

## SCHEDULE

## Regulation 2

### Interpretation

1. In this Schedule—

“accused person” (*“person a gyhuddwyd”*) means a person who is the subject of the investigation which gave rise to the reference to the Adjudication Panel for Wales under section 71(3) or 72(4) of the Act;

“investigating officer” (*“swyddog ymchwilio”*) means a person who carried out the investigation which gave rise to the reference to the Adjudication Panel for Wales under section 71(3) or 72(4) of the Act

“register” (*“cofrestr”*) means the register of adjudications and decisions kept in accordance with these provisions;

“registrar” (*“cofrestrydd”*) means the person for the time being acting as a registrar of tribunals and includes any person authorised for the purpose by the president of the Adjudication Panel for Wales;

“report” (*“adroddiad”*) means the report produced by a Local Commissioner in Wales in accordance with section 71(3)(a) or 72(1) of the Act, a copy of which has been sent or given to the president of the Adjudication Panel for Wales in accordance with section 71(3)(c) or 72(5)(c) of the Act;

“the Act” (*“y Ddeddf”*) means the Local Government Act 2000; and

“tribunal” (*“tribiwnlys”*) means a case tribunal established under section 76(1) of the Act or an interim case tribunal established under section 76(2) of the Act (as the case may be).

### Acknowledgement, registration and notification

2. Following a reference by a Local Commissioner in Wales under section 71(3) or 72(4) of the Act the registrar shall—

- (a) send to the Local Commissioner an acknowledgement of its receipt;
- (b) enter particulars of it in the register;
- (c) give written notice to any accused person of the reference, the case number entered in the register (which shall constitute the title of the adjudication) and the address to which notices and other communications to the tribunal shall be sent; and
- (d) send with the notice a copy of the report and such other information as is appropriate to the case including information about the delivery of a reply.

### Reply

3.—(1) An accused person must deliver to the registrar a written reply acknowledging receipt of the notice and stating—

- (a) whether or not that person intends
  - (i) to attend or be represented at the hearing, or
  - (ii) to dispute the contents of the report and, if so, on what grounds;
- (b) the name and address and the profession of any person who is to represent him or her and whether such address is to be his or her address for service for the purposes of the adjudication; and
- (c) whether that person wishes the hearing to be conducted in English or Welsh.

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(2) Such reply shall be signed either by the accused person or by his or her nominated representative and shall be delivered to the address for the tribunal specified in the notice given under paragraph 2(c) above not later than 21 days after the date on which the notice was received or by such later date as the tribunal may allow.

(3) If no reply is received by the registrar within the specified time or any extension of time allowed by the tribunal, or if the accused person states in his or her reply that he or she does not intend either to attend or be represented at the hearing or to dispute the contents of the report, the tribunal may determine the adjudication without a hearing.

#### **Written representations**

4. An accused person who has delivered to the registrar a written reply stating that he or she does not intend to attend or be represented at the hearing or to dispute the contents of the report may send to the registrar written representations which shall be considered by the tribunal before a decision on the case is reached.

#### **Directions in preparation for a hearing**

5.—(1) The tribunal may at any time, on the application of an accused person or of its own motion, give directions to enable that person to prepare for the hearing or to assist the tribunal to determine the issues.

(2) An application for directions shall be made in writing to the registrar.

#### **Particulars**

6. The tribunal may give directions requiring any person to provide such particulars as may be reasonably required for the determination of the adjudication.

#### **Disclosure of documents and other material**

7. The tribunal may give directions requiring any person to deliver to the tribunal any document or other material which the tribunal may require and which it is in the power of that person to deliver.

#### **Summoning of witnesses**

8. The tribunal may by summons require any person in the United Kingdom (with the exception of a Local Commissioner in Wales and any member of the staff of the Commission for Local Administration in Wales) to attend as a witness at the hearing of an adjudication at such time and place as may be specified in the summons and at the hearing to answer any questions or produce any documents or other material in his or her custody or control which relate to any matter in question in the adjudication, provided that—

- (a) no person shall be required to attend in obedience to such a summons unless he or she has been given at least fourteen days' notice of the hearing or, if less than fourteen days, has informed the tribunal that he or she accepts such notice as has been given; and
- (b) no person, other than an accused person, shall be required in obedience to such a summons to attend and give evidence or to produce any document unless the necessary expenses of his or her attendance are paid or tendered to him or her.

### **Attendance of investigating officers**

9. The tribunal may require an investigating officer to attend the hearing of an adjudication for the purpose of presenting the report and/or explaining any of the matters contained in it but not otherwise.

### **Experts**

10.—(1) Where the tribunal considers that any question arises on which it would be desirable to have the assistance of an expert, it may make arrangements for a person with appropriate qualifications to enquire into and report on the matter and, if the tribunal so requires, to attend the hearing and to give evidence.

(2) A copy of a report received from an expert shall be supplied to each accused person before the hearing or any resumed hearing.

(3) The fees of an expert shall be borne by the tribunal.

### **Varying or setting aside directions**

11. Where a person to whom a direction (including any summons) is addressed had no opportunity of objecting to the making of the direction, he or she may apply to the tribunal to vary it or set it aside but the tribunal shall not so do without first notifying the person who applied for the direction and considering any representations made by him or her.

### **Pre-hearing review**

12.—(1) Where it appears to the tribunal that an adjudication would be facilitated by the holding of a pre-hearing review, it may, of its own motion or on the application of an accused person, give directions for such a review to be held. The registrar shall give each accused person at least fourteen days notice of the time and place of the review.

(2) The review shall be held in private unless the tribunal directs otherwise and any accused person may appear and be represented by any other person.

(3) On a review:—

(a) the tribunal or, subject to sub-paragraph (4), the registrar shall give all such directions as appear to be necessary or desirable to secure the just, expeditious and economical conduct of the adjudication;

(b) the tribunal or, subject to sub-paragraph (4), the registrar shall endeavour to secure that any accused person makes all such admissions and agreements as ought reasonably to be made in relation to the adjudication; and

(c) the tribunal may, if every accused person agrees, determine the adjudication on the documents and statements then before it without any further hearing.

(4) The registrar shall exercise the powers given to him or her by sub-paragraph (3)(a) and (b) in accordance with the directions of the tribunal and any direction given by the registrar may be set aside or varied by the tribunal of its own motion or on the application of an accused person.

### **Notice of place and time of hearing**

13.—(1) The registrar shall fix the date, time and place of the hearing and, not less than twenty one days before that date, shall send to any accused person notice of the hearing.

(2) The registrar shall include in or with the notice of hearing:—

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- (a) information and guidance, in a form approved by the president of the Adjudication Panel for Wales, as to attendance at the hearing of witnesses, the bringing of documents, and the right of representation by another person; and
  - (b) a statement explaining the possible consequences of non-attendance and of the right of any accused person who has delivered a reply but who does not attend and is not represented to make representations in writing.
- (3) The tribunal may postpone a hearing and the registrar shall give to any accused person not less than seven days notice of any such postponement.
- (4) The tribunal may from time to time adjourn a hearing and, if the time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

### **Public notice of hearings**

14. The registrar shall make available for public inspection a list of all adjudications for which an oral hearing is to be held and of the date, time and place of the hearing.

### **Power to determine an adjudication without a hearing**

- 15.—(1) The tribunal may—
- (a) if every accused person so agrees in writing, or
  - (b) in the circumstances described in paragraph 3(3) above,
- determine an adjudication, or any particular issue, without a hearing.
- (2) The provisions of paragraphs 17(2) and 18(6) shall apply in respect of the determination of an adjudication, or any particular issue, in accordance with this paragraph.

### **Hearings to be public: exceptions**

- 16.—(1) All hearings by a tribunal shall be held in public except where the tribunal considers that publicity would prejudice the interests of justice.
- (2) The following persons shall be entitled to attend a hearing whether or not it is in private—
- (a) the president and members of the Adjudication Panel for Wales notwithstanding that they do not constitute the tribunal for the purpose of the hearing;
  - (b) members of the Council on Tribunals;
  - (c) a Local Commissioner in Wales or the representative of a Local Commissioner in Wales; and
  - (d) the monitoring officer of an authority of which the accused person is a member or co-opted member.
- (3) The tribunal may permit any other person to attend a hearing which is held in private.
- (4) Without prejudice to any other powers which it may have, a tribunal may exclude from a hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing.

### **Failure of parties to attend hearing**

- 17.—(1) If an accused person fails to attend or be represented at a hearing of which he or she has been duly notified, the tribunal may—
- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the adjudication in that person's absence; or

(b) adjourn the hearing;  
and may make such order as to costs and expenses as it thinks fit.

(2) Before deciding to determine an adjudication in the absence of an accused person, the tribunal shall consider any representations in writing submitted by that person in response to the notice of hearing and, for the purpose of this paragraph, any reply shall be treated as a representation in writing.

### **Procedure at hearing**

**18.**—(1) At the beginning of the hearing the chairperson shall explain the order of proceeding which the tribunal proposes to adopt.

(2) Subject to this paragraph, the tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the adjudication; it shall so far as appears to it appropriate seek to avoid formality in its proceedings.

(3) The hearing may be conducted in either English or Welsh as the tribunal directs and in making such a direction the tribunal shall take account of and, so far as is reasonably practicable, give effect to any preference stated by an accused person in a reply delivered under paragraph 3. In either case an instantaneous translation service shall be provided for any person attending the hearing who requests it.

(4) Any accused person shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal both on the evidence and generally on the subject matter of the adjudication.

(5) Evidence before the tribunal may be given orally or, if the tribunal so orders, by affidavit or written statement, but the tribunal may at any stage of the proceedings require the personal attendance of any deponent or maker of a written statement.

(6) The tribunal may receive evidence of any fact which appears to the tribunal to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law but shall not refuse to admit any evidence which is admissible at law and is relevant.

(7) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

### **Decision of Tribunal**

**19.**—(1) A decision of a tribunal may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority.

(2) The decision of a tribunal may be given orally at the end of the hearing or reserved and, in any event, whether there has been a hearing or not, shall be recorded forthwith in a document which shall also contain a statement of the reasons for its decision and which shall be signed and dated by the chairperson.

(3) Subject to sub-paragraph (4), every document referred to in this paragraph shall, as soon as may be, be entered in the register.

(4) Where any such document refers to any evidence that has been heard in private, only a summary of the document shall be entered in the register, omitting such material as the tribunal may direct.

(5) Except where a decision is announced at the end of the hearing, the document recording it shall be treated as having been made on the date on which it is entered in the register.

### **Orders for costs and expenses**

**20.**—(1) Save as provided by paragraph 17(1) the tribunal shall not normally make an order awarding costs and expenses, but may, subject to sub-paragraph (2), make such an order against a person if it is of the opinion that that person has acted frivolously or vexatiously or that his or her conduct has been wholly unreasonable.

(2) No order shall be made under sub-paragraph (1) against a person without that person having been given an opportunity to make representations against the making of the order.

(3) An order under sub paragraph (1) may require the person against whom it is made to pay another person either a specified sum in respect of the costs and expenses incurred by that other person in connection with the adjudication or the whole or part of such costs as assessed (if not otherwise agreed).

(4) Any costs required by an order under this paragraph to be assessed shall be assessed in the county court on the standard basis.

(5) The specified or assessed amount of any costs and expenses awarded by a tribunal shall, unless set aside and subject to any variation on appeal or review, carry interest from the fourteenth day after the date of the award at the rate for the time being prescribed under section 69 of the County Courts Act 1984<sup>(1)</sup>.

(6) The specified or assessed amount of any costs and expenses and any interest thereon shall be recoverable by execution issued from a county court.

### **Irregularities**

**21.**—(1) Any irregularity resulting from failure to comply with any of these provisions or of any direction of the tribunal before the tribunal has reached its decision shall not of itself render the adjudication void.

(2) Where any such irregularity comes to the attention of the tribunal, the tribunal may, and if it considers that any person may have been prejudiced by the irregularity shall, give such directions as it thinks just before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the chairperson by certificate under his hand.

### **The register and publication of decisions**

**22.**—(1) The register shall be kept at the address of the Adjudication Panel for Wales and shall be open to the inspection of any person without charge at all reasonable hours.

(2) The tribunal may make arrangements for the publication of its decisions as it considers appropriate but, in doing so, shall have regard to the need to preserve the confidentiality of any evidence heard in private and for that purpose may make any necessary amendments to the text of a decision.

### **Proof of documents and certificate of decisions**

**23.**—(1) Any document purporting to be a document duly executed or issued by the registrar on behalf of the tribunal shall, unless the contrary is proved, be deemed to be a document so executed or issued as the case may be.

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(1) 1984 c. 28.

(2) A document purporting to be certified by the registrar to be a true copy of any entry of a decision in the register shall, unless the contrary is proved, be sufficient evidence of the entry and of matters contained therein.

**Method of sending, delivering or serving documents, etc**

**24.**—(1) Any document required or authorised by these provisions to be sent or delivered to, or served on, any person shall be duly sent, delivered or served on that person—

- (a) if it is sent to that person at his or her proper address by post in a registered letter or by recorded delivery;
- (b) if it is sent to him or her at that address by facsimile transmission or any other means which produces a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form; or
- (c) if it is delivered to him or her or left at his or her address.

(2) Any document required or authorised to be sent or delivered to, or served on, an incorporated company or body shall be duly sent, delivered or served if sent or delivered to or served on the secretary of the company or body.

(3) The proper address of any person to or on whom any such document is to be sent, delivered or served shall, in the case of a secretary of any incorporated company or body, be that of the registered or principal office of the company or body and, in any other case, be the last known address of the person in question.

**Time**

**25.** Where the time prescribed by these provisions for doing any act expires on a Sunday or public holiday, the act shall be in time if done on the next following day which is not a Sunday or public holiday.