welsh Ministers.

Chairman of Welsh Committee

- 8 (1) The Welsh Ministers must nominate one of the members mentioned in paragraph 7(2)(c) to be chairman of the Welsh Committee.
- (2) The chairman of the Welsh Committee is to hold and vacate that office in accordance with the terms of his nomination, but—
- (a) may resign that office by giving written notice to the Welsh Ministers, and
 - (b) ceases to be chairman if he ceases to be a person who is a member of the Council by virtue of appointment under paragraph 1(2)(b).

Term of office of Committee members

- 9 (1) Subject to the following provisions of this paragraph, a person appointed under paragraph 7(2)(d) is to hold and vacate office in accordance with the terms of his appointment.
- (2) The person may resign by giving written notice to the Welsh Ministers.
- (3) The Welsh Ministers may remove the person on the ground of inability or misbehaviour.

Remuneration of Council and Committee members

- 10 (1) The Lord Chancellor must pay such remuneration as he may determine to each of the following—
- (a) the chairman of the Council;
 - (b) the chairman of the Scottish Committee;
 - (c) the chairman of the Welsh Committee.
- (2) The Lord Chancellor may pay such fees as he may determine to—
- (a) members of the Council other than the chairman;
 - (b) members of the Scottish Committee other than the chairman;
 - (c) members of the Welsh Committee other than the chairman.
- (3) The Lord Chancellor may pay such expenses as he may determine to—
- (a) members of the Council;
 - (b) members of the Scottish Committee;
 - (c) members of the Welsh Committee.

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- (4) In sub-paragraph (3) “expenses” includes (in particular) subsistence allowances and travelling expenses.

Status of Council and Committees

- 11 The Council, the Scottish Committee and the Welsh Committee are not to be regarded—
- (a) as agents or servants of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.

PART 2

FUNCTIONS

Introductory

- 12 The Council has the functions conferred on it by this Schedule or any other statutory provision.

Functions with respect to the administrative justice system

- 13 (1) The Council is to—
- (a) keep the administrative justice system under review,
 - (b) consider ways to make the system accessible, fair and efficient,
 - (c) advise the persons mentioned in sub-paragraph (2) on the development of the system,
 - (d) refer proposals for changes in the system to those persons, and
 - (e) make proposals for research into the system.
- (2) Those persons are—
- (a) the Lord Chancellor,
 - (b) the Scottish Ministers,
 - (c) the Welsh Ministers, and
 - (d) the Senior President of Tribunals.
- (3) The Council may make such reports as it considers appropriate on any of the matters mentioned in sub-paragraph (1).
- (4) In this paragraph “the administrative justice system” means the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including—
- (a) the procedures for making such decisions,
 - (b) the law under which such decisions are made, and
 - (c) the systems for resolving disputes and airing grievances in relation to such decisions.

General functions with respect to tribunals

- 14 (1) The Council is to—
- (a) keep under review, and report on, the constitution and working—

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- (i) of listed tribunals in general, and
 - (ii) of each listed tribunal,
 - (b) consider, and report on, any other matter—
 - (i) that relates to listed tribunals in general or to a particular listed tribunal, and
 - (ii) that the Council determines to be of special importance, and
 - (c) consider, and report on, any particular matter referred to the Council—
 - (i) that relates to tribunals in general or to any particular tribunal, and
 - (ii) whose referral to the Council falls within paragraph 16.
- (2) The Council may scrutinise and comment on legislation, existing or proposed, relating to tribunals or to any particular tribunal.
- (3) The Council must—
- (a) consult the Scottish Committee before exercising the power conferred by sub-paragraph (2) with respect to legislation, existing or proposed, that relates to at least one tribunal with jurisdiction in cases arising in Scotland;
 - (b) consult the Welsh Committee before exercising that power with respect to legislation, existing or proposed, that relates to at least one tribunal with jurisdiction in cases arising in Wales.
- (4) In sub-paragraphs (1)(c), (2) and (3)—
- “legislation” includes procedural rules;
 - “tribunal” includes a proposed tribunal.

General functions with respect to statutory inquiries

- 15 The Council is to—
- (a) keep under review, and report on, the constitution and working of statutory inquiries, both in general and by reference to statutory provisions under which statutory inquiries of different descriptions may be held,
 - (b) consider, and report on, any other matter—
 - (i) that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and
 - (ii) that the Council determines to be of special importance, and
 - (c) consider, and report on, any particular matter referred to the Council—
 - (i) that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and
 - (ii) whose referral to the Council falls within paragraph 16.

Referral of matters to the Council under paragraphs 14 and 15

- 16 (1) This paragraph has effect for the purposes of paragraphs 14(1)(c) and 15(c).
- (2) The referral of any matter falls within this paragraph if it is referred to the Council jointly by—
- (a) the Lord Chancellor,
 - (b) the Welsh Ministers, and
 - (c) the Scottish Ministers.
- (3) In addition—

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- (a) the referral of a matter that relates only to Wales falls within this paragraph if it is referred to the Council by the Welsh Ministers,
- (b) the referral of a matter that relates only to Scotland falls within this paragraph if it is referred to the Council by the Scottish Ministers, and
- (c) the referral of a matter that—
 - (i) does not relate to Scotland, and
 - (ii) if it relates to Wales, does not relate only to Wales,
 falls within this paragraph if it is referred to the Council by the Lord Chancellor.

Reports by the Council under paragraphs 14 and 15

- 17 (1) A report by the Council on a matter referred to it under paragraph 14(1)(c) or 15(c) must be made to the authority or authorities who referred the matter.
- (2) Any other report by the Council under paragraph 14 or 15—
- (a) must be made to the Lord Chancellor,
 - (b) if it relates to Wales, must be made also to the Welsh Ministers, and
 - (c) if it relates to Scotland, must be made also to the Scottish Ministers.
- (3) The Lord Chancellor must lay before each House of Parliament every report made by the Council to him under this paragraph, other than a report that relates only to matters within sub-paragraph (4).
- (4) Matters are within this sub-paragraph if legislation providing for them would be within the legislative competence of the Scottish Parliament if the legislation were included in an Act of that Parliament.
- (5) The Scottish Ministers must lay before the Scottish Parliament every report made by the Council to them under this paragraph.
- (6) The Welsh Ministers must lay before the National Assembly for Wales every report made by the Council to them under this paragraph.
- (7) Where—
- (a) a report is required by this paragraph to be made to one or more, but not all, of—
 - (i) the Lord Chancellor,
 - (ii) the Welsh Ministers, and
 - (iii) the Scottish Ministers, and
 - (b) the Council considers that the report could be relevant to matters that are the responsibility of another of those authorities,
- the Council must send a copy of the report to the other authority.

Referral of matters to, and reports by, the Scottish Committee

- 18 (1) The Council may not make a report on any matter relating only to Scotland until the Council—
- (a) has referred the matter of the report for consideration, and report to the Council, by the Scottish Committee, and
 - (b) has considered the report of the Committee.

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- (2) Where the Council proposes to make a report on a matter that relates to Scotland but not only to Scotland, the Council must give the Scottish Committee details of the matter.
- (3) The Scottish Committee may of its own motion make a report to the Council on any of the following matters so far as relating to Scotland—
 - (a) any matter relating to the administrative justice system,
 - (b) the constitution or working—
 - (i) of listed tribunals in general or of a particular listed tribunal, or
 - (ii) of statutory inquiries in general or of statutory inquiries of a particular description,
 - (c) any other matter—
 - (i) that relates to listed tribunals in general, to a particular listed tribunal, to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and
 - (ii) that the Scottish Committee determines to be of special importance, and
 - (d) any matter referred to the Council under paragraph 14(1)(c) or 15(c).
- (4) If—
 - (a) the Council does not make a report on matters dealt with in a report made by the Scottish Committee under sub-paragraph (1) or (3), or
 - (b) in making a report on those matters, the Council does not adopt the report made by the Scottish Committee without modification,the Scottish Committee may submit its report to the Scottish Ministers.
- (5) Where the Scottish Committee—
 - (a) submits a report to the Scottish Ministers under sub-paragraph (4), and
 - (b) considers that the report could be relevant to matters that are the responsibility of the Lord Chancellor or the Welsh Ministers,the Council must send a copy of the report to the Lord Chancellor or (as the case may be) the Assembly.
- (6) The Scottish Ministers must lay before the Scottish Parliament any report submitted to them under sub-paragraph (4).
- (7) In sub-paragraph (3)(a) “the administrative justice system” has the meaning given by paragraph 13(4).

Referral of matters to, and reports by, the Welsh Committee

- 19 (1) The Council may not make a report on any matter relating only to Wales until the Council—
 - (a) has referred the matter of the report for consideration, and report to the Council, by the Welsh Committee, and
 - (b) has considered the report of the Committee.
- (2) Where the Council proposes to make a report on a matter that relates to Wales but not only to Wales, the Council must give the Welsh Committee details of the matter.
- (3) The Welsh Committee may of its own motion make a report to the Council on any of the following matters so far as relating to Wales—

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- (a) any matter relating to the administrative justice system,
 - (b) the constitution or working—
 - (i) of listed tribunals in general or of a particular listed tribunal, or
 - (ii) of statutory inquiries in general or of statutory inquiries of a particular description,
 - (c) any other matter—
 - (i) that relates to listed tribunals in general, to a particular listed tribunal, to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and
 - (ii) that the Welsh Committee determines to be of special importance, and
 - (d) any matter referred to the Council under paragraph 14(1)(c) or 15(c).
- (4) If—
- (a) the Council does not make a report on matters dealt with in a report made by the Welsh Committee under sub-paragraph (1) or (3), or
 - (b) in making a report on those matters, the Council does not adopt the report made by the Welsh Committee without modification,
- the Welsh Committee may submit its report to the Welsh Ministers.
- (5) Where the Welsh Committee—
- (a) submits a report to the Welsh Ministers under sub-paragraph (4), and
 - (b) considers that the report could be relevant to matters that are the responsibility of the Lord Chancellor or the Scottish Ministers,
- the Council must send a copy of the report to the Lord Chancellor or (as the case may be) the Scottish Ministers.
- (6) The Welsh Ministers must lay before the National Assembly for Wales any report submitted to them under sub-paragraph (4).
- (7) In sub-paragraph (3)(a) “the administrative justice system” has the meaning given by paragraph 13(4).

The Council’s programme of work

- 20 (1) The Council must formulate, in general terms, a programme of the work that the Council plans to undertake in carrying out its functions.
- (2) The Council must—
- (a) keep the programme under review, and
 - (b) revise it when appropriate.
- (3) In discharging its duties under sub-paragraphs (1) and (2), the Council must have regard to—
- (a) the work of the Civil Justice Council,
 - (b) the work of the Social Security Advisory Committee, and
 - (c) the work of the Industrial Injuries Advisory Council.
- (4) The Council must send a copy of the programme, and a copy of any significant revisions to the programme, to—
- (a) the Lord Chancellor,

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- (b) the Welsh Ministers, and
- (c) the Scottish Ministers.

Annual reports

- 21 (1) The Council must make an annual report on the proceedings of the Council to—
- (a) the Lord Chancellor,
 - (b) the Scottish Ministers, and
 - (c) the Welsh Ministers.
- (2) The Scottish Committee must make an annual report to the Scottish Ministers on the proceedings of the Scottish Committee.
- (3) The Welsh Committee must make an annual report to the Welsh Ministers on the proceedings of the Welsh Committee.
- (4) The Lord Chancellor must lay before each House of Parliament a copy of any report made under sub-paragraph (1).
- (5) The Scottish Ministers must lay before the Scottish Parliament a copy of any report made under sub-paragraph (1) or (2).
- (6) The Welsh Ministers must lay before the National Assembly for Wales a copy of any report made under sub-paragraph (1) or (3).

Right to attend proceedings

- 22 (1) A member of any of—
- (a) the Council,
 - (b) the Scottish Committee, and
 - (c) the Welsh Committee,
- may attend (as observer) proceedings of a listed tribunal or of a statutory inquiry.
- (2) The right under sub-paragraph (1) applies even in respect of proceedings—
- (a) taking the form of a hearing held in private, or
 - (b) not taking the form of a hearing.
- (3) The right under sub-paragraph (1) is subject to any statutory provision by which members of the Council, members of the Scottish Committee or members of the Welsh Committee are expressly excluded from proceedings.

Application to Northern Ireland

- 23 Nothing in paragraphs 13 to 15 authorises or requires the Council to deal with a matter if legislation providing for the matter would be within the legislative competence of the Northern Ireland Assembly.

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PART 3

COUNCIL TO BE CONSULTED ON RULES FOR LISTED TRIBUNALS

- 24 (1) The power of a Minister of the Crown, the Welsh Ministers or the Scottish Ministers to make, approve, confirm or concur in procedural rules for any listed tribunal is exercisable only after consultation with the Council.
- (2) Sub-paragraph (1) does not apply with respect to any procedural rules made or to be made for a listed tribunal by the Tribunal Procedure Committee.
- (3) The Council must consult the Scottish Committee in relation to the exercise of its function under sub-paragraph (1) with respect to any tribunal having jurisdiction in relation to Scotland.
- (4) The Council must consult the Welsh Committee in relation to the exercise of its function under sub-paragraph (1) with respect to any tribunal having jurisdiction in relation to Wales.

PART 4

INTERPRETATION

Meaning of “listed tribunal”

- 25 (1) The following are listed tribunals for the purposes of this Schedule—
- (a) the First-tier Tribunal, and
 - (b) the Upper Tribunal.
- (2) In addition, an authority may by order provide for a tribunal to be a listed tribunal for the purposes of this Schedule if, or to the extent that, the tribunal is one for which the authority is responsible.
- (3) For the purposes of sub-paragraph (2)—
- (a) each of the following is an authority—
 - (i) the Lord Chancellor,
 - (ii) the Scottish Ministers, and
 - (iii) the Welsh Ministers, and
 - (b) the Lord Chancellor is the authority responsible for a tribunal unless, or except to the extent that, paragraph 26 or 27 provides for the Scottish Ministers or the Welsh Ministers to be the authority responsible for the tribunal.
- (4) An order under sub-paragraph (2) may include—
- (a) provision for a tribunal to be a listed tribunal only for the purposes of provisions of this Schedule specified in the order;
 - (b) provision for a tribunal to be a listed tribunal for the purposes of this Schedule, or for the purposes of provisions of this Schedule specified in the order, only in so far as it exercises functions so specified.
- (5) The power under sub-paragraph (2) may not be exercised so as to cause a tribunal to be a listed tribunal for any purpose of this Schedule so far as it exercises functions with respect to relevant Northern Ireland matters; and for this purpose a matter is a

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“relevant Northern Ireland matter” if legislation providing for the matter would be within the legislative competence of the Northern Ireland Assembly.

- (6) The power under sub-paragraph (2) may not be exercised so as to cause a tribunal to be a listed tribunal for any purpose of this Schedule if the tribunal is established otherwise than by or under a statutory provision.
- (7) Sub-paragraph (4) is not to be taken to prejudice the generality of section 49(3).

Responsible authorities for purposes of paragraph 25: Scotland

- 26
- (1) This paragraph applies for the purposes of paragraph 25.
 - (2) The Scottish Ministers are the authority responsible for a tribunal if—
 - (a) all of the tribunal’s functions are exercisable only in relation to Scotland, and
 - (b) at least one of the powers referred to in sub-paragraph (3) is exercisable as mentioned in sub-paragraph (6).
 - (3) Those powers are—
 - (a) power to appoint the members of the tribunal;
 - (b) power to make procedural rules for the tribunal.
 - (4) In the case of a tribunal that exercises functions in relation to Scotland and also exercises those or other functions in relation to somewhere other than Scotland, the Scottish Ministers are the authority responsible for the tribunal to the extent that it exercises functions in relation to Scotland if at least one of the powers referred to in sub-paragraph (5) is exercisable as mentioned in sub-paragraph (6).
 - (5) Those powers are—
 - (a) power to appoint the members of tribunal who exercise the tribunal’s functions in relation to Scotland;
 - (b) power to make procedural rules for the exercise of the tribunal’s functions in relation to Scotland.
 - (6) Power is exercisable as mentioned in this sub-paragraph if it is exercisable—
 - (a) by the Scottish Ministers, or
 - (b) by the Lord President of the Court of Session,and is not exercisable by them or him jointly or concurrently with a Minister of the Crown.

Responsible authorities for purposes of paragraph 25: Wales

- 27
- (1) This paragraph applies for the purposes of paragraph 25.
 - (2) The Welsh Ministers are the authority responsible for a tribunal if—
 - (a) all of the tribunal’s functions are exercisable only in relation to Wales, and
 - (b) at least one of the powers referred to in sub-paragraph (3) is exercisable as mentioned in sub-paragraph (6).
 - (3) Those powers are—
 - (a) power to appoint the members of the tribunal;
 - (b) power to make procedural rules for the tribunal.

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- (4) In the case of a tribunal that exercises functions in relation to Wales and also exercises those or other functions in relation to somewhere other than Wales, the Welsh Ministers are the authority responsible for the tribunal to the extent that it exercises functions in relation to Wales if at least one of the powers referred to in sub-paragraph (5) is exercisable as mentioned in sub-paragraph (6).
- (5) Those powers are—
- (a) power to appoint the members of the tribunal who exercise the tribunal’s functions in relation to Wales;
 - (b) power to make procedural rules for the exercise of the tribunal’s functions in relation to Wales.
- (6) Power is exercisable as mentioned in this sub-paragraph if it is exercisable by the Welsh Ministers and is not exercisable by the Welsh Ministers jointly or concurrently with a Minister of the Crown.

Other definitions

- 28 (1) In this Schedule—
- “enactment” includes an Act of the Scottish Parliament;
 - “the Council” means the Administrative Justice and Tribunals Council;
 - “Minister of the Crown” has the meaning given in the Ministers of the Crown Act 1975 (c. 26);
 - “procedural rules”, in relation to a tribunal, includes any statutory provision relating to the practice or procedure of the tribunal;
 - “the Scottish Committee” means the Scottish Committee of the Council;
 - “statutory inquiry” means a 1992 Act inquiry held, or to be held, by or on behalf of—
 - (a) a Minister of the Crown,
 - (b) the Scottish Ministers, or
 - (c) the Welsh Ministers;
 - “statutory provision” means a provision contained in, or having effect under, any enactment;
 - “tribunal” does not include an ordinary court of law;
 - “the Welsh Committee” means the Welsh Committee of the Council;
- (2) References in this Schedule to members of tribunals include references to the person constituting a tribunal consisting of one person.
- (3) In sub-paragraph (1) “1992 Act inquiry” means—
- (a) an inquiry or hearing within paragraph (a) of the definition of “statutory inquiry” in section 16(1) of the Tribunals and Inquiries Act 1992 (c. 53), or
 - (b) an inquiry or hearing that is a statutory inquiry for the purposes of that Act by virtue of an order under section 16(2) of that Act (including such an order made after the coming into force of this Schedule).