

*Status: Point in time view as at 22/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, SCHEDULE 4. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 4

Sections 14 and 15

#### TRIBUNAL: PROCEDURE

#### PART 1

#### GENERAL

#### *Decisions of the Tribunal*

- 1 (1) A decision of the Tribunal in any proceedings before it must—
  - (a) state the reasons for the decision and whether it was unanimous or taken by a majority;
  - (b) be recorded in a document signed and dated by the chairman of the Tribunal dealing with the proceedings.
- (2) In preparing that document the Tribunal shall have regard to the need for excluding, so far as practicable—
  - (a) information the disclosure of which would in its opinion be contrary to the public interest;
  - (b) commercial information the disclosure of which would or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates;
  - (c) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.
- (3) But the Tribunal shall also have regard to the extent to which any disclosure mentioned in sub-paragraph (2) is necessary for the purpose of explaining the reasons for the decision.
- (4) The President shall make such arrangements for the publication of the decisions of the Tribunal as he considers appropriate.

#### **Modifications etc. (not altering text)**

- C1** Sch. 4 para. 1(2)(b) modified (25.7.2003 for certain purposes, 29.12.2003 for certain further purposes) by Communications Act 2003 (c. 21), ss. 195(8), 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(2) (with art. 11)
- Sch. 4 para. 1(2)(b) modified (29.12.2003) by Communications Act 2003 (c. 21), ss. 294(1), 411(2)(3), Sch. 11 para. 10(7) (with transitional provisions in Sch. 18); S.I. 2003/3142, art. 3(1) (subject to arts. 3(3), 11)

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### *Enforcement of decisions in Great Britain*

- 2 If a decision of the Tribunal is registered in England and Wales in accordance with rules of court or any practice direction—
- (a) payment of damages which are awarded by the decision;
  - (b) costs or expenses awarded by the decision; and
  - (c) any direction given as a result of the decision,
- may be enforced by the High Court as if the damages, costs or expenses were an amount due in pursuance of a judgment or order of the High Court, or as if the direction were an order of the High Court.
- 3 If a decision of the Tribunal awards damages, costs or expenses, or results in any direction being given, the decision may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.
- 4 Subject to rules of court or any practice direction, a decision of the Tribunal may be registered or recorded for execution—
- (a) for the purpose of enforcing a direction given as a result of the decision, by the Registrar of the Tribunal or a person who was a party to the proceedings;
  - (b) for the purpose of enforcing a decision to award damages, costs or expenses (other than a decision to which paragraph (c) applies), by the person to whom the sum concerned was awarded; and
  - (c) for the purpose of enforcing a decision to award damages which is the subject of an order under section 47B(6) of the 1998 Act, by the specified body concerned.

### *Enforcement of decisions in Northern Ireland*

- 5 (1) A decision of the Tribunal may be enforced in Northern Ireland with the leave of the High Court in Northern Ireland—
- (a) in the case of a direction given as a result of the decision, by the Registrar of the Tribunal or a person who was a party to the proceedings;
  - (b) for the purpose of enforcing a decision to award damages, costs or expenses (other than a decision to which paragraph (c) applies), by the person to whom the sum concerned was awarded; and
  - (c) for the purpose of enforcing a decision to award damages which is the subject of an order under section 47B(6) of the 1998 Act, by the specified body concerned.
- (2) For the purpose of enforcing in Northern Ireland a decision to award damages, costs or expenses—
- (a) payment may be enforced as if the damages, costs or expenses were an amount due in pursuance of a judgment or order of the High Court in Northern Ireland; and
  - (b) a sum equal to the amount of damages, costs or expenses shall be deemed to be payable under a money judgment within the meaning of Article 2(2) of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (and the provisions of that Order apply accordingly).
- (3) For the purpose of enforcing in Northern Ireland a direction given as a result of a decision of the Tribunal, the direction may be enforced as if it were an order of the High Court in Northern Ireland.

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### *Miscellaneous*

- 6 A decision of the Tribunal in proceedings under section 47B of the 1998 Act which—
- (a) awards damages to an individual in respect of a claim made or continued on his behalf (but is not the subject of an order under section 47B(6)); or
  - (b) awards costs or expenses to an individual in respect of proceedings in respect of a claim made under section 47A of that Act prior to its being continued on his behalf in the proceedings under section 47B,
- may only be enforced by the individual concerned with the permission of the High Court or Court of Session.
- 7 An award of costs or expenses against a specified body in proceedings under section 47B of the 1998 Act may not be enforced against any individual on whose behalf a claim was made or continued in those proceedings.
- 8 In this Part of this Schedule any reference to damages includes a reference to any sum of money (other than costs or expenses) which may be awarded in respect of a claim made under section 47A of the 1998 Act or included in proceedings under section 47B of that Act.

## **PART 2**

### TRIBUNAL RULES

#### *General*

- 9 In this Schedule “the Tribunal”, in relation to any proceedings before it, means the Tribunal as constituted (in accordance with section 14) for the purposes of those proceedings.
- 10 Tribunal rules may make different provision for different kinds of proceedings.

#### *Institution of proceedings*

- [<sup>F1</sup>10A(1) Tribunal rules may make provision as to proceedings on an application for a warrant under section 194 of this Act or section 28, 28A, 62, 62A, 63, 65G or 65H of the 1998 Act, including provision—
- (a) for the Tribunal dealing with the proceedings to consist only of the President or a member of the panel of chairmen;
  - (b) as to the manner in which the proceedings are to be conducted, including provision—
    - (i) for such applications to be determined without a hearing;
    - (ii) in cases where there is a hearing, for it to be held in private if the Tribunal considers it appropriate because it is considering information of a kind mentioned in paragraph 1(2);
  - (c) as to the persons entitled to be heard in such proceedings (where there is a hearing);
  - (d) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
  - (e) as to the evidence which may be required or admitted and the extent to which it should be oral or written;

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- (f) allowing the Tribunal to fix time-limits with respect to any aspect of the proceedings and to extend any time-limit (before or after its expiry).
- (2) Paragraphs 2 to 8, and 11 to 17, of this Schedule do not apply in relation to the institution or conduct of proceedings for a warrant mentioned in sub-paragraph (1).]

#### Textual Amendments

**F1** Sch. 4 para. 10A inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 48(5), 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

- 11 (1) Tribunal rules may make provision as to the period within which and the manner in which proceedings are to be brought.
- (2) That provision may, in particular—
- (a) provide for time limits for making claims to which section 47A of the 1998 Act applies in proceedings under section 47A or 47B;
  - (b) provide for the Tribunal to extend the period in which any particular proceedings may be brought; and
  - (c) provide for the form, contents, amendment and acknowledgement of the documents by which proceedings are to be instituted.

#### Textual Amendments

**F1** Sch. 4 para. 10A inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 48(5), 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

- 12 Tribunal rules may provide for the Tribunal to reject any proceedings (other than proceedings under section 47A or 47B of the 1998 Act) if it considers that—
- (a) the person instituting them does not have a sufficient interest in the decision with respect to which the proceedings are brought; or
  - (b) the document by which he institutes them discloses no valid grounds for bringing them.
- 13 Tribunal rules may provide for the Tribunal—
- (a) to reject the whole of any proceedings under section 47B of the 1998 Act if it considers that the person bringing the proceedings is not entitled to do so or that the proceedings do not satisfy the requirements of section 47B(1);
  - (b) to reject any claim which is included in proceedings under section 47B if it considers that—
    - (i) the claim is not a consumer claim (within the meaning of section 47B(2)) which may be included in such proceedings; or
    - (ii) the individual concerned has not consented to its being made or continued on his behalf in such proceedings; or
  - (c) to reject any claim made under section 47A of the 1998 Act or included in proceedings under section 47B of that Act if it considers that there are no reasonable grounds for making it.

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- 14 Tribunal rules may provide for the Tribunal to reject any proceedings if it is satisfied that the person instituting the proceedings has habitually and persistently and without any reasonable ground—
- (a) instituted vexatious proceedings (whether against the same person or against different persons); or
  - (b) made vexatious applications in any proceedings.
- 15 Tribunal rules must ensure that no proceedings are rejected without giving the parties the opportunity to be heard.

#### *Pre-hearing reviews and preliminary matters*

- 16 (1) Tribunal rules may make provision for the carrying out by the Tribunal of a preliminary consideration of proceedings (a “pre-hearing review”).
- (2) That provision may include—
- (a) provision enabling such powers to be exercised on a pre-hearing review as may be specified in the rules;
  - (b) provision for security and supplemental provision relating to security.
- (3) For the purposes of sub-paragraph (2)(b)—
- (a) “provision for security” means provision authorising the Tribunal, in specified circumstances, to order a party to the proceedings, if he wishes to continue to participate in them, to pay a deposit not exceeding such sum as may be specified or calculated in a specified manner; and
  - (b) “supplemental provision”, in relation to security, means provision as to—
    - (i) the manner in which the amount of a deposit is to be determined;
    - (ii) the consequences of non-payment of a deposit;
    - (iii) the circumstances in which the deposit, or any part of it, may be refunded to the person who paid it or paid to another party to the proceedings.

#### *Conduct of the hearing*

- 17 (1) Tribunal rules may make provision—
- (a) as to the manner in which proceedings are to be conducted, including provision for any hearing to be held in private if the Tribunal considers it appropriate because it is considering information of a kind mentioned in paragraph 1(2);
  - (b) as to the persons entitled to appear on behalf of the parties;
  - (c) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
  - (d) as to the evidence which may be required or admitted and the extent to which it should be oral or written;
  - (e) allowing the Tribunal to fix time limits with respect to any aspect of proceedings and to extend any time limit (before or after its expiry);
  - (f) enabling the Tribunal, on the application of any party or on its own initiative, to order—
    - (i) the disclosure between, or the production by, the parties of documents or classes of documents; or

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- (ii) such recovery or inspection of documents as might be ordered by a sheriff;
  - (g) for the appointment of experts for the purposes of proceedings;
  - (h) for the award of costs or expenses, including allowances payable to persons in connection with attendance before the Tribunal;
  - (i) for taxing or otherwise settling any costs or expenses awarded by the Tribunal or for the enforcement of any order awarding costs or expenses.
- (2) Rules under sub-paragraph (1)(h) may provide, in relation to a claim made under section 47A of the 1998 Act which is continued on behalf of an individual in proceedings under section 47B of that Act, for costs or expenses to be awarded to or against that individual in respect of proceedings on that claim which took place before it was included in the proceedings under section 47B of that Act.
- (3) Otherwise Tribunal rules may not provide for costs or expenses to be awarded to or against an individual on whose behalf a claim is made or continued in proceedings under section 47B of the 1998 Act.
- (4) Tribunal rules may make provision enabling the Tribunal to refer any matter arising in any proceedings (other than proceedings under section 47A or 47B of the 1998 Act) back to the authority that made the decision to which the proceedings relate, if it appears that the matter has not been adequately investigated.
- (5) A person who without reasonable excuse fails to comply with—
- (a) any requirement imposed by virtue of sub-paragraph (1)(c); or
  - (b) any requirement with respect to the disclosure, production, recovery or inspection of documents which is imposed by virtue of sub-paragraph (1)(f),
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Quorum*

- 18 (1) Tribunal rules may make provision as to the consequences of a member of the Tribunal being unable to continue after part of any proceedings have been heard.
- (2) The rules may allow the Tribunal to consist of the remaining members for the rest of the proceedings.
- (3) The rules may enable the President, if it is the chairman of the Tribunal who is unable to continue—
- (a) to appoint either of the remaining members to chair the Tribunal; and
  - (b) if that person is not a member of the panel of chairmen, to appoint himself or some other suitably qualified person to attend the proceedings and advise the remaining members on any questions of law arising.
- (4) For the purpose of sub-paragraph (3) a person is “suitably qualified” if he is, or is qualified for appointment as, a member of the panel of chairmen.

### *Interest*

- 19 (1) Tribunal rules may make provision allowing the Tribunal to order that interest is payable on any sum awarded by the Tribunal or on any fees ordered to be paid under paragraph 20.

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- (2) That provision may include provision—
- (a) as to the circumstances in which such an order may be made;
  - (b) as to the manner in which, and the periods in respect of which, interest is to be calculated and paid.

#### *Fees*

- 20 (1) Tribunal rules may provide—
- (a) for fees to be chargeable in respect of specified costs of proceedings; and
  - (b) for the amount of such costs to be determined by the Tribunal.
- (2) Any sums received in respect of such fees shall be paid into the Consolidated Fund.

#### *Withdrawal of proceedings*

- 21 (1) Tribunal rules may make provision—
- (a) preventing a party who has instituted proceedings from withdrawing them without the permission of the Tribunal or, in specified circumstances, the President or the Registrar;
  - (b) for the Tribunal to grant permission to withdraw proceedings on such conditions as it considers appropriate;
  - (c) enabling the Tribunal to publish any decision which it would have made in any proceedings, had the proceedings not been withdrawn;
  - (d) as to the effect of withdrawal of proceedings; and
  - (e) as to the procedure to be followed if parties to proceedings agree to settle.
- (2) Tribunal rules may make, in relation to a claim included in proceedings under section 47B of the 1998 Act, any provision which may be made under subparagraph (1) in relation to the whole proceedings.

#### *Interim orders*

- 22 (1) Tribunal rules may provide for the Tribunal to make an order, on an interim basis—
- (a) suspending the effect of any decision which is the subject matter of proceedings before it;
  - (b) in the case of an appeal under section 46 or 47 of the 1998 Act, varying the conditions or obligations attached to an exemption;
  - (c) granting any remedy which the Tribunal would have had power to grant in its final decision.
- (2) Tribunal rules may also make provision giving the Tribunal powers similar to those given to the [F<sup>2</sup>CMA] by section 35 of the 1998 Act.

#### **Textual Amendments**

- F2** Word in [Sch. 4 para. 22\(2\)](#) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 66](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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### Miscellaneous

- 23 (1) Tribunal rules may make provision enabling the Tribunal to decide where to sit for the purposes of, or of any part of, any proceedings before it.
- (2) Tribunal rules may make provision enabling the Tribunal to decide that any proceedings before it are to be treated, for purposes connected with—
- (a) any appeal from a decision of the Tribunal made in those proceedings; and
  - (b) any other matter connected with those proceedings,
- as proceedings in England and Wales, Scotland or Northern Ireland (regardless of the decision made for the purposes of sub-paragraph (1)).
- (3) For the purposes of sub-paragraph (2), Tribunal rules may provide for each claim made or continued on behalf of an individual in proceedings under section 47B of the 1998 Act to be treated as separate proceedings.
- 24 Tribunal rules may make provision—
- (a) for a person who is not a party to be joined in any proceedings;
  - (b) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person;
  - (c) for proceedings to be consolidated on such terms as the Tribunal thinks appropriate in such circumstances as may be specified.
- 25 Tribunal rules may make provision for the Tribunal to transfer a claim made in proceedings under section 47A of the 1998 Act to—
- (a) the High Court or [<sup>F3</sup>the county court in England and Wales or the High Court or a county court in] Northern Ireland; or
  - (b) the Court of Session or a sheriff court in Scotland.

#### Textual Amendments

- F3** Words in [Sch. 4 para. 25\(a\)](#) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\)](#), [Sch. 9 para. 81\(d\)](#); [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956, arts. 3-11](#))

- 26 Tribunal rules may make provision in connection with the transfer of any proceedings from a court mentioned in paragraph 25 to the Tribunal under section 16.



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