

2010 No. 2653 (L. 16)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment No. 3) Rules 2010

Made - - - - - *28th October 2010*

Laid before Parliament *2nd November 2010*

Coming into force - - - *29th November 2010*

The Tribunal Procedure Committee has made the following Rules in exercise of the powers conferred by section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007^(a), having consulted in accordance with paragraph 28(1) of that Schedule to that Act.

The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of that Schedule to that Act.

Citation and commencement

1. These Rules may be cited as the Tribunal Procedure (Amendment No. 3) Rules 2010 and come into force on 29th November 2010.

Amendments to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

2.—(1) The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009^(b) are amended as follows.

(2) For rule 1(2) (application) substitute—

“(2) These Rules apply to proceedings before the General Regulatory Chamber of the First-tier Tribunal.”

(3) In rule 10 (orders for costs)—

(a) in paragraph (1)—

(i) insert at the beginning the words “Subject to paragraph (1A)”;

(ii) in sub-paragraph (c) of that paragraph, after the words “the Charity Commission”, insert “the Gambling Commission”;

(iii) in sub-paragraph (c) of that paragraph, for the words “order of the Charity Commission or the Information Commissioner” substitute “order of the Commission or the Commissioner”;

(b) after paragraph (1) insert—

(a) 2007 c. 15

(b) S.I. 2009/1976, as amended by S.I. 2010/43.

“(1A) If the Tribunal allows an appeal against a decision of the Gambling Commission, the Tribunal must, unless it considers that there is a good reason not to do so, order the Commission to pay to the appellant an amount equal to any fee paid by the appellant under the First-tier Tribunal (Gambling) Fees Order 2010^(a) that has neither been included in an order made under paragraph (1) nor refunded.”;

(c) in paragraph (5), after “paragraph (1)” insert “or (1A)”.

(4) In rule 22 (the notice of appeal), after paragraph (3) insert—

“(3A) If the appeal is brought under section 141 or 337(1) of the Gambling Act 2005^(b), the appellant must provide with the notice of appeal any fee payable to the Tribunal.”.

Amendments to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008

3.—(1) The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008^(c) are amended as follows.

(2) For rule 1(2) (application) substitute—

“(2) These Rules apply to proceedings before the Health, Education and Social Care Chamber of the First-tier Tribunal.”.

(3) In rule 1(3) (interpretation) after sub-paragraph (d) of the interpretation of “respondent” insert—

“(da) in an application for, or for a review of, a stop order under the National Health Service (Optical Charges and Payments) Regulations 1997^(d)—

(i) the supplier, where the Secretary of State is the applicant;

(ii) the Secretary of State, where the supplier is the applicant;

(db) in any other application under the National Health Service Act 2006^(e) or regulations having effect as if made under that Act by reason of section 4 of and Schedule 2 to the National Health Service (Consequential Provisions) Act 2006^(f)—

(i) the practitioner, performer or person against whom the application is made, where a Primary Care Trust is, or is deemed to be, the applicant;

(ii) the Primary Care Trust that served the notice, obtained the order or confirmation of the order, where any other person is the applicant;”.

(4) In rule 8(9) (striking out a party’s case) at the end, insert “and may summarily determine any or all issues against that respondent.”

(5) In rule 20 (the application notice) for sub-paragraph (a) of paragraph (1) substitute—

“(a) if a time for providing the application notice is specified in Schedule 1 to these Rules (time limits for providing applicant notices and responses),

(i) within the specified time;

(ii) where the Schedule specifies a period of time which must have elapsed or an event which must have occurred before an application may be made, in accordance with that period or occurrence; or”.

(6) The Schedule (time limits for providing application notices and responses), which lists in the first column the type of proceedings, in the second column the time for application notice, and in the third column the time for response, is amended by—

(a) S.I. 2010/42

(b) 2005 c. 19

(c) S.I. 2008/2699, as amended by S.I. 2009/1975 and S.I. 2010/43.

(d) S.I. 1997/818

(e) 2006 c. 41

(f) 2006 c. 43

- (a) omitting the entry in the Table relating to proceedings under section 28X of the National Health Service Act 1977; and
- (b) substituting for the entry in the Table referring to proceedings under section 28I of the Disability Discrimination Act 1995—

“Under paragraph 4 of Schedule 17 (disabled pupils: enforcement) to the Equality Act 2010 ^(a) .”	As set out in paragraph 4 of Schedule 17 to the Equality Act 2010.	30 working days after the respondent received the application notice.
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^(a) 2010 c.15”

Amendment to the Asylum and Immigration Tribunal (Procedure) Rules 2005

4.—(1) The Asylum and Immigration Tribunal (Procedure) Rules 2005(a) are amended as follows.

(2) For rule 3 (scope of these Rules)(b) substitute—

“3. These Rules apply to proceedings before the Immigration and Asylum Chamber of the First-tier Tribunal.”.

Amendment to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008

5.—(1) The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008(c) are amended as follows.

(2) For rule 1(2) (interpretation) substitute—

“(2) These Rules apply to proceedings before the Social Entitlement Chamber of the First-tier Tribunal.”.

(3) In rule 8(8) (striking out a party’s case), at the end, insert “and may summarily determine any or all issues against that respondent”.

(4) In Schedule 1 (time limits for providing notices of appeal to the decision maker), which lists in the first column the type of proceeding and, in the second column, the time for providing notice of appeal, for the first entry in the Table, substitute—

“Cases other than those listed below.

The latest of—

- (a) one month after the date on which notice of the decision being challenged was sent to the appellant;
- (b) if a written statement of reasons for the decision was requested within that month, 14 days after the later of—
 - (i) the end of that month; or
 - (ii) the date on which the written statement of reasons was provided; or
- (c) if the appellant made an application for revision of the decision under—
 - (i) regulation 17(1)(a) of the Child Support (Maintenance Assessment Procedure) Regulations

(a) S.I. 2005/230
 (b) Rule 3 was substituted by paragraph 4 of Schedule 2 to the Transfer of Functions (Asylum and Immigration Tribunal) Order 2010 (S.I. 2010/21).
 (c) S.I. 2008/2685, as amended by S.I. 2009/1975. There are other amendments but none is relevant.

1992^(a),

- (ii) regulation 3(1) or (3) or 3A(1) of the Social Security and Child Support (Decision and Appeals) Regulations 1999^(b), or
- (iii) regulation 4 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001^(c),

and that application was unsuccessful, one month after the date on which notice that the decision would not be revised was sent to the appellant.

^(a) S.I. 1992/1813

^(b) S.I. 1999/991. Regulation 3A was inserted by regulation 5 of the Child Support (Decisions and Appeals) (Amendment) Regulations 2000 (S.I. 2000/3185).

^(c) S.I. 2001/1002”.

Amendments to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

6.—(1) The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009^(a) are amended as follows.

(2) For rule 1(2) (application), substitute—

“(2) These Rules apply to proceedings before the Tax Chamber of the First-tier Tribunal.”

(3) In rule 1(3) (interpretation)—

(a) after the definition of “Complex case”, insert ““Compliance Officer” means the Compliance Officer for IPSA;”;

(b) for the definition of HMRC, substitute—

““HMRC” means Her Majesty’s Revenue and Customs but also includes—

(a) the Serious Organised Crime Agency when carrying out functions under section 317 of the Proceeds of Crime Act 2002^(b); and

(b) the Director of Border Revenue when carrying out functions under section 7 of the Borders, Citizenship and Immigration Act 2009^(c);”;

(c) after the definition of HMRC, insert—

““IPSA” means the Independent Parliamentary Standards Authority;

“MP expenses case” means an appeal under the Parliamentary Standards Act 2009^(d);

(d) for the definition of “respondent”, substitute—

““respondent” means—

(a) in a case other than an MP expenses case—

(i) HMRC, where HMRC is not an appellant;

(ii) in proceedings brought by HMRC alone, a person against whom the proceedings are brought or to whom the proceedings relate;

(b) in a MP expenses case, the Compliance Officer; and

(c) in any case, a person substituted or added as a respondent under rule 9 (substitution and addition of parties);”.

(4) In rule 10(1) (orders for costs)—

(a) omit the “or” at the end of sub-paragraph (b);

^(a) S.I. 2009/273, as amended by S.I. 2010/43.

^(b) 2002 c. 29.

^(c) 2009 c. 11

^(d) 2009 c. 13. Section 6A was inserted by section 31(5) of the Constitutional Reform and Governance Act 2010 (c 25).

- (b) insert “or” at the end of sub-paragraph (c);
 - (c) after sub-paragraph (c), insert—
 - “(d) in a MP expenses case, if—
 - (i) the case has been allocated as a Complex case under rule 23 (allocation of cases to categories); and
 - (ii) the appellant has not sent or delivered a written request to the Tribunal, within 28 days of receiving notice that the case had been allocated as a Complex case, that the proceedings be excluded from potential liability for costs or expenses under this sub-paragraph.”.
- (5) In rule 20 (starting appeal proceedings)—
- (a) for paragraph (1), substitute—

“(1) A person making or notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal.”;
 - (b) for paragraph (4) substitute—

“(4) If the notice of appeal is provided after the end of any period specified in an enactment referred to in paragraph (1) but the enactment provides that an appeal may be made or notified after that period with the permission of the Tribunal—

 - (a) the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided in time; and
 - (b) unless the Tribunal gives such permission, the Tribunal must not admit the appeal.”.
- (6) For rule 23(1) (allocation of cases to categories), substitute—
- “(1) When the Tribunal receives a notice of appeal, application notice or notice of reference, the Tribunal must give a direction—
- (a) in an MP expenses case, allocating the case to one of the categories set out in paragraph (2)(c) or (d); and
 - (b) in any other case, allocating the case to one of the categories set out in paragraph (2).”.
- (7) For rule 25(1) (respondent’s statement of case) substitute—
- “(1) A respondent must send or deliver a statement of case to the Tribunal, the appellant and any other respondent so that it is received—
- (a) in a Default Paper case, within 42 days after the Tribunal sent the notice of appeal or a copy of the application notice or notice of reference;
 - (b) in an MP expenses case, within 28 days after the Tribunal sent the notice of appeal; or
 - (c) in a Standard or Complex case other than an MP expenses case, within 60 days after the Tribunal sent the notice of appeal or a copy of the application notice or notice of reference.”.
- (8) In rule 28 (transfer of complex cases to the Upper Tribunal)—
- (a) in paragraph (1)—
 - (i) after “refer a case” insert “or a preliminary issue”; and
 - (ii) after “request that the case” insert “or issue”; and
 - (b) for paragraph (2), substitute—

“(2) If a case or issue has been referred by the Tribunal under paragraph (1), the President of the Tax Chamber may, with the concurrence of the President of the Tax and Chancery Chamber of the Upper Tribunal, direct that the case or issue be transferred to and determined by the Upper Tribunal.”.

Amendment to the Tribunal Procedure (War Pensions and Armed Forces Compensation Chamber) Rules 2008

7.—(1) The Tribunal Procedure (War Pensions and Armed Forces Compensation Chamber) Rules 2008(a) are amended as follows.

(2) For rule 1(2) (application), substitute—

“(2) These Rules apply to proceedings before the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal.”.

(3) In rule 8(8) (striking out a party’s case) at the end, insert “and may summarily determine any or all issues against that respondent”.

(4) For rule 22 (lapse of cases) substitute—

“Lapse of cases

22.—(1) If the decision maker revises the decision challenged—

- (a) the appeal shall proceed, subject to paragraph (2), as if it had been brought in relation to the revised decision; and
- (b) the notice of the revised decision sent by the decision maker to the appellant must include a statement of the action that the appellant must take under paragraph (2) in order to prevent the appeal from lapsing.

(2) The appeal against the revised decision shall lapse if, within 42 days of the date on which the decision maker sends notice of the revised decision to the appellant, the appellant does not provide to the decision maker—

- (a) representations in writing in relation to the revised decision; or
- (b) a statement in writing that the appellant wishes the appeal to proceed but has no additional representations to make in relation to the revised decision.

(3) If the decision maker has already sent or delivered a response to the Tribunal under rule 23 (responses and replies), any document which must be provided under this rule (including notice of the revised decision) must also be provided by the decision maker to the Tribunal.”.

Amendment to the Tribunal Procedure (Upper Tribunal) Rules 2008

8.—(1) The Tribunal Procedure (Upper Tribunal) Rules 2008(b) are amended as follows.

(2) After rule 47 (review of a decision in proceedings under the Forfeiture Act 1982), insert—

“Power to treat an application as a different type of application”

48. The Tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other one of those things.”.

We make these Rules,

Paul Walker
Lesley Clare
Bronwyn McKenna
Michael Reed
Douglas J. May

(a) S.I. 2008/2686. There are no relevant amendments.

(b) S.I. 2008/2698. These Rules were also amended by S.I. 2010/747.

*Nicholas Warren
Mark Rowland*

I allow these Rules,
Signed by the authority of the Lord Chancellor

28th October 2010

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Tribunal Procedure Rules applied by the First-tier Tribunal and Upper Tribunal. The changes, apart from minor refinements to maintain the common style of the Rules, are as follows.

Rule 2 amends the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976) as to the circumstances in which the Gambling Commission may have to pay the costs of a successful appellant.

Rule 3 amends the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (S.I. 2008/2699). They add to the definition of “respondent” to identify the appropriate respondents in applications made under the National Health Service Act 2006 (c.41) and regulations made under that Act.

Rules 3(6) and 5(4) make minor amendments to the Schedules identifying time limits for certain proceedings in the Health, Education and Social Care Chamber and the Social Entitlement Chamber respectively.

Rule 6 amends the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 to reflect the addition of MP expenses cases to that Chamber. They make a number of additions and amendments to definitions to reflect this. Amendments to rules relating to costs, time limits and the allocation of cases have also been amended to reflect the addition of this jurisdiction. The amendment to rule 1(3) amends the definition of HMRC to reflect the functions of the recently established Director of Border Revenue. The amendment to rule 28, which deals with the transfer of cases to the Upper Tribunal, provides that a preliminary issue may be transferred to the Upper Tribunal.

Rule 7 amends the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 (S.I. 2008/2686) governing lapse of cases in that Chamber.

Rule 8 inserts a new rule 48 into the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698). The Tribunal can treat certain post decision applications (to correct, set aside or review a decision and applications for permission to appeal) as interchangeable.

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STATUTORY INSTRUMENTS

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The Tribunal Procedure (Amendment No. 3) Rules 2010

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