



# Employment Tribunals Act 1996

## 1996 CHAPTER 17

### PART II

#### THE EMPLOYMENT APPEAL TRIBUNAL

##### *Membership etc.*

## 22 Membership of Appeal Tribunal.

- (1) The Appeal Tribunal shall consist of—
  - (a) such number of judges as may be nominated from time to time [<sup>F1</sup>by the Lord Chief Justice, after consulting the Lord Chancellor,] from the judges <sup>F2</sup>. . . of the High Court and the Court of Appeal,
  - (b) at least one judge of the Court of Session nominated from time to time by the Lord President of the Court of Session, and
  - (c) such number of other members as may be appointed from time to time by Her Majesty on the joint recommendation of the Lord Chancellor and the Secretary of State (“appointed members”).
- (2) The appointed members shall be persons who appear to the Lord Chancellor and the Secretary of State to have special knowledge or experience of industrial relations either—
  - (a) as representatives of employers, or
  - (b) as representatives of workers (within the meaning of the <sup>M1</sup>Trade Union and Labour Relations (Consolidation) Act 1992).
- (3) The [<sup>F3</sup>Lord Chief Justice shall] appoint one of the judges nominated under subsection (1) to be the President of the Appeal Tribunal.
- [<sup>F4</sup>(3A) The Lord Chief Justice must not make an appointment under subsection (3) unless—
  - (a) he has consulted the Lord Chancellor, and
  - (b) the Lord President of the Court of Session agrees.]
- (4) No judge shall be nominated a member of the Appeal Tribunal except with his consent.

*Status: Point in time view as at 27/07/2008. This version of this cross heading contains provisions that are not valid for this point in time.*

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- [<sup>F5</sup>(5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.
- (6) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under subsection (3A)(b).]

#### Textual Amendments

- F1** Words in s. 22(1)(a) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 246(2)(a)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1
- F2** Words in s. 22(1)(a) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 246(2)(b), **Sch. 18 Pt. 2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1
- F3** Words in s. 22(3) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 246(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1
- F4** S. 22(3A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 246(4)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1
- F5** S. 22(5)(6) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 246(5)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

#### Marginal Citations

- M1** 1992 c. 52.

## 23 Temporary membership.

- (1) At any time when—
- (a) the office of President of the Appeal Tribunal is vacant, or
  - (b) the person holding that office is temporarily absent or otherwise unable to act as the President of the Appeal Tribunal,
- the [<sup>F6</sup>Lord Chief Justice] may nominate another judge nominated under section 22(1)(a) to act temporarily in his place.
- (2) At any time when a judge of the Appeal Tribunal nominated under paragraph (a) or (b) of subsection (1) of section 22 is temporarily absent or otherwise unable to act as a member of the Appeal Tribunal—
- (a) in the case of a judge nominated under paragraph (a) of that subsection, the [<sup>F7</sup>Lord Chief Justice] may nominate another judge who is qualified to be nominated under that paragraph to act temporarily in his place, and
  - (b) in the case of a judge nominated under paragraph (b) of that subsection, the Lord President of the Court of Session may nominate another judge who is qualified to be nominated under that paragraph to act temporarily in his place.
- (3) At any time when an appointed member of the Appeal Tribunal 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 an appointed member to act temporarily in his place.
- (4) A person nominated or appointed to act temporarily in place of the President or any other member of the Appeal Tribunal, when so acting, has all the functions of the person in whose place he acts.

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- (5) No judge shall be nominated to act temporarily as a member of the Appeal Tribunal except with his consent.
- [<sup>F8</sup>(6) The functions conferred on the Lord Chief Justice by the preceding provisions of this section may be exercised only after consulting the Lord Chancellor.
- (7) The functions conferred on the Lord Chancellor by subsection (3) may be exercised only after consultation with the Lord Chief Justice.
- (8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]

#### Textual Amendments

- F6** Words in s. 23(1) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 247\(2\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1
- F7** Words in s. 23(2)(a) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 247\(3\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1
- F8** S. 23(6)-(8) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 247\(4\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1

## 24 Temporary additional judicial membership.

- [<sup>F9</sup>(1) This section applies if both of the following conditions are met—
- (a) the Lord Chancellor thinks that it is expedient, after consulting the Lord Chief Justice, for a qualified person to be appointed to be a temporary additional judge of the Appeal Tribunal in order to facilitate in England and Wales the disposal of business in the Appeal Tribunal;
- (b) the Lord Chancellor requests the Lord Chief Justice to make such an appointment.
- (1A) The Lord Chief Justice may, after consulting the Lord Chancellor, appoint a qualified person as mentioned in subsection (1)(a).
- (1B) An appointment under this section is—
- (a) for such period, or
- (b) on such occasions,
- as the Lord Chief Justice determines, after consulting the Lord Chancellor.]
- (2) In [<sup>F10</sup>this section]“qualified person” means a person who—
- (a) is qualified for appointment as a judge of the High Court under section 10 of the <sup>M2</sup>Supreme Court Act 1981, or
- (b) has held office as a judge of the High Court or the Court of Appeal.
- (3) A person appointed to be a temporary additional judge of the Appeal Tribunal has all the functions of a judge nominated under section 22(1)(a).
- [<sup>F11</sup>(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]

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### Textual Amendments

- F9** S. 24(1)-(1B) substituted (3.4.2006) for s. 24(1) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 248\(2\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1
- F10** Words in s. 24(2) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 248\(3\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1
- F11** S. 24(4) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 248\(4\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1

### Marginal Citations

- M2** 1981 c. 54.

VALID FROM 03/11/2008

## [<sup>F12</sup>24A Training etc. of members of Appeal Tribunal

The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training, guidance and welfare of judges, and other members, of the Appeal Tribunal (in their capacities as members of the Appeal Tribunal).

### Textual Amendments

- F12** Ss. 24A, 24B inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 8 para. 44](#); S.I. 2008/2696, [art. 5\(c\)\(i\)](#) (with [art. 3](#))

VALID FROM 03/11/2008

## 24B Oaths

- (1) Subsection (2) applies to a person (“the appointee”)—
- (a) who is appointed under section 22(1)(c) or 23(3), or
  - (b) who is appointed under section 24(1A) and—
    - (i) falls when appointed within paragraph (a), but not paragraph (b), of section 24(2), and
    - (ii) has not previously taken the required oaths after accepting another office.
- (2) The appointee must take the required oaths before—
- (a) the Senior President of Tribunals, or
  - (b) an eligible person who is nominated by the Senior President of Tribunals for the purpose of taking the oaths from the appointee.
- (3) If the appointee is a member of the Appeal Tribunal appointed before the coming into force of this section, the requirement in subsection (2) applies in relation to the appointee from the coming into force of this section.

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- (4) A person is eligible for the purposes of subsection (2)(b) if one or more of the following paragraphs applies to him—
- (a) he holds high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005);
  - (b) he holds judicial office (as defined in section 109(4) of that Act);
  - (c) he holds (in Scotland) the office of sheriff.
- (5) In this section “the required oaths” means—
- (a) the oath of allegiance, and
  - (b) the judicial oath,
- as set out in the Promissory Oaths Act 1868.]

#### Textual Amendments

**F12** Ss. 24A, 24B inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 8 para. 44](#); [S.I. 2008/2696](#), [art. 5\(c\)\(i\)](#) (with [art. 3](#))

## 25 Tenure of appointed members.

- (1) Subject to subsections (2) to (4), an appointed member shall hold and vacate office in accordance with the terms of his appointment.
- (2) An appointed member—
- (a) may at any time resign his membership by notice in writing addressed to the Lord Chancellor and the Secretary of State, and
  - (b) shall vacate his office on the day on which he attains the age of seventy.
- (3) Subsection (2)(b) is subject to section 26(4) to (6) of the <sup>M3</sup>Judicial Pensions and Retirement Act 1993 (Lord Chancellor’s power to authorise continuance of office up to the age of seventy-five).
- (4) 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 Appeal Tribunal,
  - (b) has become bankrupt or made an arrangement with his creditors, or has had his estate sequestrated or made a trust deed for behoof of his creditors or a composition contract,
  - (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 when the Lord Chancellor does so, the office becomes vacant.
- [<sup>F13</sup>(5) The Lord Chancellor may declare an appointed member's office vacant under subsection (4) only with the concurrence of the appropriate senior judge.

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- (6) The appropriate senior judge is the Lord Chief Justice of England and Wales, unless the member whose office is to be declared vacant exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session.]

#### Textual Amendments

**F13** S. 25(5)(6) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 249](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1

#### Marginal Citations

**M3** 1993 c. 8.

## 26 Staff.

The Secretary of State may appoint such officers and servants of the Appeal Tribunal as he may determine, subject to the approval of the Minister for the Civil Service as to numbers and terms and conditions of service.

## 27 Remuneration, pensions and allowances.

- (1) The Secretary of State shall pay—
- (a) the appointed members,
  - (b) any person appointed to act temporarily in the place of an appointed member, and
  - (c) the officers and servants of the Appeal Tribunal,
- such remuneration and such travelling and other allowances as he may, with the relevant approval, determine; and for this purpose the relevant approval is that of the Treasury in the case of persons within paragraph (a) or (b) and the Minister for the Civil Service in the case of persons within paragraph (c).
- (2) 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 the Treasury, determine.
- (3) If the Secretary of State determines, with the approval of the Treasury, that this subsection applies in the case of an appointed member, the Secretary of State shall—
- (a) pay such pension, allowance or gratuity to or in respect of that person on his retirement or death, or
  - (b) make to the member such payments towards the provision of a pension, allowance or gratuity for his retirement or death,
- as the Secretary of State may, with the approval of the Treasury, determine.
- (4) Where—
- (a) a person ceases to be an appointed member otherwise than on his retirement or death, and
  - (b) 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 to him a payment of such amount as the Secretary of State may, with the approval of the Treasury, determine.

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## 28 Composition of Appeal Tribunal.

- (1) The Appeal Tribunal may sit, in accordance with directions given by the President of the Appeal Tribunal, either as a single tribunal or in two or more divisions concurrently.
- (2) Subject to subsections (3) to (5), 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—
  - (a) of persons whose knowledge or experience of industrial relations is as representatives of employers, and
  - (b) of persons whose knowledge or experience of industrial relations is as representatives of workers.
- (3) 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.
- (4) Proceedings on an appeal on a question arising from any decision of, or arising in any proceedings before, an [<sup>F14</sup>employment tribunal] consisting of the person mentioned in section 4(1)(a) alone shall be heard by a judge alone unless a judge directs that the proceedings shall be heard in accordance with subsections (2) and (3).

<sup>F15</sup>(5) .....

### Textual Amendments

**F14** Words in s. 28(4) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

**F15** S. 28(5) repealed (16.7.2001) by 1999 c. 26, ss. 41, 44, Sch. 8 para. 4, Sch. 9(12); S.I. 2001/1187, art. 3(b), Sch. (as amended by S.I. 2001/1461, art. 2(2))

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