

**2009 No. 1976 (L. 20)**

**TRIBUNAL AND INQUIRIES**

**The Tribunal Procedure (First-tier Tribunal)  
(General Regulatory Chamber) Rules 2009**

*Made* - - - - - *16th July 2009*  
*Laid before Parliament* *21st July 2009*  
*Coming into force* - *1st September 2009*

**CONTENTS**

**PART 1**

**INTRODUCTION**

1. Citation, commencement, application and interpretation
2. Overriding objective and parties' obligation to co-operate with the tribunal
3. Alternative dispute resolution and arbitration.

**PART 2**

**GENERAL POWERS AND PROVISIONS**

4. Delegation to staff
5. Case management powers
6. Procedure for applying for and giving directions
7. Failure to comply with rules, practice directions or tribunal directions
8. Striking out a party's case
9. Addition, substitution and removal of parties
10. Orders for costs
11. Representatives
12. Calculating time
13. Sending and delivery of documents
14. Prevention of disclosure or publication of documents and information
15. Disclosure, evidence and submissions
16. Summoning or citation of witnesses and orders to answer questions or produce documents
17. Withdrawal
18. Lead cases
19. Transfer of charities cases to the Upper Tribunal
20. Procedure for applying for a stay of a decision pending an appeal.

PART 3

PROCEEDINGS BEFORE THE TRIBUNAL

CHAPTER 1

BEFORE THE HEARING - CASES OTHER THAN CHARITIES CASES

21. Application of this Chapter
22. The notice of appeal
23. The response
24. Appellant's reply.

CHAPTER 2

BEFORE THE HEARING - CHARITIES CASES

25. Application of this Chapter
26. The notice of appeal
27. The response
28. Appellant's reply
29. Secondary disclosure by the respondent
30. Provision of copy documents
31. Involvement of the Attorney General under section 2D of the Charities Act 1993.

CHAPTER 3

HEARINGS

32. Decision with or without a hearing
33. Entitlement to attend and take part in a hearing
34. Notice of hearings
35. Public and private hearings
36. Hearings in a party's absence.

CHAPTER 4

DECISIONS

37. Consent orders
38. Decisions.

PART 4

CORRECTING, SETTING ASIDE, REVIEWING AND APPEALING TRIBUNAL DECISIONS

39. Interpretation
40. Clerical mistakes and accidental slips or omissions
41. Setting aside a decision which disposes of proceedings
42. Application for permission to appeal
43. Tribunal's consideration of application for permission to appeal
44. Review of a decision
45. Power to treat an application as a different type of application.

After consulting in accordance with paragraph 28(1) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007<sup>(a)</sup>, the Tribunal Procedure Committee has made the following Rules in exercise of the power conferred by sections 9(3), 22 and 29(3) and (4) of, and Schedule 5 to, that Act.

The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

**PART 1**  
**INTRODUCTION**

**Citation, commencement, application and interpretation**

**1.**—(1) These Rules may be cited as the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and come into force on 1st September 2009.

▶<sup>1</sup>(2) These Rules apply to proceedings before the General Regulatory Chamber of the First-tier Tribunal.◀

<sup>1</sup>Rule 1(2) substituted by rule 2(2) of S.I. 2010/2653 as from 29.11.10.

(3) In these Rules—

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“appellant” means a person who—

- (a) commences Tribunal proceedings, whether by making an appeal, an application, a claim, a complaint, a reference or otherwise; or
- (b) is added or substituted as an appellant under rule 9 (addition, substitution and removal of parties);

“charities case” means an appeal or application in respect of a decision, order or direction of the Charity Commission, or a reference under Schedule 1D of the Charities Act 1993;

“document” means anything in which information is recorded in any form, and an obligation under these Rules or any practice direction or direction to provide or allow access to a document or a copy of a document for any purpose means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

▶<sup>2</sup>◀

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“notice of appeal” means a document which starts proceedings;

“party” means—

- (a) a person who is an appellant or a respondent;
- (b) if the proceedings have been concluded, a person who was an appellant or a respondent when the Tribunal finally disposed of all issues in the proceedings;

“practice direction” means a direction given under section 23 of the 2007 Act;

“respondent” means—

- (a) in proceedings appealing against or challenging a decision, direction or order, the person who made the decision, direction or order appealed against or challenged;
- (b) a person against whom an appellant otherwise brings proceedings; or
- (c) a person added or substituted as a respondent under rule 9 (addition, substitution and removal of parties);

<sup>2</sup>Defn. of “General Regulatory Chamber” omitted by rule 2(2) of S.I. 2011/651 as from 1.4.11.

---

(a) 2007 c. 15.

“transport case” means proceedings under the Road Traffic Act 1988(a), the Road Traffic Offenders Act 1988(b), the Greater London Authority Act 1999(c), the Postal Services Act 2000(d), the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007(e) and the European Communities (Recognition of Professional Qualifications) Regulations 2007(f);

“Tribunal” means the First-tier Tribunal.

### **Overriding objective and parties’ obligation to co-operate with the tribunal**

2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.

### **Alternative dispute resolution and arbitration**

3.—(1) The Tribunal should seek, where appropriate—

- (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and
- (b) if the parties wish, and provided that it is compatible with the overriding objective, to facilitate the use of the procedure.

(2) Part 1 of the Arbitration Act 1996(g) does not apply to proceedings before the Tribunal.

---

(a) 1988 c. 52.

(b) 1988 c. 53.

(c) 1999 c. 29.

(d) 2000 c. 26.

(e) S.I. 2007/605.

(f) S.I. 2007/2781.

(g) 1996 c. 23.

PART 2  
GENERAL POWERS AND PROVISIONS

**Delegation to staff**

4.—(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date that the Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge.

**Case management powers**

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment containing a time limit;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether under rule 18 or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;
- (j) stay (or, in Scotland, sist) proceedings;
- (k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
  - (i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal of an application for permission to appeal against, and any appeal or review of, that decision.

**Procedure for applying for and giving directions**

6.—(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made—

- (a) by sending or delivering a written application to the Tribunal; or
- (b) orally during the course of a hearing.

(3) An application for a direction must include the reason for making that application.

(4) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction.

(5) If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

**Failure to comply with rules, practice directions or tribunal directions**

7.—(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 8 (striking out a party's case);
- (d) exercising its power under paragraph (3); or
- (e) barring or restricting a party's participation in the proceedings.

(3) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the 2007 Act in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—

- (a) to attend at any place for the purpose of giving evidence;
- (b) otherwise to make themselves available to give evidence;
- (c) to swear an oath in connection with the giving of evidence;
- (d) to give evidence as a witness;
- (e) to produce a document; or
- (f) to facilitate the inspection of a document or any other thing (including any premises).

**Striking out a party's case**

8.—(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by the appellant to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

- (a) does not have jurisdiction in relation to the proceedings or that part of them; and
- (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

- (3) The Tribunal may strike out the whole or a part of the proceedings if—
- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
  - (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
  - (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings, or part of them, have been struck out under paragraph (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.

- (7) This rule applies to a respondent as it applies to an appellant except that—
- (a) a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and
  - (b) a reference to an application for the reinstatement of proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

#### **Addition, substitution and removal of parties**

**9.—**(1) The Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent.

(2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) Any person who is not a party may apply to the Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to proceedings by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

▶<sup>1</sup>(5) An application by a person to be added as a party to a reference under Schedule 1D of the Charities Act 1993(a) must be made within 42 days of the date on which the Tribunal publishes details of the reference in accordance with rule 26(4).◀

<sup>1</sup>Rule 9(5) inserted by rule 2(2) of S.I. 2012/500 as from 6.4.12.

#### **Orders for costs**

**10.—**(1) ▶<sup>2</sup>Subject to paragraph (1A)◀ the Tribunal may make an order in respect of costs (or, in Scotland, expenses) only—

- (a) under section 29(4) of the 2007 Act (wasted costs) ▶<sup>3</sup>and costs incurred in applying for such costs◀;
- (b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings; or
- (c) where the Charity Commission ▶<sup>2</sup>the Gambling Commission◀ ▶<sup>4</sup>or the Information Commissioner◀ is the respondent and a decision, direction or ▶<sup>2</sup>order of the Commission or the Commissioner◀ is the subject of the proceedings, if the Tribunal considers that the decision, direction or order was unreasonable.

<sup>2</sup>Words inserted & substituted in rule 10(1) & (c) by rule 2(3)(i)-(iii) of S.I. 2010/2653 as from 29.11.10.

<sup>3</sup>Words inserted in rule 10(1)(a) by rule 3 of S.I. 2013/477 as from 1.4.13.

<sup>4</sup>Words inserted in rule 10(1)(c) by rule 18 of S.I. 2010/43 as from 18.1.10.

(a) 1993 c. 10. Schedule 1D was inserted by the Charities Act 2006 (c. 50).

**Rules 10-11**

<sup>1</sup>Para. (1A) & words in para. (5) inserted by rule 2(3)(b) & (c) of S.I. 2010/2653 as from 29.11.10.

►<sup>1</sup>(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.◀

(2) The Tribunal may make an order under paragraph (1) on an application or on its own initiative.

(3) A person making an application for an order under this rule must—

- (a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and
- (b) send or deliver a schedule of the costs or expenses claimed with the application.

(4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal ►<sup>2</sup>sends—

- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
- (b) notice under rule 17(5) that a withdrawal which ends the proceedings has taken effect◀.

(5) The Tribunal may not make an order under paragraph (1) ►<sup>1</sup>or (1A)◀ against a person (“the paying person”) without first—

- (a) giving that person an opportunity to make representations; and
- (b) if the paying person is an individual, considering that person’s financial means.

(6) The amount of costs or expenses to be paid under an order under paragraph (1) may be ascertained by—

- (a) summary assessment by the Tribunal;
- (b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses (“the receiving person”); or
- (c) assessment of the whole or a specified part of the costs or expenses►<sup>2</sup>, including the costs or expenses of the assessment,◀ incurred by the receiving person, if not agreed.

(7) Following an order under paragraph (6)(c) a party may apply—

- (a) in England and Wales, to the county court for a detailed assessment of costs in accordance with the Civil Procedure Rules 1998(b) on the standard basis or, if specified in the order, on the indemnity basis;
- (b) in Scotland, to the Auditor of the Court of Session for the taxation of the expenses according to the fees payable in the Court of Session; or
- (c) in Northern Ireland, to the county court for the costs to be taxed.

►<sup>2</sup>(8) Upon making an order for the assessment of costs, the Tribunal may order an amount to be paid on account before the costs or expenses are assessed.◀

<sup>2</sup>Words substituted in rule 10(4) & rule 10(8) & words in 10(6)(c) inserted by rules 4-6 of S.I. 2013/477 as from 1.4.13.

**Representatives**

**11.—**(1) A party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party must send or deliver to the Tribunal and to each other party written notice of the representative’s name and address.

(3) Anything permitted or required to be done by or provided to a party under these Rules, a practice direction or a direction may be done by or provided to the representative of that party except—

- (a) signing a witness statement; or
- (b) sending or delivering a notice under paragraph (2), if the representative is not ►<sup>3</sup>a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of

<sup>3</sup>Words substituted in rule 11(3)(b) by rule 19 of S.I. 2010/43 as from 18.1.10.

(a) S.I. 2010/42.

(b) S.I. 1998/3132.

a right of audience or the conduct of litigation within the meaning of that Act, an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland.

- (4) A person who receives due notice of the appointment of a representative—
- (a) must provide to the representative any document which is required to be sent to the represented party, and need not provide that document to the represented party; and
  - (b) may assume that the representative is and remains authorised until receiving written notification to the contrary from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a party under paragraph (5).

### **Calculating time**

**12.—**(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a).

### **Sending and delivery of documents**

**13.—**(1) Any document to be provided to the Tribunal under these Rules, a practice direction or a direction must be—

- (a) sent by prepaid post or by document exchange, or delivered by hand to the address specified for the proceedings;
- (b) sent by fax to the number specified for the proceedings; or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(3) If a party informs the Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

### **Prevention of disclosure or publication of documents and information**

**14.—**(1) The Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

---

(a) 1971 c. 80.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be provided to the second party; and
- (b) provide to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not be disclosed either directly or indirectly to any other person without the Tribunal’s consent.

(6) The Tribunal may give a direction that certain documents or information must or may be disclosed to the Tribunal on the basis that the Tribunal will not disclose such documents or information to other persons, or specified other persons.

(7) A party making an application for a direction under paragraph (6) may withhold the relevant documents or information from other parties until the Tribunal has granted or refused the application.

(8) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send notice that a party has made an application for a direction under paragraph (6) to each other party.

(9) In a case involving matters relating to national security, the Tribunal must ensure that information is not disclosed contrary to the interests of national security.

(10) The Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of an order made under paragraph (1), a direction given under paragraph (2) or (6) or the duty imposed by paragraph (9).

#### **Disclosure, evidence and submissions**

**15.**—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Tribunal may give directions as to—

- (a) the exchange between parties of lists of documents which are relevant to the appeal, or relevant to particular issues, and the inspection of such documents;
- (b) the provision by parties of statements of agreed matters;
- (c) issues on which it requires evidence or submissions;
- (d) the nature of the evidence or submissions it requires;
- (e) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;

- (f) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (g) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
  - (i) orally at a hearing; or
  - (ii) by written submissions or witness statement; and
- (h) the time at which any evidence or submissions are to be provided.

(2) The Tribunal may—

- (a) admit evidence whether or not—
  - (i) the evidence would be admissible in a civil trial in <sup>1</sup>the United Kingdom<sup>4</sup>; or
  - (ii) the evidence was available to a previous decision maker; or
- (b) exclude evidence that would otherwise be admissible where—
  - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
  - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
  - (iii) it would otherwise be unfair to admit the evidence.

<sup>1</sup>Words in rules 15(2)(a)(i) & 17(1) substituted & inserted by rules 20 & 21 of S.I. 2010/43 as from 18.1.10.

(3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

#### **Summoning or citation of witnesses and orders to answer questions or produce documents**

**16.—**(1) On the application of a party or on its own initiative, the Tribunal may—

- (a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation; or
- (b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) A summons or citation under paragraph (1)(a) must—

- (a) give the person required to attend 14 days' notice of the hearing or such shorter period as the Tribunal may direct; and
- (b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.

(3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.

(4) A summons, citation or order under this rule must—

- (a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons, citation or order, if they have not had an opportunity to object to it; and
- (b) state the consequences of failure to comply with the summons, citation or order.

#### **Withdrawal**

**17.—**(1) Subject to paragraph (2) <sup>1</sup>, and, in the case of a withdrawal of a reference from an ethical standards officer, to the provisions of regulation 5 of the Case Tribunals (England) Regulations 2008(a)<sup>4</sup>, a party may give notice of the withdrawal of its case, or any part of it—

---

(a) S.I. 2008/2938.

**Rules 17-18A**

<sup>1</sup>Words in rule 17(1)(a) omitted & substituted in rule 17(5) by rule 7 of S.I. 2013/477 as from 1.4.13.

- (a) <sup>1</sup> by sending or delivering to the Tribunal a written notice of withdrawal; or
- (b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.

(3) A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Tribunal within 28 days after—

- (a) the date on which the Tribunal received the notice under paragraph (1)(a); or
- (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

(5) The Tribunal must notify each party in writing <sup>1</sup> that a withdrawal has taken effect <sup>1</sup> under this rule.

**Lead cases**

**18.**—(1) This rule applies if—

- (a) two or more cases have been started before the Tribunal;
- (b) in each such case the Tribunal has not made a decision disposing of the proceedings; and
- (c) the cases give rise to common or related issues of fact or law.

(2) The Tribunal may give a direction—

- (a) specifying one or more cases falling under paragraph (1) as a lead case or lead cases; and
- (b) staying (or, in Scotland, sisting) the other cases falling under paragraph (1) (“the related cases”).

(3) When the Tribunal makes a decision in respect of the common or related issues—

- (a) the Tribunal must send a copy of that decision to each party in each of the related cases; and
- (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) Within 28 days after the date on which the Tribunal sent a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related case.

(5) The Tribunal must give directions in respect of cases which are stayed <sup>2</sup> (or, in Scotland, sisted) <sup>1</sup> under paragraph (2)(b), providing for the disposal of or further directions in those cases.

(6) If the lead case or cases lapse or are withdrawn before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—

- (a) whether another case or other cases are to be specified as a lead case or lead cases; and
- (b) whether any direction affecting the related cases should be set aside or amended.

**<sup>2</sup>Entry directions**

**18A.**—(1) This rule applies to an appeal against a decision of, or notice issued by, the Information Commissioner.

<sup>2</sup>Words in rule 18(5) substituted and rule 18A inserted by rules 22 & 23 of S.I. 2010/43 as from 18.1.10.

(2) The Tribunal may give a direction (“an entry direction”) requiring the occupier of any premises (“the occupier”), including a party, to permit entry to specified persons in order to allow such persons to—

- (a) inspect, examine, operate or test relevant equipment;
- (b) inspect, examine or test relevant materials.

(3) In paragraph (2)—

“relevant equipment” means equipment on the premises used or intended to be used in connection with the processing of personal data, or the storage, recording or deletion of other information; and

“relevant materials” means any documents and other materials on the premises connected with the processing of personal data, or the storage, recording or deletion of other information.

(4) A direction under paragraph (2) may not require a person to permit the inspection, examination or testing of any document or other materials which a person could not be compelled to produce in the trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.

(5) A direction under paragraph (2) must specify the date and time at which the entry is to take place.

(6) The Tribunal must send a copy of the direction to the occupier so that it is received at least 7 days before the date specified for the entry.◀

#### **Transfer of ▶<sup>1</sup>◀ cases to the Upper Tribunal**

**19.**—(1) This rule applies to charities cases ▶<sup>1</sup>and proceedings under the Data Protection Act 1998 and the Freedom of Information Act 2000 (including those Acts as applied and modified by the Privacy and Electronic Communications (EC Directive) Regulations 2003(a) and the Environmental Information Regulations 2004).◀

▶<sup>1</sup>(1A) On receiving a notice of appeal in an appeal under section 28 of the Data Protection Act 1998 or section 60 of the Freedom of Information Act 2000 (including that section as applied and modified by regulation 18 of the Environmental Information Regulations 2004) (appeals in relation to national security certificates) the Tribunal must transfer the case to the Upper Tribunal without taking further action in relation to the appeal.◀

(2) ▶<sup>1</sup>In any other case◀ the Tribunal may refer a case or a preliminary issue to the President of the General Regulatory Chamber ▶<sup>2</sup>of the First-tier Tribunal◀ with a request that the case or issue be considered for transfer to the Upper Tribunal.

(3) If a case or issue has been referred by the Tribunal under paragraph (2), the President of the General Regulatory Chamber may, with the concurrence of the President of the appropriate Chamber of the Upper Tribunal, direct that the case or issue be transferred to and determined by the Upper Tribunal.

#### **▶<sup>3</sup>Power to stay or sist decision pending an appeal to, or decision by, the Tribunal**

**19A.**—(1) The Tribunal may suspend the effect of a decision of the Gambling Commission (whether or not the decision has already taken effect) while an appeal against that decision—

- (a) could be brought within the time required by these Rules; or
- (b) has been brought and has not yet been finally determined or withdrawn.

(2) In an appeal against a decision of the Immigration Services Commissioner, the Tribunal may direct that while the appeal is being dealt with the decision appealed against shall have—

- (a) no effect; or
- (b) only such limited effect as is specified in the direction.

<sup>1</sup>Words in heading to rule 19 omitted, words in paras. (1) & (2) and para. (1A) inserted by rule 24(a)-(c) of S.I. 2010/43 as from 18.1.10.

<sup>2</sup>Words inserted in rule 19(2) by rule 2(3) of S.I. 2011/651 as from 1.4.11.

<sup>3</sup>Rule 19A inserted by rule 25 of S.I. 2010/43 as from 18.1.10.

---

(a) S.I. 2003/2426.

## Rules 19A-21

(3) If the Tribunal makes a direction under paragraph (2), the Tribunal must consider any application by the Immigration Services Commissioner for the cancellation or variation of the direction.

(4) The Tribunal may vary or cancel a direction made under paragraph 9(3) of Schedule 5 to the Immigration and Asylum Act 1999 (interim directions pending the decision of the Tribunal).◀

**Procedure for applying for a stay of a decision pending an appeal**

<sup>2</sup>Words added to rule 20(1)-(4) by rule 26(a)-(d) of S.I. 2010/43 as from 18.1.10.

**20.**—(1) This rule applies where ▶<sup>1</sup>rule 19A or◀ another enactment provides in any terms for the Tribunal to stay ▶<sup>1</sup>(or, in Scotland, sist)◀ or suspend, or to lift a stay ▶<sup>1</sup>(or, in Scotland, sist)◀ or suspension of, a decision which is or may be the subject of an appeal to the Tribunal (“the substantive decision”) pending such appeal, including an enactment which provides for—

- (a) an appeal to the Tribunal against a decision not to stay ▶<sup>1</sup>(or, in Scotland, sist)◀ the effect of the substantive decision pending an appeal; or
- (b) an application to the Tribunal for an order that the substantive decision shall take effect immediately.

(2) A person who wishes the Tribunal to decide whether the substantive decision should be stayed ▶<sup>1</sup>(or, in Scotland, sisted)◀ or suspended must make a written application to the Tribunal which must include—

- (a) the name and address of the person making the application;
- (b) the name and address of any representative of that person;
- (c) the address to which documents for that person should be sent or delivered;
- (d) the name and address of any person who will be a respondent to the appeal;
- (e) details of the substantive decision and any decision as to when that decision is to take effect, and copies of any written record of, or reasons for, those decisions; and
- (f) the grounds on which the person making the application relies.

(3) In the case of an appeal against a refusal by the registrar to stay ▶<sup>1</sup>(or, in Scotland, sist)◀ a decision to refuse an application for registration as a driving instructor, an application under paragraph (2) must be sent or delivered to the Tribunal so that it is received within 10 days after the date on which the registrar sent notice of the refusal to the person making the application.

(4) If the Tribunal grants a stay ▶<sup>1</sup>(or, in Scotland, sist)◀ or suspension following an application under this rule—

- (a) the Tribunal may give directions as to the conduct of the appeal of the substantive decision; and
- (b) the Tribunal may, where appropriate, grant the stay ▶<sup>1</sup>(or, in Scotland, sist)◀ or suspension subject to conditions.

(5) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any decision made under this rule to each party.

## PART 3

## PROCEEDINGS BEFORE THE TRIBUNAL

## CHAPTER 1

## BEFORE THE HEARING - CASES OTHER THAN CHARITIES CASES

**Application of this Chapter**

**21.** This Chapter applies to cases other than charities cases.

**The notice of appeal**

**22.—(1)** An appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal so that it is received—

- (a) ►<sup>1</sup>if a time for providing the notice of appeal is set out in paragraph (6), within that time;◄
- (b) otherwise, within 28 days of the date on which notice of the act or decision to which the proceedings relate was sent to the appellant.

<sup>1</sup>Rule 22(1)(a) substituted and words inserted in para. (5) and para. (6) added by rule 27(a)-(c) of S.I. 2010/43 as from 18.1.10.

►<sup>2</sup>(1A) The time limit in paragraph (1)(b) does not apply to—

- (a) the laying before the Tribunal by the Immigration Services Commissioner of a disciplinary charge under paragraph 9(1)(e) of Schedule 5 to the Immigration and Asylum Act 1999(a);
- (b) an application by the Immigration Services Commissioner for suspension of a person's registration under paragraph 4B(1) of Schedule 6 to that Act(b).◄

<sup>2</sup>Rule 22(1A) substituted by rule 18 of S.I. 2014/2128 as from 20.10.14.

(2) The notice of appeal must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) the name and address of any respondent;
- (e) details of the decision or act, or failure to decide or act, to which the proceedings relate;
- (f) the result the appellant is seeking;
- (g) the grounds on which the appellant relies; and
- (h) any further information or documents required by a practice direction.

(3) If the proceedings challenge a decision, the appellant must provide with the notice of appeal a copy of any written record of that decision, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

►<sup>3</sup>(3A) If the appeal is brought under section 141 or 337(1) of the Gambling Act 2005(c) the appellant must provide with the notice of appeal any fee payable to the Tribunal.◄

<sup>3</sup>Para. (3A) inserted by rule 2(3)(b) of S.I. 2010/2653 as from 29.11.10.

(4) If the appellant provides the notice of appeal to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time)—

- (a) the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time; and
- (b) unless the Tribunal extends time for the notice of appeal under rule 5(3)(a) (power to extend time) the Tribunal must not admit the notice of appeal.

(5) When the Tribunal receives the notice of appeal ►<sup>1</sup>, subject to rule 19(2) (national security appeals),◄ it must send a copy of the notice of appeal and any accompanying documents to each respondent.

►<sup>1</sup>(6) The time for providing the notice of appeal referred to in paragraph (1)(a) is as follows—

- (a) in an appeal against a refusal or revocation of a licence to give driving instruction, within 14 days of the date on which notice of the decision was sent to the appellant;

---

(a) Rule 22(1A) was added by S.I. 2012/500.

(b) 1999 c. 33. Schedule 5, para. 9 has been amended by Sch. 7, paras. 2(2), 4(2) & 7(3)-(5) of the Immigration Act 2004 (c. 22).

(c) 2005 c. 19.

## Rules 22-23

- (b) in an appeal under section 28(4) of the Data Protection Act 1998 or section 60(1) of the Freedom of Information Act 2000 (including that subsection as applied and modified by regulation 18 of the Environmental Information Regulations 2004), at any time during the currency of the disputed certificate to which it relates;
- (c) in an appeal under section 28(6) of the Data Protection Act 1998 or section 60(4) of the Freedom of Information Act 2000 (including that subsection as applied and modified by regulation 18 of the Environmental Information Regulations 2004), within 28 days of the date on which the claim was made that the certificate applies to the information or data in question;
- (d) in the case of a reference from an ethical standards officer made in accordance with sections 63(3)(b) or section 65(4) of the Local Government Act 2000(a), within 28 days of the completion of the report made in accordance with sections 63(3)(a) and 65(1) of that Act; or
- (e) in the case of a reference from a Standards Committee under the Local Government Act 2000 within 28 days of the meeting which decided to make such a reference. ◀

**The response**

**23.**—(1) Each respondent must send or deliver to the Tribunal a response to the notice of appeal so that it is received—

- (a) in a transport case, within 14 days after the date on which the respondent received the notice of appeal;
- (b) otherwise, within 28 days after the date on which the respondent received the notice of appeal.

(2) The response must include—

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's representative (if any);
- (c) an address where documents for the respondent may be sent or delivered;
- (d) any further information or documents required by a practice direction or direction; and
- (e) whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(3) The response must include a statement as to whether the respondent opposes the appellant's case and, if so, any grounds for such opposition which are not contained in another document provided with the response.

(4) If the proceedings challenge a decision, the respondent must provide with the response a copy of any written record of that decision, and any statement of reasons for that decision, that the appellant did not provide with the notice of appeal and the respondent has or can reasonably obtain.

(5) If the respondent provides the response to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(6) In a transport case, the Tribunal must send a copy of the response and any accompanying documents to each other party.

(7) In any other case, the respondent must send or deliver a copy of the response and any accompanying documents to each other party at the same time as it provides the response to the Tribunal.

### **Appellant's reply**

**24.—**(1) The appellant may make a written submission and provide further documents in reply to a response.

(2) Any reply and accompanying documents provided under paragraph (1) must be sent or delivered to the Tribunal within 14 days after the date on which the respondent or the Tribunal sent the response to the appellant.

(3) If the appellant provides the reply to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 5(3)(a) (power to extend time) the reply must include a request for an extension of time and the reason why the reply was not provided in time.

(4) In a transport case, the Tribunal must send a copy of any reply and any accompanying documents to each other party.

(5) In any other case, the appellant must send or deliver a copy of any reply and any accompanying documents to each other party at the same time as it provides the reply to the Tribunal.

## **CHAPTER 2**

### **BEFORE THE HEARING - CHARITIES CASES**

#### **Application of this Chapter**

**25.** This Chapter applies to charities cases.

#### **The notice of appeal**

**26.—**(1) An appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal so that it is received—

- (a) if the appellant was the subject of the decision to which the proceedings relate, within 42 days of the date on which notice of the decision was sent to the appellant; or
- (b) if the appellant was not the subject of the decision to which the proceedings relate, within 42 days of the date on which the decision was published.

(2) The notice of appeal must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) the basis on which the appellant has standing to start proceedings before the Tribunal;
- (e) the name and address of any respondent;
- (f) details of the decision or act, or failure to decide or act, to which the proceedings relate;
- (g) the result the appellant is seeking;

- (h) the grounds on which the appellant relies; and
- (i) any further information or documents required by a practice direction.

(3) If the proceedings challenge a decision, the appellant must provide with the notice of appeal a copy of any written record of that decision, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

(4) If the notice of appeal relates to a reference under Schedule 1D of the Charities Act 1993—

- (a) if the appellant is the Charity Commission, it must send evidence of the Attorney General's consent to the reference with the notice of appeal; and
- (b) on receiving the notice of appeal the Tribunal must publish details of the reference and information as to how a person likely to be affected by the reference can apply to be added as a party to the proceedings.

(5) If the appellant provides the notice of appeal to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time)—

- (a) the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time; and
- (b) unless the Tribunal extends time for the notice of appeal under rule 5(3)(a) (power to extend time) the Tribunal must not admit the notice of appeal.

(6) The appellant must send or deliver a copy of the notice of appeal and any accompanying documents to the respondent at the same time as it provides the notice of appeal to the Tribunal.

### The response

**27.—**(1) The respondent must send or deliver to the Tribunal a response to the notice of appeal so that it is received within 28 days after the date on which the respondent received the notice of appeal.

(2) The response must include—

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's representative (if any);
- (c) an address where documents for the respondent may be sent or delivered;
- (d) any further information or documents required by a practice direction or direction; and
- (e) whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(3) The response must include a statement as to whether the respondent opposes the appellant's case and, if so, any grounds for such opposition which are not contained in another document provided with the response.

(4) If the proceedings challenge a decision, the respondent must provide with the response a copy of any written record of that decision, and any statement of reasons for that decision, that the appellant did not provide with the notice of appeal and the respondent has or can reasonably obtain.

(5) If the proceedings challenge a decision, the respondent must provide with the response a list of—

- (a) the documents relied upon by the respondent when reaching the decision; and
- (b) any other documents which the respondent considers could adversely affect its case or support the appellant's case.

(6) If the respondent provides the response to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(7) The respondent must send or deliver a copy of the response and any accompanying documents to each other party at the same time as it provides the response to the Tribunal.

#### **Appellant's reply**

**28.—**(1) The appellant may send or deliver to the Tribunal a reply to the respondent's response and any additional documents relied upon by the appellant.

(2) Any reply must be sent or delivered to the Tribunal so that it is received within 28 days after the date on which the respondent sent the response to the appellant.

(3) If the appellant provides a reply to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 5(3)(a) (power to extend time) the reply must include a request for an extension of time and the reason why the reply was not provided in time.

(4) The appellant may provide with the reply a list of documents on which the appellant relies in support of the appeal or application, and which—

- (a) the appellant did not provide with the notice of appeal; and
- (b) the respondent did not include in any list of documents provided under rule 27(5).

(5) The appellant must send or deliver a copy of any reply and any accompanying documents to each respondent at the same time as it provides the reply to the Tribunal.

#### **Secondary disclosure by the respondent**

**29.—**(1) If the appellant provides a reply under rule 28, the respondent must send or deliver to the Tribunal, so that it is received within 14 days after the date on which the respondent received the appellant's reply, a list of any further material which—

- (a) might reasonably be expected to assist that appellant's case as disclosed by that appellant's reply; and
- (b) was not included in a list of documents provided by the respondent with the response.

(2) If the respondent provides the list to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(3) The respondent must send or deliver a copy of the list to each other party at the same time as it provides the response to the Tribunal.

#### **Provision of copy documents**

**30.—**(1) If a party has provided a list of documents under rule 27, 28 or 29, that party must within 7 days of receiving a request from another party—

- (a) provide that other party with a copy of any document specified in the list; or
- (b) make such document available to that party to read or copy.

#### **Involvement of the Attorney General under section 2D of the Charities Act 1993**

**31.—**(1) If the Tribunal directs that all the necessary papers in proceedings be sent to the Attorney General under section 2D(2) and (3) of the Charities Act 1993, the Attorney General must notify the Tribunal whether the Attorney General intends to intervene in the proceedings within 28 days of receiving the papers.

(2) The Attorney General may at any time notify the Tribunal that the Attorney General intends to intervene in the proceedings on the Attorney General's own initiative.

(3) If the Tribunal requests that the Attorney General argue a question in relation to the proceedings under section 2D(4)(b) of the Charities Act 1993, the Tribunal must provide to the Attorney General—

- (a) a statement of the question;
- (b) an account of the proceedings to date;
- (c) the reasons the Tribunal considers it necessary to have the question fully argued; and
- (d) copies of the documents the Tribunal considers necessary to enable the Attorney General to decide whether it is appropriate to argue the question.

(4) If the Attorney General notifies the Tribunal that the Attorney General intends to intervene in, or to argue a question in relation to, proceedings under section 2D(4) of the Charities Act 1993, the Tribunal must hold a case management hearing.

### CHAPTER 3

#### HEARINGS

##### **Decision with or without a hearing**

**32.**—(1) Subject to paragraphs (2) and (3), the Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to the matter being determined without a hearing; and
- (b) the Tribunal is satisfied that it can properly determine the issues without a hearing.

(2) This rule does not apply to a decision under Part 4 (correcting, setting aside, reviewing and appealing Tribunal decisions).

(3) The Tribunal may in any event dispose of proceedings without a hearing under rule 8 (striking out a party's case).

(4) Notwithstanding any other provision in these Rules, if the Tribunal holds a hearing to consider a preliminary issue, and following the disposal of that preliminary issue no further issue remains to be determined, the Tribunal may dispose of the proceedings without holding any further hearing.

##### **Entitlement to attend and take part in a hearing**

**33.**—(1) Subject to rule 35(4) (exclusion of a person from a hearing) each party is entitled to—

- (a) attend any hearing that is held; and
- (b) send written representations to the Tribunal and each other party prior to the hearing.

(2) The Tribunal may give a direction permitting or requesting any person to—

- (a) attend and take part in a hearing to such extent as the Tribunal considers proper; or
- (b) make written submissions in relation to a particular issue.

##### **Notice of hearings**

**34.**—(1) The Tribunal must give each person entitled, permitted or requested to attend a hearing (including any adjourned or postponed hearing) reasonable notice of the time and place of the hearing and any changes to the time and place of the hearing.

(2) The period of notice under paragraph (1) in relation to a hearing to consider disposal of the proceedings must be at least 14 days, except that the Tribunal may give shorter notice—

- (a) with the parties' consent; or
- (b) in urgent or exceptional circumstances.

### **Public and private hearings**

**35.—**(1) Subject to the following paragraphs, all hearings must be held in public.

(2) The Tribunal may give a direction that a hearing, or part of it, is to be held in private.

(3) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

(4) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person who the Tribunal considers should be excluded in order to give effect to the requirement at rule 14(10) (prevention of disclosure or publication of documents and information); or
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person.

(5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

### **Hearings in a party's absence**

**36.** If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

## **CHAPTER 4**

## **DECISIONS**

### **Consent orders**

**37.—**(1) The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

### **Decisions**

**38.—**(1) The Tribunal may give a decision orally at a hearing.

(2) Subject to rule 14(10) (prevention of disclosure or publication of documents and information), the Tribunal must provide to each party as soon as reasonably practicable after making <sup>1</sup>a decision (other than a decision under Part 4) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e) <sup>1</sup>—

- (a) a decision notice stating the Tribunal's decision;
- (b) written reasons for the decision; and

<sup>1</sup>Words substituted in rule 38(2) by rule 8 of S.I. 2013/477 as from 1.4.13.

- (c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(3) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

#### PART 4

### CORRECTING, SETTING ASIDE, REVIEWING AND APPEALING TRIBUNAL DECISIONS

#### Interpretation

**39.** In this Part—

“appeal” means the exercise of a right of appeal on a point of law under section 11 of the 2007 Act ►<sup>1</sup>or by any other enactment◄; and

“review” means the review of a decision by the Tribunal under section 9 of the 2007 Act.

<sup>1</sup>Words inserted in rule 39 by rule 28 of S.I. 2010/43 as from 18.1.10.

#### Clerical mistakes and accidental slips or omissions

**40.** The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by—

- (a) sending notification of the amended decision or direction, or a copy of the amended document, to each party; and
- (b) making any necessary amendment to any information published in relation to the decision, direction or document.

#### Setting aside a decision which disposes of proceedings

**41.—(1)** The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if—

- (a) the Tribunal considers that it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party’s representative;
- (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
- (c) a party, or a party’s representative, was not present at a hearing related to the proceedings; or
- (d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 28 days after the date on which the Tribunal sent notice of the decision to the party.

#### Application for permission to appeal

**42.—(1)** A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal.

(2) An application under paragraph (1) must be sent or delivered to the Tribunal so that it is received no later than 28 days after the latest of the dates that the Tribunal sends to the person making the application—

►<sup>2</sup>(za) the relevant decision notice;◄

- (a) written reasons for the decision; ►<sup>2</sup>(a), if the decision disposes of—
  - (i) all issues in the proceedings; or
  - (ii) subject to paragraph (2A), a preliminary issue dealt with following a

<sup>2</sup>Rule 42(2)(za) and words in 42(2)(a) inserted by rule 9(a)-(b) of S.I. 2013/477 as from 1.4.13.

direction under rule 5(3)(e);◀

- (b) notification of amended reasons for, or correction of, the decision following a review; or
- (c) notification that an application for the decision to be set aside has been unsuccessful.

▶<sup>1</sup>(2A) The Tribunal may direct that the 28 days within which a party may send or deliver to the Tribunal an application for permission to appeal against a decision that disposes of a preliminary issue shall run from the date of the decision that disposes of all issues in the proceedings.◀

<sup>1</sup>Rule 42(2A) inserted by rule 9(c) of S.I. 2013/477 as from 1.4.13.

(3) The date in paragraph (2)(c) applies only if the application for the decision to be set aside was made within the time stipulated in rule 41 (setting aside a decision which disposes of proceedings) or any extension of that time granted by the Tribunal.

(4) If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 5(3)(a) (power to extend time)–

- (a) the application must include a request for an extension of time and the reason why the application was not provided in time; and
- (b) unless the Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application.

(5) An application under paragraph (1) must–

- (a) identify the decision of the Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state the result the party making the application is seeking.

#### **Tribunal's consideration of application for permission to appeal**

**43.—**(1) On receiving an application for permission to appeal the Tribunal must first consider, taking into account the overriding objective in rule 2, whether to review the decision in accordance with rule 44 (review of a decision).

(2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Tribunal refuses permission to appeal it must send with the record of its decision–

- (a) a statement of its reasons for such refusal; and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.

(5) The Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission.

#### **Review of a decision**

**44.—**(1) The Tribunal may only undertake a review of a decision–

- (a) pursuant to rule 43(1) (review on an application for permission to appeal); and
- (b) if it is satisfied that there was an error of law in the decision.

(2) The Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.

(3) If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (2) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

**Rule 45**

**Power to treat an application as a different type of application**

**45.** 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.

*Patrick Elias  
Phillip Brook Smith Q.C.  
Lesley Clare  
Carolyn Kirby  
Peter Lane  
Douglas J. May  
Bronwyn McKenna  
M.J. Reed  
Mark Rowland  
Nicholas Warren*

I allow these Rules

Signed by authority of the Lord Chancellor

16th July 2009

*Bridget Prentice*  
Parliamentary Under Secretary of State  
Ministry of Justice

**EXPLANATORY NOTE**

*(This note is not part of the Rules)*

Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) establishes a new tribunal structure comprising the First-tier Tribunal and the Upper Tribunal. Appeal functions of existing tribunals are being transferred to this structure and assigned to chambers within the new tribunals. These Rules govern the practice and procedure to be followed in the First-tier Tribunal in proceedings which have been allocated to the General Regulatory Chamber by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008(a).

Part 1 contains provisions for interpreting and applying the Rules and sets out the overriding objective of the Rules.

Part 2 contains general powers and provisions including the Tribunal's case management powers, the giving of directions, the power to strike out a party's case, the service of documents and rules about representatives, evidence, submissions, witnesses and costs.

Part 3 contains provisions relating to starting proceedings and procedure up to and including the making and notification of Tribunal decisions.

Part 4 deals with correcting, setting aside, reviewing and appealing Tribunal decisions.

---

(a) S.I. 2008/2684. Article 5B was inserted by the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment No. 3) Order 2009 (S.I. 2009/1590).

