Arbitration

Arising from contract

Not uncommonly commercial contracts, for example contracts of insurance, contain a provision under which the parties agree to submit disputes arising under the contract to an arbitrator who need not be a lawyer but might in, say, a building dispute, be a surveyor who has knowledge and experience of the subject matter of the dispute.

Arbitration proceedings differ from court proceedings in two main ways: first, they are private in that there need be no publicity (e.g. a public hearing followed by a law report), and second, the arbitrator will have special experience of the particular trade or business which a judge would not have. Privacy is usually the determining factor in the choice by the parties of commercial arbitration rather than litigation.

Arbitration is no longer cheap since experienced arbitrators can command daily fees of several hundred pounds, and the lawyers who appear before the arbitrators charge the same fees as for litigation in the courts. There is no guarantee of a quick resolution because it may be several months before the parties can agree upon the identity of the arbitrator(s) and also the parties are dependent in arranging the arbitration on the availability of the arbitrator, whose diary may be as full as the waiting lists in the ordinary courts.

The Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083) apply in regard to the possible abuse of clauses which businesses may put into their contracts with consumers. The Arbitration Act 1996, s 89 (as amended by SI 1999/2167) applies the provisions of the regulations to arbitration clauses and an unfair clause cannot be enforced against a consumer who may, therefore, use the civil court system where there is, say, a breach of contract by a supplier, provided the amount involved is £5,000 or less. Section 90 of the 1996 Act applies the rules relating to unfair arbitration clauses to cases where the consumer is a company. The 1999 Regulations are considered further in Chapter 15.

Other arbitrations

Arbitration also occurs under codes of practice prepared by various trade associations with the assistance of the Office of Fair Trading. The arbitration service for a particular code of practice is usually provided by the Chartered Institute of Arbitrators. The trade associations concerned, e.g. the Association of British Travel Agents and the Motor Agents Association, make a substantial contribution to the cost of administration but the consumer has to pay a fee. This is normally refunded if the consumer is successful.

Arbitration in the High Court

Arbitration in the Commercial Court, which is part of the High Court, has already been considered. There are now no arbitration arrangements in the county court, claims of £5,000 or less being referred to the small claims track.

Conciliation

Sometimes a dispute is settled following an initiative by an outside agency. For example, the Advisory, Conciliation and Arbitration Service (ACAS) is, under ss 18 and 19 of the Employment

Tribunals Act 1996, given a role in settling matters which are, or could be, the subject of proceedings before an employment tribunal.

When a complaint or claim is presented to an employment tribunal, say, for equal pay or sex discrimination, a copy is sent to the conciliation officer. It is his duty to try to settle the dispute so that it need not go to an employment tribunal. He *must* do this if asked to by the person making the complaint or the person against whom it is made, but *may* do so on his own initiative where he thinks there is a good chance of a settlement.

During the course of conciliation the parties can speak freely with the conciliation officer because anything which is said to the conciliation officer during the course of an attempted settlement is not admissible in evidence if the matter goes to an employment tribunal unless the person who made the statement agrees.

Tribunals

These are considered in detail in Chapter 3, which is concerned with tribunals and legal services.

The Court of Justice of the European Communities

This court, which is often referred to as the European Court, sits in Luxembourg, and is charged with ensuring that Community law is observed in regard to the interpretation and implementation of the Treaties. Its decisions must be accepted by the courts of member states and there is no right of appeal. The major decisions of the court are disposed of by a full court though the court can sit as a Grand Chamber of 13 judges.

At present the court consists of 25 judges, one from each member state. There is a Registry in Luxembourg, and there are information offices in Luxembourg, London, Cardiff, Edinburgh and Belfast. The court is assisted by a number of Advocates-General who give an unbiased Opinion of the case for consideration by the court. The members of the court are appointed by the unanimous agreement of the governments of the member states. They serve for six years, although the appointment is renewable. There is no requirement of professional law practice and the court consists of professional judges, academic lawyers and public servants. A judge may be removed during a period of office only by unanimous decision of the other judges.

Procedure

There is more emphasis upon submissions in writing rather than oral argument. The proceedings are more inquisitorial and the judges play a more active role in terms of asking questions during hearings.

As we have seen, there are a number of Advocates-General. They assist the court and they give an independent view of the proceedings before the publication of the decision of the court. The court does not always follow the opinion of the Advocates-General.

The court gives a single judgment and no dissenting views are given. Enforcement of judgments is through the national courts of member states.

An important function of the court is under Article 234 of the Treaty of Rome to hear references from national courts for a ruling on the interpretation of provisions of Community

law. The court is mainly concerned with actions alleging failure to fulfil the obligations of the Treaty by member states in terms of the free movement of goods, equal pay and sex and disability discrimination, and free movement of persons, which includes recognition of professional qualifications and diplomas obtained in one state of the EC as entitling the holder to practise a profession in another. The Treaty of Amsterdam extends the jurisdiction (see p 221).

Under various other Articles of the Treaty of Rome the court may deal with the following types of actions:

(*a*) actions by the Commission against member states for failure to fulfil Treaty obligations (Art 249);
(*b*) actions by one member state against another for failure to fulfil Treaty obligations (Art 227);
(*c*) actions by a member state or an individual or company against the Council or Commission for acting in breach of the Treaty (Art 230);
(*d*) actions by a member state against the Council or Commission for failure to act (Art 233).

Enforcement of judgments

Where a member state fails to comply with a judgment, infringement proceedings may be brought against it by the Commission (see further Chapter 7) before the court under Art 228. Therefore, the burden of ensuring that a judgment is complied with falls mainly on the Commission. However, the Commission succeeds in most cases in persuading the member states to comply without bringing court proceedings.

Court of First Instance

The European Communities (Amendment) Act 1986 was the UK Parliament's ratification of the Single European Act under which a new court of first instance was set up by a decision of the Council of Ministers of the EC in 1988. It consists of 25 judges, one from each member state, and deals with certain categories of case to relieve pressure on the Court of Justice, in particular, appeals against Commission Decisions in competition cases (see further, Chapter 16) and disputes between the Community and its employees. Appeal is to the European Court on a point of law only.

The judges of the court are appointed for a period of six years by unanimous agreement of the member states. There are no Advocates-General appointed to the court but judges can be asked to act as Advocates-General and, if so, must not participate in the deliberations of the court.

The role of the European Court at Luxembourg

It was decided by the Court of Appeal in *Bulmer* v *Bollinger* [1974] 2 All ER 1226 that the High Court and the Court of Appeal have a jurisdiction to interpret Community law and that they are not obliged to grant a right of appeal to the European Court of Justice. However, if the case goes to the House of Lords (going forward the Supreme Court) on appeal, the House of Lords (going forward the Supreme Court) is bound to refer the matter to the European Court of Justice if either or both of the parties wishes this. The decision in *Bulmer* was based upon an interpretation of Art 234 of the Treaty, which provides, in effect, that although any court or tribunal of a member state *may* ask the European Court to give a ruling, only the final court of appeal, in our case the House of Lords (becomes the Supreme Court) is *bound* to ask for a ruling if a party requests it.

In the case Bulmer had marketed products for many years under the name of 'Champagne Cider' and 'Champagne Perry'. Bollinger claimed that this was contrary to an EC regulation which restricted the use of the word 'champagne' to wine produced from grapes grown in the Champagne district of France. The Court of Appeal decided that since cider was made from apples and perry was made from pears, there was no infringement of the regulation. The court also refused to refer the matter to the European Court.

In the course of his judgment Lord Denning, MR laid down certain guidelines to assist judges in deciding whether to refer a case to the European Court or not. The main guidelines are as follows:

(a) The time to get a ruling. The length of time which may elapse before a ruling can be obtained from the European Court should always be borne in mind. It is important to prevent undue protraction of proceedings. The English judge should always consider this delay and the expense to the parties. However, in *Customs & Excise Commissioners* v *APS Samex* [1983] 1 All ER 1042, Bingham, J, while accepting that a reference should not be made in, say, the High Court, simply because if it was not made one of the parties would go on making appeals, it might be that if the High Court did make the reference, thus preventing further appeals to English courts, it would be cheaper for the parties in the long run.

(b) The European Court must not be overloaded. Thus, if there are too many references, the court would not be able to get through its work. However, in more recent times practitioners have appeared happier with the performance of the senior court, though there have been significant delays at the Court of First Instance level.

(c) The reference must be on a question of interpretation only of the Treaty. It is a matter for the national courts to find the facts and apply the Treaty, though the way in which the national court has interpreted the Treaty can then be a matter for reference.

(d) The difficulty of the question of Community law raised. Lord Denning was of opinion that unless the point raised was 'really difficult and important' it would be better for the English judge to decide it himself. However, in *APS Samex* (above) Bingham, J took the view that in some cases, even though the point raised might not be of great difficulty, the European Court should receive a reference because it was in a better position, among other things, to make the sort of decision which would further the orderly development of the Community. These statements by Bingham, J (who is now the Lord Chief Justice), in this case are to be welcomed because they show a greater willingness in the judiciary to take matters to Luxembourg and not to make too many decisions themselves thus to some extent shutting out the European Court.

In regard to criminal matters, a circuit judge presiding over a criminal trial on indictment has a discretion conferred on him by Art 234 of the Treaty of Rome to refer any question of interpretation of the Treaty to the European Court. It was held by the House of Lords in *R* v *Henn* [1980] 2 All ER 166 that it can seldom be a proper exercise of the presiding judge's discretion to seek a preliminary ruling before the facts of the alleged offence have been ascertained, since this could result in proceedings being held up for several months. It is generally better, said the House of Lords, that the judge should interpret the Treaty himself in the first instance and his interpretation can be reviewed thereafter if necessary through the hierarchy of the national courts, any of which may refer to the European Court.

In general terms, therefore, the House of Lords (becomes the Supreme Court) has an obligation to make a reference under Art 136. Lower courts *may* do so but if they think that the relevant Community law is sufficiently clear to be applied to the case straightaway they will not refer. This is known as the doctrine of *acte clair*. The provision of European law must,

however, be directly applicable as is the case with Art 141 (Equality of Treatment) which is often applied in equal pay cases (see Chapter 19).

The International Criminal Court

This court came into being on 1 July 2002. All the European Union members are among the 73 nations that have ratified the Rome statute of 1998 that forms the basis of the court.

Its jurisdiction and staff is as follows:

- the court will try persons accused of genocide, war crimes, crimes against humanity and (when defined) crimes of aggression; those who are heads of state as well as soldiers and civilians may be tried;
- the cases taken by the court will be cases that have not been tried or investigated by the country of the person accused and only crimes committed after 1 July 2002 can be tried;
- there are 18 judges elected by those countries that have ratified the Rome statute. They are of different nationality and they together with a chief prosecutor serve for a term of nine years;
- cases can be referred by:
  - any country that has ratified the Rome statute and has had crimes committed within its territory by foreigners or its own nationals;
  - the court prosecutor following approval by a panel of three judges;
  - the United Nations Security Council.

The ICC will make a difference since for the first time persons will be held criminally responsible for crimes against humanity. The ICC will complement existing national jurisdictions and will be able to prosecute where states are unwilling or unable to do so.

International Criminal Court Act 2001

This UK Act gives effect to the Statute of the International Criminal Court and makes provision for e.g. the arrest and delivery up of persons in the UK to the jurisdiction of the ICC, together with enforcement of sentences of imprisonment in the UK under orders of the ICC.

The European Court of Human Rights

This court, which sits in Strasbourg, was set up by the Convention for the Protection of Human Rights and Fundamental Freedoms to ensure the observance of the engagements undertaken by contracting states under the Convention. The United Kingdom is one of the states which have accepted the court's jurisdiction. The jurisdiction of the court in contentious matters extends to all cases concerning the interpretation and application of the Convention. The court can now be approached directly by the person alleging a human rights violation, by bringing an action against the state responsible. A panel of three judges then decides whether the case should be heard. If so, a ruling is given by a chamber of seven judges with an appeal to a Grand Chamber of 17. Since its creation in 1959 it has dealt with a wide variety of problems, including compulsory sex education in state primary schools in Denmark, where it was found that there was no violation of the Convention, and punishment by birching in the Isle of Man, where one or more breaches of the Convention were found to exist. More recently, the court decided against Britain by regarding the caning of schoolchildren

against the wishes of their parents as a breach of the Convention. The court has power to grant 'just satisfaction' of a pecuniary nature to the injured party.

The court has decided that certain members of the UK armed forces who were discharged because of their homosexuality had been subjected to a violation of their human rights under the European Convention (see *Lustig-Prean and Beckett* v *United Kingdom* (1999) *The Times*, 11 October). The decision meant that the armed forces had to revise their policy on homosexuals, but the case has no binding effect on private business, only on 'emanations of the state'. The ruling is not *directly applicable* to business, but it is binding on public authorities. It will, of course, be influential in terms of future legislation on discrimination.

The Human Rights Act 1998 incorporates the Convention into UK law, enabling enforcement of Convention rights by UK residents in UK courts.

Since the most usual channel of complaint under the Act will be against public authorities by way of judicial review, the Act is considered in more detail in Chapter 3.

3

OTHER COURTS AND TRIBUNALS, JUDICIAL REVIEW, HUMAN RIGHTS AND LEGAL SERVICES

All of the famous writers on constitutional theory have drawn attention to the dangers of any system which takes away from the citizen, in his dealings with government and other officials, the protection of the law functioning in its traditional setting, i.e. the courts of law, which were considered in a previous chapter.

However, one of the most significant developments of this century is the considerable increase in what might be called broadly administrative justice dispensed in special courts outside of the ordinary system.

This has arisen from the great extension in the functions of government which has taken place over the years. For example, the government pays pensions to various classes of persons and a wide variety of social security benefits, and in order to further schemes of social welfare, it is often necessary for a public body to acquire land by compulsory purchase.

Obviously, disputes arise between individuals and the state. People may claim benefits to which the state suggests they are not entitled, and landowners are often aggrieved by the compulsory purchase of their land. Tenants complain about increases in rent and other charges by landlords. The settlement of such disputes might have been given over to the ordinary courts of law, but instead increasing use has been made of an administrative court of one kind or another.

Lord Denning, in *Freedom under the Law*, has said of these tribunals:

> They are a separate set of courts dealing with a separate set of rights and duties. Just as in the old days there were ecclesiastical courts dealing with matrimonial cases and the administration of estates and just as there was the Chancellor dealing with the enforcement and administration of trusts so in our day there are the new tribunals dealing with the rights and duties between man and the State.

It should not be assumed, however, that all administrative tribunals are concerned with disputes between a person and the state. Some deal with disputes between individuals. The Rent Assessment Committees set up under the Rent Act 1977 to deal with rent and other questions arising under statutory provisions relating to the letting of houses, are an example of a situation in which the government has provided a specialised court to deal with certain disputes between landlord and tenant rather than give the particular jurisdiction to the ordinary courts of law.

Furthermore, administrative justice is not always meted out in a permanent independent tribunal. For example, the local planning authority may grant planning permission with or

without conditions or may refuse permission or fail to notify their decision within the period laid down. In the case of a grant with conditions, or a refusal to grant, or delay in notification, the applicant may appeal to the Secretary of State through the Department of the Environment. The decision of the Secretary of State is final, though there may be an appeal by the authority or the applicant to the High Court on the grounds set out in s 288(1) of the Town and Country Planning Act 1990, e.g. that the order is not within the provisions of that Act.

We shall now consider in more detail the way in which certain of these tribunals work.

Administrative tribunals

It is not appropriate in a book of this nature to deal with all the tribunals in this field but consideration will be given to some important ones as examples.

Social Security Tribunals – the Appeals Service

The procedure is governed by the Social Security Act 1998 and previous arrangements have been wound-up. Where the payment of social security benefits is refused, appeal is to an appeals tribunal.

The members of the tribunal

The members of the relevant appeal tribunals are made up from a panel of doctors, lawyers, those with experience of disability and those with financial specialisms, e.g. accountants. One of the members of the tribunal must be legally qualified and will normally act as the chair of the tribunal.

Rules made under the Social Security Act 1998 apply and the following types of tribunals are available to hear appeals as appropriate:

- a three-member tribunal being a lawyer, a doctor and a person with experience of disability hears appeals for disabled persons' tax credits, disability living allowance, and attendance allowance;
- a two-member panel, i.e. a lawyer and a doctor, hears appeals regarding incapability to work;
- a two or three-member tribunal, i.e. a lawyer and one or two doctors, hears appeals regarding industrial injuries or severe disablement. Where the appeal involves difficult financial issues, a financial specialist, e.g. an accountant, is substituted for one of the doctors.

Appeals

There is an appeal to the Social Security Commissioner if the tribunal has made an error of law as where the tribunal misunderstood a particular benefit rule or where there is a breach of natural justice as where the tribunal refuses to postpone a hearing even though the appellant had a good reason for not being able to attend and told the tribunal about it. This would offend against the rule that the appellant had a right to be heard.

There is a further appeal to the Court of Appeal from the Commissioner only on a error of law. Leave of the Commissioner or the Court of Appeal is required. It is also possible in some cases to challenge the decisions made by judicial review, such as on a refusal to give a right of appeal by a tribunal chair. The above rights of appeal are possessed also by the provider of the benefit, e.g. a local authority.

Human rights

Arguments based on the Human Rights Convention can be raised throughout the above procedures.

Valuation and use of Lands Tribunal

Another important tribunal is the *Lands Tribunal* which deals with disputes arising over the valuation and compensation payable on compulsory acquisition of land by public authorities under a variety of statutes, together with appeals from local valuation courts on the value of property for various purposes. An important function of the Lands Tribunal is that it can discharge or modify restrictive covenants over land. These normally restrict the use to which the land can be put and are not always welcomed by business developers. An application to the Lands Tribunal may be made in these circumstances. It does not follow that the Lands Tribunal will discharge or modify a particular covenant (see further Chapter 22).

The tribunal has a President, who is either a person who has held high judicial office or a person who holds a seven-year general qualification within s 71 of the Courts and Legal Services Act 1990, and other members, of the same standing, or persons experienced in the valuation of land. The jurisdiction of the tribunal may be exercised by any one or more of its members. Procedure is governed by rules made after consultation between the Lord Chief Justice and the Lord Chancellor and these are published by statutory instrument. The tribunal ordinarily sits in public and travels round the country, and there is a right of audience and legal representation. The decisions of the tribunal are written and reasoned, and appeal lies to the Court of Appeal on points of law. Either party can require the tribunal to state a case for consideration by the Court of Appeal. Legal representation is available in respect of proceedings in the Lands Tribunal. Legal aid is not available (see Sch 2 of the Access to Justice Act 1999).

Employment tribunals

These consist of employment tribunals from which there is an appeal to the Employment Appeal Tribunal. Neither the Employment Appeal Tribunal nor an employment tribunal has the jurisdiction to decide whether legislation is incompatible with the Convention on Human Rights since neither tribunal falls within the definition of a 'court' within s 4(5) of the Human Rights Act 1998 (see *Whittaker* v *P & D Watson* (2002) *The Times*, 26 March).

Employment tribunals

Employment tribunals are constituted under the Employment Tribunals Act 1996 and the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (SI 2004/1861). Some changes were made by the Employment Act 2002 but these were by way of changes in the 1996 Act.

The jurisdiction of these tribunals includes, for example, disputes arising out of the contract of employment or unfair dismissal, redundancy, equal pay and sex, race and disability discrimination. (See further Chapter 19.)

Tribunals, which usually consist of a chairman, and two lay members one from each panel (see below), are drawn from three panels as follows:

- a chairman who is appointed by the Lord Chancellor following selection by the Judicial Appointments Commission and who must have a seven-year qualification. Appointments may be full-time or part-time;

- persons appointed by the Secretary of State for Trade and Industry after consulting representatives of employers; and
- persons so appointed after consultation with organisations representative of employees.

Members drawn from the two lay panels immediately above are referred to as 'lay members' and all serve part-time. The tribunals sit at suitable centres throughout the United Kingdom.

A full tribunal consists of a member from each panel. However, certain types of proceedings must be heard by a tribunal consisting of a chairman sitting alone unless a chairman, who need not necessarily be the same person who is to hear the case, directs to the contrary (ETA 1996, s 4). Some important categories of case are:

- applications for unlawful deductions from wages;
- applications regarding written particulars of employment and itemised pay statements, guarantee payments and redundancy payments;
- proceedings where the parties have given written consent to a hearing before the chairman alone whether or not consent was subsequently withdrawn;
- proceedings where the defendant or all defendants, if more than one, did not contest the claim at first or later.

These claims are explained in Chapter 19.

If a sum of money awarded by a tribunal is not paid over to the claimant, he can apply to the county court for a warrant of execution (see Chapter 5).

Legal aid is not available for a lawyer to represent a claimant before a tribunal, but legal advice may be given in respect of employment matters. This can include the drafting of documents in relation to the proceedings and assistance with the way in which the case is to be presented to the tribunal. A legal aid lawyer can attend the tribunal hearing with his client but cannot speak or argue on his behalf. If legal representation is required at the hearing, the party concerned must take responsibility for payment subject to recovery of costs, which are only exceptionally awarded (see below).

An applicant to a tribunal may be able to obtain legal assistance including representation in the tribunal from a variety of sources, e.g. a trade union or from the Equal Opportunities Commission (in sex discrimination claims) or the Commission for Racial Equality (in race discrimination claims) and the Disability Rights Commission (in disability discrimination claims). Under the Equality Act 2006 the above Commissions will, over a period of time, be brought together under the single Commission for Equality and Human Rights. Small employers responding to claims may also seek assistance from the Commissions and this may also be provided by a trade association.

The claim form for a case to be heard by an employment tribunal is ETl. It can be obtained from job centres and most advice centres or from the tribunals' website **www.employmenttribunals.gov.uk.** In England and Wales the claim should be presented to the tribunal office in the postal district where the claimant is or was employed. The claim can be delivered by hand, sent by post, or fax or completed online at the above website or by other means of electronic communication, such as email.

The person against whom the claim is being made will receive a copy of the claim from the tribunal secretariat. If he or she wishes to defend the claim, a response form (ET3) must be completed and returned within 28 days of the date on which the copy of the claim was sent. The response must be in writing.

Employment tribunals have power to request the parties to give each other particulars of the grounds which are relied upon and to grant disclosure of documents.

Hearings before employment tribunals normally take place in public, though there may be a private hearing where, in the opinion of the tribunal, this would be appropriate, as where evidence is to be presented which relates to national security.

As regards costs, an employment tribunal does not normally make an award but may do so, for example, where in its opinion a party to any proceedings has acted frivolously or vexatiously, as where an employer or employee refuses to take any part in the proceedings, or has acted abusively or disruptively – so the parties must behave!

The only situation in which a tribunal *has a duty to make a costs order* is when in an unfair dismissal complaint the employee claimant has expressed a wish to be reinstated or re-engaged and has told the employer this at least seven days before the hearing and yet the hearing has had to be postponed because the employer has failed, without special reason, to adduce reasonable evidence as to the availability of the job from which the employee was dismissed or of comparable or suitable employment where he can be re-engaged. Under the 2004 regulations a tribunal can now also make a *preparation time order* where either the claimant or the defendant makes a payment in respect of the preparation time of the other. Such an order may be made where the party who receives payment was not legally represented at the hearing or where the proceedings were determined without a hearing. An hourly rate of £26 per hour is applied from 1 April 2006 and goes up by £1 an hour every year. A maximum of £10,000 can be awarded. The provision may help, for example, small employers who may face claims from employees who are backed by trade unions and the employer deals with his or her own defence. These payments do not depend upon who succeeds at a hearing.

Also under the 2004 regulations a tribunal may make a *wasted costs order* against a person representating either party where the representative's unreasonable or negligent act or omission has affected the conduct of the proceedings. These orders can be applied to lawyers and other representatives such as trade unions, employers' associations and law centres.

The decision is made by a majority and is given orally at the hearing or, if necessary, reserved and given at a later date. In any case it is recorded in a document which is signed by the chairman and contains reasons for the decision. The parties each receive a copy. It should also be noted that where an employee has died tribunal proceedings may be started or continued by his personal representatives.

An employment tribunal can review and change its decision afterwards where, for example, new evidence has become available which could not have been known of or foreseen at the original hearing.

The Employment Appeal Tribunal (EAT)

Appeal from an employment tribunal lies only on questions of law. The determination of the facts by an employment tribunal cannot be challenged on appeal and it is, therefore, most important that the facts are properly presented to the tribunal at the hearing. In this connection an EAT decision serves as a warning to employers who fail to turn up at tribunal hearings. The EAT has ruled that evidence that was not placed before an employment tribunal because the employer decided not to attend the hearing could not be raised on appeal (see *Taylor* v *John Webster Buildings Civil Engineering* [1999] ICR 561). Under s 9 of the Trade Union and Labour Relations (Consolidation) Act 1992 it will also hear an appeal from the ACAS Certification Officer by a trade union aggrieved by his refusal to issue it with a certificate that it is independent. The major legislative privileges are given to those trade unions which are independent of the employer and not, for example, to employer-dominated staff associations. The Certification Officer adjudicates upon the matter of independence under s 6 of the Trade Union and Labour Relations (Consolidation) Act 1992.

The Employment Appeal Tribunal is a superior court of record with an official seal. Although the central office of the tribunal is in London, it may sit at any time and in any place in Great Britain. It may also sit in one or more divisions.