

**2013 No. 1188 (L. 9)**

**TRIBUNALS AND INQUIRIES, ENGLAND AND WALES**

**The Tribunal Procedure (Amendment No. 3) Rules 2013**

*Made* - - - - 20th May 2013

*Laid before Parliament* 22nd May 2013

*Coming into force* - - 1st July 2013

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 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 that Schedule.

**Citation and commencement**

1. These Rules may be cited as the Tribunal Procedure (Amendment No. 3) Rules 2013 and come into force on 1st July 2013.

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

2. The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010(b) are amended as follows.

3. For rule 10 (orders for costs) substitute—

**“Orders for costs**

**10.**—(1) The Tribunal may make an order for costs on an application or on its own initiative.

(2) Any order under paragraph (1)—

- (a) may only be made in accordance with the conditions or in the circumstances referred to in paragraphs (3) to (6);
- (b) must, in a case to which section 4 of the 1961 Act(c) applies, be in accordance with the provisions of that section.

(3) The Tribunal may in any proceedings make an order for costs—

- (a) under section 29(4) of the 2007 Act (wasted costs) and for costs incurred in applying for an order for such costs;

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(a) 2007 c. 15

(b) S.I. 2010/2600, as amended by S.I. 2012/500.

(c) Section 4 of the Land Compensation Act 1961 (c. 33) was amended by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

- (b) if the Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings; or
  - (c) in the circumstances to which paragraph (14) refers.
- (4) Except in proceedings to which paragraph (5) or (6) apply, the Tribunal may—
- (a) with the consent of the parties, or
  - (b) where there is a disparity of interest or resources between the parties,
- direct that an order for costs may be made in the proceedings against one or more of the parties in respect of costs incurred following such a direction.
- (5) The Tribunal may make an order for costs in judicial review proceedings.
- (6) The Tribunal may make an order for costs in proceedings—
- (a) for compensation for compulsory purchase;
  - (b) for injurious affection of land;
  - (c) under section 84 of the Law of Property Act 1925<sup>(a)</sup> (discharge or modification of restrictive covenants affecting land);
  - (d) on an appeal from a decision of the Valuation Tribunal for England or the Valuation Tribunal for Wales.
- (7) Subject to paragraph (3), in proceedings to which paragraph (6) applies, the Tribunal may direct that no order for costs may be made against one or more specified parties in respect of costs subsequently incurred.
- (8) In proceedings to which paragraph (6) applies, the Tribunal must have regard to the size and nature of the matters in dispute.
- (9) A person making an application for an order for costs, or a direction regarding costs—
- (a) must send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made;
  - (b) must include in the application, where it is for a direction regarding costs, the person's reasons why the conditions or circumstances relevant to making such a direction under paragraph (4) or (7) apply; and
  - (c) may send or deliver with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (10) An application for an order for costs may be made at any time during the proceedings but may not be made later than 14 days after the date on which—
- (a) the Tribunal sends a decision notice recording the decision which finally disposes of all issues in the proceedings;
  - (b) the Tribunal sends notice under rule 20 (withdrawal) that a withdrawal which ends the proceedings has taken effect; or
  - (c) notice of withdrawal is sent to the Tribunal with the consent of all parties.
- (11) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (12) The amount of costs to be paid under an order under this rule may be determined 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 (the “receiving person”); or
  - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person—

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(a) 1925 c. 20

- (i) on the standard basis; or
  - (ii) on the indemnity basis, if so specified in the costs order, by the Tribunal or by the Senior Courts Costs Office or by a county court;
- and the Civil Procedure Rules 1998(a) shall apply, with necessary modifications, to that application and assessment as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(13) The Tribunal may order an amount to be paid on account before the costs are assessed.

(14) The Tribunal may order a party to pay to another party costs of an amount equal to the whole or part of any fee paid (which has not been remitted by the Lord Chancellor under the Upper Tribunal (Lands Chamber) Fees Order 2009(b)) in the proceedings by that other party that is not otherwise included in an award of costs.”

4. In rule 20 (withdrawal), in paragraph (1)(a), omit “at any time before a hearing to consider the final disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that final disposal),”.

5. In rule 30 (references by consent: application of the Arbitration Act 1996)—

- (a) omit sub-paragraph (f);
- (b) insert “and” after the semi-colon in sub-paragraph (g);
- (c) at the end of sub-paragraph (h) for “; and” substitute a full stop;
- (d) omit sub-paragraph (i).

6. For the heading to Part 8, substitute “Cases transferred to the Tribunal, including judicial review proceedings”.

7. Immediately before rule 45 (proceedings transferred to the Tribunal) insert—

**“Transfer from the First-tier Tribunal**

**44A.** Where a case is transferred by a direction made under rule 25 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013(c)—

- (a) subject to that direction and to any direction given under rule 45(b) of these Rules, the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 shall continue to apply, with necessary modifications, to the case; and
- (b) Part 2 of these Rules only applies to the extent provided for by a direction of the Tribunal.”

8. In Part 10, after rule 51 (decisions) insert—

**“Interest**

**51A.**—(1) Where the decision of the Tribunal provides for a sum to be payable, including a sum awarded in respect of costs of the proceedings before the Tribunal, the provisions listed in paragraph (2) apply, with necessary modifications, as if the proceedings in the Tribunal were proceedings in a court to which those provisions apply.

(2) The provisions to which paragraph (1) refers are—

- (a) section 35A of the Senior Courts Act 1981(d);

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(a) S.I. 1998/3132  
(b) S.I. 2009/1114  
(c) S.I. 2013/1169  
(d) 1981 c. 54. Section 35A was inserted by section 15(1) and Part 1 of Schedule 1 to the Administration of Justice Act 1982 (c. 53).

- (b) section 74 of the County Courts Act 1984(a);
- (c) section 17 of the Judgments Act 1838(b);
- (d) the County Courts (Interest on Judgment Debts) Order 1991(c).”

9. In rule 55 (application for permission to appeal)—

(a) for sub-paragraph (a) of paragraph (2), substitute—

“(za) the relevant decision notice;

(a) written reasons for the decision, if the decision disposes of—

(i) all issues in the proceedings; or

(ii) subject to paragraph (2A), a separate or preliminary issue dealt with following a direction under rule 5(3)(e);”

(b) after paragraph (2), insert—

“(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 separate or preliminary issue shall run from the date of the decision that disposes of all issues in the proceedings.”;

(c) in paragraph (3), for “rule 10(3)” substitute “rule 10(10)”.

#### **Transitional provision**

10. In proceedings which were started in the Lands Chamber of the Upper Tribunal before 1st July 2013, the Tribunal may give any direction to ensure that the proceedings are dealt with fairly and, in particular, may—

(a) apply any provision of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 which applied to the proceedings before 1st July 2013, and

(b) disapply any amendment made by these Rules.

We make these Rules,

*Brian F J Langstaff*  
*M J Reed*  
*Mark Rowland*  
*Simon Ennals*  
*Simon Cox*  
*Douglas J May QC*

20th May 2013

I allow these Rules,

*Helen Grant*  
 Parliamentary Under Secretary of State  
 Ministry of Justice

20th May 2013

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(a) 1984 c. 28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).  
 (b) 1838 c. 110. Section 17 was amended by the Civil Procedure (Modification of Enactments) Order 1998 (S.I. 1998/2940), the Statute Law Revision (No. 2) Act 1888 (c. 57), the Judgments Debts (Rates of Interest) Order 1993 (S.I. 1993/564) and Part 1 of Schedule 1 to the Civil Procedure Acts Repeals Act 1879 (c. 59).  
 (c) S.I. 1991/1184, as amended by S.I. 1996/2516.

## 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-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.

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STATUTORY INSTRUMENTS

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