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## SCHEDULES

### SCHEDULE 6

Sections 28(12), 48(5).

#### APPEAL PROCEEDINGS

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

- C1** Sch. 6 applied (with modifications) (1.3.2000) by S.I. 1999/2093, **reg. 32(8)(a)**  
Sch. 6 applied (30.11.2002) by 2000 c. 36, ss. 61(2), 87(3) (with ss. 7(1)(7), 56, 78); S.I. 2002/2812, **art. 2**  
Sch. 6 applied (with modifications) (11.12.2003) by The Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426), **reg. 28(8)(b)** (with regs. 4, 15(3), 28, 29)
- C2** Sch. 6 extended (with modifications) (11.12.2003) by the Privacy and Electronic Communications (EC Directive) Regulations (S.I. 2003/2426), {reg. 31}, Sch. 1 (with regs. 4, 15(3), 28, 29) (Sch. 1 amended (26.5.2011) by The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (S.I. 2011/1208), reg. {14})
- C3** Sch. 6 applied (6.4.2010) by The Data Protection (Monetary Penalties) Order 2010 (S.I. 2010/910), **art. 7**
- C4** Sch. 6 applied (with modifications) (26.5.2011) by The Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426), reg. 31B, **Sch. 1** (reg. 31B being inserted and Sch. 1 amended (26.5.2011) by The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (S.I. 2011/1208), regs. {12}{14})

##### *Hearing of appeals*

- 1 For the purpose of hearing and determining appeals or any matter preliminary or incidental to an appeal the Tribunal shall sit at such times and in such places as the chairman or a deputy chairman may direct and may sit in two or more divisions.

##### *Constitution of Tribunal in national security cases*

- 2 (1) The Lord Chancellor shall from time to time designate, from among the chairman and deputy chairmen appointed by him under section 6(4)(a) and (b), those persons who are to be capable of hearing appeals under section 28(4) or (6) [<sup>F1</sup>or under section 60(1) or (4) of the Freedom of Information Act 2000].
- (2) A designation under sub-paragraph (1) may at any time be revoked by the Lord Chancellor.
- [<sup>F2</sup>(3) The Lord Chancellor may make, or revoke, a designation under this paragraph only with the concurrence of all of the following—
- (a) the Lord Chief Justice;
  - (b) the Lord President of the Court of Session;
  - (c) the Lord Chief Justice of Northern Ireland.

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- (4) 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 sub-paragraph (3) so far as they relate to a designation under this paragraph.
- (5) 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 sub-paragraph (3) so far as they relate to a designation under this paragraph.
- (6) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under sub-paragraph (3) so far as they relate to a designation under this paragraph—
  - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

#### Textual Amendments

- F1** Words in Sch. 6 para. 2(1) inserted (14.5.2001) by 2000 c. 36, s. 61(1), Sch. 4 para. 1 (with ss. 7(1)(7), 56, 78); S.I. 2001/1637, art. 2(c)
- F2** Sch. 6 para. 2(3)-(6) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 4 para. 275(2); S.I. 2006/1014, art. 2, Sch. 1 para. 11

- [<sup>F3</sup> [ The Tribunal shall be duly constituted—
- <sup>F4</sup>(1)] (a) for an appeal under section 28(4) or (6) in any case where the application of paragraph 6(1) is excluded by rules under paragraph 7, or
- (b) for an appeal under section 60(1) or (4) of the Freedom of Information Act 2000,
- if it consists of three of the persons designated under paragraph 2(1), of whom one shall be designated by the Lord Chancellor to preside.
- [ The Lord Chancellor may designate a person to preside under this paragraph only
- <sup>F5</sup>(2) with the concurrence of all of the following—
- (a) the Lord Chief Justice of England and Wales;
  - (b) the Lord President of the Court of Session;
  - (c) the Lord Chief Justice of Northern Ireland.
- (3) 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 paragraph.
- (4) 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 paragraph.
- (5) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this paragraph—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

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#### Textual Amendments

- F3** Sch. 6 para. 3 substituted (1.1.2005) by 2000 c. 36, ss. 61(1), 87(3), Sch. 4 para. 2 (with ss. 7(1)(7), 56, 78); S.I. 2004/1909, **art. 2**; S.I. 2004/3122, **art. 2**
- F4** Sch. 6 para. 3 renumbered (3.4.2006 with effect as mentioned in Sch. 4 para. 361 of the amending Act) as Sch. 6 para. 3(1) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 paras. 275(3)(a)**, 406(2)(4); S.I. 2006/1014, **art. 2**, Sch. 1 para. 11
- F5** Sch. 6 para. 3(2)-(5) inserted (3.4.2006 with effect as mentioned in Sch. 4 para. 361 of the amending Act) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 paras. 275(3)(b)**, 406(3)(4); S.I. 2006/1014, **art. 2**, Sch. 1 para. 11

#### *Constitution of Tribunal in other cases*

- 4 (1) Subject to any rules made under paragraph 7, the Tribunal shall be duly constituted for an appeal under section 48(1), (2) or (4) if it consists of—
- the chairman or a deputy chairman (who shall preside), and
  - an equal number of the members appointed respectively in accordance with paragraphs (a) and (b) of section 6(6).
- [<sup>F6</sup>(1A) Subject to any rules made under paragraph 7, the Tribunal shall be duly constituted for an appeal under section 57(1) or (2) of the Freedom of Information Act 2000 if it consists of—
- the chairman or a deputy chairman (who shall preside), and
  - an equal number of the members appointed respectively in accordance with paragraphs (aa) and (bb) of section 6(6).]

(2) The members who are to constitute the Tribunal in accordance with sub-paragraph (1) [<sup>F7</sup>or (1A)] shall be nominated by the chairman or, if he is for any reason unable to act, by a deputy chairman.

#### Textual Amendments

- F6** Sch. 6 para. 4(1A) inserted (30.11.2002) by 2000 c. 36, ss. 61(1), 87(3), Sch. 4 para. 3(2) (with ss. 7(1)(7), 56, 78); S.I. 2002/2812, **art. 2**
- F7** Words in Sch. 6 para. 4(2) inserted (30.11.2002) by 2000 c. 36, ss. 61(1), 87(3), Sch. 4 para. 3(3) (with ss. 7(1)(7), 56, 78); S.I. 2002/2812, **art. 2**

#### *Determination of questions by full Tribunal*

- 5 The determination of any question before the Tribunal when constituted in accordance with paragraph 3 or 4 shall be according to the opinion of the majority of the members hearing the appeal.

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### *Ex parte proceedings*

- 6 (1) Subject to any rules made under paragraph 7, the jurisdiction of the Tribunal in respect of an appeal under section 28(4) or (6) shall be exercised *ex parte* by one or more persons designated under paragraph 2(1).
- (2) Subject to any rules made under paragraph 7, the jurisdiction of the Tribunal in respect of an appeal under section 48(3) shall be exercised *ex parte* by the chairman or a deputy chairman sitting alone.

### *Rules of procedure*

- 7 (1) The [<sup>F8</sup> Secretary of State] may make rules for [<sup>F9</sup>regulating—
- (a) the exercise of the rights of appeal conferred—
    - (i) by sections 28(4) and (6) and 48, and
    - (ii) by sections 57(1) and (2) and section 60(1) and (4) of the Freedom of Information Act 2000, and
  - (b) the practice and procedure of the Tribunal.]
- (2) Rules under this paragraph may in particular make provision—
- (a) with respect to the period within which an appeal can be brought and the burden of proof on an appeal,
  - [<sup>F10</sup>(aa) for the joinder of any other person as a party to any proceedings on an appeal under the Freedom of Information Act 2000,
  - (ab) for the hearing of an appeal under this Act with an appeal under the Freedom of Information Act 2000,]
  - (b) for the summoning (or, in Scotland, citation) of witnesses and the administration of oaths,
  - (c) for securing the production of documents and material used for the processing of personal data,
  - (d) for the inspection, examination, operation and testing of any equipment or material used in connection with the processing of personal data,
  - (e) for the hearing of an appeal wholly or partly in camera,
  - (f) for hearing an appeal in the absence of the appellant or for determining an appeal without a hearing,
  - (g) for enabling an appeal under section 48(1) against an information notice to be determined by the chairman or a deputy chairman,
  - (h) for enabling any matter preliminary or incidental to an appeal to be dealt with by the chairman or a deputy chairman,
  - (i) for the awarding of costs or, in Scotland, expenses,
  - (j) for the publication of reports of the Tribunal's decisions, and
  - (k) for conferring on the Tribunal such ancillary powers as the [<sup>F8</sup> Secretary of State] thinks necessary for the proper discharge of its functions.
- (3) In making rules under this paragraph which relate to appeals under section 28(4) or (6) the [<sup>F8</sup> Secretary of State] shall have regard, in particular, to the need to secure that information is not disclosed contrary to the public interest.

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#### Textual Amendments

- F8** Words in [Sch. 7 para. 4](#) substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [art. 9](#), [Sch. 2 para. 9\(1\)\(d\)](#)
- F9** Word and [Sch. 6 para. 7\(1\)\(a\)\(b\)](#) substituted for words in [Sch. 6 para. 7\(1\)](#) (14.5.2001) by [2000 c. 36, s. 61\(1\)](#), [Sch. 4 para. 4\(2\)](#) (with [ss. 7\(1\)\(7\)](#), [56](#), [78](#)); [S.I. 2001/1637](#), [art. 2\(c\)](#)
- F10** [Sch. 6 para. 7\(2\)\(aa\)\(ab\)](#) inserted (14.5.2001) by [2000 c. 36, s. 61\(1\)](#), [Sch. 4 para. 4\(3\)](#) (with [ss. 7\(1\)\(7\)](#), [56](#), [78](#)); [S.I. 2001/1637](#), [art. 2\(c\)](#)

#### Commencement Information

- I1** [Sch. 6 para. 7](#) wholly in force at 1.3.2000; [Sch. 6 para. 7](#) in force for certain purposes at Royal Assent see [s. 75\(2\)\(i\)](#); [Sch. 6 para. 7](#) in force at 1.3.2000 insofar as not already in force by [S.I. 2000/183](#), [art. 2\(1\)](#)

#### *Obstruction etc.*

- 8 (1) If any person is guilty of any act or omission in relation to proceedings before the Tribunal which, if those proceedings were proceedings before a court having power to commit for contempt, would constitute contempt of court, the Tribunal may certify the offence to the High Court or, in Scotland, the Court of Session.
- (2) Where an offence is so certified, the court may inquire into the matter and, after hearing any witness who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which it could deal with him if he had committed the like offence in relation to the court.

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