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*Changes to legislation:* There are currently no known outstanding effects for the  
Judicial Review and Courts Act 2022, Part 1. (See end of Document for details)

## SCHEDULES

PROSPECTIVE

### SCHEDULE 5

#### 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\(4\)](#)

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