

## SCHEDULE

### AUTHORISED COURT AND TRIBUNAL STAFF: LEGAL ADVICE AND JUDICIAL FUNCTIONS

#### PART 2

#### TRIBUNALS

##### *Tribunals, Courts and Enforcement Act 2007*

- 39 The Tribunals, Courts and Enforcement Act 2007 is amended as follows.
- 40 In section 8(2) (functions of Senior President of Tribunals excluded from general power to delegate), at the appropriate places insert—
- “section 29B;  
section 29D;”, and  
“paragraph 3 of Schedule 5;”.
- 41 After section 29 insert—

#### “CHAPTER 2A

##### EXERCISE OF TRIBUNAL FUNCTIONS BY AUTHORISED PERSONS

#### **29A Meaning of “authorised person” and “judicial office holder”**

In this Chapter—

“authorised person” means a person authorised under paragraph 3 of Schedule 5 to exercise functions of the First-tier Tribunal or Upper Tribunal;

“judicial office holder” has the meaning given by section 109(4) of the Constitutional Reform Act 2005.

#### **29B Directions and independence: authorised persons**

- (1) The Senior President of Tribunals may give directions to an authorised person.
- (2) Apart from such directions, an authorised person exercising a function by virtue of paragraph 3 of Schedule 5 is not subject to the direction of the Lord Chancellor or any other person when exercising the function.
- (3) The Senior President of Tribunals may delegate to one or more of the following the Senior President of Tribunals’ functions under subsection (1)—
  - (a) a judicial office holder;
  - (b) a person appointed under section 2(1) of the Courts Act 2003 or section 40(1) of this Act.
- (4) A person to whom functions of the Senior President of Tribunals are delegated under subsection (3)(b) is not subject to the direction of any person other than—

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- (a) the Senior President of Tribunals, or
  - (b) a judicial office holder nominated by the Senior President of Tribunals,
- when exercising the functions.

- (5) Subsections (3) to (5) of section 8 apply to—
- (a) a delegation under subsection (3) of this section, and
  - (b) a nomination under subsection (4) of this section,
- as they apply to a delegation under subsection (1) of that section.

### **29C Protection of authorised persons**

- (1) No action lies against an authorised person in respect of what the person does or omits to do—
- (a) in the execution of the person’s duty as an authorised person exercising, by virtue of paragraph 3 of Schedule 5, functions of a tribunal, and
  - (b) in relation to a matter within the person’s jurisdiction.
- (2) An action lies against an authorised person in respect of what the person does or omits to do—
- (a) in the purported execution of the person’s duty as an authorised person exercising, by virtue of paragraph 3 of Schedule 5, functions of a tribunal, but
  - (b) in relation to a matter not within the person’s jurisdiction,
- if, but only if, it is proved that the person acted in bad faith.
- (3) If an action is brought in a court in Scotland in circumstances in which subsection (1) or (2) provides that no action lies, the court in which the action is brought—
- (a) may, on the application of the defender, dismiss the action, and
  - (b) if it does so, may find the person bringing the action liable in expenses.
- (4) If an action is brought in any other court in circumstances in which subsection (1) or (2) provides that no action lies, the court in which the action is brought—
- (a) may, on the application of the defendant, strike out the proceedings in the action, and
  - (b) if it does so, may if it thinks fit order the person bringing the action to pay costs.

### **29D Costs or expenses in legal proceedings: authorised persons**

- (1) A court may not order an authorised person to pay costs in any proceedings in respect of what the person does or omits to do in the execution (or purported execution) of the person’s duty as an authorised person exercising, by virtue of paragraph 3 of Schedule 5, a function of a tribunal.
- (2) But subsection (1) does not apply in relation to any proceedings in which an authorised person—
- (a) is being tried for an offence or is appealing against a conviction, or

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- (b) is proved to have acted in bad faith in respect of the matters giving rise to the proceedings.
- (3) A court which is prevented by subsection (1) from ordering an authorised person to pay costs in any proceedings may instead order the Lord Chancellor to make a payment in respect of the costs of a person in the proceedings.
- (4) The Lord Chancellor may, after consulting the Senior President of Tribunals, make regulations specifying—
  - (a) circumstances in which a court must or must not exercise the power conferred on it by subsection (3), and
  - (b) how the amount of any payment ordered under subsection (3) is to be determined.
- (5) The power to make regulations under subsection (4) includes power to make—
  - (a) any supplementary, incidental or consequential provision, and
  - (b) any transitory, transitional or saving provision,which the Lord Chancellor considers necessary or expedient.
- (6) The Senior President of Tribunals may delegate the Senior President of Tribunals’ functions under subsection (4) to a person who is a judicial office holder.
- (7) Subsections (3) to (5) of section 8 apply to a delegation under subsection (6) of this section as they apply to a delegation under subsection (1) of that section.
- (8) In the application of this section to Scotland—
  - (a) references to a court ordering an authorised person to pay costs are to be read as references to a court finding an authorised person liable in expenses, and
  - (b) the second reference to costs in subsection (3) is to be read as a reference to expenses.

## **29E Indemnification of authorised persons**

- (1) “Indemnifiable amounts”, in relation to an authorised person, means—
  - (a) costs which the person reasonably incurs in or in connection with proceedings in respect of anything done or omitted to be done in the exercise (or purported exercise) of the person’s duty as an authorised person,
  - (b) costs which the person reasonably incurs in taking steps to dispute a claim which might be made in such proceedings,
  - (c) damages awarded against the person or costs ordered to be paid by the person in such proceedings, or
  - (d) sums payable by the person in connection with a reasonable settlement of such proceedings or such a claim.
- (2) The Lord Chancellor must indemnify an authorised person in respect of indemnifiable amounts if, in respect of the matters giving rise to the proceedings or claim, the person acted reasonably and in good faith.

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- (3) The Lord Chancellor may indemnify an authorised person in respect of other indemnifiable amounts unless it is proved, in respect of the matters giving rise to the proceedings or claim, that the person acted in bad faith.
  - (4) Any question whether, or to what extent, an authorised person is to be indemnified under this section is to be determined by the Lord Chancellor.
  - (5) The Lord Chancellor may, if an authorised person claiming to be indemnified so requests, make a determination for the purposes of this section with respect to—
    - (a) costs such as are mentioned in subsection (1)(a) or (b), or
    - (b) sums such as are mentioned in subsection (1)(d),
 before the costs are incurred or the settlement in connection with which the sums are payable is made.
  - (6) But a determination under subsection (5) before costs are incurred—
    - (a) is subject to such limitations (if any) as the Lord Chancellor thinks proper and to the subsequent determination of the costs reasonably incurred, and
    - (b) does not affect any other determination which may fall to be made in connection with the proceedings or claim in question.
  - (7) In the application of this section to Scotland, references to costs are to be read as references to expenses.”
- 42 (1) Section 49 (orders and regulations under Part 1: supplemental and procedural provisions) is amended as follows.
- (2) In subsection (5), for the words from the beginning to “containing it” substitute “None of the orders or regulations mentioned in subsection (6) may be made unless a draft of the statutory instrument containing the order or regulations”.
  - (3) In subsection (6)—
    - (a) for “Those orders” substitute “The orders and regulations”, and
    - (b) after paragraph (a) insert—
      - “(aa) regulations under section 29D(4);”.
- 43 Schedule 5 (Tribunal Procedure Rules) is amended as follows.
- 44 (1) Paragraph 3 is amended as follows.
- (2) In sub-paragraph (1), for “40(1)” substitute “2(1) of the Courts Act 2003 or section 40(1) of this Act”.
  - (3) At the end insert—
    - “(3) A person may exercise functions by virtue of this paragraph only if authorised to do so by the Senior President of Tribunals.
    - (4) An authorisation under this paragraph—
      - (a) may be subject to conditions, and
      - (b) may be varied or revoked by the Senior President of Tribunals at any time.

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- (5) The Senior President of Tribunals may delegate to one or more of the following the Senior President of Tribunals' functions under the preceding provisions of this paragraph—
- (a) a judicial office holder;
  - (b) a person appointed under section 2(1) of the Courts Act 2003 or section 40(1) of this Act.
- (6) A person to whom functions of the Senior President of Tribunals are delegated under sub-paragraph (5)(b) is not subject to the direction of any person other than—
- (a) the Senior President of Tribunals, or
  - (b) a judicial office holder nominated by the Senior President of Tribunals,
- when exercising the functions.
- (7) Subsections (3) to (5) of section 8 apply to—
- (a) a delegation under sub-paragraph (5), and
  - (b) a nomination under sub-paragraph (6),
- as they apply to a delegation under subsection (1) of that section.
- (8) In this paragraph—
- “function” does not include—
- (a) any function so far as its exercise involves authorising a person's committal to prison or arrest;
  - (b) any function of granting an injunction;
- “judicial office holder” has the meaning given by section 109(4) of the Constitutional Reform Act 2005.”

45 After paragraph 28 insert—

*“Delegation of functions to staff: reconsideration of decisions*

- 28A (1) Before making Rules that provide for the exercise of functions of the First-tier Tribunal or Upper Tribunal by authorised persons by virtue of paragraph 3, the Committee must take the following steps in relation to each of the functions in question.
- (2) The Committee must consider whether the Rules should include a right for the parties to proceedings in which a decision is made by an authorised person exercising the function to have the decision reconsidered by a judicial office holder.
- (3) If the Committee considers that the rules should include such a right, it must include provision to that effect when it makes the Rules.
- (4) If the Committee does not consider that the rules should include such a right, it must inform the Lord Chancellor of—
- (a) its decision, and
  - (b) its reasons for reaching that decision.

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- (5) In this paragraph “authorised person” and “judicial office holder” have the same meanings as in Chapter 2A of Part 1 of this Act (see section 29A).”