

Status: This version of this schedule contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Judicial Review and Courts Act 2022, Schedule 5. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 5

Section 34

EMPLOYMENT TRIBUNAL PROCEDURE RULES: FURTHER PROVISION

PART 1

MAKING AND CONTENT OF EMPLOYMENT TRIBUNAL PROCEDURE RULES

1 In the Employment Tribunals Act 1996, before Schedule 1 insert—

“SCHEDULE A1

Section 37QA

PROCEDURE RULES

PART 1

OBJECTIVES

- 1 (1) The Tribunal Procedure Committee must exercise its power to make Procedure Rules with a view to securing—
- (a) that justice is done in proceedings before the tribunal,
 - (b) that the tribunal system is accessible and fair,
 - (c) that proceedings are handled quickly and efficiently,
 - (d) that Procedure Rules are both simple and simply expressed, and
 - (e) that Procedure Rules, where appropriate, confer responsibility on members of the tribunal for ensuring that proceedings before the tribunal are handled quickly and efficiently.
- (2) In sub-paragraph (1)(b), “the tribunal system” means the system for deciding matters within the jurisdiction of the tribunal.

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PART 2

CONTENT OF PROCEDURE RULES

Delegation of functions to staff

- 2 (1) Procedure Rules may provide for functions of the tribunal to be exercised by staff appointed under section 2(1) of the Courts Act 2003 (court staff) or section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (tribunal staff).
- (2) In making provision of the kind mentioned in sub-paragraph (1) in relation to a function, Procedure Rules may (in particular)—
 - (a) provide for the function to be exercisable by a member of staff only if the member of staff is, or is of a description, specified in exercise of a discretion conferred by Procedure Rules;
 - (b) provide for the function to be exercisable by a member of staff only if the member of staff is approved, or is of a description approved, for the purpose by a person specified in Procedure Rules.
- (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.
- (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 the Tribunals, Courts and Enforcement Act 2007.
- (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 of the Tribunals, Courts and Enforcement Act 2007 apply to a delegation under sub-paragraph (5) as they apply to a delegation under subsection (1) of that section.
- (8) In this paragraph, “judicial office holder” means—

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- (a) a judicial office holder within the meaning given by section 109(4) of the Constitutional Reform Act 2005, or
- (b) the President of Employment Tribunals (Scotland).

Time limits

- 3 Procedure Rules may make provision for time limits as respects initiating, or taking any step in, proceedings before the tribunal.

Determining where to start proceedings

- 4 Procedure Rules may include provision for determining whether proceedings before the tribunal are to be brought in England and Wales or in Scotland.

Repeat applications

- 5 Procedure Rules may make provision restricting the making of fresh applications where a previous application in relation to the same matter has been made.

Tribunal acting of its own initiative

- 6 Procedure Rules may make provision about the circumstances in which the tribunal may exercise its powers of its own initiative.

Hearings

- 7 Procedure Rules may—
 - (a) make provision for dealing with matters without a hearing;
 - (b) make provision as respects allowing or requiring a hearing to be in private or as respects allowing or requiring a hearing to be in public.

Proceedings without notice

- 8 Procedure Rules may make provision for proceedings to take place, in circumstances described in Procedure Rules, at the request of one party even though the other, or another, party has had no notice.

Representation

- 9 Procedure Rules may make provision conferring additional rights of audience before the tribunal.

Intervention by Secretary of State

- 10 Procedure Rules may make provision—
 - (a) for the Secretary of State to be treated (either generally or in circumstances prescribed by the Rules) as a party to any proceedings, and

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- (b) for the Secretary of State to be entitled to appear and to be heard accordingly.

Evidence, witnesses and attendance

- 11 (1) Procedure Rules may make provision about evidence (including evidence on oath and administration of oaths).
- (2) Procedure Rules may modify any rules of evidence provided for elsewhere, so far as they would apply to proceedings before the tribunal.
- (3) Procedure Rules may make provision, where an employment tribunal has required a person—
- (a) to attend at any place for the purpose of giving evidence,
 - (b) otherwise to be available to give evidence,
 - (c) to swear an oath in connection with the giving of evidence,
 - (d) to give evidence as a witness,
 - (e) to produce a document, or
 - (f) to facilitate the inspection of a document or any other thing (including any premises),
- for the Appeal Tribunal to deal with non-compliance with the requirement as though the requirement had been imposed by the Appeal Tribunal.
- (4) Procedure Rules may make provision for the payment of expenses and allowances to persons giving evidence, producing documents, attending proceedings or required to attend proceedings.

Use of information

- 12 (1) Procedure Rules may make provision for the disclosure or non-disclosure of information received during the course of proceedings before the tribunal.
- (2) Procedure Rules may make provision for imposing reporting restrictions in circumstances described in Procedure Rules.

Set-off

- 13 Procedure Rules may make provision for a party to proceedings to deduct, from amounts payable by the party, amounts payable to the party.

Reconsideration or review of decisions

- 14 Procedure Rules may confer power on the tribunal to reconsider or review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with Procedure Rules.

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Correction of errors and setting aside of decisions on procedural grounds

- 15 (1) Procedure Rules may make provision for the correction of accidental errors in a decision or record of a decision.
- (2) Procedure Rules may make provision for the setting aside of a decision in proceedings before the tribunal—
- (a) where a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party's representative,
- (b) where a document relating to the proceedings was not sent to the tribunal at an appropriate time,
- (c) where a party to the proceedings, or a party's representative, was not present at a hearing related to the proceedings, or
- (d) where there has been any other procedural irregularity in the proceedings.
- (3) Sub-paragraphs (1) and (2) do not affect, and are not affected by, any power to correct errors or set aside decisions that is exercisable apart from rules made by virtue of those sub-paragraphs.

Registration and proof of decisions

- 16 Procedure Rules may make provision for the registration and proof of decisions, orders and awards of the tribunal.

Ancillary powers

- 17 Procedure Rules may confer on the tribunal such ancillary powers as are necessary for the proper discharge of its functions.

Rules may refer to practice directions

- 18 Procedure Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions under section 7A or 29A.

Presumptions

- 19 Procedure Rules may make provision in the form of presumptions (including, in particular, presumptions as to service or notification).

Differential provision

- 20 Procedure Rules may make different provision for different purposes or different areas.

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PART 3

SUPPLEMENTARY PROVISION

Procedure for making Procedure Rules

- 21 (1) Part 3 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 (which makes provision about how Tribunal Procedure Rules are to be made) applies to the making of Procedure Rules under this Act as it applies to the making of Tribunal Procedure Rules under section 22 of that Act, with the following modifications.
- (2) In paragraph 28(1)(a) of that Schedule, the reference to the Chamber Presidents is to be read as a reference to the President of the Employment Tribunals (England and Wales) and the President of the Employment Tribunals (Scotland).
- (3) In paragraph 28A(1) of that Schedule—
- (a) the reference to the First-tier Tribunal or Upper Tribunal is to be read as a reference to an employment tribunal or the Employment Appeal Tribunal, and
- (b) the reference to paragraph 3 of that Schedule is to be read as a reference to paragraph 2 of this Schedule.

Interpretation

- 22 In this Schedule, “the tribunal” means—
- (a) an employment tribunal, in relation to Procedure Rules in respect of employment tribunals;
- (b) the Appeal Tribunal, in relation to Procedure Rules in respect of the Appeal Tribunal.”

Commencement Information

- II** Sch. 5 para. 1 not in force at Royal Assent, see [s. 51\(4\)](#)

PART 2

OTHER AMENDMENTS OF THE EMPLOYMENT TRIBUNALS ACT 1996

Introduction

- 2 The Employment Tribunals Act 1996 is amended as follows.

Commencement Information

- I2** Sch. 5 para. 2 not in force at Royal Assent, see [s. 51\(4\)](#)

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Employment tribunals

- 3 (1) Section 7A (practice directions) is amended as follows.
- (2) In subsection (A1), after “about the” insert “practice and”.
- (3) For subsection (1) substitute—
- “(1) The territorial President may make directions about the practice and procedure of employment tribunals.”
- (4) Omit subsection (2).
- (5) In subsection (2A), for “power under subsection (A1) includes” substitute “powers under subsections (A1) and (1) include”.
- (6) In subsection (2C), for “(1)(a)” substitute “(1)”.

Commencement Information

I3 Sch. 5 para. 3 not in force at Royal Assent, see [s. 51\(4\)](#)

- 4 (1) Section 7B (mediation) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) A person exercising power to make Procedure Rules or give practice directions must, when making provision in relation to mediation, have regard to the following principles—
- (a) mediation of matters in dispute between parties to proceedings is to take place only by agreement between those parties;
- (b) where parties to proceedings fail to mediate, or where mediation between parties to proceedings fails to resolve disputed matters, the failure is not to affect the outcome of the proceedings.”
- (3) In subsection (1), for the words from “Employment” to “directions to” substitute “Practice directions under section 7A may”.
- (4) In subsection (2)—
- (a) for “included in employment tribunal procedure regulations” substitute “made”;
- (b) omit “enabling practice directions to provide for”.

Commencement Information

I4 Sch. 5 para. 4 not in force at Royal Assent, see [s. 51\(4\)](#)

- 5 (1) Section 9 (pre-hearing reviews) is amended as follows.
- (2) For the heading substitute “Preliminary hearings”.
- (3) For subsection (1) substitute—
- “(1) If Procedure Rules authorise an employment tribunal to carry out a preliminary hearing, Procedure Rules may make provision for enabling such

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powers as may be prescribed by the Rules to be exercised in connection with the hearing.”

(4) In subsection (2)—

- (a) in the words before paragraph (a), for “regulations” substitute “Rules”;
- (b) in paragraph (a)—
 - (i) for “pre-hearing review” substitute “preliminary hearing”;
 - (ii) omit “under the regulations”;
 - (iii) for “regulations” (in the remaining place it occurs) substitute “Rules”;
 - (iv) omit “of an amount not exceeding £1,000”.

(5) After subsection (2) insert—

“(2ZA) Procedure Rules of the kind mentioned in subsection (2)(a) may not provide for a deposit of an amount exceeding £1,000.”

(6) For subsection (2A) substitute—

“(2A) Procedure Rules may not enable a power of striking out to be exercised in a preliminary hearing on a ground which does not apply outside a preliminary hearing.”

(7) In subsection (3)—

- (a) for “Secretary of State” substitute “Lord Chancellor”;
- (b) for “(2)(a)” substitute “(2ZA)”.

(8) Omit subsection (4).

(9) At the end insert—

“(5) In this section “preliminary hearing” means a hearing in any proceedings before an employment tribunal which takes place at a time before a hearing held for the purpose of determining them.”

Commencement Information

I5 Sch. 5 para. 5 not in force at Royal Assent, see [s. 51\(4\)](#)

6 (1) Section 10 (national security) is amended as follows.

(2) In subsections (2), (5) and (6), omit “Employment tribunal procedure”.

(3) In subsections (6) and (7), omit “employment tribunal procedure”.

(4) After subsection (9) insert—

“(10) Regulations under this section are to be made by the Lord Chancellor.”

Commencement Information

I6 Sch. 5 para. 6 not in force at Royal Assent, see [s. 51\(4\)](#)

7 Omit section 10A (confidential information).

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Commencement Information

I7 Sch. 5 para. 7 not in force at Royal Assent, see [s. 51\(4\)](#)

- 8 In section 11 (restriction of publicity in cases involving sexual misconduct)—
- (a) in subsection (1), for “Employment tribunal procedure regulations” substitute “Procedure Rules”;
 - (b) in subsection (6), in paragraph (a) of the definition of “restricted reporting order”, for “regulations made by virtue of this section” substitute “Procedure Rules of the kind mentioned in subsection (1)(b)”.

Commencement Information

I8 Sch. 5 para. 8 not in force at Royal Assent, see [s. 51\(4\)](#)

- 9 In section 12 (restriction of publicity in disability cases)—
- (a) in subsection (2), for “Employment tribunal procedure regulations” substitute “Procedure Rules”;
 - (b) in subsection (7)—
 - (i) in the definition of “promulgation”, for “regulations made by virtue” substitute “Procedure Rules made for the purposes”;
 - (ii) in paragraph (a) of the definition of “restricted reporting order”, for “regulations made by virtue of this section” substitute “Procedure Rules of the kind mentioned in subsection (2)(a)”.

Commencement Information

I9 Sch. 5 para. 9 not in force at Royal Assent, see [s. 51\(4\)](#)

- 10 In section 12A(9) (subsequent award of compensation not to necessitate review of financial penalties), in the words before paragraph (a), after “be” insert “reconsidered or”.

Commencement Information

I10 Sch. 5 para. 10 not in force at Royal Assent, see [s. 51\(4\)](#)

- 11 (1) Section 13 (costs and expenses) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) Procedure Rules may make provision for regulating matters relating to—
- (a) costs or expenses;
 - (b) allowances payable under section 5(2)(c) or (3).”
- (3) In subsection (1A)—
- (a) for “Regulations under subsection (1) may” substitute “Procedure Rules may, in particular,”;
 - (b) omit “under such regulations”.

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- (4) In subsection (1B), for “Employment tribunal procedure regulations may” substitute “Procedure Rules may, in particular,”.
- (5) In subsection (1C), for “Employment tribunal procedure regulations may also” substitute “Procedure Rules may, in particular,”.
- (6) In subsection (2), for “employment tribunal procedure regulations shall” substitute “Procedure Rules must”.
- (7) In subsection (3)—
 - (a) for the words from “Provision” to “must” substitute “If Procedure Rules make provision of the kind mentioned in subsection (1)(a), Procedure Rules must also”;
 - (b) for “regulations” (in the remaining place it occurs) substitute “Rules”.
- (8) In subsection (4)(a), for “the regulations” substitute “Procedure Rules”.

Commencement Information

III Sch. 5 para. 11 not in force at Royal Assent, see [s. 51\(4\)](#)

- 12 (1) Section 13A (payments in respect of preparation time) is amended as follows.
- (2) In subsection (1), for “Employment tribunal procedure regulations” substitute “Procedure Rules”.
 - (3) In subsection (2)—
 - (a) for “Regulations under subsection (1) may” substitute “Procedure Rules may, in particular,”;
 - (b) for “under such regulations” substitute “as described in subsection (1)”.
 - (4) In subsection (2A)—
 - (a) for the words from “Provision” to “must” substitute “If Procedure Rules include provision of the kind mentioned in subsection (1), Procedure Rules must also”;
 - (b) for “regulations” (in the remaining place it occurs) substitute “Rules”.
 - (5) In subsection (2B)(a), for “the regulations” substitute “Procedure Rules”.
 - (6) In subsection (3)—
 - (a) in the words before paragraph (a), for “employment tribunal procedure regulations” substitute “Procedure Rules”;
 - (b) in paragraph (b), for “of the kind mentioned in section 13(1)(a)” substitute “for the award of costs or expenses”.
 - (7) In subsection (4)—
 - (a) in the words before paragraph (a), for “the regulations” substitute “Procedure Rules”;
 - (b) in paragraph (b), for “of the kind mentioned in section 13(1)(a)” substitute “of costs or expenses”.

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Commencement Information

I12 Sch. 5 para. 12 not in force at Royal Assent, see [s. 51\(4\)](#)

- 13 In section 14 (interest), in subsections (1) and (3)(f), for “Secretary of State” substitute “Lord Chancellor”.

Commencement Information

I13 Sch. 5 para. 13 not in force at Royal Assent, see [s. 51\(4\)](#)

- 14 In section 15 (enforcement)—
- (a) in subsection (1), for “employment tribunal procedure regulations” substitute “Procedure Rules”;
 - (b) in subsection (3), in paragraphs (a) and (b), after “being” insert “reconsidered or”.

Commencement Information

I14 Sch. 5 para. 14 not in force at Royal Assent, see [s. 51\(4\)](#)

- 15 (1) Section 18A (requirement to contact ACAS before instituting proceedings) is amended as follows.
- (2) In subsection (10), for “employment tribunal procedure regulations” substitute “regulations made by the Secretary of State”.
- (3) In subsection (11), omit “employment tribunal procedure”.
- (4) In subsection (12)—
- (a) in the words before paragraph (a), for “Employment tribunal procedure regulations” substitute “The regulations”;
 - (b) in paragraph (a), for “such regulations” substitute “the regulations”.

Commencement Information

I15 Sch. 5 para. 15 not in force at Royal Assent, see [s. 51\(4\)](#)

- 16 In section 19(1) (conciliation procedure), for “Employment tribunal procedure regulations shall” substitute “Procedure Rules must”.

Commencement Information

I16 Sch. 5 para. 16 not in force at Royal Assent, see [s. 51\(4\)](#)

- 17 In section 19A(9) (power to provide time limits for certain applications about settlement sums), for “Employment tribunal procedure regulations” substitute “Procedure Rules”.

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Commencement Information

I17 Sch. 5 para. 17 not in force at Royal Assent, see [s. 51\(4\)](#)

Commencement Information

- I3** Sch. 5 para. 3 not in force at Royal Assent, see [s. 51\(4\)](#)
- I4** Sch. 5 para. 4 not in force at Royal Assent, see [s. 51\(4\)](#)
- I5** Sch. 5 para. 5 not in force at Royal Assent, see [s. 51\(4\)](#)
- I6** Sch. 5 para. 6 not in force at Royal Assent, see [s. 51\(4\)](#)
- I7** Sch. 5 para. 7 not in force at Royal Assent, see [s. 51\(4\)](#)
- I8** Sch. 5 para. 8 not in force at Royal Assent, see [s. 51\(4\)](#)
- I9** Sch. 5 para. 9 not in force at Royal Assent, see [s. 51\(4\)](#)
- I10** Sch. 5 para. 10 not in force at Royal Assent, see [s. 51\(4\)](#)
- I11** Sch. 5 para. 11 not in force at Royal Assent, see [s. 51\(4\)](#)
- I12** Sch. 5 para. 12 not in force at Royal Assent, see [s. 51\(4\)](#)
- I13** Sch. 5 para. 13 not in force at Royal Assent, see [s. 51\(4\)](#)
- I14** Sch. 5 para. 14 not in force at Royal Assent, see [s. 51\(4\)](#)
- I15** Sch. 5 para. 15 not in force at Royal Assent, see [s. 51\(4\)](#)
- I16** Sch. 5 para. 16 not in force at Royal Assent, see [s. 51\(4\)](#)
- I17** Sch. 5 para. 17 not in force at Royal Assent, see [s. 51\(4\)](#)

Employment Appeal Tribunal

- 18** In section 29A (practice directions)—
- (a) in subsection (1), after “about the” insert “practice and”;
 - (b) in subsection (5), after “about the” insert “practice or”.

Commencement Information

I18 Sch. 5 para. 18 not in force at Royal Assent, see [s. 51\(4\)](#)

- 19** After section 30 insert—

“30A National security

- (1) The Lord Chancellor may by regulations make provision about the composition of the Appeal Tribunal (including provision disapplying or modifying section 28) for the purposes of proceedings in relation to which—
 - (a) a direction is given under subsection [\(2\)](#), or
 - (b) an order is made under subsection [\(3\)](#).
- (2) A direction may be given under this subsection by a Minister of the Crown if—
 - (a) it relates to particular Crown employment proceedings, and
 - (b) the Minister considers it expedient in the interests of national security.

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“Crown employment proceedings” is to be read in accordance with section 10(8).

- (3) An order may be made under this subsection by a judge of the Appeal Tribunal in relation to particular proceedings if the judge considers it expedient in the interests of national security.
- (4) The Lord Chancellor may by regulations make, in relation to the Appeal Tribunal, provision of a kind which may be made in relation to employment tribunals under section 10(5), (6) or (7).
- (5) For the purposes of subsection (4), references in section 10(6) and (7) to things enabled or done by virtue of any provision in section 10(5) or (6) are to be read as references to things enabled or done by virtue of subsection (4) so far as it refers to that provision.
- (6) Section 10B applies in relation to a direction to, or determination of, the Appeal Tribunal as it applies in relation to a direction to or determination of an employment tribunal.
- (7) For the purposes of subsection (6), the references in section 10B(1) to section 10(5) and 10(6) are to be read as references to subsection (4) of this section so far as it refers to section 10(5) or (as the case may be) 10(6).”

Commencement Information

I19 Sch. 5 para. 19 not in force at Royal Assent, see [s. 51\(4\)](#)

- 20 In section 31 (restriction of publicity in cases involving sexual misconduct)—
- (a) in subsection (1), for “Appeal Tribunal procedure rules” substitute “Procedure Rules”;
 - (b) in subsection (7)(a)(i), for “rules made by virtue of this section” substitute “Procedure Rules of the kind mentioned in subsection (1)(b)”.

Commencement Information

I20 Sch. 5 para. 20 not in force at Royal Assent, see [s. 51\(4\)](#)

- 21 In section 32 (restriction of publicity in disability cases)—
- (a) in subsection (2), for “Appeal Tribunal procedure rules” substitute “Procedure Rules”;
 - (b) in subsection (7)(b)(i), for “rules made by virtue of this section” substitute “Procedure Rules of the kind mentioned in subsection (2)(a)”;
 - (c) in subsection (8), in the definition of “promulgation”, for “rules made by virtue” substitute “Procedure Rules made for the purposes”.

Commencement Information

I21 Sch. 5 para. 21 not in force at Royal Assent, see [s. 51\(4\)](#)

- 22 (1) Section 34 (costs and expenses) is amended as follows.

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(2) For subsection (1) substitute—

“(1) Procedure Rules may make provision for regulating matters relating to costs and expenses.”

(3) In subsection (2), for “Rules under subsection (1) may” substitute “Procedure Rules may, in particular,”.

(4) In subsection (3), for “Appeal Tribunal procedure rules may” substitute “Procedure Rules may, in particular,”.

(5) In subsection (4), for “Appeal Tribunal procedure rules may also” substitute “Procedure Rules may, in particular,”.

Commencement Information

I22 Sch. 5 para. 22 not in force at Royal Assent, see [s. 51\(4\)](#)

Commencement Information

I18 Sch. 5 para. 18 not in force at Royal Assent, see [s. 51\(4\)](#)

I19 Sch. 5 para. 19 not in force at Royal Assent, see [s. 51\(4\)](#)

I20 Sch. 5 para. 20 not in force at Royal Assent, see [s. 51\(4\)](#)

I21 Sch. 5 para. 21 not in force at Royal Assent, see [s. 51\(4\)](#)

I22 Sch. 5 para. 22 not in force at Royal Assent, see [s. 51\(4\)](#)

General

23 In the heading of Part 3, at the beginning insert “General and”.

Commencement Information

I23 Sch. 5 para. 23 not in force at Royal Assent, see [s. 51\(4\)](#)

24 After section [37QA](#) (inserted by section [34\(4\)](#) of this Act) insert—

“37QB Power to amend legislation in connection with Procedure Rules

(1) The Lord Chancellor may by regulations amend, repeal or revoke any enactment to the extent that the Lord Chancellor considers necessary or desirable—

- (a) in order to facilitate the making of Procedure Rules, or
- (b) in consequence of—
 - (i) section [37QA](#),
 - (ii) Schedule [A1](#), or
 - (iii) Procedure Rules.

(2) In subsection (1) “enactment” means any enactment whenever passed or made, including an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.”

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Commencement Information

I24 Sch. 5 para. 24 not in force at Royal Assent, see [s. 51\(4\)](#)

25 (1) Section 41 (orders, regulations and rules) is amended as follows.

(2) After subsection (1) insert—

“(1A) No recommendation may be made to Her Majesty to make an Order in Council under section 38(4) unless a draft of the Order in Council has been laid before Parliament and approved by a resolution of each House of Parliament.”

(3) In subsection (2)—

- (a) for the words from the beginning to “no order shall be made under” substitute “A statutory instrument containing—
 - (a) an order under”;
- (b) for “and no regulations are to be made under” substitute—
 - “(b) regulations under”;
- (c) for the words from “unless a draft” to the end substitute “, or
 - (c) regulations under section [37QB](#) that amend or repeal provision made by an Act,

may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

(4) After subsection (4) insert—

“(5) This section does not apply in relation to Procedure Rules (the procedure for which is provided for by Schedule [A1](#)).”

Commencement Information

I25 Sch. 5 para. 25 not in force at Royal Assent, see [s. 51\(4\)](#)

26 In section 42(1) (definition of terms)—

- (a) omit the definitions of “Appeal Tribunal procedure rules” and “employment tribunal procedure regulations”;
- (b) at the appropriate place insert—
 - ““Procedure Rules” is to be read in accordance with section [37QA\(2\)](#), and—
 - (a) in Part 1, means Procedure Rules in respect of employment tribunals;
 - (b) in Part 2, means Procedure Rules in respect of the Appeal Tribunal.”;
- (c) omit the “and” immediately before the definition of “trade union”;
- (d) after that definition insert—
 - ““Tribunal Procedure Committee” means the committee of that name constituted under Part 2 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.”

Status: This version of this schedule contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Judicial Review and Courts Act 2022, Schedule 5. (See end of Document for details)

Commencement Information

I26 Sch. 5 para. 26 not in force at Royal Assent, see [s. 51\(4\)](#)

Commencement Information

I23 Sch. 5 para. 23 not in force at Royal Assent, see [s. 51\(4\)](#)

I24 Sch. 5 para. 24 not in force at Royal Assent, see [s. 51\(4\)](#)

I25 Sch. 5 para. 25 not in force at Royal Assent, see [s. 51\(4\)](#)

I26 Sch. 5 para. 26 not in force at Royal Assent, see [s. 51\(4\)](#)

PART 3

RELATED AMENDMENTS OF OTHER LEGISLATION

Employment Rights Act 1996

27 In section 163 of the Employment Rights Act 1996 (references to employment tribunals about redundancy payments), after subsection (5) insert—

“(6) Where in accordance with Employment Tribunal Procedure Rules an employment tribunal determines in the same proceedings a complaint presented under section 111 (unfair dismissal) and a question referred under this section, subsection (2) has no effect for the purposes of the proceedings in so far as they relate to the complaint under section 111.”

Commencement Information

I27 Sch. 5 para. 27 not in force at Royal Assent, see [s. 51\(4\)](#)

Tribunals, Courts and Enforcement Act 2007

28 In section 8(2) of the Tribunals, Courts and Enforcement Act 2007 (functions of the Senior President of Tribunals not capable of delegation under that section), at the end insert—

“paragraph 2 of Schedule A1 to the Employment Tribunals Act 1996.”

Commencement Information

I28 Sch. 5 para. 28 not in force at Royal Assent, see [s. 51\(4\)](#)

29 (1) Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 (which, among other things, deals with membership of the Tribunals Procedure Committee) is amended as follows.

(2) In paragraph 21 (Lord Chancellor’s appointees)—

- (a) in sub-paragraph (1)(a), for “three” substitute “four”;
- (b) after sub-paragraph (1) insert—

Status: This version of this schedule contains provisions that are prospective.

*Changes to legislation: There are currently no known outstanding effects for the
Judicial Review and Courts Act 2022, Schedule 5. (See end of Document for details)*

“(1A) At least one of those persons must have experience of—

- (a) practice in employment tribunals and the Employment Appeal Tribunal, or
- (b) advising persons involved in employment tribunal proceedings and the Employment Appeal Tribunal.”

(3) In paragraph 22(1) (Lord Chief Justice’s appointees)—

- (a) omit “and” at the end of paragraph (b);
- (b) at the end of paragraph (c) insert “, and
- (d) one person who is a judge, or other member, of the Employment Appeal Tribunal or a member of a panel of members of employment tribunals (whether or not a panel of Employment Judges).”

Commencement Information

I29 Sch. 5 para. 29 not in force at Royal Assent, see [s. 51\(4\)](#)

Commencement Information

I28 Sch. 5 para. 28 not in force at Royal Assent, see [s. 51\(4\)](#)

I29 Sch. 5 para. 29 not in force at Royal Assent, see [s. 51\(4\)](#)

Status:

This version of this schedule contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Judicial Review and Courts Act 2022, Schedule 5.