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## SCHEDULES

### SCHEDULE 5

#### PROCEDURE IN FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL

##### PART 1

##### TRIBUNAL PROCEDURE RULES

###### *Introductory*

- 1 (1) This Part of this Schedule makes further provision about the content of Tribunal Procedure Rules.
- (2) The generality of section 22(1) is not to be taken to be prejudiced by—
  - (a) the following paragraphs of this Part of this Schedule, or
  - (b) any other provision (including future provision) authorising or requiring the making of provision by Tribunal Procedure Rules.
- (3) In the following paragraphs of this Part of this Schedule “Rules” means Tribunal Procedure Rules.

###### *Concurrent functions*

- 2 Rules may make provision as to who is to decide, or as to how to decide, which of the First-tier Tribunal and Upper Tribunal is to exercise, in relation to any particular matter, a function that is exercisable by the two tribunals on the basis that the question as to which of them is to exercise the function is to be determined by, or under, Rules.

###### *Delegation of functions to staff*

- 3 (1) Rules may provide for functions—
  - (a) of the First-tier Tribunal, or
  - (b) of the Upper Tribunal,to be exercised by staff appointed under section 40(1).
- (2) In making provision of the kind mentioned in sub-paragraph (1) in relation to a function, Rules may (in particular)—
  - (a) provide for the function to be exercisable by a member of staff only if the member of staff is, or is of a description, specified in exercise of a discretion conferred by Rules;
  - (b) provide for the function to be exercisable by a member of staff only if the member of staff is approved, or is of a description approved, for the purpose by a person specified in Rules.

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#### *Time limits*

- 4 Rules may make provision for time limits as respects initiating, or taking any step in, proceedings before the First-tier Tribunal or the Upper Tribunal.

#### *Repeat applications*

- 5 Rules may make provision restricting the making of fresh applications where a previous application in relation to the same matter has been made.

#### *Tribunal acting of its own initiative*

- 6 Rules may make provision about the circumstances in which the First-tier Tribunal, or the Upper Tribunal, may exercise its powers of its own initiative.

#### *Hearings*

- 7 Rules may—
- (a) make provision for dealing with matters without a hearing;
  - (b) make provision as respects allowing or requiring a hearing to be in private or as respects allowing or requiring a hearing to be in public.

#### *Proceedings without notice*

- 8 Rules may make provision for proceedings to take place, in circumstances described in Rules, at the request of one party even though the other, or another, party has had no notice.

#### *Representation*

- 9 Rules may make provision conferring additional rights of audience before the First-tier Tribunal or the Upper Tribunal.

#### *Evidence, witnesses and attendance*

- 10 (1) Rules may make provision about evidence (including evidence on oath and administration of oaths).
- (2) Rules may modify any rules of evidence provided for elsewhere, so far as they would apply to proceedings before the First-tier Tribunal or Upper Tribunal.
- (3) Rules may make provision, where the First-tier Tribunal has required a person—
- (a) to attend at any place for the purpose of giving evidence,
  - (b) otherwise to make himself available to give evidence,
  - (c) to swear an oath in connection with the giving of evidence,
  - (d) to give evidence as a witness,
  - (e) to produce a document, or
  - (f) to facilitate the inspection of a document or any other thing (including any premises),

for the Upper Tribunal to deal with non-compliance with the requirement as though the requirement had been imposed by the Upper Tribunal.

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- (4) Rules may make provision for the payment of expenses and allowances to persons giving evidence, producing documents, attending proceedings or required to attend proceedings.

*Use of information*

- 11 (1) Rules may make provision for the disclosure or non-disclosure of information received during the course of proceedings before the First-tier Tribunal or Upper Tribunal.
- (2) Rules may make provision for imposing reporting restrictions in circumstances described in Rules.

*Costs and expenses*

- 12 (1) Rules may make provision for regulating matters relating to costs, or (in Scotland) expenses, of proceedings before the First-tier Tribunal or Upper Tribunal.
- (2) The provision mentioned in sub-paragraph (1) includes (in particular)—
- (a) provision prescribing scales of costs or expenses;
  - (b) provision for enabling costs to undergo detailed assessment in England and Wales by [<sup>F1</sup>the county court] or the High Court;
  - (c) provision for taxation in Scotland of accounts of expenses by an Auditor of Court;
  - (d) provision for enabling costs to be taxed in Northern Ireland in [<sup>F1</sup>the county court] or the High Court;
  - (e) provision for costs or expenses—
    - (i) not to be allowed in respect of items of a description specified in Rules;
    - (ii) not to be allowed in proceedings of a description so specified;
  - (f) provision for other exceptions to either or both of subsections (1) and (2) of section 29.

**Textual Amendments**

- F1** Words in Sch. 5 para. 12(2)(b) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 9 para. 52](#); [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956, arts. 3-11](#))

*Set-off and interest*

- 13 (1) Rules may make provision for a party to proceedings to deduct, from amounts payable by him, amounts payable to him.
- (2) Rules may make provision for interest on sums awarded (including provision conferring a discretion or provision in accordance with which interest is to be calculated).

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### *Arbitration*

- 14 Rules may provide for [<sup>F2</sup>any of the provisions of sections 1 to 15 of and schedule 1 to the Arbitration (Scotland) Act 2010 (which extends to Scotland) or] Part 1 of the Arbitration Act 1996 (c. 23) (which extends to England and Wales, and Northern Ireland, but not Scotland) not to apply, or not to apply except so far as is specified in Rules, where the First-tier Tribunal, or Upper Tribunal, acts as arbitrator.

#### **Textual Amendments**

- F2** Words in Sch. 5 para. 14 inserted (S.) (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), [Sch. para. 8](#)

### *Correction of errors and setting-aside of decisions on procedural grounds*

- 15 (1) Rules may make provision for the correction of accidental errors in a decision or record of a decision.
- (2) Rules may make provision for the setting aside of a decision in proceedings before the First-tier Tribunal or Upper Tribunal—
- (a) where a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party's representative,
  - (b) where a document relating to the proceedings was not sent to the First-tier Tribunal or Upper Tribunal at an appropriate time,
  - (c) where a party to the proceedings, or a party's representative, was not present at a hearing related to the proceedings, or
  - (d) where there has been any other procedural irregularity in the proceedings.
- (3) Sub-paragraphs (1) and (2) shall not be taken to prejudice, or to be prejudiced by, any power to correct errors or set aside decisions that is exercisable apart from rules made by virtue of those sub-paragraphs.

### *Ancillary powers*

- 16 Rules may confer on the First-tier Tribunal, or the Upper Tribunal, such ancillary powers as are necessary for the proper discharge of its functions.

### *Rules may refer to practice directions*

- 17 Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions under section 23.

### *Presumptions*

- 18 Rules may make provision in the form of presumptions (including, in particular, presumptions as to service or notification).

### *Differential provision*

- 19 Rules may make different provision for different purposes or different areas.

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