

**2010 No. 43 (L. 1)**

**TRIBUNALS AND INQUIRIES**

**The Tribunal Procedure (Amendment) Rules 2010**

*Made* - - - - *10th January 2010*

*Laid before Parliament* *12th January 2010*

*Coming into force* - - *18th January 2010*

After consulting in accordance with paragraph 28(1) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007(a), the Tribunal Procedure Committee has made the following Rules in exercise of the powers conferred by sections 9(3), 22, and 29(3) and (4) of, and Schedule 5 to, that Act, paragraph 7(2)(d) of Schedule 6 to the Data Protection Act 1998(b), section 87(3B) and (3C) of the Immigration and Asylum Act 1999(c) and section 146(1)(b) of the Gambling Act 2005(d).

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

**Citation and commencement**

1. These Rules may be cited as the Tribunal Procedure (Amendment) Rules 2010 and come into force on 18 January 2010.

**Amendments to the Lands Tribunal Rules 1996**

2. In rule 52 of the Lands Tribunal Rules 1996(e) (taxation of costs)—

(a) for the title substitute “Costs”; and

(b) before paragraph (2) insert—

“(1A) In an appeal against the decision of a leasehold valuation tribunal—

(a) the Tribunal may not make an order in respect of costs against a party to the appeal unless the Tribunal considers that the party ordered to pay costs or its representative has behaved unreasonably in bringing, defending or conducting the proceedings; and

(b) the Tribunal may not order a party to pay more than £500 in respect of costs.”

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(a) 2007 c.15.

(b) 1998 c.29.

(c) 1999 c.33. Section 87(3B) and (3C) were inserted by paragraph 35 of Schedule 2 to the Transfer of Tribunal Functions Order (S.I. 2010/22).

(d) 2005 c.19. Section 146 was amended by paragraph 99 of Schedule 2 to the Transfer of Tribunal Functions Order 2009 (S.I. 2010/22).

(e) S.I. 1996/1022.

### **Amendments to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008**

3. In rule 1(3) of the Tribunal Procedure (First-tier Tribunal)(Social Entitlement Chamber) Rules 2008(a)(citation, commencement, application and interpretation) in the definition of “legal representative”, for “an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990” substitute “a person who, for the purposes of the Legal Services Act 2007(b), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation within the meaning of that Act”.

### **Amendments to the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008**

4. In rule 1(3) of the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008(c) (citation, commencement, application and interpretation) in the definition of “legal representative”, for “an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990” substitute “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 a right of audience or the conduct of litigation within the meaning of that Act”.

### **Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008**

5. The Tribunal Procedure (Upper Tribunal) Rules 2008(d) are amended as follows.

6. In rule 1(3) (interpretation)—

(a) after the definition of “mental health case” insert—

““national security certificate appeal” means an appeal under section 28 of the Data Protection Act 1998 or section 60 of the Freedom of Information Act 2000(e) (including that section as applied and modified by regulation 18 of the Environmental Information Regulations 2004(f));”;

(b) after the definition of “practice direction” insert—

““relevant minister” means the Minister or designated person responsible for the signing of the certificate to which a national security certificate appeal relates;”.

7. In rule 10 (orders for costs)—

(a) in rule 10(1) after “tribunal except—” insert as sub-paragraph (aa) “in a national security certificate appeal, to the extent permitted by paragraph (1A);”;

(b) after rule 10(1) insert—

“(1A) In a national security certificate appeal—

(a) the Upper Tribunal may make an order in respect of costs or expenses in the circumstances described at paragraph (3)(c) and (d);

(b) if the appeal is against a certificate, the Upper Tribunal may make an order in respect of costs or expenses against the relevant Minister and in favour of the appellant if the Upper Tribunal allows the appeal and quashes the certificate to any extent or the Minister withdraws the certificate;

(c) if the appeal is against the application of a certificate, the Upper Tribunal may make an order in respect of costs or expenses—

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(a) S.I. 2008/2685.

(b) 2007 c.29.

(c) S.I. 2008/2686.

(d) S.I. 2008//2698.

(e) 2000 c.36.

(f) S.I. 2004/3391.

- (i) against the appellant and in favour of any other party if the Upper Tribunal dismisses the appeal to any extent; or
- (ii) in favour of the appellant and against any other party if the Upper Tribunal allows the appeal to any extent.”

**8.** In rule 11(9) (representatives) for “an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990” substitute “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 a right of audience or the conduct of litigation within the meaning of that Act”.

**9.** In rule 24(2) (response to the notice of appeal) for “(1)” substitute “(1A)”.

**10.** In rule 26A(a) (cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent) after paragraph (3) insert—

“(4) Schedule 2 makes further provision for national security certificate appeals transferred to the Upper Tribunal.”

**11.** In rule 35 (entitlement to attend a hearing)—

- (a) before “Subject” insert “—(1)”; and
- (b) after paragraph (1) insert—

“(2) In a national security certificate appeal the relevant Minister is entitled to attend any hearing.”

**12.** In rule 37 (public and private hearings) after paragraph (2) insert—

“(2A) In a national security certificate appeal, the Upper Tribunal must have regard to its duty under rule 14(10) (no disclosure of information contrary to the interests of national security) when considering whether to give a direction that a hearing, or part of it, is to be held in private.”.

**13.** In rule 40 (decisions) after paragraph (4) insert—

“(5) In a national security certificate appeal, when the Upper Tribunal provides a notice or reasons to the parties under this rule, it must also provide the notice or reasons to the relevant Minister and the Information Commissioner, if they are not parties.”

**14.** After Schedule 1 (procedure after the notice of appeal in appeals against decisions of traffic commissioners) insert—

## “SCHEDULE 2

Rule 26A(4)

### Additional procedure in national security certificate cases

- 1.** This Schedule applies only to national security certificate appeals.
- 2.** Following the transfer of the appeal from the First-tier Tribunal, the Upper Tribunal must provide a copy of the notice of appeal to the respondent, the relevant Minister and the Information Commissioner.
- 3.** The relevant Minister must send or deliver to the Upper Tribunal a copy of the certificate to which the appeal relates, and a response to the notice of appeal, not later than 42 days after the date on which the relevant Minister received a copy of the notice of appeal.

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(a) Rule 26A was inserted by S.I. 2009/274.

**4.** 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), the relevant Minister's response must state whether the relevant Minister intends to oppose the appeal and, if so set out—

- (a) a summary of the circumstances relating to the issue of the certificate;
- (b) the reason for the issue of the certificate;
- (c) the grounds on which the relevant Minister relies in opposing the appeal; and
- (d) a statement of the evidence on which the relevant Minister relies in support of those grounds.

**5.** 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), the relevant Minister's response must state whether the relevant Minister intends to make representations in relation to the appeal and, if so set out—

- (a) the extent to which the relevant Minister intends to support or oppose the appeal;
- (b) the grounds on which the relevant Minister relies in supporting or opposing the appeal; and
- (c) a statement of the evidence on which the relevant Minister relies in support of those grounds.

**6.** The Upper Tribunal must—

- (a) subject to paragraph 11, provide the relevant Minister's response and any other response to the appellant, the Information Commissioner and any respondent; and
- (b) send a copy of any other response to the relevant Minister.

**7.** On grounds of the need to ensure that information is not disclosed contrary to the interests of national security, the relevant Minister may—

- (a) object to the disclosure of the relevant Minister's response to the appellant, the Information Commissioner or any respondent, by sending a notice to the Upper Tribunal with the response; or
- (b) object to the disclosure of any other response to the Information Commissioner or any respondent, by sending a notice to the Upper Tribunal within 42 days of the date on which the relevant Minister received a copy of the response.

**8.** A notice under paragraph 7 must—

- (a) state the reason for the objection; and
- (b) in the case of a notice under paragraph 7(a) and to the extent that it is possible to do so, be accompanied by a version of the relevant Minister's response in a form that can be shown to the appellant, the Commissioner or, as the case may be, a respondent.

**9.** Before the Upper Tribunal gives a direction, issues a summons or citation, or produces or publishes a written record of, or reasons for, a decision—

- (a) the Upper Tribunal must notify the relevant Minister of the proposed action; and
- (b) if the relevant Minister considers that the proposal would cause information that is or would be exempt by virtue of a provision in Part 2 of the Freedom of Information Act 2000 to be disclosed, the relevant Minister may object to the proposal by sending a notice to the Upper Tribunal.

**10.** When deciding whether to uphold an objection made by the relevant Minister—

- (a) any hearing must take place in the absence of the parties;

- (b) if the Upper Tribunal is minded to overrule the relevant Minister’s objection, or to require the relevant Minister to provide a version of the relevant Minister’s response in a form other than one provided under paragraph 8(b) above, the Upper Tribunal must invite the relevant Minister to make representations; and
- (c) if the Upper Tribunal overrules an objection in relation to the disclosure of a response, the Tribunal must not disclose, or require the relevant Minister to disclose, any material the subject of the objection unless the relevant Minister relies upon that material in opposing the appeal.

11. Where the relevant Minister may object to the disclosure of a response or proposed action by the Upper Tribunal, the Upper Tribunal may not proceed with that disclosure or that proposed action unless—

- (a) the time for the relevant Minister to object has expired; and
- (b) the relevant Minister has not objected, or the Tribunal has overruled the relevant Minister’s objection and, in the case of the disclosure of a response, may proceed with the disclosure under paragraph 10(c).”

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

15. In rule 1(3) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008(a) (citation, commencement, application and interpretation) in the definition of “legal representative”, for “an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990” substitute “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 a right of audience or the conduct of litigation within the meaning of that Act”.

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

16. In rule 11(7) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009(b)(representatives) for “an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990” substitute “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 a right of audience or the conduct of litigation within the meaning of that Act”.

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

17. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(c) are amended as follows.

18. In rule 10(1)(c) (order for costs) after each reference to “Charity Commission” insert “or the Information Commissioner”.

19. In rule 11(3)(b) (representatives) for “an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990” substitute “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 a right of audience or the conduct of litigation within the meaning of that Act”.

20. In rule 15(2)(a)(i) (disclosure, evidence and submissions) for “England and Wales” substitute “the United Kingdom”.

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(a) S.I. 2008/2699.  
 (b) S.I. 2009/273.  
 (c) S.I. 2009/1976 (L. 20).

21. In rule 17(1) (withdrawal) after “paragraph (2)” insert “, 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)”.

22. In rule 18(5) (lead cases) for “or sisted” substitute “(or, in Scotland, sisted)”.

23. After rule 18 (lead cases) insert—

#### “Entry directions

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

(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.”

24. In rule 19 (transfer of charities cases to the Upper Tribunal)—

- (a) in the heading omit “charities”;
- (b) in paragraph (1) after “cases” insert “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(b) and the Environmental Information Regulations 2004)”;

(c) after paragraph (1) insert—

“(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.”; and

(d) at the beginning of paragraph (2) insert “In any other case,”.

25. After rule 19 insert—

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(a) S.I. 2008/2938.

(b) S.I. 2003/2426.

**“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.

(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).”

**26.** In rule 20 (procedure for applying for a stay of a decision pending an appeal)—

- (a) in paragraph (1)—
  - (i) after “where” insert “rule 19A or”; and
  - (ii) after each reference to “stay” insert “(or, in Scotland, sist)”;
- (b) in paragraph (2) after “stayed” insert “(or, in Scotland, sisted)”;
- (c) in paragraph (3) after “stay” insert “(or, in Scotland, sist)”; and
- (d) in paragraph (4) after each reference to “stay” insert “(or, in Scotland, sist)”.

**27.** In rule 22 (the notice of appeal)—

- (a) in sub-paragraph (1)(a) omit the wording and substitute “if a time for providing the notice of appeal is set out in paragraph (6), within that time”;
- (b) in paragraph (5) after the first reference to “appeal” insert “, subject to rule 19(2)(national security appeals),”; and
- (c) insert after paragraph (5)—

“(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;
- (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.”

28. In rule 39 (interpretation) after “section 11 of the 2007 Act” insert “or by any other enactment”.

*Carolyn Kirby*  
*Philip Brook-Smith QC*  
*Peter Lane*  
*Bronwyn McKenna*  
*Douglas May QC*  
*Mark Rowland*  
*Alison McKenna*

I allow these Rules  
Signed by authority of the Lord Chancellor

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

10th January 2010

#### **EXPLANATORY NOTE**

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

These Rules amend the Lands Tribunal Rules 1996, the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009.

Rule 2 of these Rules makes an amendment to the Lands Tribunal Rules 1996 to replace sections 175(6) and (7) of the Commonhold and Leasehold Reform Act 2002 which article 73 of the Transfer of Tribunal Functions Order 2009 omits.

Rules 6, 7, 9, 10, 11, 12, 13 and 14 of these Rules make amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 to reflect the transfer of functions under article 40 of the Transfer of Functions Order 2009 concerning national security from the Information Tribunal to the Upper Tribunal or First-tier Tribunal.

Rules 3, 4, 8, 15, 16 and 19 make consequential amendments to the definition of legal representative arising from the Legal Services Act 2007.

Rules 18, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of these Rules also make amendments to the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 to effect the transfer of functions under the Transfer of Functions Order 2009. Rule 25 introduces a power to stay a decision pending, or an appeal to, the Upper Tribunal. Rule 27 makes provision for times for providing the notice of appeal.

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£5.50