
STATUTORY INSTRUMENTS

2011 No. 2343 (L. 18)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011

Made - - - - *22nd September*
2011

Laid before Parliament *26th September 2011*

Coming into force - - *17th October 2011*

The Tribunal Procedure Committee has made the following Rules in exercise of the powers conferred by sections 18(11), 19(5) and 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007⁽¹⁾, and section 4 of the Forfeiture Act 1982⁽²⁾, having consulted in accordance with paragraph 28(1) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

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 (Upper Tribunal) (Amendment) Rules 2011 and come into force on 17th October 2011.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

2. The Tribunal Procedure (Upper Tribunal) Rules 2008⁽³⁾ are amended as follows.

3. In the table of contents—

(a) after the entry for rule 28 insert—

“**28A.** Special provisions for fresh claim proceedings”;

(b) after the entry for rule 33 insert —

“**33A.** Amendments and additional grounds resulting in transfer of proceedings to the High Court in England and Wales ”; and

(1) 2007 c.15.

(2) 1982 c.34.

(3) S.I.2008/2698 as amended by S.I. 2009/274, S.I. 2009/1975, S.I. 2010/43, S.I.2010/44, S.I.2010/747, S.I.2010/2653 and S.I.2011/651.

- (c) in the entry for rule 47 for “Review of” substitute “Setting aside”.
4. In rule 1(3) (interpretation) after the definition of “financial services case” insert—
- ““fresh claim proceedings” means judicial review proceedings which call into question a decision of the Secretary of State not to treat submissions as an asylum claim or a human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002⁽⁴⁾ wholly or partly on the basis that they are not significantly different from material that has previously been considered, and which have been begun in or transferred to the Upper Tribunal pursuant to a direction made by the Lord Chief Justice of England and Wales for the purposes of section 18(6) of the 2007 Act ⁽⁵⁾”.
5. For rule 8(1) (striking out of party’s case) substitute—
- “(1) The proceedings, or the appropriate part of them, will automatically be struck out—
- (a) if the appellant or applicant has failed to comply with a direction that stated that failure by the appellant or applicant to comply with the direction would lead to the striking out of the proceedings or part of them; or
- (b) when a fee has not been paid upon the grant of permission in fresh claim proceedings as required.”
6. In rule 11 (representatives)—
- (a) at the beginning of paragraph (1) insert “Subject to paragraph (5A),”;
- (b) at the beginning of paragraph (5) insert “Subject to paragraph (5B),”;
- (c) after paragraph (5) insert—
- “(5A) In fresh claim proceedings, a party may appoint as a representative only a person authorised under the Legal Services Act 2007⁽⁶⁾ to undertake the conduct of litigation in the High Court.
- (5B) At a hearing of fresh claim proceedings, rights of audience before the Upper Tribunal are restricted to persons authorised to exercise those rights in the High Court under the Legal Services Act 2007.”.
7. At the beginning of rule 28(8) (applications for permission to bring judicial review proceedings) insert “Except where rule 28A(2)(a) (special provisions for fresh claim proceedings) applies,”.
8. After rule 28 (applications for permission to bring judicial review proceedings) insert—

“Special provisions for fresh claim proceedings

28A.—(1) The Upper Tribunal must not accept an application for permission to bring fresh claim proceedings unless it is either accompanied by any required fee or the Upper Tribunal accepts an undertaking that the fee will be paid.

(2) Within 9 days of making an application referred to in paragraph (1), an applicant must provide—

- (a) a copy of the application and any accompanying documents to each person named in the application as a respondent or an interested party; and
- (b) the Upper Tribunal with a written statement of when and how this was done.”

(4) 2002 c.41. An “asylum claim” and a “human rights claim” are defined in section 113 of the 2002 Act. Amendments to those definitions made by section 62(1) of the Immigration, Asylum and Nationality Act 2006 have not been commenced.

(5) The Lord Chief Justice’s direction for the time being in force can be found at <http://www.judiciary.gov.uk/publications-and-reports/practice-directions/tribunals/tribunals-pd>

(6) 2007 c.29.

9. In rule 29 (acknowledgement of service)—
- (a) in paragraph (1)—
 - (i) after “who is sent” insert “or provided with”;
 - (ii) after “(applications for permission to bring judicial review proceedings)” insert “or rule 28A(2)(a) (special provisions for fresh claim proceedings)”;
 - (iii) for “send or deliver” substitute “provide”;
 - (iv) after “the date on which the Upper Tribunal sent” insert “, or in fresh claim proceedings the applicant provided,”;
 - (b) after paragraph (2) insert—

“(2A) In fresh claim proceedings, a person who provides an acknowledgement of service under paragraph (1) must also provide a copy to—

 - (a) the applicant; and
 - (b) any other person named in the application under rule 28(4)(a) or acknowledgement of service under paragraph (2)(c)

no later than the time specified in paragraph (1).”;
 - (c) in paragraph (3)—
 - (i) for “sent” substitute “provided with”;
 - (ii) after “rule 28(8)” insert “or 28A(2)(a)”;
 - (iii) after “service” insert “to the Upper Tribunal”.
10. In rule 30(5) (decision on permission or summary dismissal, and reconsideration of permission or summary dismissal at a hearing) after “14 days” insert “, or in fresh claim proceedings 9 days.”.
11. After rule 33 (right to make representations) insert—

“Amendments and additional grounds resulting in transfer of proceedings to the High Court in England and Wales

33A.—(1) This rule applies only to judicial review proceedings arising under the law of England and Wales.

- (2) In relation to such proceedings—
 - (a) the powers of the Upper Tribunal to permit or require amendments under rule 5(3) (c) extend to amendments which would, once in place, give rise to an obligation or power to transfer the proceedings to the High Court in England and Wales under section 18(3) of the 2007 Act or paragraph (3);
 - (b) except with the permission of the Upper Tribunal, additional grounds may not be advanced, whether by an applicant or otherwise, if they would give rise to an obligation or power to transfer the proceedings to the High Court in England and Wales under section 18(3) of the 2007 Act or paragraph (3).
- (3) Where the High Court in England and Wales has transferred judicial review proceedings to the Upper Tribunal under any power or duty and subsequently the proceedings are amended or any party advances additional grounds—
 - (a) if the proceedings in their present form could not have been transferred to the Upper Tribunal under the relevant power or duty had they been in that form at the time of the transfer, the Upper Tribunal must transfer the proceedings back to the High Court in England and Wales;

- (b) subject to sub-paragraph (a), where the proceedings were transferred to the Upper Tribunal under section 31A(3) of the Senior Courts Act 1981(7)(power to transfer judicial review proceedings to the Upper Tribunal), the Upper Tribunal may transfer proceedings back to the High Court in England and Wales if it appears just and convenient to do so.”.

12. For rule 46(1) (review of decision), substitute—

“(1) The Upper Tribunal may only undertake a review of a decision pursuant to rule 45(1) (review on an application for permission to appeal).”

13. In rule 47 (review of a decision in proceedings under the Forfeiture Act 1982)—

- (a) in the heading of that rule, for “Review of” substitute “Setting aside”;
- (b) in sub-paragraph (1)(a), for “reviewed” substitute “set aside and re-made under this rule”;
- (c) in sub-paragraph (1)(b), for “reviewed” substitute “set aside and re-made under this rule”;
- (d) in paragraph (2), for “review the decision” substitute “set aside the decision, either in whole or in part, and re-make it”;
- (e) omit sub-paragraph (2)(a);
- (f) for paragraphs (3) to (5), substitute—
- “(3) Rule 26(2) to (4), Parts 5 and 6 and this Part apply to a reference under this rule as they apply to a reference under rule 26(1).”

We make these Rules

Paul Walker
Mark Rowland
Michael Reed
Philip Brook Smith, QC
Simon Ennals

I allow these Rules
Signed by authority of the Lord Chancellor

22nd September 2011

McNally
Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Tribunal Procedure (Upper Tribunal) Rules 2008 (“the Procedure Rules”). First, a number of changes are made so the Upper Tribunal can deal with “fresh claim proceedings” in a similar way to the High Court in England and Wales. “Fresh claim proceedings” are those specified in a direction made by the Lord Chief Justice under section 18(6) of Tribunals, Courts and Enforcement Act 2007. Applications in such cases can be made directly to the Upper Tribunal or transferred from the High Court in England and Wales when the conditions in section 31A(2A) of the Senior Courts Act 1981 are met.

The Lord Chief Justice’s Direction can be found at:

<http://www.judiciary.gov.uk/publications-and-reports/practice-directions/tribunals/tribunals-pd> .

Rule 5 amends the strike out provisions in the Procedure Rules so that if an applicant fails to pay the required fee when permission has been granted, his application can be struck out.

Rule 6 amends the Procedure Rules to restrict representation in fresh claim judicial reviews before the Upper Tribunal to persons with the right to represent parties in the High Court.

Rule 8 provides that the Upper Tribunal must not accept an application for permission to bring fresh claim judicial review proceedings unless it is accompanied by a fee or an undertaking to pay a fee. It also provides for copies of the application to be served on all parties and details to be sent to the Upper Tribunal of when and how this was done.

Rule 9 provides that a recipient of an application for fresh claim judicial review proceedings must acknowledge service if they wish to take part in proceedings.

Rule 10 amends the time limit for making an application to the Upper Tribunal in fresh claim judicial review proceedings where the Upper Tribunal has determined an application for permission without a hearing, from 14 days to 9 days, to bring it into line with that applicable in the High Court.

Secondly, changes are made in rule 11 in respect of judicial reviews in England and Wales, to identify circumstances giving rise to an obligation, or a power, to transfer the application to the High Court in England and Wales, and to clarify that the Upper Tribunal may permit or require amendments, or permit reliance upon additional grounds, which would have this effect.

Thirdly, rules 12 and 13 make minor changes to correct an error in the rules governing forfeiture cases in the Upper Tribunal, to ensure that an appeal is available if the Upper Tribunal refuses to look again at its own decision in the circumstances set out in rule 47.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.