



# REMOVAL OF TRIBUNAL MEMBERS (PROCEDURE) ORDER 2023

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Statutory Document No. 2023/0246



*Tribunals Act 2006*

## REMOVAL OF TRIBUNAL MEMBERS (PROCEDURE) ORDER 2023<sup>1</sup>

*Approved by Tynwald: 17 July 2024*  
*Coming into Operation: in accordance with article 2*

The Appointments Commission, having consulted the Deemsters<sup>1</sup>, makes the following Order under sections 5(3A) and 12 of the Tribunals Act 2006.

### PART 1 - INTRODUCTORY

#### 1 Title

This Order is the Removal of Tribunal Members (Procedure) Order 2023.

#### 2 Commencement

If approved by Tynwald, this Order comes into operation on the day after it is approved<sup>2</sup>.

#### 3 Interpretation

(1) In this Order —

“**the Act**” means the Tribunals Act 2006;

“**the Commission**” means the Appointments Commission;

“**complainant**” means a person who makes a complaint about a tribunal member in accordance with this Order;

“**investigating officer**” has the meaning given in article 14(1);

“**office**” means the office of acting as a tribunal member;

<sup>1</sup> Consultation with the Deemsters is required under section 5(3A) of the Tribunals Act 2006 before an order is made under that section.

<sup>2</sup> Under section 12(2) of the Tribunals Act 2006, Tynwald approval is required before this Order can have effect.

“**relevant ground**” in relation to a complaint about a tribunal member or a determination to remove a tribunal member from office, means one of the circumstances set out in section 5(3)(a) to (d) of the Act; and

“**tribunal member**” means a person to whom this Order applies, as specified in article 4(1).

- (2) In this Order, a reference to the Commission informing a person of a matter is a reference to so informing the person in writing, whether such writing is communicated by electronic means or otherwise.

## **4 Application**

- (1) This Order applies to —
- (a) a member of a Part 1 tribunal;
  - (b) the chairman of a Part 2 tribunal (other than a panel chairman); and
  - (c) a member of a panel from which the chairman or other members of a Part 2 tribunal are drawn.
- (2) This Order applies for the purposes of the Commission determining whether to remove a tribunal member from office on any relevant ground, whether the determination is as a result of the making of a complaint about the tribunal member or otherwise.
- (3) This Order applies to any determination as specified in paragraph (2) required to be made by the Commission after this Order comes into operation, whether or not the facts giving rise to the need to make such a determination occurred before the coming into operation of this Order.

## **PART 2 – MAKING A COMPLAINT**

## **5 Making a complaint**

- (1) A complaint about a tribunal member must be made to the secretary to the Commission.
- (2) A complaint must be in writing, signed by the complainant, and must state —
- (a) the complainant’s name, address and contact telephone number;
  - (b) the complainant’s email address, where available;
  - (c) the name of the tribunal member about whom the complaint is made;
  - (d) the name of the tribunal of which the tribunal member is a member;
  - (e) the relevant ground upon which the complaint is made;
  - (f) details of the relevant ground of complaint, including (where applicable) details of any conduct complained of and the date or dates on which such conduct took place; and

- (g) details of the circumstances of the relevant ground of complaint and of any witnesses to the conduct complained of.
- (3) A complaint must be accompanied by a copy of all the documents within the control of the complainant to which the complainant refers in the complaint.
- (4) The Commission must not consider a complaint in any case where the complainant states that the complainant does not want the tribunal member about whom the complaint is made to see a copy of the complaint or any document accompanying it.
- (5) On receipt of a complaint, the secretary to the Commission must (unless article 6(2) applies) inform the complainant —
  - (a) that the complaint has been received and will be forwarded to the Commission for consideration in accordance with this Order; or
  - (b) if paragraph (4) applies, that the complaint cannot be considered for the reasons specified in that paragraph.

## **6 Time limits for making a complaint**

- (1) A complaint must be made —
  - (a) within 3 months of the event or matter complained of; or
  - (b) where the complaint is based upon a series of events, within 3 months of the last event of that series.
- (2) The Commission must not consider a complaint if the complaint is made outside the time limit specified in paragraph (1).
- (3) If paragraph (2) applies, the complainant must be informed by the secretary to the Commission that the complaint cannot be considered because it is made out of time.

## **PART 3 – INITIAL ASSESSMENT OF A COMPLAINT**

### **7 Initial assessment of a complaint**

- (1) The Commission must make an initial assessment of a complaint (except a complaint to which article 5(4) applies or which is made outside the time limits specified in article 6) in order to consider whether the complaint contains an allegation based on a relevant ground.
- (2) The initial assessment under paragraph (1) must be made within 28 days of the receipt of the complaint under article 5(1).
- (3) In making the initial assessment, the Commission may —
  - (a) invite the complainant to provide further information regarding the complaint within such time limits as the Commission may specify;

- (b) make such preliminary enquiries as it considers appropriate to verify any facts stated in the complaint.

## **8 Disposal of a complaint following initial assessment**

- (1) Subject to paragraphs (2), (5) and (6), the Commission must dismiss a complaint, or part of a complaint, following an initial assessment if it falls into any of the following categories —
  - (a) it does not provide sufficient details of the matter complained of or does not comply with the requirements of article 5(2);
  - (b) it raises no issue based on a relevant ground;
  - (c) the action complained of was not done or caused to be done by a tribunal member;
  - (d) it is vexatious, frivolous or trivial;
  - (e) it is plainly without substance;
  - (f) it would not, even if true, require any form of action against the tribunal member concerned;
  - (g) it raises a matter that has already been dealt with, whether by way of a previous complaint or otherwise, and does not present any material new evidence;
  - (h) it concerns the conduct in a non-judicial capacity of the tribunal member concerned, which could not reasonably be considered to affect the tribunal member's suitability to hold office.
- (2) The Commission must not dismiss a complaint under paragraph (1)(a) unless it has invited the complainant, within 10 days of the invitation, to —
  - (a) provide sufficient details of the complaint; or
  - (b) comply with the requirements of article 5(2).
- (3) If the Commission dismisses a complaint under paragraph (1) or (2), it must inform the complainant of the dismissal and the reasons for the dismissal.
- (4) The Commission may, on dismissal of a complaint under paragraph (1) or (2), inform the tribunal member of the complaint and its dismissal if it considers that it is appropriate to do so.
- (5) If a complaint does not contain an allegation based on a relevant ground, the Commission may deal with the complaint informally and give such advice to the tribunal member concerned as it considers appropriate.
- (6) Where paragraph (5) applies, the Commission must inform the complainant that the matter is being dealt with informally.

## **9 Complaint not dismissed following initial assessment**

If the Commission makes an initial assessment of a complaint under article 7(1) and does not dispose of it under article 8, it must —

- (a) deal with the complaint under the summary process in Part 4; or
- (b) deal with the complaint under Part 5.

## **PART 4 – SUMMARY PROCESS**

### **10 Summary process of removal from office**

- (1) Where the Commission —
  - (a) has made an initial assessment of a complaint about a tribunal member under article 7(1);
  - (b) does not dispose of the complaint under article 8; and
  - (c) is satisfied that one of the circumstances in paragraph (2) applies, it may, subject to article 11, determine to remove the tribunal member from office by instrument in writing, without further investigation.
- (2) The circumstances referred to in paragraph (1)(c) are that the tribunal member concerned —
  - (a) has been convicted in the Island of a criminal offence and has been sentenced to a term of custody (which may include a suspended term of custody);
  - (b) has been convicted outside the Island of a criminal offence which, if committed in the Island would have constituted a criminal offence, and has been sentenced to a term of custody (which may include a suspended term of custody);
  - (c) has been committed to custody for contempt of court (including a suspended committal order);
  - (d) has been convicted of an offence in the Island or elsewhere involving dishonesty, deception, or against public justice;
  - (e) has been convicted in the Island or elsewhere of a sexual offence or a violent offence;
  - (f) is an undischarged bankrupt;
  - (g) has made an arrangement with creditors and has not been discharged in respect of it;
  - (h) is subject to —
    - (i) a disqualification order or a disqualification undertaking under the Company Officers (Disqualification) Act 2009; or
    - (ii) any order, undertaking or other sanction imposed in another jurisdiction for conduct which in the Island would

result in such a disqualification order or disqualification undertaking;

- (i) has been suspended from a register held by a licensing or professional body and that suspension has not been terminated;
  - (j) has been removed from a register held by a licensing or professional body and is not eligible to be reinstated on the register; or
  - (k) is otherwise prevented from practising a profession or activity licensed or regulated by a licensing or professional body for which the tribunal member is qualified.
- (3) Each of the circumstances specified in paragraph (2) constitutes a matter that satisfies a relevant ground for the purposes of the making of a determination under paragraph (1).

## **11 Summary process: procedure**

- (1) Before removing a tribunal member from office under article 10, the Commission must —
- (a) inform the tribunal member of —
    - (i) the complaint received;
    - (ii) the Commission's intention to remove the tribunal member from office under this Part; and
    - (iii) the circumstance under article 10(2) which applies; and
  - (b) invite the tribunal member to make representations to the Commission as to whether the alleged circumstance for removal is satisfied, or why the tribunal member should not be removed from office.
- (2) The tribunal member must make any representations referred to in paragraph (1)(b) within 28 days of receiving the invitation to make them.
- (3) The Commission may not remove a tribunal member from office under article 10 unless —
- (a) the tribunal member has made representations within the time permitted under paragraph (2) and the Commission has considered those representations;
  - (b) the tribunal member has notified the Commission that the tribunal member will not be making any representations; or
  - (c) the time permitted for making representations under paragraph (2) has expired and the tribunal member has not made any such representations.



**12 Removal of a tribunal member under the summary process**

- (1) If the Commission determines to remove a tribunal member from office under article 10, having followed the summary process in this Part, it must inform the tribunal member concerned of its determination, stating which circumstance specified in article 10(2) applies and why.
- (2) The Commission may inform the complainant of a determination under this Part to remove the tribunal member who is the subject of the complainant's complaint from office but, if it does so, it is not obliged to provide the grounds upon which its determination is based.

**PART 5 – INVESTIGATION OF A COMPLAINT****13 Application of this Part**

This Part applies where the Commission has made an initial assessment of a complaint about a tribunal member under article 7(1) and does not—

- (a) dispose of the complaint under article 8; or
- (b) apply the summary process in Part 4 to the complaint.

**14 Investigation of complaint**

- (1) Where this Part applies to a complaint, the Commission must arrange for the investigation of the complaint by appointing a person it considers to be suitably qualified and appropriate to conduct the investigation (the “investigating officer”), having regard to the nature of the particular complaint.
- (2) The purpose of an investigation under this Part is to —
  - (a) determine the facts of the matter complained of; and
  - (b) determine whether the facts established satisfy a relevant ground.
- (3) Any question as to whether a fact is established must be decided on the balance of probabilities.
- (4) The Commission must provide an investigating officer appointed under paragraph (1) with a copy of the complaint to be investigated, together with a copy of all the documents supplied by the complainant.
- (5) The Commission must, in relation to a complaint to which this Part applies —
  - (a) provide a copy of the complaint to the tribunal member who is the subject of the complaint, together with a copy of all the documents supplied by the complainant; and
  - (b) notify the tribunal member and the complainant of —
    - (i) the investigation of the complaint; and

- (ii) the appointment of any investigating officer in connection with the complaint.
- (6) For the purpose of investigating a complaint under this Part, an investigating officer appointed under paragraph (1) may —
  - (a) make such inquiries into the matter as the investigating officer considers appropriate;
  - (b) request any documents that appear to be relevant;
  - (c) interview any such person as the investigating officer considers appropriate.
- (7) An investigating officer must provide the tribunal member who is the subject of the complaint being investigated with a reasonable opportunity to —
  - (a) make written representations to the investigating officer with respect to the complaint;
  - (b) be heard by the investigating officer in response to the complaint, if the tribunal member requests to be heard.
- (8) An investigating officer must, when conducting an investigation, ensure that the investigation is fair to both the complainant and the tribunal member complained of.
- (9) After conducting an investigation, the investigating officer must provide a written report to the Commission containing the investigating officer's findings and conclusions in respect of the complaint.

## **15 Determination following investigation**

- (1) The Commission must consider the report provided to it under article 14(9) and determine whether the complaint which is the subject of the report is made on a relevant ground.
- (2) Following a determination under paragraph (1), the Commission may —
  - (a) dismiss the complaint;
  - (b) uphold the complaint but take no further action;
  - (c) deal with the complaint informally and give such advice to the tribunal member concerned as it considers appropriate; or
  - (d) determine to remove the tribunal member complained of from office by instrument in writing.
- (3) Before removing a tribunal member from office under paragraph (2)(d), the Commission must —
  - (a) notify the tribunal member of —
    - (i) the Commission's intention to remove the tribunal member from office; and

- (ii) the relevant ground upon which the determination is based; and
  - (b) invite the tribunal member to make representations to the Commission as to whether the alleged relevant ground for removal is satisfied and, if so, why the tribunal member should not be removed from office.
- (4) The tribunal member must make any representations referred to in paragraph (3)(b) within 28 days of receiving the invitation to make them.
- (5) The Commission may not remove a tribunal member from office under paragraph (2)(d) unless —
- (a) the tribunal member has made representations within the time permitted under paragraph (4) and the Commission has considered those representations;
  - (b) the tribunal member has notified the Commission that the tribunal member will not be making any representations; or
  - (c) the time permitted for making representations under paragraph (4) has expired and the tribunal member has not made any such representations.
- (6) The Commission must inform the complainant and tribunal member concerned of —
- (a) the Commission’s determination under paragraph (1); and
  - (b) the action it has taken under paragraph (2).
- (7) The Commission must provide a copy of the report of the investigating officer in respect of the complaint to the tribunal member concerned upon request.
- (8) Nothing in paragraph (7) obliges the Commission to disclose personal data in contravention of the data protection legislation.
- (9) In paragraph (8), “data protection legislation” has the meaning given in regulation 5 of the GDPR and LED Implementing Regulations 2018<sup>3</sup>.

## PART 6 – APPEALS

### 16 Appeal against removal from office

- (1) A tribunal member (“appellant”) may appeal by way of complaint to the High Bailiff against a determination of the Commission to remove the tribunal member from office —
  - (a) under article 10(1); or
  - (b) under article 15(2)(d).

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<sup>3</sup> SD 2018/0145.

- (2) An appeal under paragraph (1) shall be limited to a review of the determination of the Commission.
- (3) An appeal under paragraph (1) must be made within 10 days of the appellant being notified of the determination appealed against.
- (4) On receiving notice of an appeal the High Bailiff may order the suspension of the operation of any instrument issued under section 5(3) of the Act pending the disposal of the appeal.
- (5) The clerk of the High Bailiff must give notice to the Commission and the appellant of —
  - (a) the date, time, and place fixed for the hearing of the appeal, which must be not less than 14 days after the High Bailiff received the complaint; and
  - (b) whether the High Bailiff has made an order under paragraph (4).
- (6) The Commission may appoint such person as it considers appropriate to appear on behalf of the Commission and be heard at the hearing of the appeal.
- (7) The High Bailiff may adjourn the hearing of the appeal at the request of either the Commission or the appellant or if the High Bailiff considers it appropriate to do so.
- (8) If both the Commission and the appellant agree, the High Bailiff may decide the appeal, or any matter connected with it, without the parties needing to be present.
- (9) The appellant may withdraw the appeal at any time.
- (10) On the hearing of an appeal the High Bailiff may —
  - (a) dismiss the appeal; or
  - (b) quash the determination and give the Commission such directions as the High Bailiff thinks fit as respects the reconsideration of its determination to remove the appellant from office.
- (11) On the withdrawal of an appeal or the determination of an appeal the High Bailiff may make such order as to payment of costs as the High Bailiff thinks fit.

## **PART 7 – SUPPLEMENTARY**

### **17 Procedure where there is no complaint**

- (1) Where the Commission receives no complaint under Part 2 but receives information from any source which leads it to consider that it might be justified in exercising its powers under section 5(3) of the Act to remove a tribunal member on a relevant ground, the Commission must —

- (a) consider the information as if it were a complaint made within the time limits in article 6; and
  - (b) deal with it under this Order,
- with the necessary modifications and with the exception that any obligation to be discharged in relation to a complainant does not apply.
- (2) The Commission must commence the action referred to in paragraph (1)(a) and (b) within 28 days of receiving the information referred to in that paragraph.

## **18 Deferral of consideration of a matter**

- (1) If the Commission considers that dealing with a complaint received under article 5 or information referred to in article 17(1) could prejudice any proceedings or criminal investigation, it may defer dealing with the complaint or information, or direct an investigating officer to defer an investigation —
  - (a) pending the conclusion of the proceedings or criminal investigation; or
  - (b) until the Commission no longer considers that prejudice would be caused.
- (2) Where consideration of a complaint or matter is deferred, the Commission must inform —
  - (a) the complainant (if any); and
  - (b) where the tribunal member concerned has been informed of the complaint or matter, the tribunal member.

## **19 Interim suspension of a tribunal member**

- (1) Where Part 4 or 5 applies to a complaint (or to information under article 17), the Commission may, if it considers it appropriate, suspend the tribunal member concerned —
  - (a) where Part 4 applies to the complaint or information, pending the conclusion of the summary process under that Part;
  - (b) where Part 5 applies to the complaint or information, pending the conclusion of an investigation and a determination being made under that Part.
- (2) A suspension under paragraph (1) takes immediate effect.
- (3) If the Commission suspends a tribunal member under paragraph (1), it must —
  - (a) immediately inform the tribunal member of the suspension and the reasons for it; and

- (b) invite the tribunal member to make representations regarding the suspension.
- (4) The tribunal member must make any representations under paragraph (3) within 10 days of being informed of the suspension under that paragraph.
- (5) The Commission must —
  - (a) consider any representations made by a tribunal member under this article;
  - (b) determine whether, as a result of those representations, the suspension of the tribunal member should continue; and
  - (c) inform the tribunal member of its decision either that the suspension is lifted or is continued.

## **20 Information and advice**

The Commission may, for the purpose of exercising its functions under this Order, request information, make enquiries, or seek advice as necessary from any person it considers appropriate.

## **21 Withdrawal of a complaint**

- (1) A complainant may withdraw a complaint made by the complainant at any time.
- (2) If a complaint is withdrawn —
  - (a) any information received in the withdrawn complaint that is information as described in article 17(1) is to be treated as information to which that article applies; and
  - (b) with respect to such information, the Commission must commence the action referred to in article 17(1)(a) and (b) within 28 days of the complaint being withdrawn.

**MADE 26 SEPTEMBER 2023**

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.