

2013 No. 606 (L. 5)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment No. 2) Rules 2013

Made - - - - *13th March 2013*

Laid before Parliament *14th March 2013*

Coming into force - - *1st April 2013*

The Tribunal Procedure Committee has made the following Rules in exercise of the powers conferred by section 22 of and Schedule 5 to the Tribunals, Courts and Enforcement Act 2007^(a) and section 133(3) of the Financial Services and Markets Act 2000^(b), 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 that Schedule to that Act.

Citation and commencement

1. These Rules may be cited as the Tribunal Procedure (Amendment No. 2) Rules 2013 and come into force on 1st April 2013.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

2.—(1) The Tribunal Procedure (Upper Tribunal) Rules 2008^(c) are amended as follows.

(2) In rule 1(3) (interpretation etc)—

(a) in the definition of “financial services case”^(d), for paragraph (a) substitute—

“(a) a decision of the Financial Conduct Authority;

(aa) a decision of the Prudential Regulation Authority;”;

(b) in the definition of “respondent”^(e), for paragraph (da) substitute—

“(da) in a financial services case—

(i) where the case is a multiple regulator case, both the primary and secondary regulator as defined in Schedule 3 to these rules (but subject to the operation of paragraph 4A(3) of that Schedule);

(a) 2007 c. 14

(b) 2000 c. 8. Section 133 was substituted by S.I. 2010/22.

(c) S.I. 2008/2698

(d) The definition of “financial services case” in rule 1(3) was inserted by S.I. 2010/747 and amended by S.I. 2011/651.

(e) The definition of “respondent” in rule 1(3) was amended by S.I. 2009/274 and S.I.2012/1363 and paragraph (da) of that definition was inserted by S.I. 2010/747.

- (ii) where the case is a single regulator case, the maker of the decision in respect of which a reference has been made; or”.
- (3) In rule 5(5) (interim suspension)(a)—
 - (a) at the end of sub-paragraph (a), omit “or”;
 - (b) at the end of sub-paragraph (b), for “.” substitute “; or”;
 - (c) after sub-paragraph (b) insert—
 - “(c) the stability of the financial system of the United Kingdom.”.
- (4) In paragraph 1 (interpretation) of Schedule 3 (procedure in financial services cases)(b)—
 - (a) at the appropriate places, insert—
 - ““multiple regulator case” means a case where—
 - (a) any of the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England has given the notice in respect of which the reference has been made; and
 - (b) such notice stated that another of those regulators had decided to take one of the following actions—
 - (i) to refuse a consent where such consent is required under the 2000 Act;
 - (ii) to give a conditional consent under the 2000 Act; or
 - (iii) to direct another regulator to take an action or not to take an action under the 2000 Act;”
 - “primary regulator” means, in a multiple regulator case, the regulator giving the notice;
 - “secondary regulator action” means an action taken by a secondary regulator, as stated in the notice given by the primary regulator;
 - “secondary regulator” means, in a multiple regulator case, a regulator specified in the notice other than the primary regulator;
 - “single regulator case” means a case that is not a multiple regulator case;”
 - (b) for the definition of “further material” substitute—
 - ““further material” means—
 - (a) in a single regulator case, documents which—
 - (i) were considered by the respondent in reaching or maintaining the decision to give the notice in respect of which the reference has been made; or
 - (ii) were obtained by the respondent in connection with the matter to which that notice relates (whether they were obtained before or after giving the notice) but which were not considered by it in reaching or maintaining that decision;
 - but does not include documents on which the respondent relies in support of the referred action;
 - (b) in a multiple regulator case—
 - (i) in relation to a respondent who is the primary regulator, documents which—
 - (aa) were considered by that regulator in reaching or maintaining its decision to give the notice in respect of which the reference has been made; or
 - (bb) were obtained by that regulator in connection with the matter to which that notice relates (whether they were obtained before or after the notice was given) but which were not considered by that regulator in reaching or maintaining its decision;

(a) Rule 5(5) was added by S.I. 2010/747.

(b) Paragraph 1 of Schedule 3 was added by S.I. 2010/747.

- (ii) in relation to a respondent who is the secondary regulator, documents which—
 - (aa) were considered by that regulator in reaching or maintaining its decision to take the secondary regulator action in relation to the notice in respect of which the reference has been made; or
 - (bb) were obtained by that regulator in connection with the matter to which that notice relates (whether they were obtained before or after the notice was given) but which were not considered by that regulator in reaching or maintaining its decision;
 but does not include documents on which either the primary regulator or the secondary regulator relies;”;
- (c) for the definition of “referred action” substitute—
 - ““referred action” means—
 - (a) in a single regulator case, the act (or proposed act) on the part of the respondent that gave rise to the reference; and
 - (b) in a multiple regulator case, the act (or proposed act) on the part of the primary regulator that gave rise to the reference;”.
- (5) In paragraph 2 of Schedule 3(a) (reference notice), for sub-paragraph (5) substitute—
 - “(5) At the same time the applicant must send a copy of the reference notice—
 - (a) in a single regulator case, to the respondent; and
 - (b) in a multiple regulator case, to each of the primary and secondary regulators.”.
- (6) In paragraph 3 of Schedule 3(b) (register of references and decisions), after sub-paragraph (4) insert—
 - “(5) In a multiple regulator case, notification under sub-paragraph (4)(b) must be given to each of the primary and secondary regulators.”.
- (7) In paragraph 4 of Schedule 3(c) (respondent’s statement of case)—
 - (a) for the heading, substitute “Respondent’s statement of case in a single regulator case”;
 - (b) in sub-paragraph (1) after “The respondent” insert “in a single regulator case”.
- (8) After paragraph 4 of Schedule 3 insert—

“Respondents’ statements of case in a multiple regulator case

- 4A.—**(1) This paragraph applies in a multiple regulator case.
- (2) The primary regulator must send or deliver either—
 - (a) a written statement (a “statement of case”) in support of the referred action; or
 - (b) a written notification that it does not itself advance a case in support of the referred action,

so that it is received by the Upper Tribunal no later than 28 days after the day on which the primary regulator received from the Upper Tribunal the notification required by paragraph 3(4)(b).

- (3) A primary regulator providing a written notification under sub-paragraph (2)(b) must send or deliver a copy to the secondary regulator and the applicant and upon so doing—
 - (a) the primary regulator shall not be required to take further steps in the proceedings unless the Upper Tribunal gives a direction to the contrary under rule 6; and

(a) Paragraph 2 of Schedule 3 was added by S.I. 2010/747.
 (b) Paragraph 3 of Schedule 3 was added by S.I. 2010/747.
 (c) Paragraph 4 of Schedule 3 was added by S.I. 2010/747.

(b) the respondent shall be the secondary regulator unless the Upper Tribunal orders otherwise.

(4) The secondary regulator must send or deliver a written statement (“a statement of case”) in support of its decision to take the secondary regulator action so that it is received by the Upper Tribunal no later than 28 days after the day on which the secondary regulator received from the Upper Tribunal the notification required by paragraph 3(4)(b).

(5) A statement of case must—

- (a) identify the statutory provisions providing for the referred action;
- (b) state the reasons in support for the referred action; and
- (c) set out all the matters and facts upon which the regulator relies to support the referred action.

(6) A regulator must provide with the statement of case a list of—

- (a) all documents on which it relies in support of the referred action;
- (b) any further material which, in the opinion of the regulator, might undermine its decision to—
 - (i) in the case of a primary regulator; take the referred action; and
 - (ii) in the case of a secondary regulator; take the secondary regulator action.

(7) The primary regulator and the secondary regulator must send to the applicant and the other regulator a copy of any statement of case required by sub-paragraphs (2) and (4) above and of the list referred to in sub-paragraph (6).”

(9) In paragraph 5 of Schedule 3(a) (applicant’s reply)—

(a) in sub-paragraph (1)—

(i) for paragraph (a) substitute—

“(a) in a single regulator case, on the date on which the applicant received a copy of the statement of case;

(aa) in a multiple regulator case, on the first date on which the applicant was in receipt of all the statements and, where relevant, notifications required under paragraphs 4A(2) and 4A(4); or”;

(ii) in paragraph (b) for “the respondent” substitute “a respondent”;

(b) in sub-paragraph (2)(b)—

(i) for “the statement of case” substitute “the respondent’s statement of case (or, where applicable, respondents’ statements of case)”;

(ii) omit “and” at the end of the paragraph;

(c) in sub-paragraph (4), for “the respondent” substitute “all other parties”;

(d) after sub-paragraph (4), insert—

“(5) Where the primary regulator has provided a written notification under paragraph 4A(2)(b), if the applicant wishes the Tribunal to direct that further steps in the proceedings be taken by the primary regulator, an application must be made at the time of sending the reply.”

(10) In paragraph 6 of Schedule 3(b) (secondary disclosure by the respondent)—

(a) in the heading for “the respondent” substitute “a respondent”;

(b) in sub-paragraph (1)—

(i) after “the list” insert “(or lists)”;

(ii) after “paragraph 4(3)” insert “(or paragraph 4A(6) where applicable)”;

(a) Paragraph 5 of Schedule 3 was added by S.I. 2010/747.

(b) Paragraph 6 of Schedule 3 was added by S.I. 2010/747.

- (iii) after “the respondent” insert “(or the respondents)”;
 - (iv) after “a list” insert “(or lists)”;
 - (c) in sub-paragraph (2), after “the respondent” insert “in question”; and
 - (d) in sub-paragraph (3), for “the respondent must send a copy to the applicant” substitute “a respondent must send a copy to the applicant (and where applicable the other parties)”.
- (11) In paragraph 7 of Schedule 3(a) (exceptions to disclosure)—
- (a) in sub-paragraph (1)—
 - (i) after “paragraph 4(3)” insert “, 4A(6)”;
 - (ii) after “the respondent” insert “providing the list”;
 - (b) in sub-paragraph (2), after “4(3)” insert “, 4A(6)”;
 - (c) in sub-paragraph (3), after “4(3)” insert “, 4A(6)”;
 - (d) in sub-paragraph (4), after “4(3)” insert “, 4A(6)”;
 - (e) for sub-paragraph (7) substitute—

“(7) A party (“P”) who has sent or delivered a list under paragraph 4(3), 4A(6), 5(3) or 6(1) must, upon the request of another party, provide that other party with a copy of any document which P has which is specified in the list, or make it available for inspection or copying, and if P does not have it, tell the other party where to the best of P’s knowledge and belief it may be found.”.
- (12) In paragraph 8 of Schedule 3(b) (subsequent notices in relation to the referred action)—
- (a) for “the respondent”, in the first place it appears, substitute “a respondent”; and
 - (b) for “the respondent”, in the second place it appears, substitute “that respondent”.
- (13) In paragraph 9 of Schedule 3(c) (references by third parties)—
- (a) in sub-paragraph (2)(a), after “the respondent” insert “that gave the notice”; and
 - (b) for sub-paragraph (4) substitute—

“(4) The duties of a respondent to—

 - (a) set out information under paragraphs 4(2), 4A(2), 4A(4) or 4A(5); or
 - (b) list material under paragraphs 4(3), 4A(6) or 6(1);

apply only to information or material which relate to the matters referred to the Upper Tribunal in accordance with section 393(9) or (as the case may be) section 393(11) of the 2000 Act.”.

We make these Rules,

Brian F J Langstaff
M J Reed
Philip Brook Smith QC
Simon Ennals
Lesley Clare
Douglas J May QC
Bronwyn McKenna
Mark Rowland

(a) Paragraph 7 of Schedule 3 was added by S.I. 2010/747.
 (b) Paragraph 8 of Schedule 3 was added by S.I. 2010/747.
 (c) Paragraph 9 of Schedule 3 was added by S.I. 2010/747.

I allow these Rules,
Signed by the authority of the Lord Chancellor

Helen Grant
Parliamentary Under Secretary of State
Ministry of Justice

13th March 2013

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698) which apply in financial services cases in the Upper Tribunal. The changes are consequential upon the changes made by the Financial Services Act 2012 (c. 21) to the Financial Services and Markets Act 2000 (c. 8) concerning regulatory responsibilities in the financial services sector and are necessary to ensure that the tribunal rules function properly for future cases.

New definitions are introduced and others are amended to reflect the fact that in future a person may be regulated by more than one regulator and in consequence more than one regulator may be a respondent in a case that is referred to the Tribunal.

The amendments clarify the information requirements and the notifications which must be given by the appropriate regulators.

The amendment to rule 5(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 has the effect that before giving a direction in a financial services case to suspend the effect of a decision pending determination by the Tribunal, the Upper Tribunal must also be satisfied that suspending the effect of the decision would not prejudice the stability of the financial system of the United Kingdom.

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STATUTORY INSTRUMENTS

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