

**2014 No. 514 (L. 4)**

**TRIBUNALS AND INQUIRIES**

**The Tribunal Procedure (Amendment) Rules 2014**

*Made* - - - - *4th March 2014*

*Laid before Parliament* *10th March 2014*

*Coming into force* - - *6th April 2014*

The Tribunal Procedure Committee has made the following Rules in exercise of the powers conferred by regulation 44(2) of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013(a), regulation 44(2) of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013(b) and sections 22 and 29(3) of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(c), having consulted in accordance with paragraph 28(1) of that Schedule to that Act.

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) Rules 2014 and come into force on 6th April 2014.

**Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008**

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

3. In the table of contents—

- (a) in the entry for rule 26B, after “Financial services cases” insert “and wholesale energy cases”;
- (b) in the entry for Schedule 3, after “Financial Services Cases” insert “and Wholesale Energy Cases”.

4. In rule 1 (interpretation etc), in paragraph (3)(e)—

- (a) in paragraph (b) of the definition of “applicant”, after “financial services case” insert “or a wholesale energy case”;
- (b) at the end of paragraph (c) of the definition of “financial services case” omit “or”;

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(a) S.I. 2013/1389

(b) S.R. & O. 2013/208

(c) 2007 c. 15

(d) S.I. 2008/2698

(e) Rule 1(3) has been amended by S.I. 2009/274, 2009/1975, 2010/43, 2010/2653, 2011/651, 2011/2343, 2012/1363, 2013/606 and 2013/2067.

- (c) in paragraph (c) of the definition of “interested party”, after “financial services case” insert “or a wholesale energy case”;
- (d) after paragraph (da) of the definition of “respondent” insert—  
“(db) in a wholesale energy case, in relation to Great Britain, the Gas and Electricity Markets Authority or, in relation to Northern Ireland, the Northern Ireland Authority for Utility Regulation; or”;
- (e) after the definition of “tribunal”, insert—  
““wholesale energy case” means a reference to the Upper Tribunal in respect of a decision of—  
(a) in relation to Great Britain, the Gas and Electricity Markets Authority under the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013(a); or  
(b) in relation to Northern Ireland, the Northern Ireland Authority for Utility Regulation under the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013(b);”.
- 5.** In rule 5 (case management powers), after paragraph (6)(c), insert—  
“(7) In a wholesale energy case, the Upper Tribunal may direct that the effect of the decision in respect of which the reference has been made is to be suspended pending the determination of the reference.”
- 6.** In rule 10 (orders for costs), in paragraph (3)(e)(d), after “financial services case” insert “or a wholesale energy case”.
- 7.** In rule 21 (application to the Upper Tribunal for permission to appeal)(e)—  
(a) in paragraph (2)(b), at the end, insert “or has been granted only on limited grounds”;  
(b) after paragraph (7) insert—  
“(8) In this rule, a reference to notice of a refusal of permission to appeal is to be taken to include a reference to notice of a grant of permission to appeal on limited grounds.”
- 8.** In rule 22 (decision in relation to permission to appeal)(f)—  
(a) in paragraph (1), after “permission to appeal” insert “or refuses to admit a late application for permission”;  
(b) after paragraph (3)(a)(iia), insert—  
“(iib) the Property Chamber of the First-tier Tribunal;”  
(c) in paragraph (4)(a), after “permission to appeal”, insert “or refuses to admit a late application for permission”.
- 9.** In the heading to rule 26B(g), after “Financial services cases” insert “and wholesale energy cases”.
- 10.** In rule 26B, after “financial services cases” insert “and wholesale energy cases”.
- 11.** In rule 30 (decision on permission or summary dismissal, and reconsideration of permission or summary dismissal at a hearing)(h)—  
(a) for paragraph (1)(b), substitute—

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(a) S.I. 2013/1389  
(b) S.R. & O. 2013/208  
(c) Rule 5(6) was inserted by S.I. 2010/747 and amended by S.I. 2013/606.  
(d) Rule 10 was substituted by S.I. 2009/274; rule 10(3) has been amended by SI 2013/477 and 2013/2067.  
(e) Rule 21 was amended by S.I. 2009/1975 and 2010/44.  
(f) Rule 22(3) was amended by S.I. 2009/274, and paragraph (3)(a)(iia) was inserted by S.I. 2009/1975.  
(g) Rule 26B was inserted by S.I. 2010/747.  
(h) Rule 30(4) was amended, and rule 30(4A) inserted, by S.I. 2013/2067.

- “(b) the reasons for any—
  - (i) refusal of the application or refusal to admit the late application, or
  - (ii) limitations or conditions on permission.”
- (b) for paragraph (3)(a), substitute—
  - “(a) determines an application for permission to bring judicial review proceedings by—
    - (i) refusing permission or refusing to admit the late application, or
    - (ii) giving permission on limited grounds or subject to conditions”;
- (c) in paragraph (4A), after “refuses permission to bring immigration judicial review proceedings” insert “or refuses to admit a late application for permission to bring such proceedings”.

**12.** In the heading to Schedule 3(a) after “Financial Services Cases” insert “and Wholesale Energy Cases”.

**13.** In Schedule 3—

- (a) in paragraph 1 (interpretation), in the definition of “reference notice”, after “financial services case” insert “or a wholesale energy case”;
- (b) after the definition of “the 2000 Act” insert—
  - “;
  - “the 2013 Regulations” means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013;
  - “the 2013 (NI) Regulations” means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013.”
- (c) in paragraph 3 (register of references etc)—
  - (i) in sub-paragraph (1), after “financial services cases” insert “and wholesale energy cases”;
  - (ii) in sub-paragraph (3), for the words from “in particular to” to the end, substitute—
    - “in particular to—
      - (a) any unfairness to the applicant or, except as regards a reference in respect of a decision of the Prudential Regulation Authority, any prejudice to the interests of consumers that might otherwise result;
      - (b) as regards a reference in respect of a decision of the Financial Conduct Authority, any detriment to the stability of the UK financial system;
      - (c) as regards a reference in respect of a decision of the Prudential Regulation Authority, any prejudice to the safety and soundness of persons authorised by it, or where section 2C of the 2000 Act applies, any prejudice to securing the appropriate degree of protection for policy holders; or
      - (d) as regards a reference under the 2013 Regulations or the 2013 (NI) Regulations any detriment to the stability of the wholesale energy market as defined in those Regulations.”;
- (d) in paragraph 7 (exceptions to disclosure), in sub-paragraph (9), at the end insert “or regulation 52(2) of the 2013 Regulations or regulation 51(2) of the 2013 (NI) Regulations”;
- (e) in paragraph 9 (references by third parties)—
  - (i) in sub-paragraph (1), after “2000 Act” insert “, regulation 40 of the 2013 Regulations or regulation 40 of the 2013 (NI) Regulations”;

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(a) Schedule 3 was inserted by S.I. 2010/747 and amended by S.I. 2013/606.

- (ii) in sub-paragraph (2)(a), after “2000 Act” insert “, regulation 40(9) of the 2013 Regulations or regulation 40(9) of the 2013 (NI) Regulations”;
- (iii) in sub-paragraph (2)(b), after “2000 Act” insert “, regulation 40(11) of the 2013 Regulations or regulation 40(11) of the 2013 (NI) Regulations”;
- (iv) in sub-paragraph (3), after “2000 Act” insert “, regulation 40(11) of the 2013 Regulations or regulation 40(11) of the 2013 (NI) Regulations”;
- (v) in sub-paragraph (4), after “2000 Act” insert “, regulation 40(9) or, as the case may be, regulation 40(11) of the 2013 Regulations, or regulation 40(9) or, as the case may be, regulation 40(11) of the 2013 (NI) Regulations”.

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

**14.** The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010(a) are amended as follows.

**15.** In rule 21(2) (application to the Tribunal for permission to appeal), after “permission to appeal” at the third place where those words appear, insert “, or sent notice that permission has been granted only on limited grounds.”.

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

**16.** The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008(b) are amended as follows.

**17.** In rule 32 (procedure in mental health cases)(c), after paragraph (8), insert—

“(9) The responsible authority must make records relating to the detention or treatment of the patient and any after-care services available to the Tribunal on request and the Tribunal or an appropriate member of the Tribunal may, before or at the hearing, examine and take notes and copies of such records for use in connection with the proceedings.”

**18.** For rule 34 (medical examination of the patient), substitute—

“**34.**—(1) Where paragraph (2) applies, an appropriate member of the Tribunal must, so far as practicable, examine the patient in order to form an opinion of the patient’s mental condition, and may do so in private.

(2) This paragraph applies—

- (a) in proceedings under section 66(1)(a) of the Mental Health Act 1983(d) (application in respect of an admission for assessment), unless the Tribunal is satisfied that the patient does not want such an examination;
- (b) in any other case, if the patient or the patient’s representative has informed the Tribunal in writing, not less than 14 days before the hearing, that—
  - (i) the patient; or
  - (ii) if the patient lacks the capacity to make such a decision, the patient’s representative, wishes there to be such an examination; or
- (c) if the Tribunal has directed that there be such an examination.”

**19.** In rule 37 (time and place of hearings), in paragraph (4), for “14 days” substitute “21 days”.

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(a) S.I. 2010/2600  
 (b) S.I. 2008/2699  
 (c) Rule 32 was amended by S.I. 2012/500.  
 (d) 1983 c. 20

**20.** In rule 39 (hearings in a party’s absence), for paragraph (2) substitute—

“(2) The Tribunal may not proceed with a hearing that the patient has failed to attend unless the Tribunal is satisfied that—

- (a) the patient—
  - (i) has decided not to attend the hearing; or
  - (ii) is unable to attend the hearing for reasons of ill health; and
- (b) an examination under rule 34 (medical examination of the patient)—
  - (i) has been carried out; or
  - (ii) is impractical or unnecessary.”

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

**21.** The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008(a) are amended as follows.

**22.** In rule 22 (cases in which notice of appeal is sent to the Tribunal)(b), in paragraph (6) omit “or (aa)” in both places.

We make these Rules,

*Brian F J Langstaff  
Douglas J May QC  
Philip Brook Smith QC  
Mark Rowland  
Simon Cox  
Lesley Clare  
Simon Ennals  
W B Thompson*

26th February 2014

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

*Shailesh Vara*  
Parliamentary Under Secretary of State  
Ministry of Justice

4th March 2014

**EXPLANATORY NOTE**

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

These Rules amend the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698) (“Upper Tribunal Rules”), the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (S.I. 2010/2600) (“Lands Chamber Rules”), the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (S.I. 2008/2699) (“HESC Rules”) and the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (S.I. 2008/2685) (“SEC Rules”).

The amendments made by rules 4 to 6, 9, 10, 12 and 13 prescribe the procedures applicable to cases referred to the Upper Tribunal resulting from certain decisions of the national regulatory authorities for the wholesale energy market (the Gas and Electricity Markets Authority in Great

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(a) S.I. 2008/2685.  
(b) Rule 22 was amended by S.I. 2013/477 and 2013/2067.

Britain and the Northern Ireland Authority for Utility Regulation, in Northern Ireland). Similar procedures are applied to references in wholesale energy cases as currently apply to references in financial services cases.

Rule 7 amends rule 21 of the Upper Tribunal Rules and rule 15 amends rule 21 of the Lands Chamber Rules. A person may apply for permission to appeal on grounds which have been refused or not admitted by the tribunal whose decision is being appealed.

Rules 8 and 11 amend rules 22 and 30 of the Upper Tribunal Rules, which relate to applications for permission to appeal and applications for permission to apply for judicial review respectively. In both situations the Tribunal must send a written notice of a refusal to admit a late application. Where an application to admit a late application for permission to apply for judicial review is refused by the Tribunal without a hearing, an applicant may apply for reconsideration of that refusal.

Rules 17 to 20 amend rules 32, 34, 37 and 39 of the HESC Rules. The amendments relate to the examination by the Tribunal of patients and their medical records and to the circumstances in which the Tribunal may proceed with the hearing of the appeal in the absence of the patient.

Rule 22 amends rule 22 of the SEC Rules in consequence of the amendment of legislation which currently prescribes time limits for appeals relating to child benefits and guardians' allowances.

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