

2012 No. 500 (L. 1)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment) Rules 2012

Made - - - - *22nd February 2012*

Laid before Parliament *6th March 2012*

Coming into force - - *6th April 2012*

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 section 22 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.

Citation and commencement

- 1.—(1) These Rules may be cited as the Tribunal Procedure (Amendment) Rules 2012.
- (2) These Rules come into force on 6th April 2012.

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

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

- (2) In rule 9 (addition, substitution and removal of parties), after paragraph (4), insert—

“(5) An application by a person to be added as a party to a reference under Schedule 1D of the Charities Act 1993(c) must be made within 42 days of the date on which the Tribunal publishes details of the reference in accordance with rule 26(4).”
- (3) In rule 22 (the notice of appeal)(d), after paragraph (1), insert—

“(1A) The time limit in paragraph (1)(b) does not apply to 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(e).”

(a) 2007 c.15.
(b) S.I 2009/1976. Amendments have been made by S.I 2010/43, S.I 2010/2653 and S.I 2011/651.
(c) 1993 c.10. Schedule 1D was inserted by the Charities Act 2006 (c.50).
(d) Rule 22(1) was amended by S.I 2010/43.
(e) 1999 c.33. Paragraph 9 of Schedule 5 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19) and the Transfer of Tribunal Functions Order 2010 (S.I 2010/22).

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

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

(2) In rule 32 (procedure in mental health cases)—

- (a) in paragraph (2)(a), for “name and address” substitute “name, address and date of birth”;
- (b) in paragraph (2)(c)—
 - (i) before “a community patient” insert “or”; and
 - (ii) omit “or subject to after-care under supervision”;
- (c) after paragraph (2), insert—

“(2A) A reference must, if possible, include—

- (a) the name and address of the person or body making the reference;
- (b) the name, address and date of birth of the patient;
- (c) the name and address of any representative of the patient;
- (d) the provision under which the patient is detained, liable to be detained, subject to guardianship or a community patient (as the case may be);
- (e) whether the person or body making the reference has appointed a representative or intends to do so, and the name and address of any representative appointed;
- (f) if the reference is made by the Secretary of State, the name and address of the responsible authority in relation to the patient, or, in the case of a conditionally discharged patient, the name and address of the responsible clinician and any social supervisor in relation to the patient.”;

(d) for paragraphs (4) to (7), substitute—

“(4) If the patient is a conditionally discharged patient—

- (a) upon being notified by the Tribunal of an application, the Secretary of State must immediately provide to the Tribunal the names and addresses of the responsible clinician and any social supervisor in relation to the patient; and
- (b) upon being notified by the Tribunal of an application or reference, the responsible clinician and any social supervisor named by the Secretary of State under this rule must send or deliver the documents specified in the relevant practice direction to the Tribunal so that they are received by the Tribunal as soon as practicable and in any event within 3 weeks after the notification.

(5) In proceedings under section 66(1)(a) of the Mental Health Act 1983(b) (application in respect of an admission for assessment), on the earlier of receipt of the copy of the application or a request from the Tribunal, the responsible authority must immediately send or deliver to the Tribunal a copy of—

- (a) the application for admission; and
- (b) the written medical recommendations on which that application was founded;

and must as soon as practicable send or deliver to the Tribunal the documents specified in the relevant practice direction.

(6) If neither paragraph (4) nor (5) applies, the responsible authority must send or deliver the documents specified in the relevant practice direction to the Tribunal so that they are received by the Tribunal as soon as practicable and in any event within 3 weeks after the responsible authority made the reference or received a copy of the application or reference.

(a) S.I 2008/2699. Amendments have been made by S.I 2009/1975, S.I 2010/43, S.I 2010/2653 and S.I 2011/651.

(b) 1983 c.20. Section 66 was amended by the Mental Health (Patients in the Community) Act 1995 (c.52), the Mental Health Act 2007 (c.12), and the Transfer of Tribunal Functions Order 2008 (S.I 2008/2833).

(7) If the patient is a restricted patient, a person or body providing a document to the Tribunal in accordance with paragraph (4)(b) or (6) must also send or deliver a copy of the document to the Secretary of State.

(7A) The Secretary of State must send the information specified in paragraph (7B) and any observations the Secretary of State wishes to make to the Tribunal as soon as practicable and in any event—

- (a) in proceedings under section 75(1) of the Mental Health Act 1983(a) (reference concerning a conditionally discharged restricted patient who has been recalled to hospital), within 2 weeks after the Secretary of State received the documents sent or delivered in accordance with paragraph (7);
- (b) otherwise, within 3 weeks after the Secretary of State received the documents sent or delivered in accordance with paragraph (7).

(7B) The information specified in this paragraph is—

- (a) a summary of the offence or alleged offence that resulted in the patient being detained in hospital subject to a restriction order or, in the case of a patient subject to a restriction or limitation direction, that resulted in the patient being remanded in custody, kept in custody or sentenced to imprisonment;
- (b) a record of any other criminal convictions or findings recorded against the patient;
- (c) full details of the history of the patient's liability to detention under the Mental Health Act 1983 since the restrictions were imposed;
- (d) any further information in the Secretary of State's possession that the Secretary of State considers relevant to the proceedings.;

(e) in paragraph (8), after "Mental Health Act 1983" insert "(removal of alien patients)".

(3) In rule 35 (no disposal of proceedings without a hearing)—

(a) for the title of that rule, substitute "Restrictions on disposal of proceedings without a hearing";

(b) for paragraph (1), substitute—

"(1) Subject to the following paragraphs, the Tribunal must hold a hearing before making a decision which disposes of proceedings."

(c) after paragraph (2), insert—

"(3) The Tribunal may make a decision on a reference under section 68 of the Mental Health Act 1983 (duty of managers of hospitals to refer cases to tribunal) without a hearing if the patient is a community patient aged 18 or over and either—

- (a) the patient has stated in writing that the patient does not wish to attend or be represented at a hearing of the reference and the Tribunal is satisfied that the patient has the capacity to decide whether or not to make that decision; or
- (b) the patient's representative has stated in writing that the patient does not wish to attend or be represented at a hearing of the reference.

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

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

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

(a) Section 75 was amended by the Crime (Sentences) Act 1997 (c.43), the Mental Health Act 2007 and the Transfer of Tribunal Functions Order 2008.

(b) S.I 2008/2685. Amendments have been made by S.I 2009/274, S.I 2009/1975, S.I 2010/43, S.I 2010/2653 and S.I 2011/651.

- (2) In rule 23 (cases in which the notice of appeal is to be sent to the decision maker)(a)—
- (a) in paragraph (4), for “if the decision maker does not object” substitute “if neither the decision maker nor any other respondent objects”;
 - (b) in paragraph (7)(a), after “the decision maker” insert “or any other respondent”.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

- 5.—(1) The Tribunal Procedure (Upper Tribunal) Rules 2008(b) are amended as follows.
- (2) In rule 26A(c) (cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent)—
- (a) at the end of sub-paragraph (2)(a), omit “and”;
 - (b) after sub-paragraph (2)(a), insert—
 - “(aa) in a reference under Schedule 1D of the Charities Act 1993, the Upper Tribunal may give directions providing for an application to join the proceedings as a party and the time within which it may be made; and”.

Amendments to the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

- 6.—(1) The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010(d) are amended as follows.
- (2) In rule 24(4)(a)(iv) (notice of appeal), for “a valuation tribunal in Wales”, substitute “the Valuation Tribunal for Wales”.
- (3) In rule 28(7) (notice of reference), after sub-paragraph (c) insert—
- “(d) the date of issue of the certificate, where the reference is made under section 18(1) of the 1961 Act(e).”.

We make these Rules

Paul Walker
Philip Brook-Smith QC
Simon Cox
Douglas J May QC
Michael Reed
Mark Rowland

I allow these Rules
Signed by authority of the Lord Chancellor

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

22nd February 2012

(a) Rule 23 was amended by S.I 2009/1975.
(b) S.I 2008/2698. Amendments have been made 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, S.I 2011/651, and S.I 2011/2343.
(c) Rule 26A was inserted by S.I 2009/274.
(d) S.I 2010/2600.
(e) The “1961 Act” is the Land Compensation Act 1961 (c.33).

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Tribunal Procedure Rules applied by the First-tier Tribunal and Upper Tribunal.

Rule 2 amends the rules for the General Regulatory Chamber of the First-tier Tribunal. Rule 2(2) introduces a time limit of 42 days for applications to be joined as a party to references under Schedule 1D to the Charities Act 1993. Rule 2(3) disapplies the default 28-day time limit for starting proceedings in that Chamber to the laying of disciplinary charges by the Immigration Services Commissioner.

Rule 5 makes provision for charity references in the Upper Tribunal. The Upper Tribunal is given the express power to make directions about applications to join the proceedings, including directions about the time within which such applications may be made.

Rule 3 amends the rules for the Health, Education and Social Care Chamber of the First-tier Tribunal (“the HESC rules”). The changes to rule 32 of the HESC rules, relating to mental health cases, make provision for the content of references to the Tribunal (akin to the existing provisions for the content of applications), and amend the provisions requiring information to be provided to the Tribunal. In particular, the requirement to provide reports in relation to conditionally discharged patients is transferred from the Secretary of State to the responsible clinician and any social supervisor named by the Secretary of State, and the additional information to be supplied by the Secretary of State in such cases is specified. The changes to rule 35 of the HESC rules allow mental health cases to be struck out without a hearing where the Tribunal has no jurisdiction. They also allow the Tribunal to dispose of certain references without a hearing, under limited circumstances and where the patient has given consent or where a representative has given consent on their behalf.

Rule 4 amends the rules for the Social Entitlement Chamber of the First-tier Tribunal. It amends the procedure in cases with more than one respondent where the notice of appeal is sent to the decision maker. The effect of these amendments is that respondents other than the decision maker will now be able to object to late appeals as well.

Rule 6 is about the Upper Tribunal Lands Chamber; rule 6(2) reflects a change in the title of the valuation tribunal in Wales and rule 6(3) imposes a time limit for appeals about certificates of appropriate alternative development under the Land Compensation Act 1961, now directed to that Chamber by virtue of the Localism Act 2011(a).

A regulatory impact assessment has not been prepared for these Rules as no impact on the public, private or voluntary sectors is foreseen.

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(a) 2011 c.20.

STATUTORY INSTRUMENTS

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The Tribunal Procedure (Amendment) Rules 2012

£4.00

E2683 03/2012 122683T 19585

ISBN 978-0-11-152070-3



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