

*Status:* This version of this part contains provisions that are prospective.  
*Changes to legislation:* There are currently no known outstanding effects for the  
Judicial Review and Courts Act 2022, Part 2. (See end of Document for details)

## SCHEDULES

PROSPECTIVE

### SCHEDULE 5

#### EMPLOYMENT TRIBUNAL PROCEDURE RULES: FURTHER PROVISION

#### PART 2

#### OTHER AMENDMENTS OF THE EMPLOYMENT TRIBUNALS ACT 1996

##### *Introduction*

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

##### **Commencement Information**

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

##### *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**

- I2** 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—

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“(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**

**I3** 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 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”;

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(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

**I4** 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

**I5** Sch. 5 para. 6 not in force at Royal Assent, see [s. 51\(4\)](#)

7 Omit section 10A (confidential information).

#### Commencement Information

**I6** 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

**I7** 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”;

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- (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**

**I8** 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**

**I9** 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”.
- (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**

**I10** 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”.

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- (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”.

**Commencement Information**

**I11** 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**

**I12** 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**

**I13** 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”.

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(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**

**I14** 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**

**I15** 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”.

#### **Commencement Information**

**I16** Sch. 5 para. 17 not in force at Royal Assent, see [s. 51\(4\)](#)

#### **Commencement Information**

- I2** Sch. 5 para. 3 not in force at Royal Assent, see [s. 51\(4\)](#)
- I3** Sch. 5 para. 4 not in force at Royal Assent, see [s. 51\(4\)](#)
- I4** Sch. 5 para. 5 not in force at Royal Assent, see [s. 51\(4\)](#)
- I5** Sch. 5 para. 6 not in force at Royal Assent, see [s. 51\(4\)](#)
- I6** Sch. 5 para. 7 not in force at Royal Assent, see [s. 51\(4\)](#)
- I7** Sch. 5 para. 8 not in force at Royal Assent, see [s. 51\(4\)](#)
- I8** Sch. 5 para. 9 not in force at Royal Assent, see [s. 51\(4\)](#)
- I9** Sch. 5 para. 10 not in force at Royal Assent, see [s. 51\(4\)](#)
- I10** Sch. 5 para. 11 not in force at Royal Assent, see [s. 51\(4\)](#)
- I11** Sch. 5 para. 12 not in force at Royal Assent, see [s. 51\(4\)](#)
- I12** Sch. 5 para. 13 not in force at Royal Assent, see [s. 51\(4\)](#)
- I13** Sch. 5 para. 14 not in force at Royal Assent, see [s. 51\(4\)](#)
- I14** Sch. 5 para. 15 not in force at Royal Assent, see [s. 51\(4\)](#)
- I15** Sch. 5 para. 16 not in force at Royal Assent, see [s. 51\(4\)](#)
- I16** 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”.

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#### Commencement Information

I17 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.

“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

I18 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”;

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- (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**

**I19** 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**

**I20** 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.
- (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**

**I21** Sch. 5 para. 22 not in force at Royal Assent, see [s. 51\(4\)](#)

**Commencement Information**

**I17** Sch. 5 para. 18 not in force at Royal Assent, see [s. 51\(4\)](#)  
**I18** Sch. 5 para. 19 not in force at Royal Assent, see [s. 51\(4\)](#)  
**I19** Sch. 5 para. 20 not in force at Royal Assent, see [s. 51\(4\)](#)  
**I20** Sch. 5 para. 21 not in force at Royal Assent, see [s. 51\(4\)](#)  
**I21** 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”.



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**I22** 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.”

#### Commencement Information

**I23** 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](#)).”

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#### Commencement Information

**I24** 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.”

#### Commencement Information

**I25** Sch. 5 para. 26 not in force at Royal Assent, see [s. 51\(4\)](#)

#### Commencement Information

**I22** Sch. 5 para. 23 not in force at Royal Assent, see [s. 51\(4\)](#)

**I23** Sch. 5 para. 24 not in force at Royal Assent, see [s. 51\(4\)](#)

**I24** Sch. 5 para. 25 not in force at Royal Assent, see [s. 51\(4\)](#)

**I25** Sch. 5 para. 26 not in force at Royal Assent, see [s. 51\(4\)](#)

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