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SCHEDULES

SCHEDULE 8

TRIBUNALS AND INQUIRIES: CONSEQUENTIAL AND OTHER AMENDMENTS

Employment Tribunals Act 1996 (c. 17)

35 The Employment Tribunals Act 1996 is amended as follows.

36 Before section 4 insert—

Meaning of “Employment Judge”

“3A A person who is a member of a panel of chairmen of employment tribunals which is appointed in accordance with regulations under section 1(1) may be referred to as an Employment Judge.”

37 In section 4 (composition of employment tribunals), in each of subsections (2), (6), (6A) and (6B)(a) (which refer to the person who is the chairman of an employment tribunal), after “the person mentioned in subsection (1)(a) alone” insert “ or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal ”.

38 In sections 4(4), 18(8) and 40(1), after “The Secretary of State” insert “ and the Lord Chancellor, acting jointly, ”.

39 In section 5(1) (pay), for paragraph (c) substitute—

“(c) any person who is an Employment Judge on a full-time basis, and”.

40 After section 5 insert—

“5A Training etc.

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 members of panels of members of employment tribunals (in their capacities as members of such panels, whether or not panels of chairmen).

5B Members of employment tribunals: removal from office

(1) Any power by which the President of the Employment Tribunals (England and Wales) may be removed from that office may be exercised only with the concurrence of the Lord Chief Justice of England and Wales.

(2) Any power by which the President of the Employment Tribunals (Scotland) may be removed from that office may be exercised only with the concurrence of the Lord President of the Court of Session.

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- (3) Any power by which a member of a panel may be removed from membership of the panel—
- (a) may, if the person exercises functions wholly or mainly in Scotland, be exercised only with the concurrence of the Lord President of the Court of Session;
 - (b) may, if paragraph (a) does not apply, be exercised only with the concurrence of the Lord Chief Justice of England and Wales.
- (4) In subsection (3) “panel” means—
- (a) a panel of chairmen of employment tribunals, or
 - (b) any other panel of members of employment tribunals,
- which is appointed in accordance with regulations made under section 1(1).
- (5) The Lord Chief Justice of England and Wales 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 this section.

5C Oaths

- (1) Subsection (2) applies to a person (“the appointee”)—
- (a) who is appointed—
 - (i) as President of the Employment Tribunals (England and Wales),
 - (ii) as President of the Employment Tribunals (Scotland), or
 - (iii) as a member of a panel (as defined in section 5B(4)), and
 - (b) who 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 President or panel member 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.
- (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,

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as set out in the Promissory Oaths Act 1868.

5D Judicial assistance

- (1) Subsection (2) applies where regulations under section 1(1) make provision for a relevant tribunal judge, or a relevant judge, to be able by virtue of his office to act as a member of a panel of members of employment tribunals.
- (2) The provision has effect only if—
 - (a) the persons in relation to whom the provision operates have to be persons nominated for the purposes of the provision by the Senior President of Tribunals,
 - (b) its operation in relation to a panel established for England and Wales in any particular case requires the consent of the President of Employment Tribunals (England and Wales),
 - (c) its operation in relation to a panel established for Scotland in any particular case requires the consent of the President of Employment Tribunals (Scotland),
 - (d) its operation as respects a particular relevant judge requires—
 - (i) the consent of the relevant judge, and
 - (ii) the appropriate consent (see subsection (3)), and
 - (e) it operates as respects a relevant tribunal judge or a relevant judge only for the purpose of enabling him to act as a member of a panel of chairmen of employment tribunals.
- (3) In subsection (2)(d)(ii) “the appropriate consent” means—
 - (a) the consent of the Lord Chief Justice of England and Wales where the relevant judge is—
 - (i) an ordinary judge of the Court of Appeal in England and Wales,
 - (ii) a puisne judge of the High Court in England and Wales,
 - (iii) a circuit judge,
 - (iv) a district judge in England and Wales, or
 - (v) a District Judge (Magistrates' Courts);
 - (b) the consent of the Lord President of the Court of Session where the relevant judge is—
 - (i) a judge of the Court of Session, or
 - (ii) a sheriff;
 - (c) the consent of the Lord Chief Justice of Northern Ireland where the relevant judge is—
 - (i) a Lord Justice of Appeal in Northern Ireland,
 - (ii) a puisne judge of the High Court in Northern Ireland,
 - (iii) a county court judge in Northern Ireland, or
 - (iv) a district judge in Northern Ireland.
- (4) In this section—
 - (a) “relevant tribunal judge” means—
 - (i) a person who is a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007,

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- (ii) a transferred-in judge of the First-tier Tribunal,
 - (iii) a person who is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to that Act,
 - (iv) a transferred-in judge of the Upper Tribunal,
 - (v) a deputy judge of the Upper Tribunal, or
 - (vi) a person who is the Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, and does not fall within any of sub-paragraphs (i) to (v);
- (b) “relevant judge” means a person who—
- (i) is an ordinary judge of the Court of Appeal in England and Wales (including the vice-president, if any, of either division of that Court),
 - (ii) is a Lord Justice of Appeal in Northern Ireland,
 - (iii) is a judge of the Court of Session,
 - (iv) is a puisne judge of the High Court in England and Wales or Northern Ireland,
 - (v) is a circuit judge,
 - (vi) is a sheriff in Scotland,
 - (vii) is a county court judge in Northern Ireland,
 - (viii) is a district judge in England and Wales or Northern Ireland, or
 - (ix) is a District Judge (Magistrates' Courts).
- (5) References in subsection (4)(b)(iii) to (ix) to office-holders do not include deputies or temporary office-holders.”
- 41 (1) Section 7A (practice directions) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) The Senior President of Tribunals may make directions about the procedure of employment tribunals.”
- (3) In subsection (1)—
- (a) in paragraph (a), before “President” insert “ territorial ”, and
 - (b) in paragraphs (b) and (c), for “such directions” substitute “ directions under subsection (A1) or paragraph (a) ”.
- (4) In subsection (2), for “by the President” substitute “ under subsection (A1) or (1)(a) ”.
- (5) After subsection (2) insert—
- “(2A) The power under subsection (A1) includes—
- (a) power to vary or revoke directions made in exercise of the power, and
 - (b) power to make different provision for different purposes (including different provision for different areas).
- (2B) Directions under subsection (A1) may not be made without the approval of the Lord Chancellor.
- (2C) Directions under subsection (1)(a) may not be made without the approval of—

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- (a) the Senior President of Tribunals, and
- (b) the Lord Chancellor.

(2D) Subsections (2B) and (2C)(b) do not apply to directions to the extent that they consist of guidance about any of the following—

- (a) the application or interpretation of the law;
- (b) the making of decisions by members of an employment tribunal.

(2E) Subsections (2B) and (2C)(b) do not apply to directions to the extent that they consist of criteria for determining which members of employment tribunals may be selected to decide particular categories of matter; but the directions may, to that extent, be made only after consulting the Lord Chancellor.”

(6) In subsection (3), after “references to the” insert “ territorial ”.

42 After section 7A insert—

“7B Mediation

- (1) Employment tribunal procedure regulations may include provision enabling practice directions to provide for members to act as mediators in relation to disputed matters in a case that is the subject of proceedings.
- (2) The provision that may be included in employment tribunal procedure regulations by virtue of subsection (1) includes provision for enabling practice directions to provide for a member to act as mediator in relation to disputed matters in a case even though the member has been selected to decide matters in the case.
- (3) Once a member has begun to act as mediator in relation to a disputed matter in a case that is the subject of proceedings, the member may decide matters in the case only with the consent of the parties.
- (4) Staff appointed under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (staff for employment and other tribunals) may, subject to their terms of appointment, act as mediators in relation to disputed matters in a case that is the subject of proceedings.
- (5) Before making a practice direction that makes provision in relation to mediation, the person making the direction must consult the Advisory, Conciliation and Arbitration Service.

(6) In this section—

“member” means a member of a panel of members of employment tribunals (whether or not a panel of chairmen);

“practice direction” means a direction under section 7A;

“proceedings” means proceedings before an employment tribunal.”

43 In section 15(1) (enforcement in England and Wales as an order of a county court), for the words from “shall, if a county court so orders,” to the end substitute “ shall be recoverable by execution issued from a county court or otherwise as if it were payable under an order of a county court. ”

44 After section 24 insert—

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“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).

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.
- (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.”

45 In section 27(1)(a) (payment of appointed members of Employment Appeal Tribunal), after “members,” insert “ and ”.

- 46 (1) Section 28 (composition of Employment Appeal Tribunal) is amended as follows.
- (2) In subsection (4) (appeals from employment tribunal consisting of chairman alone), for the words from “question” to “section 4(1)(a) alone” substitute “ chairman-alone question ”.
 - (3) After subsection (4) insert—
 - “(4A) In subsection (4) “chairman-alone question” means—
 - (a) a question arising from any decision of an employment tribunal that is a decision of—

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- (i) the person mentioned in section 4(1)(a) acting alone, or
- (ii) any Employment Judge acting alone, or
- (b) a question arising in any proceedings before an employment tribunal that are proceedings before—
 - (i) the person mentioned in section 4(1)(a) alone, or
 - (ii) any Employment Judge alone.”

47 After section 29 insert—

“29A Practice directions

- (1) Directions about the procedure of the Appeal Tribunal may be given—
 - (a) by the Senior President of Tribunals, or
 - (b) by the President of the Appeal Tribunal.
- (2) A power under subsection (1) includes—
 - (a) power to vary or revoke directions given in exercise of the power, and
 - (b) power to make different provision for different purposes.
- (3) Directions under subsection (1)(a) may not be given without the approval of the Lord Chancellor.
- (4) Directions under subsection (1)(b) may not be given without the approval of—
 - (a) the Senior President of Tribunals, and
 - (b) the Lord Chancellor.
- (5) Subsection (1) does not prejudice any power apart from that subsection to give directions about the procedure of the Appeal Tribunal.
- (6) Directions may not be given in exercise of any such power as is mentioned in subsection (5) without the approval of—
 - (a) the Senior President of Tribunals, and
 - (b) the Lord Chancellor.
- (7) Subsections (3), (4)(b) and (6)(b) do not apply to directions to the extent that they consist of guidance about any of the following—
 - (a) the application or interpretation of the law;
 - (b) the making of decisions by members of the Appeal Tribunal.
- (8) Subsections (3), (4)(b) and (6)(b) do not apply to directions to the extent that they consist of criteria for determining which members of the Appeal Tribunal may be chosen to decide particular categories of matter; but the directions may, to that extent, be given only after consulting the Lord Chancellor.
- (9) Subsections (4) and (6) do not apply to directions given in a particular case for the purposes of that case only.
- (10) Subsection (6) does not apply to directions under section 28(1).”

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- 48 In section 30(3) (Employment Appeal Tribunal to regulate its own procedure, subject to procedure rules), after the words “Appeal Tribunal procedure rules” insert “ and directions under section 28(1) or 29A(1) ”.

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