

Status: Point in time view as at 03/08/2015.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 2. (See end of Document for details)

SCHEDULES

SCHEDULE 4

TRIBUNAL: PROCEDURE

PART 2

TRIBUNAL RULES

General

9 ^[F1](1) In this Schedule “the Tribunal”, in relation to any proceedings before it, means the Tribunal as constituted (in accordance with section 14) for the purposes of those proceedings.

^[F2](2) In this Schedule, where a paragraph is capable of applying to proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act, any reference in that paragraph to “proceedings” includes a reference to those proceedings.]

Textual Amendments

- F1** Sch. 4 para. 9 renumbered as Sch. 4 para. 9(1) (3.8.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 28\(a\)](#); S.I. 2015/1584, art. 3(d); S.I. 2015/1630, art. 3(j)
- F2** Sch. 4 para. 9(2) inserted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 28\(b\)](#); S.I. 2015/1584, art. 3(d)

10 Tribunal rules may make different provision for different kinds of proceedings.

Institution of proceedings

^[F3]10A(1) Tribunal rules may make provision as to proceedings on an application for a warrant under section 194 of this Act or section 28, 28A, 62, 62A, 63, 65G or 65H of the 1998 Act, including provision—

- (a) for the Tribunal dealing with the proceedings to consist only of the President or a member of the panel of chairmen;
- (b) as to the manner in which the proceedings are to be conducted, including provision—
 - (i) for such applications to be determined without a hearing;
 - (ii) in cases where there is a hearing, for it to be held in private if the Tribunal considers it appropriate because it is considering information of a kind mentioned in paragraph 1(2);

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- (c) as to the persons entitled to be heard in such proceedings (where there is a hearing);
- (d) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
- (e) as to the evidence which may be required or admitted and the extent to which it should be oral or written;
- (f) allowing the Tribunal to fix time-limits with respect to any aspect of the proceedings and to extend any time-limit (before or after its expiry).

(2) Paragraphs 2 to 8, and 11 to 17, of this Schedule do not apply in relation to the institution or conduct of proceedings for a warrant mentioned in sub-paragraph (1).]

Textual Amendments

F3 Sch. 4 para. 10A inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 48\(5\)](#), [103\(1\)\(i\)\(3\)](#); [S.I. 2014/416](#), [art. 2\(1\)\(b\)](#) (with [Sch.](#))

- 11 (1) Tribunal rules may make provision as to the period within which and the manner in which proceedings are to be brought.
- (2) That provision may, in particular—
- (a) [^{F4}make further provision as to procedural aspects of the operation of the limitation or prescriptive periods in relation to claims which may be made in proceedings under section 47A of the 1998 Act, as set out in section 47E(3) to (6) of that Act;]
 - (b) provide for the Tribunal to extend the period in which any particular proceedings may be brought; and
 - (c) provide for the form, contents, amendment and acknowledgement of the documents by which proceedings are to be instituted.

Textual Amendments

F4 Sch. 4 para. 11(2)(a) substituted (3.8.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Consumer Rights Act 2015 \(c. 15\)](#), [s. 100\(5\)](#), [Sch. 8 para. 29](#); [S.I. 2015/1584](#), [art. 3\(d\)](#); [S.I. 2015/1630](#), [art. 3\(j\)](#)

- 12 Tribunal rules may provide for the Tribunal to reject any proceedings (other than proceedings under section 47A or 47B of the 1998 Act) if it considers that—
- (a) the person instituting them does not have a sufficient interest in the decision with respect to which the proceedings are brought; or
 - (b) the document by which he institutes them discloses no valid grounds for bringing them.
- 13 [^{F5}(1) Tribunal rules may provide for the Tribunal—
- (a) to reject a claim made under section 47A of the 1998 Act or a section 47B claim if it considers that there are no reasonable grounds for making it;

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- (b) to reject a section 47B claim if—
 - (i) the Tribunal declines to make a collective proceedings order in respect of the proceedings under section 47B of the 1998 Act,
 - (ii) the Tribunal makes a collective proceedings order in respect of the proceedings, but the order does not provide that the claim in question is eligible for inclusion in the proceedings,
 - (iii) the Tribunal revokes the collective proceedings order in respect of the proceedings, or
 - (iv) the Tribunal varies the collective proceedings order in such a way that the claim in question is no longer included in the proceedings;
- (c) to reject a section 47B claim if the claim had been previously made in proceedings under section 47A of the 1998 Act by a person who has not consented to its being continued in proceedings under section 47B of that Act.

(2) In this paragraph, “a section 47B claim” means a claim made in proceedings under section 47B of the 1998 Act at the commencement of those proceedings.]

Textual Amendments

- F5** Sch. 4 para. 13 substituted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 30](#); [S.I. 2015/1584](#), art. 3(d)

- 14 Tribunal rules may provide for the Tribunal to reject any proceedings if it is satisfied that the person instituting the proceedings has habitually and persistently and without any reasonable ground—
- (a) instituted vexatious proceedings (whether against the same person or against different persons); or
 - (b) made vexatious applications in any proceedings.
- 15 Tribunal rules must ensure that no proceedings are rejected without giving the parties the opportunity to be heard.

Fast-track procedure

- [^{F6}15A(1) Tribunal rules may make provision in relation to a fast-track procedure for claims made in proceedings under section 47A of the 1998 Act, including describing the factors relevant to determining whether a claim is suitable to be dealt with according to that procedure.
- (2) Tribunal rules may make different provision for claims in proceedings under section 47A of the 1998 Act which are and which are not subject to the fast-track procedure.
 - (3) Tribunal rules may, in particular, provide for the Tribunal to—
 - (a) grant an interim injunction on a claim in proceedings under section 47A of the 1998 Act which is subject to the fast-track procedure to a person who has not given an undertaking as to damages, or

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- (b) impose a cap on the amount that a person may be required to pay under an undertaking as to damages given on the granting of such an interim injunction.
- (4) In sub-paragraph (3) “an undertaking as to damages” means an undertaking to pay damages which a person sustains as a result of the interim injunction and which the Tribunal considers the person to whom the injunction is granted should pay.

Textual Amendments

F6 Sch. 4 paras. 15A-15C inserted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 31](#); [S.I. 2015/1584](#), art. 3(d)

Collective proceedings

- 15B (1) Tribunal rules may make provision in relation to collective proceedings under section 47B of the 1998 Act.
- (2) Rules under sub-paragraph (1) must in particular make provision as to the following matters—
- (a) the procedure governing an application for a collective proceedings order;
 - (b) the factors which the Tribunal must take into account in deciding whether a claim is suitable to be brought in collective proceedings (but rules need not make provision in connection with the determination as to whether claims raise the same, similar or related issues of fact or law);
 - (c) the factors which the Tribunal must take into account in deciding whether to authorise a person to act as a representative in collective proceedings;
 - (d) the procedure by which the Tribunal is to reach a decision as to whether to make a collective proceedings order;
 - (e) the procedure by which a person may opt in or opt out of collective proceedings;
 - (f) the factors which the Tribunal must take into account in deciding whether to vary or revoke a collective proceedings order;
 - (g) the assessment of damages in collective proceedings;
 - (h) the payment of damages in collective proceedings, including the procedure for publicising an award of damages;
 - (i) the effect of judgments and orders in collective proceedings.

Textual Amendments

F6 Sch. 4 paras. 15A-15C inserted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 31](#); [S.I. 2015/1584](#), art. 3(d)

Collective settlements

- 15C (1) Tribunal rules may make provision in relation to collective settlements under sections 49A and 49B of the 1998 Act.
- (2) Rules under sub-paragraph (1) must in particular make provision as to the following matters—

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- (a) the procedure governing an application for approval of a proposed collective settlement;
- (b) where section 49B applies, the factors which the Tribunal must take into account in deciding whether to make a collective settlement order (but rules need not make provision in connection with the determination as to whether claims raise the same, similar or related issues of fact or law);
- (c) where section 49B applies, the factors which the Tribunal must take into account in deciding whether to authorise a person to act as a settlement representative in relation to a collective settlement;
- (d) where section 49B applies, the procedure by which the Tribunal is to reach a decision as to whether to make a collective settlement order;
- (e) the factors which the Tribunal must take into account in deciding whether to approve a proposed collective settlement;
- (f) the procedure by which the Tribunal is to reach a decision as to whether to approve a collective settlement;
- (g) the procedure by which a person may opt in or opt out of a collective settlement;
- (h) the payment of compensation under a collective settlement, including the procedure for publicising a compensation award.]

Textual Amendments

F6 Sch. 4 paras. 15A-15C inserted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 31](#); [S.I. 2015/1584](#), art. 3(d)

Pre-hearing reviews and preliminary matters

- 16 (1) Tribunal rules may make provision for the carrying out by the Tribunal of a preliminary consideration of proceedings (a “pre-hearing review”).
- (2) That provision may include—
- (a) provision enabling such powers to be exercised on a pre-hearing review as may be specified in the rules;
 - (b) provision for security and supplemental provision relating to security.
- (3) For the purposes of sub-paragraph (2)(b)—
- (a) “provision for security” means provision authorising the Tribunal, in specified circumstances, to order a party to the proceedings, if he wishes to continue to participate in them, to pay a deposit not exceeding such sum as may be specified or calculated in a specified manner; and
 - (b) “supplemental provision”, in relation to security, means provision as to—
 - (i) the manner in which the amount of a deposit is to be determined;
 - (ii) the consequences of non-payment of a deposit;
 - (iii) the circumstances in which the deposit, or any part of it, may be refunded to the person who paid it or paid to another party to the proceedings.

Conduct of the hearing

- 17 (1) Tribunal rules may make provision—

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- (a) as to the manner in which proceedings are to be conducted, including provision for any hearing to be held in private if the Tribunal considers it appropriate because it is considering information of a kind mentioned in paragraph 1(2);
 - (b) as to the persons entitled to appear on behalf of the parties;
 - (c) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
 - (d) as to the evidence which may be required or admitted and the extent to which it should be oral or written;
 - (e) allowing the Tribunal to fix time limits with respect to any aspect of proceedings and to extend any time limit (before or after its expiry);
 - (f) enabling the Tribunal, on the application of any party or on its own initiative, to order—
 - (i) the disclosure between, or the production by, the parties of documents or classes of documents; or
 - (ii) such recovery or inspection of documents as might be ordered by a sheriff;
 - (g) for the appointment of experts for the purposes of proceedings;
 - (h) for the award of costs or expenses, including allowances payable to persons in connection with attendance before the Tribunal;
 - [^{F7}(ha) allowing the Tribunal to order payments in respect of the representation of a party to proceedings under section 47A or 47B of the 1998 Act, where the representation by a legal representative was provided free of charge;]
 - (i) for taxing or otherwise settling any costs or expenses awarded by the Tribunal or for the enforcement of any order awarding costs or expenses.
- (2) Rules under sub-paragraph (1)(h) may provide, in relation to a claim made under section 47A of the 1998 Act which is continued on behalf of [^{F8}an individual][^{F8}a person] in proceedings under section 47B of that Act, for costs or expenses to be awarded to or against [^{F9}that individual][^{F9}that person] in respect of proceedings on that claim which took place before it was included in the proceedings under section 47B of that Act.
- [^{F10}(2A) Rules under sub-paragraph (1)(h) may provide for costs or expenses to be awarded to or against a person on whose behalf a claim is made or continued in proceedings under section 47B of the 1998 Act in respect of an application in the proceedings made by that person (where that application is not made by the representative in the proceedings on that person's behalf).]
- (3) Otherwise Tribunal rules may not provide for costs or expenses to be awarded to or against [^{F11}an individual][^{F11}a person] on whose behalf a claim is made or continued in proceedings under section 47B of the 1998 Act.
- (4) Tribunal rules may make provision enabling the Tribunal to refer any matter arising in any proceedings (other than proceedings under section 47A or 47B of the 1998 Act) back to the authority that made the decision to which the proceedings relate, if it appears that the matter has not been adequately investigated.
- (5) A person who without reasonable excuse fails to comply with—
- (a) any requirement imposed by virtue of sub-paragraph (1)(c); or
 - (b) any requirement with respect to the disclosure, production, recovery or inspection of documents which is imposed by virtue of sub-paragraph (1)(f),

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is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Textual Amendments

- F7** Sch. 4 para. 17(1)(ha) inserted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 32\(a\)](#); S.I. 2015/1584, art. 3(d)
- F8** Words in Sch. 4 para. 17(2) substituted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 32\(b\)\(i\)](#); S.I. 2015/1584, art. 3(d)
- F9** Words in Sch. 4 para. 17(2) substituted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 32\(b\)\(ii\)](#); S.I. 2015/1584, art. 3(d)
- F10** Sch. 4 para. 17(2A) inserted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 32\(c\)](#); S.I. 2015/1584, art. 3(d)
- F11** Words in Sch. 4 para. 17(3) substituted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 32\(d\)](#); S.I. 2015/1584, art. 3(d)

Quorum

- 18 (1) Tribunal rules may make provision as to the consequences of a member of the Tribunal being unable to continue after part of any proceedings have been heard.
- (2) The rules may allow the Tribunal to consist of the remaining members for the rest of the proceedings.
- (3) The rules may enable the President, if it is the chairman of the Tribunal who is unable to continue—
- (a) to appoint either of the remaining members to chair the Tribunal; and
 - (b) if that person is not [^{F12}a judge within any of paragraphs (aa) to (ac) of section 12(2) or] a member of the panel of chairmen, to appoint himself or some other suitably qualified person to attend the proceedings and advise the remaining members on any questions of law arising.
- (4) For the purpose of sub-paragraph (3) a person is “suitably qualified” if he is, or is qualified for appointment as, a member of the panel of chairmen.

Textual Amendments

- F12** Words in Sch. 4 para. 18(3)(b) inserted (27.5.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), [ss. 82\(3\)](#), 100(5); S.I. 2015/1333, art. 2(b)

Interest

- 19 (1) Tribunal rules may make provision allowing the Tribunal to order that interest is payable on any sum awarded by the Tribunal or on any fees ordered to be paid under paragraph 20.
- (2) That provision may include provision—
- (a) as to the circumstances in which such an order may be made;
 - (b) as to the manner in which, and the periods in respect of which, interest is to be calculated and paid.

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Fees

- 20 (1) Tribunal rules may provide—
- (a) for fees to be chargeable in respect of specified costs of proceedings; and
 - (b) for the amount of such costs to be determined by the Tribunal.
- (2) Any sums received in respect of such fees shall be paid into the Consolidated Fund.

Stay or sist of proceedings

- [^{F13}20A(1) In relation to proceedings in England and Wales or Northern Ireland under section 47A or 47B of the 1998 Act, Tribunal rules may make provision as to the stay of the proceedings, including as to—
- (a) the circumstances in which a stay may be ordered or removed at the request of a party to the proceedings,
 - (b) the circumstances in which the proceedings may be stayed at the instance of the Tribunal, and
 - (c) the procedure to be followed.
- (2) In relation to proceedings in Scotland under section 47A or 47B of the 1998 Act, Tribunal rules may make provision as to the sist of the proceedings, including as to—
- (a) the circumstances in which a sist may be granted or recalled at the request of a party to the proceedings,
 - (b) the circumstances in which the proceedings may be sisted at the instance of the Tribunal, and
 - (c) the procedure to be followed.
- (3) Rules under sub-paragraph (1) or (2) may in particular make provision in relation to the stay or sist of proceedings under section 47A or 47B which relate to a claim in respect of an infringement decision (as defined in section 47A(6)) which has not become final (see section 58A of the 1998 Act).]

Textual Amendments

F13 Sch. 4 para. 20A and cross-heading inserted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 33](#); S.I. 2015/1584, art. 3(d)

Withdrawal of proceedings

- 21 (1) Tribunal rules may make provision—
- (a) preventing a party who has instituted proceedings from withdrawing them without the permission of the Tribunal or, in specified circumstances, the President or the Registrar;
 - (b) for the Tribunal to grant permission to withdraw proceedings on such conditions as it considers appropriate;
 - (c) enabling the Tribunal to publish any decision which it would have made in any proceedings, had the proceedings not been withdrawn;
 - (d) as to the effect of withdrawal of proceedings; and
 - (e) as to the procedure to be followed if parties to proceedings agree to settle.

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- (2) Tribunal rules may make, in relation to a claim included in proceedings under section 47B of the 1998 Act, any provision which may be made under sub-paragraph (1) in relation to the whole proceedings.

Injunctions

- [^{F14}21A] Tribunal rules may make provision in relation to the grant of injunctions (including interim injunctions) in proceedings under section 47A or 47B of the 1998 Act.]

Textual Amendments

- F14** Sch. 4 para. 21A and cross-heading inserted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 34](#); S.I. 2015/1584, art. 3(d)

Interim orders

- 22 (1) Tribunal rules may provide for the Tribunal to make an order, on an interim basis—
- (a) suspending the effect of any decision which is the subject matter of proceedings before it;
 - (b) in the case of an appeal under section 46 or 47 of the 1998 Act, varying the conditions or obligations attached to an exemption;
 - (c) granting any remedy which the Tribunal would have had power to grant in its final decision.
- (2) Tribunal rules may also make provision giving the Tribunal powers similar to those given to the [^{F15}CMA] by section 35 of the 1998 Act.

Textual Amendments

- F15** Word in Sch. 4 para. 22(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 66](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Miscellaneous

- 23 (1) Tribunal rules may make provision enabling the Tribunal to decide where to sit for the purposes of, or of any part of, any proceedings before it.
- (2) Tribunal rules may make provision enabling the Tribunal to decide that any proceedings before it are to be treated, for purposes connected with—
- (a) any appeal from a decision of the Tribunal made in those proceedings; and
 - (b) any other matter connected with those proceedings,
- as proceedings in England and Wales, Scotland or Northern Ireland (regardless of the decision made for the purposes of sub-paragraph (1)).
- (3) For the purposes of sub-paragraph (2), Tribunal rules may provide for each claim made or continued on behalf of [^{F16}an individual][^{F16}a person] in proceedings under section 47B of the 1998 Act to be treated as separate proceedings.

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Textual Amendments

F16 Words in Sch. 4 para. 23(3) substituted (3.8.2015 for specified purposes) by [Consumer Rights Act 2015](#) (c. 15), s. 100(5), [Sch. 8 para. 35](#); S.I. 2015/1584, art. 3(d)

- 24 Tribunal rules may make provision—
- (a) for a person who is not a party to be joined in any proceedings;
 - (b) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person;
 - (c) for proceedings to be consolidated on such terms as the Tribunal thinks appropriate in such circumstances as may be specified.
- 25 Tribunal rules may make provision for the Tribunal to transfer a claim made in proceedings under section 47A of the 1998 Act to—
- (a) the High Court or [^{F17}the county court in England and Wales or the High Court or a county court in] Northern Ireland; or
 - (b) the Court of Session or a sheriff court in Scotland.

Textual Amendments

F17 Words in Sch. 4 para. 25(a) substituted (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), [Sch. 9 para. 81\(d\)](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

- 26 Tribunal rules may make provision in connection with the transfer of any proceedings from a court mentioned in paragraph 25 to the Tribunal under section 16.

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