

*Status: Point in time view as at 06/02/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 11. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 11

Section 135.

#### EMPLOYMENT APPEAL TRIBUNAL

##### PART I

#### PROVISIONS AS TO MEMBERSHIP, SITTINGS, PROCEEDINGS AND POWERS

##### *Tenure of office of appointed members of Appeal Tribunal*

- 1 Subject to paragraphs 2 and 3, a member of the Appeal Tribunal appointed by Her Majesty under section 135(2)(c) (in this Schedule referred to as an “appointed member”) shall hold and vacate office as such a member in accordance with the terms of his appointment.
- 2 An appointed member may at any time resign his membership by notice in writing addressed to the Lord Chancellor and the Secretary of State.
- 3 (1) If the Lord Chancellor, after consultation with the Secretary of State, is satisfied that an appointed member—
  - (a) has been absent from sittings of the Appeal Tribunal for a period longer than six consecutive months without the permission of the President of the Tribunal; or
  - (b) has become bankrupt or made an arrangement with his creditors; or
  - (c) is incapacitated by physical or mental illness; or
  - (d) is otherwise unable or unfit to discharge the functions of a member;the Lord Chancellor may declare his office as a member to be vacant and shall notify the declaration in such manner as the Lord Chancellor thinks fit; and thereupon the office shall become vacant.
- (2) In the application of this paragraph to Scotland for the references in sub-paragraph (1) (b) to a member’s having become bankrupt and to a member’s having made an arrangement with his creditors there shall be substituted respectively references to a member’s estate having been sequestrated and to a member’s having made a trust deed for behoof of his creditors or a composition contract.

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### *Temporary membership of Appeal Tribunal*

- 4 At any time when the office of President of the Appeal Tribunal is vacant, or the person holding that office is temporarily absent or otherwise unable to act as President of the Tribunal, the Lord Chancellor may nominate another judge nominated under section 135(2)(a) to act temporarily in his place.
- 5 At any time when a judge of the Appeal Tribunal nominated by the Lord Chancellor is temporarily absent or otherwise unable to act as a judge of that Tribunal, the Lord Chancellor may nominate another person who is qualified to be nominated under section 135(2)(a) to act temporarily in his place.
- 6 At any time when a judge of the Appeal Tribunal nominated by the Lord President of the Court of Session is temporarily absent or otherwise unable to act as a judge of the Appeal Tribunal, the Lord President may nominate another judge of the Court of Session to act temporarily in his place.
- 7 At any time when an appointed member is temporarily absent or otherwise unable to act as a member of the Appeal Tribunal, the Lord Chancellor and the Secretary of State may jointly appoint a person appearing to them to have the qualifications for appointment as such a member to act temporarily in his place.
- 8 (1) At any time when it appears to the Lord Chancellor that it is expedient to do so in order to facilitate in England and Wales the disposal of business in the Appeal Tribunal, he may appoint a qualified person to be a temporary additional judge of the Tribunal during such period or on such occasions as the Lord Chancellor thinks fit.
- (2) In this paragraph “qualified person” means a person qualified for appointment as a puisne judge of the High Court under section [F1 10 of the M1 Supreme Court Act 1981] or any person who has held office as a judge of the Court of Appeal or of the High Court.

#### **Textual Amendments**

**F1** Words substituted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), [Sch. 5](#)

#### **Marginal Citations**

**M1** [1981 c. 54](#).

- 9 A person appointed to act temporarily in place of the President or any other member of the Appeal Tribunal shall, when so acting, have all the functions of the person in whose place he acts.
- 10 A person appointed to be a temporary additional judge of the Appeal Tribunal shall have all the functions of a judge nominated under section 135(2)(a).

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11 No judge shall be nominated under paragraph 5 or 6 except with his consent.

*Organisation and sittings of Appeal Tribunal*

12 The Appeal Tribunal shall be a superior court of record and shall have an official seal which shall be judicially noticed.

13 The Appeal Tribunal shall have a central office in London.

14 The Appeal Tribunal may sit at any time and in any place in Great Britain.

15 The Appeal Tribunal may sit, in accordance with directions given by the President of the Tribunal, either as a single tribunal or in two or more divisions concurrently.

[<sup>F2</sup>16 (1) Subject to sub-paragraphs (2) to (4), proceedings before the Appeal Tribunal shall be heard by a judge and either two or four appointed members, so that in either case there is an equal number of persons whose knowledge or experience of industrial relations is as representatives of employers and whose knowledge or experience of industrial relations is as representatives of workers.

(2) With the consent of the parties proceedings before the Appeal Tribunal may be heard by a judge and one appointed member or by a judge and three appointed members.

(3) Proceedings on an appeal on a question arising from any decision of, or arising in any proceedings before, an industrial tribunal consisting of the person specified in section 128(2A)(a) alone shall be heard by a judge alone unless a judge directs that the proceedings shall be heard in accordance with sub-paragraphs (1) and (2).

(4) Where a Minister of the Crown so directs in relation to any proceedings on grounds of national security, the proceedings shall be heard by the President of the Appeal Tribunal alone.]

**Textual Amendments**

**F2** Sch. 11 para. 16 substituted (30.11.1993) by 1993 c. 19, s.37; S.I. 1993/2503, art. 2(2), Sch. 2

*Rules*

17 (1) The Lord Chancellor, after consultation with the Lord President of the Court of Session, shall make rules with respect to proceedings before the Appeal Tribunal.

(2) Subject to those rules, the Tribunal shall have power to regulate its own procedure.

18 Without prejudice to the generality of paragraph 17 the rules may include provision—

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- (a) with respect to the manner in which an appeal may be brought and the time within which it may be brought;
- [<sup>F3</sup>(aa) with respect to the manner in which [<sup>F4</sup>any application to the Appeal Tribunal may be made;]]
- (b) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
- [<sup>F5</sup>(c) for requiring or enabling the Appeal Tribunal to sit in private in circumstances in which an industrial tribunal is required or empowered to sit in private by virtue of paragraph 1 of Schedule 9;]
- [<sup>F6</sup>(d) for the registration and proof of any award made on an application to the Appeal Tribunal under [<sup>F7</sup>section 67 or 176 of the Trade Union and Labour Relations (Consolidation) Act 1992].]
- [<sup>F8</sup>(e) for interlocutory [<sup>F9</sup>matters arising on any appeal or application to the Appeal Tribunal] to be dealt with otherwise than in accordance with paragraph 16.]

#### Textual Amendments

- F3** Para. 18(aa) inserted by Employment Act 1980 (c. 42, SIF 43:5), **Sch. 1 para. 28**
- F4** Words in Sch. 11 para. 18(aa) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 29**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F5** Sch. 11 para. 18(c) substituted (15.10.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para.7**; S.I. 1993/2503, art. 2(1), **Sch.1**
- F6** Para. 18(d) inserted by Employment Act 1980 (c. 42, SIF 43:5), **Sch. 1 para. 28**
- F7** Words in Sch. 11 para. 18(d) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, **Sch. 2 para. 25(a)**
- F8** Para. 18(e) inserted by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 3 para. 8**
- F9** Words in Sch. 11 para. 18(e) substituted (15.10.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.30**; S.I. 1993/2503, art. 2(1), **Sch.1**

- [<sup>F10</sup>18A(1) Without prejudice to the generality of paragraph 17 the rules may, as respects proceedings to which this paragraph applies, include provision—
- (a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation; and
- (b) for cases involving allegations of sexual misconduct, enabling the Appeal Tribunal, on the application of any party to the proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the Appeal Tribunal.
- (2) This paragraph applies to—
- (a) proceedings on an appeal against a decision of an industrial tribunal to make, or not to make, a restricted reporting order; and
- (b) proceedings on an appeal against any interlocutory decision of an industrial tribunal in proceedings in which the industrial tribunal has made a restricted reporting order which it has not revoked.

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- (3) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale—
- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
  - (b) in the case of publication in any other form, the person publishing the matter; and
  - (c) in the case of matter included in a relevant programme—
    - (i) any body corporate engaged in providing the service in which the programme is included; and
    - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.
- (4) Where a person is charged with an offence under sub-paragraph (3) it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.
- (5) Where an offence under sub-paragraph (3) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in any such capacity,
- he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In relation to a body corporate whose affairs are managed by its members “director”, in sub-paragraph (5), means a member of the body corporate.
- (7) In this paragraph—
- “identifying matter”, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation;
  - “restricted reporting order” means an order prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain;
  - “sexual misconduct” means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed;
  - “sexual offence” means any offence to which section 141A(2) of the <sup>M2</sup>Criminal Procedure (Scotland) Act 1975, section 4 of the <sup>M3</sup>Sexual Offences (Amendment) Act 1976 or the <sup>M4</sup>Sexual Offences (Amendment) Act 1992 applies (offences under the <sup>M5</sup>Sexual Offences Act 1956, the <sup>M6</sup>Sexual Offences (Scotland) Act 1976 and certain other enactments);
- and “written publication” and “relevant programme” have the same meaning as in that Act of 1992.]

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#### **Textual Amendments**

**F10** Sch. 11 para. 18A inserted (30.8.1993) by 1993 c. 19, s. 41(1); S.I. 1993/1908, art. 2(1), Sch.1

#### **Marginal Citations**

**M2** 1975 c. 21.

**M3** 1976 c. 82.

**M4** 1992 c. 34.

**M5** 1956 c. 69.

**M6** 1976 c. 67.

- 19 (1) Without prejudice to the generality of paragraph 17 the rules may empower the Appeal Tribunal to order a party to any proceedings before the Tribunal to pay to any other party to the proceedings the whole or part of the costs or expenses incurred by that other party in connection with the proceedings, where in the opinion of the Tribunal—
- (a) the proceedings were unnecessary, improper or vexatious, or
  - (b) there has been unreasonable delay or other unreasonable conduct in bringing or conducting the proceedings.
- (2) Except as provided by sub-paragraph (1), the rules shall not enable the Appeal Tribunal to order the payment of costs or expenses by any party to proceedings before the Tribunal.
- 20 Any person may appear before the Appeal Tribunal in person or be represented by counsel or by a solicitor or by a representative of a trade union or an employers' association or by any other person whom he desires to represent him.

#### *Powers of Tribunal*

- 21 (1) For the purpose of disposing of an appeal the Appeal Tribunal may exercise any powers of the body or officer from whom the appeal was brought or may remit the case to that body or officer.
- (2) Any decision or award of the Appeal Tribunal on an appeal shall have the same effect and may be enforced in the same manner as a decision or award of a body or officer from whom the appeal was brought.
- [<sup>F11</sup>21A(1) Any sum payable in England and Wales in pursuance of an award of the Appeal Tribunal under [<sup>F12</sup>section 67 or 176 of the Trade Union and Labour Relations (Consolidation) Act 1992] which has been registered in accordance with the rules shall, if a county court so orders, be recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court.
- (2) Any order by the Appeal Tribunal for the payment in Scotland of any sum in pursuance of such an award (or any copy of such an order certified by the Secretary of the Tribunals) may be enforced in like manner as an extract registered decree arbitral

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bearing a warrant for execution issued by the Sheriff Court of any Sheriffdom in Scotland.]

[<sup>F13</sup>(3) Any sum payable in pursuance of an award of the Appeal Tribunal under [<sup>F12</sup>section 67 or 176 of the Trade Union and Labour Relations (Consolidation) Act 1992] shall be treated as if it were a sum payable in pursuance of a decision of an industrial tribunal for the purposes of paragraph 6A of Schedule 9 (interest on industrial tribunal awards).]

#### Textual Amendments

- F11** Para. 21A inserted by Employment Act 1980 (c. 42, SIF 43:5), **Sch. 1 para. 29**
- F12** Words in Sch. 11 Pt. I para. 21A(1)(3) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, **Sch. 2 para. 25(b)**.
- F13** Para. 21A(3) added by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 3 para. 9**

- 22 (1) The Appeal Tribunal shall, in relation to the attendance and examination of witnesses, the production and inspection of documents and all other matters incidental to its jurisdiction, have the like powers, rights, privileges and authority—
- (a) in England and Wales, as the High Court,
  - (b) in Scotland, as the Court of Session.
- (2) No person shall be punished for contempt of the Tribunal except by, or with the consent of, a judge.
- 23 (1)
- <sup>F14</sup>(2) A magistrates' court shall not remit the whole or any part of a fine imposed by the Appeal Tribunal except with the consent of a judge who is a member of the Tribunal.
- (3) This paragraph does not extend to Scotland.

#### Textual Amendments

- F14** Sch. 11 para. 23(1) repealed by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 16(6)**

#### Staff

- 24 The Secretary of State may appoint such officers and servants of the Appeal Tribunal as he may determine, subject to the approval of [<sup>F15</sup>the Treasury] as to numbers and as to terms and conditions of service.

#### Textual Amendments

- F15** Words substituted by virtue of S.I. 1981/1670, **arts. 2(2), 3(5)**

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## PART II

### SUPPLEMENTARY

#### *Remuneration and allowances*

- 25 The Secretary of State shall pay the appointed members of the Appeal Tribunal, the persons appointed to act temporarily as appointed members, and the officers and servants of the Tribunal such remuneration and such travelling and other allowances as he may with the approval of [<sup>F16</sup>the Treasury] determine.

#### Textual Amendments

**F16** Words substituted by virtue of S.I. 1981/1670, arts. 2(2), 3(5)

- 26 A person appointed to be a temporary additional judge of the Appeal Tribunal shall be paid such remuneration and allowances as the Lord Chancellor may, with the approval of [<sup>F17</sup>the Treasury] determine.

#### Textual Amendments

**F17** Words substituted by virtue of S.I. 1981/1670, arts. 2(2), 3(5)

#### *Pensions, etc.*

- 27 If the Secretary of State determines, with the approval of [<sup>F18</sup>the Treasury], that this paragraph shall apply in the case of an appointed member, the Secretary of State shall pay such pension, allowance or gratuity to or in respect of that member on his retirement or death or make that member such payments towards the provision of such a pension, allowance or gratuity as the Secretary of State may with the like approval determine.

#### Textual Amendments

**F18** Words substituted by virtue of S.I. 1981/1670, arts. 2(1)(c), 3(5)

- 28 Where a person ceases to be an appointed member otherwise than on his retirement or death and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Secretary of State may make him a payment of such amount as the Secretary of State may, with the approval of [<sup>F19</sup>the Treasury], determine.



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**Textual Amendments**

**F19** Words substituted by virtue of S.I. 1981/1670, **arts. 2(1)(d), 3(5)**

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