

Courts and Tribunals (Online Procedure) Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice, have been ordered to be published as HL Bill 176 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Keen of Elie has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Courts and Tribunals (Online Procedure) Bill [HL] are compatible with the Convention rights.

Courts and Tribunals (Online Procedure) Bill [HL]

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B I L L

TO

Provide for online procedures in civil and family courts in England and Wales, in the First-tier Tribunal and Upper Tribunal and in employment tribunals and the Employment Appeal Tribunal.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The online procedure

1 Rules for an online procedure in courts and tribunals

- (1) For proceedings of a specified kind, there are to be procedural rules which—
- (a) must require that kind of proceedings, or one or more aspects of that kind of proceedings, to be initiated by electronic means; 5
 - (b) may authorise or require that kind of proceedings, or one or more aspects of that kind of proceedings, to be conducted, progressed or disposed of by electronic means;
 - (c) may authorise or require the parties to that kind of proceedings (and their representatives) to participate in hearings, including the hearing at which the proceedings are disposed of, by electronic means; 10
- and are otherwise to govern the practice and procedure to be followed in that kind of proceedings.
- (2) The rules are to be called Online Procedure Rules.
- (3) Power to make Online Procedure Rules is to be exercised with a view to securing— 15
- (a) that practice and procedure under the rules are accessible and fair,
 - (b) that the rules are both simple and simply expressed,
 - (c) that disputes may be resolved quickly and efficiently under the rules, and 20
 - (d) that the rules support the use of innovative methods of resolving disputes.

- (4) Different Online Procedure Rules may be made for different kinds of proceedings.
- (5) The provision that may be made under subsection (1)(b) includes provision authorising or requiring—
- (a) any question arising in proceedings, or 5
 - (b) the final determination of proceedings, to be disposed of by electronic means as a result of steps which the parties take, or fail to take, by electronic means.
- (6) Online Procedure Rules may provide—
- (a) for circumstances in which proceedings of a specified kind— 10
 - (i) are not to be governed by the rules, or
 - (ii) are to cease to be governed by the rules, and
 - (b) for the proceedings to be governed by Civil Procedure Rules, Family Procedure Rules, Tribunal Procedure Rules, employment tribunal procedure regulations or EAT procedure rules instead. 15
- (7) Online Procedure Rules may provide—
- (a) for circumstances in which excluded proceedings—
 - (i) are to be governed by Online Procedure Rules, or
 - (ii) are to be governed again by Online Procedure Rules, and
 - (b) for the proceedings to cease to be governed by Civil Procedure Rules, Family Procedure Rules, Tribunal Procedure Rules, employment tribunal procedure regulations or EAT procedure rules. 20
- (8) For the purposes of subsection (7)(a), proceedings are “excluded” if the proceedings are not governed, or cease to be governed, by Online Procedure Rules under provision of the kind referred to in subsection (6)(a). 25
- (9) Online Procedure Rules may provide—
- (a) for proceedings of a specified kind to be taken in a court or tribunal which is not the court or tribunal in which they would be taken if governed by the applicable standard rules;
 - (b) for different proceedings (whether of the same specified kind or different specified kinds) to be taken together in a particular court or tribunal (which need not be the court or tribunal in which any or all of those proceedings would be taken if governed by the applicable standard rules). 30
- (10) This section is subject to section 3. 35
- (11) Schedule 1 (practice directions) has effect.
- (12) In this section “procedural rules” means—
- (a) rules of court, in the case of court proceedings;
 - (b) Tribunal Procedure Rules, in the case of proceedings in the First-tier Tribunal or Upper Tribunal; 40
 - (c) rules which are to be treated as if they were employment tribunal procedure regulations, in the case of proceedings in the employment tribunals;
 - (d) EAT procedure rules, in the case of proceedings in the Employment Appeal Tribunals. 45

2 “Specified kinds” of proceedings

- (1) Proceedings are of a “specified kind” for the purposes of section 1 if they are a kind of—
- (a) civil proceedings,
 - (b) family proceedings, 5
 - (c) proceedings in the First-tier Tribunal,
 - (d) proceedings in the Upper Tribunal,
 - (e) proceedings in employment tribunals, or
 - (f) proceedings in the Employment Appeal Tribunal,
- specified in regulations made by the appropriate minister. 10
- (2) The factors by reference to which a kind of proceedings may be specified in regulations under subsection (1) include—
- (a) the legal basis of the proceedings;
 - (b) the factual basis of the proceedings;
 - (c) the value of the matter in issue in the proceedings; 15
 - (d) the court or tribunal in which the proceedings are to be brought or continued.
- (3) Regulations under this section are subject to the consultation requirement.
- (4) Regulations under this section are subject to affirmative resolution procedure.

3 Provision supplementing section 1 20

- (1) The appropriate Minister may, by regulations, provide for circumstances in which the person initiating proceedings, or an aspect of proceedings, may (if the proceedings are of a specified kind) choose whether the proceedings or that aspect are to be initiated in accordance with Online Procedure Rules or the applicable standard rules. 25
- (2) The appropriate Minister may, by regulations, provide—
- (a) for circumstances in which proceedings of a specified kind—
 - (i) are not to be governed by Online Procedure Rules, or
 - (ii) are to cease to be governed by Online Procedure Rules, and
 - (b) for the proceedings to be governed by Civil Procedure Rules, Family Procedure Rules, Tribunal Procedure Rules, employment tribunal procedure regulations or EAT procedure rules instead; 30
- (3) The appropriate Minister may, by regulations, provide—
- (a) for circumstances in which excluded proceedings—
 - (i) are to be governed by Online Procedure Rules, or 35
 - (ii) are to be governed again by Online Procedure Rules, and
 - (b) for the proceedings to cease to be governed by Civil Procedure Rules, Family Procedure Rules, Tribunal Procedure Rules, employment tribunal procedure regulations or EAT procedure rules.
- (4) For the purposes of subsection (3)(a) proceedings are “excluded” if the proceedings are not governed, or cease to be governed, by Online Procedure Rules under— 40
- (a) Online Procedure Rules of the kind referred to in section 1(6)(a), or
 - (b) regulations under subsection (1) or (2)(a).

- (5) Regulations under this section are subject to the consultation requirement.
- (6) Regulations under this section are subject to affirmative resolution procedure.

4 The Online Procedure Rule Committee

- (1) Online Procedure Rules are to be made by a committee known as the Online Procedure Rule Committee. 5
- (2) The Committee is to consist of –
 - (a) one person who is a judge of the Senior Courts of England and Wales, appointed to the Committee by the Lord Chief Justice;
 - (b) one person who is either –
 - (i) a judge of the Senior Courts of England and Wales, a Circuit Judge or a district judge, or 10
 - (ii) a judge of the First-tier Tribunal, a judge of the Upper Tribunal, an Employment Judge or a judge of the Employment Appeal Tribunal appointed by the Lord Chief Justice, appointed to the Committee by the Lord Chief Justice; 15
 - (c) one person who is either a barrister in England and Wales, a solicitor of the Senior Courts of England and Wales or a legal executive, appointed to the Committee by the Lord Chancellor; and
 - (d) two other persons appointed to the Committee by the Lord Chancellor –
 - (i) one of whom must have experience in and knowledge of the lay advice sector, and
 - (ii) one of whom must have IT experience and knowledge relating to end-users’ experience of internet portals. 20
- (3) Before appointing a person under subsection (2)(a) the Lord Chief Justice must consult –
 - (a) the Lord Chancellor, and
 - (b) the Senior President of Tribunals. 25
- (4) Before appointing a person under subsection (2)(b) the Lord Chief Justice must –
 - (a) consult the Lord Chancellor and the Secretary of State, and
 - (b) obtain the agreement of the Senior President of Tribunals. 30
- (5) Before appointing a person under subsection (2)(c) the Lord Chancellor must consult –
 - (a) the Lord Chief Justice, 35
 - (b) the Senior President of Tribunals, and
 - (c) the relevant authorised body.
- (6) Before appointing a person under subsection (2)(d) the Lord Chancellor must consult –
 - (a) the Lord Chief Justice, and 40
 - (b) the Senior President of Tribunals.
- (7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any function of the Lord Chief Justice under this section.

- (8) The Lord Chancellor may reimburse the members of the Online Procedure Rule Committee their travelling and out-of-pocket expenses.
- (9) In this section –
 - “IT experience and knowledge” means experience in, and knowledge of, information technology; 5
 - “legal executive” means a person authorised by the Chartered Institute of Legal Executives to practise as a member of the profession of legal executives;
 - “relevant authorised body”, in relation to an appointment under subsection (2)(c), means – 10
 - (a) the General Council of the Bar of England and Wales, if the appointment is of a barrister;
 - (b) the Law Society of England and Wales, if the appointment is of a solicitor;
 - (c) the Chartered Institute of Legal Executives, if the appointment is of a legal executive. 15

5 Powers of the Online Procedure Rule Committee

- (1) For making Online Procedure Rules for proceedings of a kind set out in an entry in the first column of the following table, the Online Procedure Rule Committee has the powers set out in the corresponding entry in the second column – 20

<i>For making Online Procedure Rules for proceedings of this kind...</i>	<i>...the Online Procedure Rule Committee has these powers...</i>	
civil proceedings	the same powers that the Civil Procedure Rule Committee has under the Civil Procedure Act 1997 or otherwise for making Civil Procedure Rules – except the powers under paragraphs 5 and 6 of Schedule 1 to that Act (powers to apply other rules & refer to practice directions: but see subsections (2) to (6) below)	25 30
family proceedings	the same powers that the Family Procedure Rule Committee has under Part 7 of the Courts Act 2003 or otherwise for making Family Procedure Rules – except the powers under section 76(4) to (8) of that Act (powers to apply other rules & refer to practice directions: but see subsections (2) to (6) below)	35
proceedings in the First-tier Tribunal	the same powers that the Tribunal Procedure Committee has under Part 1 of the Tribunals, Courts and Enforcement Act 2007 or otherwise for making Tribunal Procedure Rules for proceedings in the First-tier Tribunal – except the power under paragraph 17 of Schedule 5 to that Act (power to refer to practice directions: but see subsection (6) below)	40 45

<i>For making Online Procedure Rules for proceedings of this kind...</i>	<i>...the Online Procedure Rule Committee has these powers...</i>	
proceedings in the Upper Tribunal	the same powers that the Tribunal Procedure Committee has under Part 1 of the Tribunals, Courts and Enforcement Act 2007 or otherwise for making Tribunal Procedure Rules for proceedings in the Upper Tribunal – except the power under paragraph 17 of Schedule 5 to that Act (power to refer to practice directions: but see subsection (6) below)	5 10
proceedings in the employment tribunals	the same powers that the Secretary of State has under section 7 of the Employment Tribunals Act 1996 or otherwise for making provision with respect to proceedings before employment tribunals – except the power under section 7A(2) of that Act (power to refer to practice directions: but see subsection (6) below)	15
proceedings in the Employment Appeal Tribunal	the same powers that the Lord Chancellor has under section 30 of the Employment Tribunals Act 1996 or otherwise for making rules with respect to proceedings before the Employment Appeal Tribunal	20

- (2) Online Procedure Rules may apply any other procedural rules.
- (3) The other procedural rules may be applied to proceedings of a particular kind even if the rules would not normally be applicable to that kind of proceedings. 25
- (4) The other procedural rules may be applied –
- (a) to any extent;
 - (b) with or without modifications;
 - (c) as amended from time to time. 30
- (5) In subsections (2) to (4) “procedural rules” means –
- (a) Civil Procedure Rules,
 - (b) Family Procedure Rules,
 - (c) Tribunal Procedure Rules,
 - (d) employment tribunal procedure regulations, 35
 - (e) EAT procedure rules, and
 - (f) other rules of court (including any other provision governing the practice and procedure of a court which is made by or under any enactment).
- (6) Online Procedure Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions under Schedule 1. 40

6 Power to change certain requirements relating to the Committee

- (1) The Lord Chancellor may by regulations –

- (a) amend section 4(2) to (6), and
 - (b) make consequential amendments in any other provision of section 4 or in subsection (2) or (3) of this section.
- (2) The Lord Chancellor may make regulations under this section only with the concurrence of— 5
- (a) the Secretary of State,
 - (b) the Lord Chief Justice, and
 - (c) the Senior President of Tribunals.
- (3) Before making regulations under this section the Lord Chancellor must consult the following persons— 10
- (a) the Head of Civil Justice;
 - (b) the Deputy Head of Civil Justice (if there is one);
 - (c) the President of the Family Division.
- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any function of the Lord Chief Justice under this section. 15
- (5) Regulations under this section are subject to negative resolution procedure.

7 Making Online Procedure Rules

- (1) Before making or amending Online Procedure Rules, the Online Procedure Rule Committee must— 20
- (a) consult such persons as they consider appropriate, and
 - (b) hold a meeting (unless it is inexpedient to do so).
- (2) Rules made by the Online Procedure Rule Committee must be— 25
- (a) signed by at least three members of the Committee, and
 - (b) submitted to the Lord Chancellor.
- (3) The appropriate Minister may allow or disallow Online Procedure Rules made by the Committee.
- (4) If the appropriate Minister disallows rules, the appropriate Minister must give the Committee written reasons for doing so.
- (5) Rules made by the Committee and allowed by the appropriate Minister— 30
- (a) come into force on such day as the appropriate Minister directs, and
 - (b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 applies as if the instrument contained rules made by a Minister of the Crown.
- (6) A statutory instrument containing Online Procedure Rules is subject to annulment in pursuance of a resolution of either House of Parliament. 35

8 Power to require rules to be made

- (1) This section applies if the appropriate Minister gives the Online Procedure Rule Committee written notice that the appropriate Minister thinks it is expedient for Online Procedure Rules to include provision that would achieve a purpose specified in the notice. 40

- (2) The Committee must make such Online Procedure Rules as it considers necessary to achieve the specified purpose.
- (3) Those rules must be—
 - (a) made within a reasonable period after the appropriate minister gives notice to the Committee; 5
 - (b) made in accordance with section 7.

9 Power to make amendments in relation to Online Procedure Rules

- (1) The Lord Chancellor may, by regulations, amend, repeal or revoke—
 - (a) any Act, or
 - (b) any provision made under an Act, 10
 to the extent the Lord Chancellor considers necessary or desirable in consequence of Online Procedure Rules.
- (2) The Lord Chancellor may by regulations amend, repeal or revoke—
 - (a) any Act passed before this Act or in the same Session, or
 - (b) any provision made under an Act before the regulations come into force, 15
 to the extent the Lord Chancellor considers necessary or desirable in order to facilitate the making of Online Procedure Rules.
- (3) The Lord Chancellor must consult the Lord Chief Justice and the Senior President of Tribunals before making regulations under this section. 20
- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the function under subsection (3).
- (5) Regulations under this section are subject to affirmative resolution procedure.

Final provisions 25

10 Consequential and transitional provision etc

- (1) The Secretary of State or Lord Chancellor may, by regulations, make consequential, supplementary, incidental, transitional, transitory or saving provision in relation to any provision of this Act.
- (2) The regulations may, in particular, amend, repeal or revoke—
 - (a) any provision of an Act passed before this Act or in the same Session, or
 - (b) any provision made under an Act before the regulations come into force. 30
- (3) A statutory instrument containing regulations under this section that amend or repeal any provision of an Act (whether alone or with other provision) are subject to affirmative resolution procedure. 35
- (4) Any other statutory instrument containing regulations under this section is subject to negative resolution procedure.

11 Amendments of other legislation

Schedule 2 (amendments relating to the online procedure in courts and tribunals) has effect.

12 Regulations

- (1) Regulations under this Act are to be made by statutory instrument. 5
- (2) For provision about the appropriate Minister see section 13(2) to (6).
- (3) Where regulations under this Act are subject to “the consultation requirement”, the appropriate Minister making the regulations –
 - (a) must consult the Lord Chief Justice before making the regulations if, or to the extent that, the regulations relate to – 10
 - (i) civil proceedings, or
 - (ii) family proceedings;
 - (b) must consult the Senior President of Tribunals before making the regulations if, or to the extent that, the regulations relate to – 15
 - (i) proceedings in the First-tier Tribunal
 - (ii) proceedings in the Upper Tribunal,
 - (iii) the employment tribunals, or
 - (iv) the Employment Appeal Tribunal.
- (4) Where regulations under this Act are subject to “negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (5) Where regulations under this Act are subject to “affirmative resolution procedure” the regulations must not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament. 25
- (6) Regulations under this Act may –
 - (a) make different provision for different purposes or areas;
 - (b) include consequential, supplementary or incidental provision;
 - (c) make transitional, transitory or saving provision.
- (7) Subsection (6) does not apply to regulations under section 14. 30

13 Interpretation

- (1) In this Act –
 - “applicable standard rules” means –
 - (a) Civil Procedure Rules, in the case of civil proceedings;
 - (b) Family Procedure Rules, in the case of family proceedings; 35
 - (c) Tribunal Procedure Rules, in the case of proceedings in the First-tier Tribunal or the Upper Tribunal;
 - (d) employment tribunal procedure regulations, in the case of proceedings in the employment tribunals;
 - (e) EAT procedure rules, in the case of proceedings in the Employment Appeal Tribunal; 40
 - “appropriate Minister” is to be read in accordance with subsections (2) to (6);

- “civil proceedings” means proceedings about which Civil Procedure Rules may be made under the Civil Procedure Act 1997;
- “EAT procedure rules” means rules made under section 30 of the Employment Tribunals Act 1996 or otherwise with respect to proceedings before the Employment Appeal Tribunal; 5
- “employment tribunal procedure regulations” means regulations made under section 7 of the Employment Tribunals Act 1996 or otherwise with respect to proceedings before employment tribunals;
- “family proceedings” has the meaning given in section 75 of the Courts Act 2003; 10
- “Online Procedure Rules” has the meaning given in section 1(2);
- “specified kind” (in relation to proceedings) is to be read in accordance with section 2(1).
- (2) Where this Act provides for a relevant function to be exercisable by the appropriate Minister, the reference to the appropriate Minister is to be read in accordance with subsections (4) to (6). 15
- (3) For that purpose, each of the following is a “relevant function” –
- (a) making regulations (see sections 2 and 3);
 - (b) allowing or disallowing Online Procedure Rules and giving reasons (see section 7(3) and (4)); 20
 - (c) directing which day Online Procedure Rules are to come into force (see section 7(5)(a));
 - (d) giving the Online Procedure Rule Committee written notice that it is expedient for Online Procedure Rules to include provision that would achieve a specified purpose (see section 8(1)); 25
 - (e) approving, or being consulted on, practice directions (see paragraph 11 of Schedule 1).
- (4) The relevant function is exercisable by the Lord Chancellor, except if, or to the extent that, subsection (5) or (6) provides otherwise.
- (5) If, or to the extent that, the regulations, Online Procedure Rules or practice directions in question relate to a kind of proceedings in the employment tribunals, the relevant function is exercisable by the Secretary of State. 30
- (6) If, or to the extent that, the regulations or Online Procedure Rules or practice directions in question relate to a kind of proceedings –
- (a) that are not themselves proceedings in the employment tribunals, but
 - (b) which relate to proceedings in the employment tribunals,
- the relevant function is exercisable by the Lord Chancellor and the Secretary of State acting jointly. 35
- (7) Where transfer provision in Online Procedure Rules applies to a specified kind of proceedings, those proceedings are to be regarded for the purposes of subsections (2) to (6) as being both – 40
- (a) proceedings in the transferred forum, and
 - (b) proceedings in the usual forum.
- (8) Transfer provision in Online Procedure Rules applies to a specified kind of proceedings if (by virtue of section 1(9)) the Online Procedure Rules provide that proceedings of that kind are to be taken in a court or tribunal (the “transferred forum”) which is not the court or tribunal in which they would be taken if governed by the applicable standard rules (the “usual forum”). 45

14 Short title, commencement and extent

- (1) This Act may be cited as the Courts and Tribunals (Online Procedure) Act 2019.
- (2) Sections 9, 10, 12 and 13 and this section come into force on the day on which this Act is passed.
- (3) The other provisions of this Act come into force on such day as the Lord Chancellor or Secretary of State may by regulations made by statutory instrument appoint. 5
- (4) Regulations under subsection (3) may –
 - (a) appoint different days for different purposes;
 - (b) appoint different days for different areas; 10
 - (c) make transitional, transitory or saving provision.
- (5) This Act extends –
 - (a) to England and Wales, Scotland and Northern Ireland in its application to the First-tier Tribunal and the Upper Tribunal;
 - (b) to England and Wales and Scotland in its application to employment tribunals and the Employment Appeal Tribunal; 15
 - (c) otherwise, to England and Wales only;but that is subject to subsection (6).
- (6) Any amendment, repeal or revocation made by this Act has the same extent as the enactment amended, repealed or revoked. 20

SCHEDULES

SCHEDULE 1

Section 1

PRACTICE DIRECTIONS

PART 1

CIVIL PROCEEDINGS AND FAMILY PROCEEDINGS

5

Power to give practice directions

- 1 Practice directions may be given in relation to –
- (a) civil proceedings which are governed by Online Procedure Rules;
 - (b) family proceedings which are governed by Online Procedure Rules.

Contents of practice directions

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- 2 (1) Practice directions under paragraph 1 that relate to civil proceedings may provide for any matter which may be provided for in Online Procedure Rules relating to such proceedings.
- (2) Practice directions under paragraph 1 that relate to family proceedings may provide for any matter which may be provided for in Online Procedure Rules relating to such proceedings.

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Giving practice directions

- 3 (1) Practice directions under paragraph 1 may be given in accordance with the CRA 2005 procedure.
- (2) Practice directions under paragraph 1 may be given otherwise than in accordance with the CRA 2005 procedure; but, in this case, the directions may not be given without the approval of –
- (a) the Lord Chancellor, and
 - (b) the Lord Chief Justice.
- (3) Sub-paragraph (2)(a) does not require the approval of the Lord Chancellor for practice directions to the extent that they consist of guidance about –
- (a) the application or interpretation of the law;
 - (b) the making of judicial decisions.
- (4) Sub-paragraph (2)(a) does not require the approval of the Lord Chancellor for practice directions to the extent that they consist of criteria for determining which judges may be allocated to hear particular categories of case; but the directions may, to that extent, be given only after consultation with the Lord Chancellor (as well as with the approval of the Lord Chief Justice required by sub-paragraph (2)(b)).

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- (5) A reference in this paragraph to directions being given in accordance with the CRA 2005 procedure is a reference to the directions being given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005.

Particular provision in practice directions

- 4 The power under paragraph 1 to give practice directions includes power – 5
- (a) to vary or revoke directions given under paragraph 1 by any person;
 - (b) to give directions containing different provision for different cases (including different areas);
 - (c) to give directions containing provision for a specific court, for specific proceedings or for a specific jurisdiction. 10

PART 2

PROCEEDINGS IN THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL

Power to give practice directions

- 5 Practice directions may be given in relation to – 15
- (a) proceedings in the First-tier Tribunal which are governed by Online Procedure Rules;
 - (b) proceedings in the Upper Tribunal which are governed by Online Procedure Rules.

Contents of practice directions

- 6 (1) Practice directions under paragraph 5 that relate to proceedings in the First-tier Tribunal may provide for any matter which may be provided for in Online Procedure Rules relating to such proceedings. 20
- (2) Practice directions under paragraph 5 that relate to proceedings in the Upper Tribunal may provide for any matter which may be provided for in Online Procedure Rules relating to such proceedings. 25

Giving practice directions

- 7 (1) The Senior President of Tribunals may give practice directions under paragraph 5 in relation to any proceedings.
- (2) The Senior President may not give practice directions without the approval of the Lord Chancellor. 30
- (3) A Chamber President may give practice directions under paragraph 5 in relation to proceedings in the Chamber of the First-tier Tribunal or Upper Tribunal over which he or she presides.
- (4) A Chamber President may not give practice directions without the approval of – 35
- (a) the Lord Chancellor, and
 - (b) the Senior President of Tribunals.
- (5) Sub-paragraph (2) or (4)(a) does not require the approval of the Lord Chancellor for practice directions to the extent that they consist of guidance about – 40

- (a) the application or interpretation of the law;
 - (b) the making of decisions by members of the First-tier Tribunal or Upper Tribunal.
- (6) Sub-paragraph (2) or (4)(a) does not require the approval of the Lord Chancellor for practice directions to the extent that they consist of criteria for determining which members of the First-tier Tribunal or Upper Tribunal may be chosen to hear particular categories of case; but, in the case of directions given by a Chamber President, the directions may, to that extent, be given only after consultation with the Lord Chancellor (as well as with the approval of the Senior President of Tribunals required by sub-paragraph (4)(b)).

Particular provision in practice directions

- 8 The power under paragraph 5 to give practice directions includes power –
- (a) to vary or revoke directions given under paragraph 5 by any person;
 - (b) to give directions containing different provision for different cases (including different areas);
 - (c) to give directions containing provision for a specific court, for specific proceedings or for a specific jurisdiction.

PART 3

PROCEEDINGS IN EMPLOYMENT TRIBUNALS AND THE EMPLOYMENT APPEAL TRIBUNAL 20

Power to give practice directions

- 9 Practice directions may be given in relation to –
- (a) proceedings in employment tribunals which are governed by Online Procedure Rules;
 - (b) proceedings in the Employment Appeal Tribunal which are governed by Online Procedure Rules.

Contents of practice directions

- 10 (1) Practice directions under paragraph 9 that relate to proceedings in employment tribunals may provide for any matter which may be provided for in Online Procedure Rules relating to such proceedings. 30
- (2) Practice directions under paragraph 9 that relate to proceedings in the Employment Appeal Tribunal may provide for any matter which may be provided for in Online Procedure Rules relating to such proceedings.

Giving practice directions

- 11 (1) The Senior President of Tribunals may give practice directions under paragraph 9 in relation to any proceedings. 35
- (2) The Senior President may not give practice directions without the approval of the appropriate Minister.
- (3) The President of the Employment Appeal Tribunal may give practice directions under paragraph 9 in relation to proceedings in that Tribunal. 40

- (4) A territorial president may give practice directions under paragraph 9 in relation to proceedings in the employment tribunals for which he or she is responsible.
- (5) The President of the Employment Appeal Tribunal or a territorial president may not give practice directions without the approval of – 5
- (a) the appropriate Minister, and
 - (b) the Senior President of Tribunals.
- (6) Sub-paragraph (2) or (5)(a) does not require the approval of the appropriate Minister for practice directions to the extent that they consist of guidance about – 10
- (a) the application or interpretation of the law;
 - (b) the making of decisions by members of the employment tribunals or the Employment Appeal Tribunal.
- (7) Sub-paragraph (2) or (5)(a) does not require the approval of the appropriate Minister for practice directions to the extent that they consist of criteria for determining which members of the employment tribunals or the Employment Appeal Tribunal may be chosen to hear particular categories of case; but the directions may, to that extent, be given only after consultation with the appropriate Minister (as well as with the approval of the Senior President of Tribunals required by sub-paragraph (5)(b)). 15
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- (8) In this paragraph “territorial president” means a person appointed in accordance with regulations under section 1(1) of the Employment Tribunals Act 1996 as –
- (a) President of Employment Tribunals (England and Wales), or
 - (b) President of Employment Tribunals (Scotland). 25

Particular provision in practice directions

- 12 The power under paragraph 9 to give practice directions includes power –
- (a) to vary or revoke directions given under paragraph 9 by any person;
 - (b) to give directions containing different provision for different cases (including different areas); 30
 - (c) to give directions containing provision for a specific court, for specific proceedings or for a specific jurisdiction.

Practice directions relating to mediation

- 13 (1) A person exercising the power to give practice directions must, when making provision in relation to mediation, have regard to the following principles – 35
- (a) mediation of matters in dispute between parties to proceedings is to take place only by agreement between those parties;
 - (b) where parties to proceedings fail to mediate, or where mediation between parties to proceedings fails to resolve disputed matters, the failure is not to affect the outcome of the proceedings. 40
- (2) Practice directions may provide for members to act as mediators in relation to disputed matters in a case that is the subject of proceedings.
- (3) The provision that may be made by virtue of sub-paragraph (2) includes provision for a member to act as a mediator in relation to disputed matters 45

- in a case even though the member has been chosen to decide matters in the case.
- (4) Before making a practice direction that makes provision in relation to mediation, the person making the direction must consult ACAS.
- (5) Once a member has begun to act in accordance with directions under this Part of this Schedule 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. 5
- (6) 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 in accordance with directions under this Part of this Schedule as mediators in relation to disputed matters in a case that is the subject of proceedings. 10
- (7) In this section –
- “ACAS” means the Advisory, Conciliation and Arbitration Service; 15
 - “member” means a member of a panel of members of employment tribunals (whether or not a panel of Employment Judges);
 - “practice direction” means a direction under paragraph 9;
 - “proceedings” means proceedings before an employment tribunal.

SCHEDULE 2

Section 11

20

AMENDMENTS RELATING TO THE ONLINE PROCEDURE IN COURTS AND TRIBUNALS

Employment Tribunals Act 1996

- 14 (1) The Employment Tribunals Act 1996 is amended as follows.
- (2) In section 7 (employment tribunal procedure regulations), after subsection (6) insert – 25
- “(7) Employment tribunal procedure regulations must be framed so that the practice and procedure to be followed in proceedings of a specified kind are not governed by those regulations except to the extent that the practice and procedure are not, or have ceased to be, governed by Online Procedure Rules. 30
- (8) In this section –
- “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019;
 - “specified kind” means a kind of proceedings specified for the purposes of section 1 of the Courts and Tribunals (Online Procedure) Act 2019.” 35
- (3) In section 7A (practice directions), after subsection (2E) insert –
- “(2F) Practice directions under this section do not apply to proceedings which are governed by Online Procedure Rules.
- (2G) In this section “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019.” 40

- (4) In section 7B (mediation), after subsection (5) insert –
- “(5A) Practice directions made by virtue of this section do not apply to proceedings which are governed by Online Procedure Rules.
- (5B) In this section “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019.” 5
- (5) In section 29A (practice directions), after subsection (10) insert –
- “(11) Practice directions made under this section do not apply to proceedings which are governed by Online Procedure Rules.
- (12) In this section “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019.” 10
- (6) In section 30 (Appeal Tribunal procedure rules), after subsection (2C) insert –
- “(2D) Appeal Tribunal procedure rules must be framed so that the practice and procedure to be followed in proceedings of a specified kind are not governed by those rules except to the extent that the practice and procedure are not, or have ceased to be, governed by Online Procedure Rules. 15
- (2E) In this section –
- “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019; 20
- “specified kind” means a kind of proceedings specified for the purposes of section 1 of the Courts and Tribunals (Online Procedure) Act 2019.”

Civil Procedure Act 1997

- 15 (1) The Civil Procedure Act 1997 is amended as follows. 25
- (2) In section 1 (Civil Procedure Rules), after subsection (3) insert –
- “(4) Civil Procedure Rules must be framed so that the practice and procedure to be followed in proceedings of a specified kind are not governed by those Rules except to the extent that the practice and procedure are not, or have ceased to be, governed by Online Procedure Rules. 30
- (5) In this section –
- “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019;
- “specified kind” means a kind of proceedings specified for the purposes of section 1 of the Courts and Tribunals (Online Procedure) Act 2019.” 35
- (3) In section 5 (practice directions), after subsection (6) insert –
- “(7) Practice directions under this section do not apply to proceedings which are governed by Online Procedure Rules. 40
- (8) In this section “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019.”

Courts Act 2003

- 16 (1) The Courts Act 2003 is amended as follows.
- (2) In section 75 (Family Procedure Rules), after subsection (5) insert—
- “(6) Family Procedure Rules must be framed so that the practice and procedure to be followed in proceedings of a specified kind are not governed by those Rules except to the extent that the practice and procedure are not, or have ceased to be, governed by Online Procedure Rules. 5
- (7) In this section—
- “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019; 10
- “specified kind” means a kind of proceedings specified for the purposes of section 1 of the Courts and Tribunals (Online Procedure) Act 2019.”
- (3) In section 81 (practice directions relating to family proceedings), at the end insert— 15
- “(6) Practice directions under this section do not apply to proceedings which are governed by Online Procedure Rules.
- (7) In this section “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019.” 20

Tribunals, Courts and Enforcement Act 2007

- 17 (1) The Tribunals, Courts and Enforcement Act 2007 is amended as follows.
- (2) In section 22 (Tribunal Procedure Rules), after subsection (5) insert—
- “(6) Tribunal Procedure Rules must be framed so that the practice and procedure to be followed in proceedings of a specified kind are not governed by those Rules except to the extent that the practice and procedure are not, or have ceased to be, governed by Online Procedure Rules. 25
- (7) In this section—
- “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019; 30
- “specified kind” means a kind of proceedings specified for the purposes of section 1 of the Courts and Tribunals (Online Procedure) Act 2019.”
- (3) In section 23 (practice directions), after subsection (7) insert— 35
- “(8) Practice directions under this section do not apply to proceedings which are governed by Online Procedure Rules.
- (9) In this section “Online Procedure Rules” means rules made under section 1 of the Courts and Tribunals (Online Procedure) Act 2019.”

Courts and Tribunals (Online Procedure) Act 2019 40

- 18 Omit section 1(1) of the Courts and Tribunals (Online Procedure) Act 2019.

Courts and Tribunals (Online Procedure) Bill [HL]

A

B I L L

To provide for online procedures in civil and family courts in England and Wales, in the First-tier Tribunal and Upper Tribunal and in employment tribunals and the Employment Appeal Tribunal.

Lord Keen of Elie

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