

## SCHEDULE

### MODEL RULES FOR APPEALS

## CHAPTER I

### MODEL RULES FOR APPEALS

#### PART VI

#### THE HEARING

*Procedure at the hearing etc.*

#### **Hearing to be in public**

**25.**—(1) The hearing must be in public except where the tribunal is satisfied that, because the subject matter to be considered by the tribunal—

(a) relates to intimate personal or financial circumstances, is commercially sensitive, or consists of information communicated or obtained in confidence; or

(b) is a matter whose disclosure would be contrary to the interests of national security;

or for any other reason, it is fair and reasonable for the hearing, or any part of the hearing, to be conducted in private.

(2) Whether or not the hearing is held in public, a member of the Council on Tribunals or its Scottish Committee is entitled to attend the hearing and may remain present during the deliberations of the tribunal, but must not take part in the deliberations.

#### **Procedure at the hearing**

**26.**—(1) At the beginning of the hearing the Chairman must explain the order of proceedings which the tribunal proposes to adopt.

(2) The tribunal must conduct the hearing in the manner which it considers most suitable to clarification of the issues before it and generally to fair handling of the proceedings; it shall so far as appears appropriate seek to avoid formality in its proceedings.

(3) The appellant and the Authority may appear at the hearing and may be represented or assisted by any person.

(4) If the appellant or the Authority fails to attend or be represented at the hearing, the tribunal may hear and, provided they have considered any representations made by the party under rule 21(1)(b), determine the appeal in that party's absence.

(5) The tribunal must consider any representations made by an interested person under rule 16.

(6) Subject to paragraph (7), the appellant and the Authority are entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal both on the evidence and generally on the subject matter of the appeal.

(7) The tribunal may at any point in the hearing limit the rights of either party under paragraph (6), provided that it is satisfied that to do so will not prevent the appeal from being decided fairly.

(8) The tribunal may adjourn the hearing, but must not do so unless it is satisfied that it is necessary to do so in order for the appeal to be decided fairly.

(9) The time and place fixed for an adjourned hearing must be—

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- (a) announced before the adjournment, or
- (b) published in accordance with rule 23.

### **Absence of a member of the tribunal**

**27.** The tribunal may continue to hear the appeal in the absence of one member of the tribunal other than the Chairman, and the tribunal shall be taken to be properly constituted in those circumstances.

### **Evidence**

**28.**—(1) Evidence before the tribunal may be given orally or, if the tribunal so orders, by affidavit or written statement, but the tribunal may at any stage of the proceedings require the personal attendance of any deponent or maker of a written statement.

(2) The tribunal may receive evidence of any fact which appears to the tribunal to be relevant, whether or not the evidence—

- (a) would be admissible in a court of law, or
- (b) was available to the Authority when the disputed action was taken.

(3) The tribunal may require any witness to give evidence on oath or affirmation which may be administered for the purpose by the Chairman.

### **Summoning or citing of witnesses**

**29.**—(1) Subject to paragraphs (2) and (3), the tribunal may on the application of either party issue a summons, or in relation to Scottish proceedings a citation, requiring any person in England or Wales (or in relation to Scottish proceedings, in Scotland)—

- (a) to attend as a witness at the hearing, at the time and place set out in the summons or citation, and
- (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the appeal.

(2) No person may be required to attend in compliance with a summons or citation under this rule unless—

- (a) he has been given at least seven days' notice of the hearing, and
- (b) he is paid the necessary expenses of his attendance.

(3) No person may be required in compliance with a summons or citation under this rule to give any evidence or produce any document or other material that he could not be required to produce in legal proceedings.

(4) Where a person summoned under paragraph (1)—

- (a) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced, or
- (b) having been so summoned, refuses to be sworn or to give evidence,

a judge may, on the application of the Chairman, exercise his powers under section 55 of the County Courts Act 1984<sup>(1)</sup> in relation to that person as though the person had been summoned in pursuance of county court rules as a witness in a county court.

(5) Where a person cited in paragraph (1)—

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(1) 1984 c. 28.

- (a) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the citation to be produced, or
- (b) having been so cited, refuses to be sworn or to give evidence,

a sheriff may, on the application of the Chairman, exercise in relation to that person any power which is for the time being conferred on the sheriff in the Ordinary Cause Rules set out in the First Schedule to the Sheriff Court (Scotland) Act 1907<sup>(2)</sup> to ordain a witness to forfeit and pay a penalty and to grant decree for that penalty in favour of the party on whose behalf a witness was cited, as though the person had been duly cited and had demanded and been paid his travelling expenses and had failed to attend a Proo in a cause to which the said Ordinary Cause Rules apply.

- (6) In this rule, “legal proceedings” means—
  - (a) in the case of proceedings relating to an appeal which relates to matters arising in England or Wales, proceedings in a county court, and
  - (b) in the case of Scottish proceedings, proceedings in an ordinary cause before the sheriff.

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(2) 1907 c. 51. The first Schedule was substituted by S.I.1993/1956.