



# Judicial Review and Courts Act 2022

## 2022 CHAPTER 35

### PART 2

#### COURTS, TRIBUNALS AND CORONERS

### CHAPTER 3

#### EMPLOYMENT TRIBUNALS AND THE EMPLOYMENT APPEAL TRIBUNAL

PROSPECTIVE

#### 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)).

*Status: This version of this provision is prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Judicial Review and Courts Act 2022, Section 35. (See end of Document for details)*

- (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.
- (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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*Status:* This version of this provision is prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Judicial Review and Courts Act 2022, Section 35. (See end of Document for details)

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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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**Status:** This version of this provision is prospective.

**Changes to legislation:** There are currently no known outstanding effects for the  
Judicial Review and Courts Act 2022, Section 35. (See end of Document for details)

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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,”.

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**Commencement Information**

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

**Status:**

This version of this provision is prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Judicial Review and Courts Act 2022, Section 35.