



# Judicial Review and Courts Act 2022

## 2022 CHAPTER 35

### PART 2

#### COURTS, TRIBUNALS AND CORONERS

PROSPECTIVE

### CHAPTER 3

#### EMPLOYMENT TRIBUNALS AND THE EMPLOYMENT APPEAL TRIBUNAL

#### 34 Employment Tribunal Procedure Rules

- (1) The Employment Tribunals Act 1996 is amended as set out in subsections (2) to (4).  
(2) For section 7 substitute—

**“7 Practice and procedure: general**

Procedure Rules (see section 37QA) are to govern the practice and procedure to be followed in employment tribunals.”

- (3) For section 30 substitute—

**“30 Practice and procedure: general**

- (1) Procedure Rules (see section 37QA) are to govern the practice and procedure to be followed in the Appeal Tribunal.  
(2) The Appeal Tribunal has the power to regulate its own practice and procedure, subject to Procedure Rules, directions under section 29A(1), and any other provision made by or under an enactment.”

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*Status: This version of this chapter contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the*  
*Judicial Review and Courts Act 2022, Chapter 3. (See end of Document for details)*

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(4) At the beginning of Part 3 insert—

*“Procedure Rules*

**37QA Procedure Rules**

- (1) There are to be rules made by the Tribunal Procedure Committee called “Employment Tribunal Procedure Rules”.
- (2) Those are the rules referred to as “Procedure Rules” in this Act.
- (3) Schedule A1 makes further provision about Procedure Rules.
- (4) The power of the Tribunal Procedure Committee to make Procedure Rules for the purposes set out in sections 7 and 30(1) is not limited by any other provision (including future provision) about what Procedure Rules may or must contain.”
- (5) [Schedule 5](#) contains further provision in connection with the provision made by the preceding subsections.

**Commencement Information**

**II** S. 34 not in force at Royal Assent, see [s. 51\(4\)](#)

**35 Composition of tribunals**

- (1) The Employment Tribunals Act 1996 is amended as follows.
- (2) For section 4 substitute—

**“4 Composition of tribunals**

- (1) An employment tribunal is, for the purpose of deciding any given matter, to be composed of a member or members chosen by the Senior President of Tribunals.
- (2) The member, or each member, chosen must belong to a panel of members of employment tribunals appointed in accordance with regulations under section 1(1).
- (3) The Senior President of Tribunals (or any person to whom the function under subsection (1) is delegated)—
  - (a) must act in accordance with regulations under subsection (4);
  - (b) may choose themselves (if eligible in accordance with regulations under section 1(1)).
- (4) The Lord Chancellor must by regulations make provision, in relation to every matter that may fall to be decided by an employment tribunal, for determining the number of members who are to compose the tribunal.

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- (5) Where regulations under subsection (4) provide for a tribunal to be composed of a single member, the regulations must provide for that member to be an Employment Judge.
- (6) Where regulations under subsection (4) provide for a tribunal to be composed of more than one member, the regulations—
  - (a) must provide for at least one of those members to be an Employment Judge,
  - (b) must make provision for determining how many (if any) of the other members are to be Employment Judges and how many (if any) are to be members who are not Employment Judges, and
  - (c) if the tribunal is to include one or more members who are not Employment Judges, may make provision for determining what qualifications (if any) that member or any of those members must have.
- (7) A duty under subsection (4) or (6) to provide for the determination of anything may be discharged by providing for the thing to be determined by the Senior President of Tribunals or the President of Employment Tribunals in accordance with any provision made under that subsection.
- (8) The power under subsection (6)(c) may be exercised by giving the Senior President of Tribunals or the President of Employment Tribunals power to determine what qualifications are required in accordance with any provision made by the regulations.
- (9) Where a tribunal is to be composed of more than one member, the tribunal may proceed in the absence of one or more of the members chosen to compose it if—
  - (a) the parties to the case agree, and
  - (b) at least one of the members who is present is an Employment Judge.
- (10) Where a person (other than an Employment Judge) is chosen as one of the members composing a tribunal but does not have a qualification required by virtue of subsection (6)(c), the tribunal may still proceed with that person as a member if the parties to the case agree.
- (11) Before making regulations under this section, the Lord Chancellor must consult the Senior President of Tribunals.
- (12) In this section—
  - “President of Employment Tribunals”—
    - (a) in relation to employment tribunals in England and Wales, means the President of Employment Tribunals (England and Wales), and
    - (b) in relation to employment tribunals in Scotland, means the President of Employment Tribunals (Scotland);
  - “qualification” includes experience.”

(3) For section 28 substitute—

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## **“28 Composition of Appeal Tribunal**

- (1) The Appeal Tribunal is, for the purpose of deciding any given matter, to be composed of a member or members chosen by the Senior President of Tribunals.
- (2) The Senior President of Tribunals (or any person to whom the function under subsection (1) is delegated)—
  - (a) must act in accordance with regulations under subsection (3);
  - (b) may choose themselves (if otherwise eligible to sit).
- (3) The Lord Chancellor must by regulations make provision, in relation to every matter that may fall to be decided by the Appeal Tribunal, for determining the number of members who are to compose the Tribunal.
- (4) Where regulations under subsection (3) provide for the Appeal Tribunal to be composed of a single member, the regulations must provide for that member to be a judge.
- (5) Where regulations under subsection (3) provide for the Appeal Tribunal to be composed of more than one member, the regulations—
  - (a) must provide for at least one of those members to be a judge,
  - (b) must make provision for determining how many (if any) of the other members are to be judges and how many (if any) are to be appointed members, and
  - (c) if the Tribunal is to be composed of persons who include one or more appointed members, may make provision for determining what qualifications (if any) that member or any of those members must have.
- (6) A duty under subsection (3) or (5) to provide for the determination of anything may be discharged by providing for the thing to be determined by the Senior President of Tribunals or the President of the Appeal Tribunal in accordance with any provision made under that subsection.
- (7) The power under subsection (5)(c) may be exercised by giving the Senior President of Tribunals or the President of the Appeal Tribunal power to determine what qualifications are required in accordance with any provision made by the regulations.
- (8) Where the Appeal Tribunal is to be composed of more than one member, the Tribunal may proceed in the absence of one or more of the members chosen to compose it if—
  - (a) the parties to the case agree, and
  - (b) at least one of the members who is present is a judge.
- (9) Where a person (other than a judge) is chosen as one of the members composing the Appeal Tribunal but does not have a qualification required by virtue of subsection (5)(c), the Tribunal may still proceed with that person as a member if the parties to the case agree.
- (10) Before making regulations under this section, the Lord Chancellor must consult the Senior President of Tribunals.

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(11) In this section, “qualification” includes experience.”

(4) In section 41(2) (orders, regulations and rules subject to affirmative procedure)—

- (a) omit “, 4(4) or (6D)” and “, 28(5)”;
- (b) before “37N” insert “4, 28,”.

#### Commencement Information

**I2** S. 35 not in force at Royal Assent, see [s. 51\(4\)](#)

### 36 Saving for existing procedural provisions

No amendment or repeal made by section 34 or 35 or [Schedule 5](#) affects the continued operation of—

- (a) the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ([S.I. 2013/1237](#)),
- (b) the Employment Appeal Tribunal Rules 1993 ([S.I. 1993/2854](#)), or
- (c) any practice direction made under section 7A of the Employment Tribunals Act 1996 or the regulations referred to in paragraph (a).

#### Commencement Information

**I3** S. 36 not in force at Royal Assent, see [s. 51\(4\)](#)

### 37 Exercise of tribunal functions by authorised persons

(1) Chapter 2A of Part 1 of the Tribunals, Courts and Enforcement Act 2007 (which makes provision in connection with the exercise of functions of tribunals by persons authorised under Tribunal Procedure Rules) is amended as follows.

(2) In section 29A (meaning of certain terms)—

- (a) for the heading substitute “Interpretation of Chapter”;
- (b) in the definition of “authorised person”—
  - (i) for “paragraph 3 of Schedule 5” substitute “a relevant Procedure Rule”;
  - (ii) for “the First-tier Tribunal or Upper Tribunal” substitute “a tribunal”;
- (c) in the definition of “judicial office holder”—
  - (i) for “has” substitute “means—  
“(a) a judicial office holder within”;
  - (ii) at the end insert “, or  
(b) the President of Employment Tribunals (Scotland);”;
- (d) at the end insert—  
““relevant Procedure Rule” means—
  - (a) a Tribunal Procedure Rule of a kind mentioned in paragraph 3 of Schedule 5 to this Act, or
  - (b) an Employment Tribunal Procedure Rule of a kind mentioned in paragraph 2 of Schedule [A1](#) to the Employment Tribunals Act 1996;

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“tribunal” means the First-tier Tribunal, the Upper Tribunal, an employment tribunal or the Employment Appeal Tribunal.”

(3) In each of the following provisions, for “paragraph 3 of Schedule 5” substitute “a relevant Procedure Rule”—

- (a) section 29B(2) (authorised person not subject to directions not made under that section);
- (b) section 29C(1)(a) and (2)(a) (protection against actions for authorised persons acting within or without jurisdiction);
- (c) section 29D(1) (protection against costs for authorised persons).

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**Commencement Information**

**I4** S. 37 not in force at Royal Assent, see [s. 51\(4\)](#)

### **38 Responsibility for remunerating tribunal members**

In the following provisions of the Employment Tribunals Act 1996, for “Secretary of State”, in each place it occurs, substitute “Lord Chancellor”—

- (a) section 5(1), (2) and (3) (remuneration of members of employment tribunals etc);
- (b) section 27(1), (3) and (4) (remuneration of members of Employment Appeal Tribunal etc).

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**Commencement Information**

**I5** S. 38 not in force at Royal Assent, see [s. 51\(4\)](#)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Judicial Review and Courts Act 2022, Chapter 3.