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STATUTORY INSTRUMENTS

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**2008 No. 2686**

**The Tribunal Procedure (First-tier Tribunal) (War Pensions  
and Armed Forces Compensation Chamber) Rules 2008**

**PART 4**

Correcting, setting aside, reviewing and appealing Tribunal decisions

**Interpretation**

**33.** In this Part—

“appeal” means the exercise of a right of appeal on a point of law under section 11 of the 2007 Act; and

“review” means the review of a decision by the Tribunal under section 9 of the 2007 Act.

**Clerical mistakes and accidental slips or omissions**

**34.** The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by—

- (a) sending notification of the amended decision or direction, or a copy of the amended document, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, direction or document.

**Setting aside a decision which disposes of proceedings**

**35.—(1)** The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it, if—

- (a) the Tribunal considers that it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative;
- (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
- (c) a party, or a party's representative, was not present at a hearing related to the proceedings; or
- (d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 1 month after the date on which the Tribunal sent notice of the decision to the party.

### Application for permission to appeal

**36.—**(1) A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal.

(2) An application under paragraph (1) must be sent or delivered to the Tribunal so that it is received no later than 42 days after the latest of the dates that the Tribunal sends—

[<sup>F1</sup>(za) the relevant decision notice;]

(a) written reasons for the decision [<sup>F2</sup>, if the decision disposes of—

(i) all issues in the proceedings; or

(ii) subject to paragraph (2A), a preliminary issue dealt with following a direction under [<sup>F3</sup>rule 5(3)(e)]];

(b) notification of amended reasons for, or correction of, the decision following a review; or

(c) notification that an application for the decision to be set aside has been unsuccessful.

[<sup>F4</sup>(2A) The Tribunal may direct that the 42 days within which a party may send or deliver an application for permission to appeal against a decision that disposes of a preliminary issue shall run from the date of the decision that disposes of all issues in the proceedings.]

(3) The date in paragraph (2)(c) applies only if the application for the decision to be set aside was made within the time stipulated in rule 35 (setting aside a decision which disposes of proceedings) or any extension of that time granted by the Tribunal.

(4) If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 5(3)(a) (power to extend time)—

(a) the application must include a request for an extension of time and the reason why the application was not made in time; and

(b) unless the Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application.

(5) An application under paragraph (1) must—

(a) identify the decision of the Tribunal to which it relates;

(b) identify the alleged error or errors of law in the decision; and

(c) state the result the party making the application is seeking.

(6) If a person makes an application under paragraph (1) when the Tribunal has not given a written statement of reasons for its decision—

(a) if no application for a written statement of reasons has been made to the Tribunal, the application for permission must be treated as such an application;

(b) unless the Tribunal decides to give permission and directs that this sub-paragraph does not apply, the application is not to be treated as an application for permission to appeal; and

(c) if an application for a written statement of reasons has been, or is, refused because of a delay in making the application, the Tribunal must only admit the application for permission if the Tribunal considers that it is in the interests of justice to do so.

#### Textual Amendments

**F1** Rule 36(2)(za) inserted (1.4.2013) by [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), rules 1(2)(c), **48(a)**

**F2** Words in rule 36(2)(a) inserted (1.4.2013) by [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), rules 1(2)(c), **48(b)**

- F3** Words in rule 36(2)(a)(ii) substituted (1.11.2013) by [The Tribunal Procedure \(Amendment No. 4\) Rules 2013 \(S.I. 2013/2067\)](#), rules 1, **28**
- F4** Rule 36(2A) inserted (1.4.2013) by [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), rules 1(2)(c), **48(c)**

### **Tribunal's consideration of application for permission to appeal**

**37.**—(1) On receiving an application for permission to appeal the Tribunal must first consider, taking into account the overriding objective in rule 2, whether to review the decision in accordance with rule 38 (review of a decision).

(2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Tribunal refuses permission to appeal it must send with the record of its decision—

(a) a statement of its reasons for such refusal; and

(b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.

(5) The Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission.

### **Review of a decision**

**38.**—(1) The Tribunal may only undertake a review of a decision—

(a) pursuant to rule 37(1) (review on an application for permission to appeal); and

(b) if it is satisfied that there was an error of law in the decision.

(2) The Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.

(3) If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (2) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

### **Power to treat an application as a different type of application**

**39.** The Tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other one of those things.

**Changes to legislation:**

There are currently no known outstanding effects for the The Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008, PART 4.