

SCHEDULE 5

Article 5(4)

Transitional and saving provisions

Interpretation of Schedule 5

1. In this Schedule—

“old tribunal” means a tribunal, the functions of which are transferred by article 2, but does not include the Pensions Regulator Tribunal in respect of its functions exercisable in Northern Ireland;

“new tribunal” means—

- (a) the Upper Tribunal, in respect of—
 - (i) the functions of the Financial Services and Markets Tribunal and the Pensions Regulator Tribunal;
 - (ii) the functions of the Information Tribunal of deciding appeals under section 28 of the Data Protection Act 1998(1) or section 60 of the Freedom of Information Act 2000(2) (including that section as applied and modified by regulation 18 of the Environmental Information Regulations 2004(3)) (appeals in relation to national security certificates);
- (b) the First-tier Tribunal, in respect of—
 - (i) the tribunal functions mentioned in article 2(1);
 - (ii) the functions of the Information Tribunal other than those mentioned in paragraph (a)(ii);

“transfer date” means the date on which the functions of an old tribunal are transferred to a new tribunal by article 2.

Transitional and saving provisions

2. Any proceedings before an old tribunal which are pending immediately before the transfer date shall continue on and after the transfer date as proceedings before the new tribunal.

3.—(1) The following sub-paragraphs apply where proceedings are continued in a new tribunal by virtue of paragraph 2.

(2) Where a hearing began before the transfer date but was not completed by that date, the new tribunal must be comprised for the continuation of that hearing of the person or persons who began it.

(3) The new tribunal may give any direction to ensure that proceedings are dealt with fairly and, in particular, may—

- (a) apply any provision in procedural rules which applied to the proceedings before the transfer date; or
- (b) disapply provisions of Tribunal Procedure Rules.

(4) In sub-paragraph (3) “procedural rules” means provision (whether called rules or not) regulating practice or procedure before a tribunal.

(5) Any direction or order given or made in proceedings which is in force immediately before the transfer date remains in force on and after that date as if it were a direction or order of the new tribunal.

(1) 1998 c. 29.

(2) 2000 c. 36.

(3) S.I. 2004/3391.

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(6) A time period which has started to run before the transfer date and which has not expired shall continue to apply.

(7) An order for costs may only be made if, and to the extent that, an order for costs could have been made by the old tribunal before the transfer date.

4. Paragraph 5 applies where—

- (a) an appeal lies to a court from any decision made by an old tribunal before the transfer date;
- (b) that right of appeal has not been exercised; and
- (c) the time to exercise that right of appeal has not expired prior to the transfer date.

5. In the circumstances set out at paragraph 4, such of the following provisions as is appropriate shall apply as if the decision were a decision made on or after the transfer date by the new tribunal—

- (a) section 11 of the Tribunals, Courts and Enforcement Act 2007⁽⁴⁾ (right to appeal to Upper Tribunal);
- (b) section 13 of the Tribunals, Courts and Enforcement Act 2007 (right to appeal to Court of Appeal);
- (c) section 78(9A) to (9D) or section 78B(4) to (7) of the Local Government Act 2000 (as inserted or amended by Schedule 2 to this Order)⁽⁵⁾.

6. Any case to be remitted by a court on or after the transfer date and which, if it had been remitted before the transfer date, would have been remitted to an old tribunal, shall be remitted to the new tribunal.

7. Staff appointed to an old tribunal before the transfer date are to be treated on and after that date, for the purpose of any enactment, as if they had been appointed by the Lord Chancellor under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (tribunal staff and services).

8. A decision made by an old tribunal before the transfer date is to be treated on or after the transfer date as a decision of the new tribunal.

(4) 2007 c. 15.

(5) 2000 c. 22. Sections 78 and 78B are amended by paragraphs 60 and 62 of Schedule 2 to this Order.