
CHAPTER 307**UTILITIES APPEAL TRIBUNAL**

LIST OF AUTHORISED PAGES

1 – 20 LRO 1/2010

ARRANGEMENT OF SECTIONS

SECTION

PART I - PRELIMINARY

1. Short title.
2. Interpretation.

PART II - THE UTILITIES APPEAL TRIBUNAL

3. Establishment of Tribunal.
4. Panels.
5. Jurisdiction of the Tribunal.
6. Judgement of the Tribunal.
7. Tribunal rules.
8. Powers of Tribunal.
9. Additional powers of Tribunal.
10. Order to pay costs.
11. Order may be made retroactive.
12. Power to make interim orders and to take interim measures.
13. Appeals from judgements of the Tribunal.
14. On whom award to be binding.
15. Initial funding.

SCHEDULE 1

QUALIFICATION OF MEMBERS

SCHEDULE 2

TRIBUNAL PROCEDURE

SCHEDULE 3

FUNDING OF THE TRIBUNAL

CHAPTER 307

UTILITIES APPEAL TRIBUNAL

*11 of 2009**[Assent – 29th May, 2009]**[Commencement – 1st September, 2009] S.I. 74/2009.***PART I - PRELIMINARY**

1. This Act may be cited as the Utilities Appeal Tribunal Act. Short title.

2. In this Act all terms have the meanings given to them by the Interpretation and General Clauses Act unless expressly defined — Interpretation.
Ch. 2.

“Minister” means the Minister responsible for relations with Utilities Regulation Competition Authority.

“regulated sector” means those sectors for which Utilities Regulation Competition Authority has specific responsibilities under any Act or any laws, including but not limited to the Communications Act; Ch. 304.

“regulatory or other measures” means all possible acts issued by the relevant body, by whatever procedure including but not limited to directions, decisions, adjudications, orders and regulations;

“Tribunal” means the Utilities Appeal Tribunal established under section 3;

“URCA” means the Utilities Regulation and Competition Authority established under the URCA Act;

“URCA Act” means the Utilities Regulation and Competition Authority Act. Ch. 306.

PART II - THE UTILITIES APPEAL TRIBUNAL

3. (1) There shall be established a Utilities Appeal Tribunal. The Tribunal shall be an *ad hoc* tribunal and shall exercise its functions, when required, by panels constituted in accordance with section 4. Establishment of
Tribunal.

(2) The Tribunal shall have an official seal which shall be judicially noticed.

(3) The Tribunal shall consist of the President and its other members.

(4) The Governor General acting on the advice of the Judicial and Legal Service Commission shall appoint —

- (a) the President of the Tribunal; and
- (b) legal members of the Tribunal.

(5) The Governor General shall appoint ordinary members of the Tribunal.

(6) A person may be appointed as the President or as a legal member of the Tribunal only if that person satisfies the eligibility criteria set out in paragraph 2 of Schedule 1.

Schedule 1.

(7) A person may be appointed as an ordinary member of the Tribunal only if he appears to the Governor General to have appropriate knowledge and experience of matters falling within the jurisdiction of the Tribunal.

(8) The President shall appoint a Registrar who shall, subject to overall supervision by the President, be responsible for the administration of the Tribunal.

(9) The Registrar shall exercise the functions and have the powers set out in Schedule 1.

Schedule 1.

(10) The Registrar shall serve for a term of four years and shall be eligible for reappointment.

(11) The expenses of the Tribunal not met by sums collected in accordance with section 10(2) and the salaries and allowances of the President, Registrar and members of the Tribunal shall be paid out of —

- (a) sums levied and collected in accordance with the provisions of Schedule 3; or
- (b) if such sums are unavailable or are certified by the Registrar to be insufficient to secure the efficient performance by the Tribunal of its functions and powers then such sums as Parliament may from time to time appropriate for that purpose.

Schedule 3.

(12) The provisions of Schedule 1 shall have effect as to the Tribunal, its members and staff, and otherwise in relation thereto.

Schedule 1.

4. (1) The functions of the Tribunal shall be exercised by panels of the Tribunal. Panels.

(2) Panels of the Tribunal shall sit at such times and in such places as the President may direct.

(3) More than one panel may sit at a time.

(4) The President shall make arrangements for determining which members of the Tribunal are to constitute a panel of the Tribunal in relation to the exercise of any function.

(5) Those arrangements shall ensure that each panel is constituted in one of the following ways —

(a) as the President sitting alone;

(b) as a legal member sitting alone;

(c) as the President sitting with two ordinary members;

(d) as a legal member sitting with two ordinary members;

(e) as the President sitting with one ordinary member;

(f) as a legal member sitting with one ordinary member.

(6) The President shall publish in the Gazette arrangements made under this section.

5. (1) The Tribunal shall have exclusive jurisdiction to hear and determine all appeals, matters and disputes referred to it and shall have such original, appellate and supervisory jurisdiction as may be conferred upon it by any law relating to a sector regulated by URCA or by any other law. Jurisdiction of the Tribunal.

(2) The Tribunal may also act as arbitrator under a reference by consent, under the terms of any agreement which provides for referring any matter in relation to a regulated sector to arbitration by the Tribunal. The Tribunal shall publish in the Gazette arrangements made under this section.

6. (1) Judgements of the Tribunal may be taken by majority vote. Judgement of the Tribunal.

(2) In the case of a panel that includes the President, the President shall have a casting vote.

(3) In the case of a panel presided over by a legal member, the legal member appointed by the President shall have a casting vote.

Schedule 2.

(4) Part I of Schedule 2 shall have effect.

Tribunal rules.

7. (1) The President may, after consulting and having due regard to the advice of such persons as he or she considers appropriate, make rules (in this Part referred to as “Tribunal rules”) with respect to proceedings before the Tribunal.

(2) Tribunal rules may make provision with respect to matters incidental to or consequential upon appeals provided for by or under any law to the Court of Appeal.

(3) Tribunal rules may —

- (a) confer functions on the President or the Registrar in relation to proceedings before the Tribunal; and
- (b) contain incidental, supplemental, consequential or transitional provisions.

Schedule 2.

(4) Without prejudice to the generality of subsection (1) above, Part 2 of Schedule 2 shall have effect.

Powers of Tribunal.

8. The Tribunal may in relation to any matter before it —

- (a) remit a dispute, subject to such conditions as the Tribunal may determine, to the parties for further consideration by them with a view to settling or reducing the issues in dispute;
- (b) when —
 - (i) deciding an appeal by applying the same principles as would be applied by the Supreme Court on an application for judicial review; or
 - (ii) deciding an appeal by drawing any inferences that are not inconsistent with the findings of fact made by an authority and that are necessary for determining a question of law or jurisdiction,

quash or uphold the whole or part of the relevant regulatory measure. Where it quashes the whole or part of such regulatory measure, the Tribunal may refer the matter back to the relevant authority with a direction to reconsider and make

a new decision in accordance with the findings of the Tribunal;

- (c) except when deciding an appeal referred to in paragraph (b), make an order or award (including a provisional or interim order or award) relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or judgement;
- (d) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter, if it appears that the matter or part thereof is trivial, or that further proceedings are unnecessary or undesirable.

9. (1) In addition to the powers conferred on it under the provisions of any other law the Tribunal may —

Additional powers of Tribunal.

- (a) proceed to hear and determine any question arising in connection with a dispute in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so without reasonable justification;
- (b) order any person —
 - (i) who in the opinion of the Tribunal may be affected by an order or award; or
 - (ii) who in any other case the Tribunal considers should be joined as a party,
to be joined as a party to the proceedings under consideration on such terms and conditions as the Tribunal may direct; or
- (c) generally give all such directions and do all such things as are necessary or expedient for the expeditious and fair hearing and determination of the dispute or any other matter before it, in accordance with Tribunal rules.

(2) Without prejudice to the provisions of subsection (1), where in any proceedings before the Tribunal, the Tribunal makes an order or award for the payment of a sum as compensation or damages, the Tribunal may in addition, if it thinks fit, order that there shall be included in the sum so ordered or awarded, interest at such rate as the Tribunal thinks fit on the whole or any part of the compensation or damages from the date of the order or award provided that

nothing in this subsection shall authorise the giving of interest upon interest.

Order to pay costs.

10. (1) The Tribunal may at its discretion at any stage of the proceedings make any order it thinks fit in relation to the payment of costs by one party to another in respect of the whole or part of the proceedings and in determining how much the party is required to pay, the Tribunal may take into account the conduct of all parties in relation to the proceedings.

(2) The power to award costs pursuant to subsection (1) includes the power to direct any party to pay to the Tribunal such sum as may be appropriate in reimbursement of any costs incurred by the Tribunal in connection with the summoning or citation of witnesses or the instruction of experts on the Tribunal's behalf.

(3) Any sum due as a result of such a direction under subsection (2) may be recovered by the Tribunal as a civil debt due to the Tribunal and for that purpose the Tribunal shall be entitled to issue a claim in the Supreme Court.

Order may be made retroactive.

11. An order or award in any matter referred to the Tribunal for determination may be made operative from such date as the Tribunal may direct.

Power to make interim orders and to take interim measures.

12. (1) The Tribunal may make an order on an interim basis —

- (a) suspending in whole or part the effect of any decision which is the subject matter of proceedings before it;
- (b) varying the conditions or obligations attached to any order;
- (c) granting any remedy which the Tribunal would have the power to grant in its final judgement.

(2) Without prejudice to the generality of the foregoing, if the Tribunal considers that it is necessary as a matter of urgency for the purpose of —

- (a) preventing serious, irreparable damage to a particular person or category of person; or
- (b) protecting the public interest,

the Tribunal may give such directions as it considers appropriate for that purpose.

(3) The Tribunal shall exercise its power under this section taking into account all the relevant circumstances, including —

- (a) the urgency of the matter;
- (b) the effect on the party making the request if the relief sought is not granted; and
- (c) the effect on competition if the relief is granted.

(4) Any order or direction under this section is subject to the Tribunal's further order, direction or final judgement.

13. (1) Subject to any provisions in any other law determining otherwise including Article 28 of the Constitution, any party to a matter before the Tribunal is entitled as of right to appeal to the Court of Appeal on any of the following grounds —

Appeals from judgements of the Tribunal.

- (a) that the Tribunal had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Tribunal had been formally taken at some time during the progress of the matter before the making of the order or award;
- (b) that the Tribunal has exceeded its jurisdiction on the matter;
- (c) that the order or award has been obtained by fraud;
- (d) that any finding or judgement of the Tribunal in any matter is erroneous in point of law;
- (e) that some other specific illegality not mentioned in paragraph (a) to (d) and substantially affecting the merits of the matter has been committed in the course of the proceedings.

(2) On the hearing of an appeal from the Tribunal in any matter brought before it, the Court of Appeal shall have power —

- (a) to confirm, modify or reverse the order or award appealed against;
- (b) if the Court of Appeal confirms the order or award appealed against, to order that there shall be included in the sum which is the subject of the appeal, interest at the rate of ten per centum on

the whole or any part of the sum, from the date of the order or award appealed against;

- (c) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or
- (d) to order a new hearing on any question without interfering with the finding or judgement upon any other question,

and the Court of Appeal may make such final or other order (other than an order as to costs) as the circumstances of the matter may require.

(3) The Court of Appeal may in any matter brought on appeal before it, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred although it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

On whom award to be binding.

14. An order or award of the Tribunal shall be binding on —

- (a) all parties to the dispute who appear or are represented before the Tribunal;
- (b) all persons who have been summoned to appear as parties to the dispute, whether they have appeared or not.

Initial funding.

15. (1) The President shall apply to the Minister for a loan from the Government not exceeding five hundred thousand dollars in order for the Tribunal to carry out its functions and exercise its powers prior to funding becoming available under section 3(11).

(2) Any loan made under subsection (1) shall be on such terms as the Minister may specify and shall be repaid by application of funds collected under section 3(11) within three years.

SCHEDULE 1**QUALIFICATION OF MEMBERS****1. Appointment, etc. of President and legal members.**

(1) A person is not eligible for appointment as President unless he or she is or has been a member of the Bahamas Bar or of any country of the Commonwealth or is or has been enrolled and has practised as a solicitor in any country of the Commonwealth for a period of at least ten years and he or she appears to the Judicial and Legal Services Commission to have appropriate experience and knowledge to enable him or her to discharge his or her functions as a member of the Tribunal.

(2) A person is not eligible for appointment as a legal member unless he or she is or has been a member of the Bahamas Bar or of any country of the Commonwealth or is or has been enrolled and has practised as a solicitor in any country of the Commonwealth for a period of at least seven years standing and he or she appears to the Judicial and Legal Services Commission to have appropriate experience and knowledge to enable him or her to discharge his or her functions as a member of the Tribunal.

(3) The members appointed as President or as legal members shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

(4) A person may not be appointed as President or a legal member for more than eight years (but this does not prevent a temporary re-appointment for the purpose of continuing to act as a member of the Tribunal as constituted for the purposes of any proceedings instituted before the end of his term of office).

(5) The President and the legal members may resign their offices by notice in writing to the Judicial and Legal Services Commission.

(6) The Governor General acting on the advice of the Judicial and Legal Services Commission may remove a person from office as President or legal member if satisfied that the President or legal member is —

- (a) unable; or
- (b) unwilling; or

- (c) unfit (whether because of misbehaviour or otherwise),

to perform his or her functions as a member of the Tribunal.

(7) If the President is absent or otherwise unable to act, the Governor General acting on the advice of the Judicial and Legal Services Commission may appoint as acting President any person qualified for appointment as a legal member of the Tribunal.

2. Appointment, etc. of ordinary members.

(1) Ordinary members shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

(2) A person may not be an ordinary member for more than eight years (but this does not prevent a temporary re-appointment for the purpose of continuing to act as a member of the Tribunal as constituted for the purposes of any proceedings instituted before the end of his term of office).

(3) Ordinary members shall be persons with experience, expertise or professional qualifications that the Governor General considers relevant to exercising the jurisdiction of the Tribunal and may include economists, lawyers, surveyors, accountants or persons with substantial and relevant experience in business or public service.

(4) An ordinary member may resign his office by notice in writing to the President.

(5) The Governor General may remove a person from office as an ordinary member if the Governor General is satisfied that the member is —

- (a) unable, or
- (b) unwilling, or
- (c) unfit (whether because of misbehaviour or otherwise),

to perform his or her functions as a member of the Tribunal.

3. Remuneration etc. for members.

The Registrar shall apply the Tribunal Fee to pay the President, the legal members and the ordinary members

such remuneration (whether by way of salaries or fees), and such allowances, as the Minister may determine.

4. Staff, accommodation and property.

Any staff, office accommodation or equipment required for the Tribunal shall be provided by the Registrar applying the Tribunal Fee.

5. Functions and powers of the Registrar.

(1) The Registrar shall have custody of the seal and records of the Tribunal and shall exercise such other functions as are assigned to him under this Schedule or by the President under a separate order.

(2) Subject to any order of the President the Registrar shall have the following powers —

- (a) to require any petition, appeal or other reference to the Tribunal to be amended in accordance with the rules, practice and procedure of the Tribunal or to be re-presented after an amendment has been made at the direction of the Registrar;
- (b) to fix dates and make all other practical arrangements, including the issuing of notices to parties and witnesses, for sittings of the Tribunal or any panel of the Tribunal;
- (c) to arrange for publication of the proceedings and judgements of the Tribunal;
- (d) to direct any formal amendment of the record of the Tribunal; and
- (e) to order the provision of copies of documents to parties and to grant leave to inspect the records of the Tribunal.

SCHEDULE 2**TRIBUNAL PROCEDURE****PART I - GENERAL****1. Judgements of the Tribunal.**

(1) A judgement of the Tribunal in any proceedings before it must —

- (a) state the reasons for the judgement and whether it was unanimous or taken by a majority;
- (b) be recorded in a document signed and dated by the chairman of the panel of the Tribunal dealing with the proceedings.

(2) The President shall make such arrangements for the publication of the judgements of the Tribunal as he considers appropriate.

2 Enforcement of judgements.

(1) A judgement of the Tribunal which is registered in The Bahamas in accordance with rules of court or any practice direction for —

- (a) payment of damages which are awarded by the judgement;
- (b) costs or expenses awarded by the judgement; and
- (c) any direction given as a result of the judgement,

may be enforced by the Supreme Court as if the damages, costs or expenses were an amount due in pursuance of a judgement or order of the Supreme Court, or as if the direction were an order of the Supreme Court.

(2) If a judgement of the Tribunal awards damages, costs or expenses, or results in any direction being given, the judgement may be recorded for execution in the Supreme Court Registry and shall be enforceable accordingly.

(3) Subject to rules of court or any practice direction, a judgement of the Tribunal may be registered or recorded for execution —

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- (a) for the purpose of enforcing a direction given as a result of the judgement, by the Tribunal or a person who was a party to the proceedings;
 - (b) for the purpose of enforcing a judgement to award damages, costs or expenses (other than a judgement to which subparagraph (1)(c) applies), by the person to whom the sum concerned was awarded.

PART II - TRIBUNAL RULES

1. General.

Tribunal rules may make different provision for different kinds of proceedings.

2. Institution of proceedings.

(1) Tribunal rules may make provision as to the period within which and the manner in which proceedings are to be brought.

(2) That provision may, in particular —

- (a) provide for a fee to be paid when filing claims;
- (b) provide for time limits for making claims;
- (c) provide for the Tribunal to extend the period in which any particular proceedings may be brought; and
- (d) provide for the form, contents, amendment and acknowledgement of the documents by which proceedings are to be instituted.

(3) Tribunal rules may provide for the Tribunal to reject any proceedings if it considers that —

- (a) the person instituting them does not have a sufficient interest in the judgement with respect to which the proceedings are brought; or
- (b) the document by which such person institutes the proceedings discloses no valid grounds for bringing them.

(4) Tribunal rules may provide for the Tribunal to reject any proceedings if it is satisfied that the person instituting the proceedings has habitually and persistently and without any reasonable ground —

- (a) instituted vexatious proceedings (whether against the same person or against different persons); or
- (b) made vexatious applications in any proceedings.

(5) Tribunal rules must ensure that no proceedings are rejected without giving the parties the opportunity to be heard.

3. Pre-hearing.

(1) Tribunal rules may make provision for the carrying out by the Tribunal of a preliminary consideration of proceedings (a “pre-hearing review”).

- (2) Provision for a pre-hearing may include —
 - (a) provision enabling such powers to be exercised on a pre-hearing review as may be specified in the rules; and
 - (b) provision for security and supplemental provision relating to security.
- (3) For the purposes of paragraph 3(2)(b) —
 - (a) “provision for security” means provision authorising the Tribunal, in specified circumstances, to order a party to the proceedings, if the party wishes to continue to participate in the proceedings, to pay a deposit not exceeding such sum as may be specified or calculated in a specified manner; and
 - (b) “supplemental provision”, in relation to security, means provision as to —
 - (i) the manner in which the amount of a deposit is to be determined;
 - (ii) the consequences of non-payment of a deposit;
 - (iii) the circumstances in which the deposit, or any part of it, may be refunded to the person who paid it or paid to another party to the proceedings.

4 Conduct of hearing.

- (1) Tribunal rules may make provision —
 - (a) as to the manner in which proceedings are to be conducted, including provision for any hearing to

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- be held in private if the President considers it appropriate;
- (b) as to the persons entitled to appear on behalf of the parties;
 - (c) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
 - (d) as to the evidence which may be required or admitted and the extent to which it should be oral or written;
 - (e) allowing the Tribunal to fix time limits with respect to any aspect of proceedings and to extend any time limit (before or after its expiry);
 - (f) enabling the Tribunal, on the application of any party or on its own initiative, to order:
 - (i) the disclosure between, or the production by, the parties of documents or classes of documents; or
 - (ii) discovery or inspection of documents;
 - (g) for the appointment of experts for the purposes of proceedings;
 - (h) for the award of costs or expenses, including allowances payable to persons in connection with attendance before the Tribunal; and
 - (i) for taxing or otherwise settling any costs or expenses awarded by the Tribunal or for the enforcement of any order awarding costs or expenses.
- (2) A person who without reasonable excuse fails to comply with —
- (a) any requirement imposed by virtue of paragraph (1)(c); or
 - (b) any requirement with respect to the disclosure, production, discovery or inspection of documents which is imposed by virtue of paragraph (1)(f),

is guilty of an offence and liable on summary conviction to a fine not exceeding twenty thousand dollars.

5. Quorum.

(1) Tribunal rules may make provision as to the consequences of a member of the Tribunal being unable to continue after part of any proceedings have been heard.

(2) The rules may allow the Tribunal to consist of the remaining members for the rest of the proceedings.

6. Interest.

(1) Tribunal rules may make provision allowing the Tribunal to order that interest is payable on any sum awarded by the Tribunal or on any fees ordered to be paid under paragraph 9 of this Schedule.

(2) A provision made under subparagraph (1) may include provision —

- (a) as to the circumstances in which such an order may be made;
- (b) as to the manner in which, and the periods in respect of which, interest is to be calculated and paid.

7. Fees.

Tribunal rules may provide —

- (a) for fees to be chargeable in respect of specified costs of proceedings; and
- (b) for the amount of such costs to be determined by the Tribunal.

8. Withdrawal of proceedings.

Tribunal rules may make provision —

- (a) preventing a party who has instituted proceedings from withdrawing them without the permission of the Tribunal or, in specified circumstances, the President;
- (b) for the Tribunal to grant permission to withdraw proceedings on such conditions as it considers appropriate;
- (c) as to the effect of withdrawal of proceedings; and
- (d) as to the procedure to be followed if parties to proceedings agree to settle.

9. Interim orders.

Tribunal rules may provide for the Tribunal to make an order, on an interim basis —

- (a) suspending the effect of any judgement which is the subject matter of proceedings before it;
- (b) granting any remedy which the Tribunal would have had power to grant in its final judgement.

10. Miscellaneous.

Tribunal rules may make provision —

- (a) for a person who is not a party to be joined in any proceedings;
- (b) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person;
- (c) for proceedings to be consolidated on such terms as the Tribunal thinks appropriate in such circumstances as may be specified.

SCHEDULE 3**FUNDING OF THE TRIBUNAL**

(1) To the extent that they are not met by sums collected in accordance with section 10(2), the expenses of the Tribunal and the salaries and allowances of the President, Registrar and members of the Tribunal (the 'relevant expenditure') shall be paid out of sums collected in accordance with this Schedule.

(2) The Registrar shall, at the direction of the President, within three months after establishment of the Tribunal publish and certify as reasonable an estimate of the anticipated relevant expenditure of the Tribunal for the first period of at least twelve months ending on 31 December following establishment of the Tribunal.

(3) For each subsequent period of twelve months ending on 31 December (each being a 'relevant period') the Registrar shall, at the direction of the President, publish and certify as reasonable an estimate of the anticipated relevant expenditure of the Tribunal for the relevant period based on —

- (a) actual relevant expenditure properly incurred by the Tribunal in exercise of its functions and powers during the previous twelve months, and
- (b) an estimate of any additional or extraordinary relevant expenditure reasonably anticipated by the Registrar during the relevant period.

(4) Any estimate published and certified by the Registrar in accordance with paragraphs (2) and (3) shall indicate whether any element of anticipated relevant expenditure relates specifically to one or more regulated sectors so that URCA may in levying and collecting the Tribunal Fee under paragraph (5) apportion that Tribunal Fee between regulated sectors.

(5) As soon as reasonably practicable and in any event within three (3) months after publication of the Registrar's estimate in accordance with paragraphs (2) and (3) shall demand and collect from all licensees or regulated persons in the regulated sectors a fee (the 'Tribunal Fee').

(6) All sums demanded and collected by URCA under paragraph (5) shall be paid to the Registrar for the account of the Tribunal and those sums shall be applied by the Registrar to secure the efficient performance by the Tribunal of its functions and powers.

(7) The Registrar shall retain any excess sums collected under this Schedule for application to relevant expenditure during the next or any subsequent relevant period.