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## EXPLANATORY NOTE

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

These Rules (“the amending rules”) amend the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (S.I. 2010/2600) (“the Lands Chamber Rules”) which apply in the Lands Chamber of the Upper Tribunal.

Rule 4 of the amending rules substitutes a new Rule 10 (orders for costs) in the Lands Chamber Rules. The changes introduced by the substituted rule 10 and those made by amending rules 5 and 8 implement recommendations relevant to the Lands Chamber made in the Report of the Costs Review Group to the Senior President of Tribunals (<http://www.judiciary.gov.uk/publications-and-reports/reports/Tribunals/costs-in-tribunals-report-december-2011>).

The changes relate mainly to limiting the proceedings in which the Lands Chamber of the Upper Tribunal may award costs to be paid by the losing party to the successful party. Other changes are consequential upon the conferral of additional jurisdiction on the Upper Tribunal by the Transfer of Tribunal Functions Order 2013 (S.I. 2013/1036). The types of proceedings in relation to which the Lands Chamber’s power to award costs is maintained are—

- judicial review;
- compulsory purchase;
- injurious affection of land;
- discharge or modification of restrictive covenants affecting land;
- appeals from the Valuation Tribunal for England or the Valuation Tribunal for Wales.

The Rules continue to reflect the power conferred by section 29(2) of the 2007 Act to make an order regarding wasted costs, and rule 10(3)(a) specifies that an award of wasted costs may include the costs of seeking those wasted costs.

The Lands Chamber may order payment of the winning party’s costs in any type of proceedings if it considers that the losing party or its representative has behaved unreasonably in the Tribunal proceedings (rule 10(3)(b)).

In certain circumstances the Lands Chamber may give directions as to what costs it will subsequently order. If the parties consent, or if there is a disparity between the parties, the Tribunal may make a direction lifting the rule preventing the Tribunal from awarding costs incurred subsequent to the date of that direction (rule 10(4)).

In the types of proceedings referred to in rule 10(6), the Lands Chamber may direct that no award may be made in respect of costs incurred subsequent to the date of the direction (rule 10(7)). The Tribunal must also, in such proceedings, have regard to the size and nature of the matters in dispute (rule 10(8)).

Rule 10(10) makes clearer provision regarding the date from which the time limit for applying for costs runs after a case is withdrawn.

Rule 10(12)(c) specifies that a detailed assessment of costs may include the costs of that assessment.

Rule 10(13) enables the Lands Chamber to order an interim payment of costs on account before costs are assessed.

The Rules also include amendments consequential upon the conferral of new jurisdiction on both the First-tier Tribunal and the Upper Tribunal. Rule 7 of the amending rules inserts rule 44A into the Lands Chamber Rules. Where a case is transferred by direction under the Tribunal Procedure (First-

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tier Tribunal) (Property Chamber) Rules 2013, those Rules will continue to apply to the case when it is proceeding in the Upper Tribunal instead of the Lands Chamber Rules.

Rule 8 of the amending rules inserts a new rule 51A into the Lands Chamber Rules to clarify the power of the Lands Chamber to award interest on sums payable by virtue of a decision of the Tribunal, including sums awarded by way of costs. It applies the provisions governing interest which apply to courts.

Other changes to the Lands Chamber Rules reflect amendments previously made to the rules which apply in other chambers of the First-tier Tribunal and of the Upper Tribunal.

Rule 4 of the amending rules extends the power to withdraw a case to circumstances in which a case has been adjourned part heard.

Rule 9 of the amending rules introduces provision that preliminary issues are to be treated in the same way as decisions which dispose of all the issues in the proceedings, in relation to hearings, the provision of reasons and the rules on appeals.

Rule 10 of the amending rules makes transitional provision for cases which have started in the Lands Chamber before 1st July 2013 when the rules come into force.