

SCHEDULE 5

Regulation 11(6)(b)

THE EMPLOYMENT TRIBUNALS (IMPROVEMENT AND PROHIBITION NOTICES APPEALS) RULES OF PROCEDURE (SCOTLAND) *for use only in proceedings on an appeal against an improvement or prohibition notice*

Notice of appeal

1. An appeal shall be commenced by the appellant sending to the Secretary a notice of appeal which shall be in writing and shall set out—

- (a) the name and address of the appellant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the appeal to be sent;
- (b) the date of the improvement notice or prohibition notice appealed against and the address of the premises or place concerned;
- (c) the name and address of the respondent;
- (d) particulars of the requirements or directions appealed against; and
- (e) the grounds of the appeal.

Time limit for bringing appeal

2.—(1) Subject to paragraph (2), the notice of appeal shall be sent to the Secretary within 21 days from the date of the service on the appellant of the notice appealed against.

(2) A tribunal may extend the time mentioned above where it is satisfied, on an application made in writing to the Secretary either before or after the expiration of that time, that it is not or was not reasonably practicable for an appeal to be brought within that time.

Action upon receipt of notice of appeal

3. Upon receiving a notice of appeal the Secretary shall—

- (a) enter the following details of the appeal in the Register, namely—
 - (i) the case number;
 - (ii) the date the Secretary received the notice of appeal;
 - (iii) the name and address of the appellant;
 - (iv) the name and address of the respondent;
 - (v) the Regional Office of the Employment Tribunals dealing with the appeal; and
 - (vi) the fact that the appeal is an appeal against an improvement or prohibition notice, as the case may be, under section 24 of the 1974 Act;
- (b) send a copy of the notice of appeal to the respondent; and
- (c) inform the parties in writing of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent.

Application for direction suspending the operation of a prohibition notice

4.—(1) Where an appeal has been brought against a prohibition notice and an application is made to the tribunal by the appellant in pursuance of section 24(3)(b) of the 1974 Act for a direction suspending the operation of the notice until the appeal is finally disposed of or withdrawn, the application shall be sent in writing to the Secretary and shall set out—

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- (a) the case number of the appeal if known to the appellant or particulars sufficient to identify the appeal; and
- (b) the grounds on which the application is made.

(2) Upon receiving the application, the Secretary shall enter the fact of it against the entry in the Register relating to the appeal and shall send a copy of it to the respondent.

Power to require attendance of witnesses and production of documents, etc

5.—(1) A tribunal may on the application of a party made either by notice to the Secretary or at the hearing—

- (a) require a party to furnish in writing to the other party further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) require one party to grant to the other party such recovery or inspection of documents as might be ordered by a sheriff; and
- (c) require the attendance of any person as a witness or require the production of any document relating to the matter to be determined, and

may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

(2) A person on whom a requirement has been made under paragraph (1) may apply to the tribunal either by notice to the Secretary or at the hearing to vary or set aside the requirement.

(3) No such application to vary or set aside shall be entertained in a case where a time has been appointed under paragraph (1) in relation to the requirement unless it is made before the time or, as the case may be, expiration of the time so appointed.

(4) Every document containing a requirement under paragraph (1)(b) or (c) shall contain a reference to the fact that, under section 7(4) of the 1996 Act, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

Time and place of hearing and appointment of assessor

6.—(1) The President or a Regional Chairman shall fix the date, time and place of the hearing of the appeal and the Secretary shall not less than 14 days (or such shorter time as may be agreed by him with the parties) before the date so fixed send to each party a notice of hearing together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.

(2) Where the President or a Regional Chairman so directs, the Secretary shall also send notice of the hearing to such persons as may be directed, but the requirement as to the period of notice contained in paragraph (1) shall not apply to any such notice.

(3) The President or a Regional Chairman may, if he thinks fit, appoint in pursuance of section 24(4) of the 1974 Act a person or persons having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal as assessor or assessors.

The hearing

7.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with section 4(1) and (2) of the 1996 Act.

(2) Subject to paragraph (3), any hearing of or in connection with an appeal shall take place in public.

(3) A tribunal may sit in private—

- (a) for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—
 - (i) information which he could not disclose without contravening a prohibition imposed by or by virtue of any enactment,
 - (ii) any information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
 - (iii) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of the 1992 Act, cause substantial injury to any undertaking of his or in which he works; or
 - (b) if it considers it expedient in the interests of national security.
- (4) A member of the Council on Tribunals or of its Scottish Committee shall be entitled to attend any hearing taking place in private in his capacity as member.

Written representations

8. If a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the appeal, that party shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy of it to the other party.

Procedure at hearing

9.—(1) At any hearing of or in connection with an appeal a party shall be entitled to make an opening statement, to give evidence on his own behalf, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2) If a party shall fail to appear or to be represented at the time and place fixed for the hearing of an appeal, the tribunal may dispose of the appeal in the absence of that party or may adjourn the hearing to a later date; provided that before disposing of an appeal in the absence of a party the tribunal shall consider any written representations submitted by that party in pursuance of rule 8.

(3) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Devolution issues

10.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform the relevant authority thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time—

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send the relevant authority a copy of the notice of appeal.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

Decision of tribunal

11.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

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(3) The clerk shall transmit the document signed by the chairman to the Secretary who shall enter it in the Register and shall send a copy of the entry to each of the parties.

(4) The reasons for the decision shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs.

(5) The chairman of a tribunal shall have power by certificate to correct in the document recording the tribunal's decision clerical mistakes or errors arising therein from any accidental slip or omission.

(6) The clerk shall send a copy of any document so corrected and the certificate of the chairman to the Secretary who shall as soon as practicable make such correction as may be necessary in the Register and shall send a copy of the corrected entry or of the corrected reasons, as the case may be, to each of the parties.

(7) If any decision is—

- (a) corrected under paragraph (5),
- (b) reviewed, revoked or varied under rule 12, or
- (c) altered in any way by order of an appellate court,

the Secretary shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties.

Review of tribunal's decision

12.—(1) A tribunal shall have power on the application of a party to review and revoke or vary by certificate any of its decisions on the grounds that—

- (a) the decision was wrongly made as a result of an error on the part of the tribunal staff;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (d) new evidence has become available since the making of the decision provided that its existence could not have been reasonably known of or foreseen; or
- (e) the interests of justice require such a review.

(2) An application for the purposes of paragraph (1) may be made at the hearing. If the application is not made at the hearing, such application shall be made to the Secretary within 14 days from the date of the entry of a decision in the Register and must be in writing stating the grounds in full.

(3) An application for the purposes of paragraph (1) may be refused by the chairman of the tribunal which decided the case, by the President or by a Regional Chairman if in his opinion it has no reasonable prospect of success and he shall state the reasons for his opinion.

(4) If such an application is not refused under paragraph (3), it shall be heard by the tribunal and if it is granted the tribunal shall either vary its decision or revoke its decision and order a re-hearing.

(5) The clerk shall send to the Secretary the certificate of the chairman as to any revocation or variation of the tribunal's decision under this rule. The Secretary shall as soon as practicable make such correction as may be necessary in the Register and shall send a copy of the entry to each of the parties.

Expenses

13.—(1) A tribunal may make an order that a party shall pay to the other either a specified sum in respect of the expenses of or in connection with an appeal incurred by that other party or, in default of agreement, the taxed amount of those expenses.

(2) Any expenses required by an order under this rule to be taxed may be taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order, and thereafter the tribunal may issue an order for payment of the amount as taxed.

Miscellaneous powers

14.—(1) Subject to the provisions of these rules, a tribunal may regulate its own procedure.

(2) A tribunal may, if it thinks fit—

- (a) postpone the day or time fixed for, or adjourn, any hearing;
- (b) before granting an application under rule 5 or 12 require the party making the application to give notice thereof to the other party;
- (c) either on the application of any person or of its own motion, direct any other person to be sisted as a party to the appeal (giving such consequential directions as it considers necessary), but may do so only after having given to the person proposed to be sisted a reasonable opportunity of making written or oral objection;
- (d) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;
- (e) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;
- (f) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(3) Any act required or authorised by these rules to be done by a tribunal may be done by a chairman except—

- (a) the granting of an extension of time under rule 2(2);
- (b) the hearing of an appeal under rule 7;
- (c) an act required or authorised to be so done by rule 9 or 11 which the rule implies is to be done by the tribunal which is hearing or heard the appeal;
- (d) the hearing of an application under rule 12(1), and the variation or revocation of a decision, and ordering of a re-hearing, under rule 12(4).

(4) Any function of the Secretary may be performed by an Assistant Secretary.

Notices, etc

15.—(1) Any notice given under these rules shall be in writing and all notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraphs (3) and (4)) or delivered to or at—

- (a) in the case of a document directed to the Secretary, the Office of the Tribunals or such other office as may be notified by the Secretary to the parties;
- (b) in the case of a notice or document directed to the Advocate General for Scotland pursuant to rule 10, the Officer of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ;
- (c) in the case of a notice or document directed to the Lord Advocate pursuant to rule 10, the Legal Secretariat to the Lord Advocate, 25 Chambers Street, Edinburgh, EH1 1LA;
- (d) in the case of a document directed to a party, his address for service specified in the notice of appeal or in a notice under paragraph (2) or (if no address for service is so specified or if a notice sent to such an address has been returned), his last known address or place of

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business in the United Kingdom or, if the party is a corporation, the corporation's registered or principal office;

- (e) in the case of a document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the United Kingdom, or if such a person is a corporation, the corporation's registered or principal office;

and if sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(2) A party may at any time by notice to the Secretary and to the other party change his address for service under these rules.

(3) Where a notice of appeal is not delivered, it shall be sent by the recorded delivery service.

(4) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this rule, the President or a Regional Chairman may make an order for substituted service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this rule.

(5) In the case of an appeal to which the respondent is an inspector appointed otherwise than by the Health and Safety Executive, the Secretary shall send to that executive copies of the notice of appeal and the document recording the decision of the tribunal on the appeal.