
STATUTORY INSTRUMENTS

2009 No. 273

**The Tribunal Procedure (First-tier
Tribunal) (Tax Chamber) Rules 2009**

PART 2

General powers and provisions

Delegation to staff

4.—(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date that the Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may make a written application to the Tribunal requiring that decision to be considered afresh by a judge.

Case management powers

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment setting down a time limit;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 18 (lead cases) or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management hearing;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;

- (j) stay (or, in Scotland, sist) proceedings;
- (k) transfer proceedings to another tribunal if that other tribunal has jurisdiction in relation to the proceedings and, because of a change of circumstances since the proceedings were started—
 - (i) the Tribunal no longer has jurisdiction in relation to the proceedings; or
 - (ii) the Tribunal considers that the other tribunal is a more appropriate forum for the determination of the case;
- (l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal, as the case may be, of an application for permission to appeal, a review or an appeal.

Procedure for applying for and giving directions

6.—(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

- (2) An application for a direction may be made—
 - (a) by sending or delivering a written application to the Tribunal; or
 - (b) orally during the course of a hearing.

(3) An application for a direction must include the reasons for making that application.

(4) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction.

(5) If a party or other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

Failure to comply with rules etc.

7.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 8 (striking out a party's case);
- (d) restricting a party's participation in proceedings; or
- (e) exercising its power under paragraph (3).

(3) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the 2007 Act (Upper Tribunal to have powers of High Court or Court of Session) in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—

- (a) to attend at any place for the purpose of giving evidence;
- (b) otherwise to make themselves available to give evidence;
- (c) to swear an oath in connection with the giving of evidence;
- (d) to give evidence as a witness;
- (e) to produce a document; or

- (f) to facilitate the inspection of a document or any other thing (including any premises).

Striking out a party's case

8.—(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

- (2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—
 - (a) does not have jurisdiction in relation to the proceedings or that part of them; and
 - (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
- (3) The Tribunal may strike out the whole or a part of the proceedings if—
 - (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
 - (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
 - (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sent notification of the striking out to the appellant.

- (7) This rule applies to a respondent as it applies to an appellant except that—
 - (a) a reference to the striking out of the proceedings must be read as a reference to the barring of the respondent from taking further part in the proceedings; and
 - (b) a reference to an application for the reinstatement of proceedings which have been struck out must be read as a reference to an application for the lifting of the bar on the respondent taking further part in the proceedings.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submissions made by that respondent, and may summarily determine any or all issues against that respondent.

Substitution and addition of parties

- 9.—(1) The Tribunal may give a direction substituting a party if—
 - (a) the wrong person has been named as a party; or
 - (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.

(2) The Tribunal may give a direction adding a person to the proceedings as a respondent.

(3) A person who is not a party to proceedings may make an application to be added as a party under this rule.

(4) If the Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the Tribunal.

(5) If the Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

Orders for costs

- 10.**—(1) The Tribunal may only make an order in respect of costs (or, in Scotland, expenses)—
- (a) under section 29(4) of the 2007 Act (wasted costs);
 - (b) if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings; or
 - (c) if—
 - (i) the proceedings have been allocated as a Complex case under rule 23 (allocation of cases to categories); and
 - (ii) the taxpayer (or, where more than one party is a taxpayer, one of them) has not sent or delivered a written request to the Tribunal, within 28 days of receiving notice that the case had been allocated as a Complex case, that the proceedings be excluded from potential liability for costs or expenses under this sub-paragraph.
- (2) The Tribunal may make an order under paragraph (1) on an application or of its own initiative.
- (3) A person making an application for an order under paragraph (1) must—
- (a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and
 - (b) send or deliver with the application a schedule of the costs or expenses claimed in sufficient detail to allow the Tribunal to undertake a summary assessment of such costs or expenses if it decides to do so.
- (4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of a withdrawal under rule 17 (withdrawal) which ends the proceedings.
- (5) The Tribunal may not make an order under paragraph (1) against a person (the “paying person”) without first—
- (a) giving that person an opportunity to make representations; and
 - (b) if the paying person is an individual, considering that person’s financial means.
- (6) The amount of costs (or, in Scotland, expenses) to be paid under an order under paragraph (1) may be ascertained 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 or expenses (the “receiving person”); or
 - (c) assessment of the whole or a specified part of the costs or expenses incurred by the receiving person, if not agreed.
- (7) Following an order for assessment under paragraph (6)(c) the paying person or the receiving person may apply—
- (a) in England and Wales, to a county court, the High Court or the Costs Office of the Supreme Court (as specified in the order) for a detailed assessment of the costs on the standard basis or, if specified in the order, on the indemnity basis; and the Civil Procedure Rules 1998(1)

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;

- (b) in Scotland, to the Auditor of the Sheriff Court or the Court of Session (as specified in the order) for the taxation of the expenses according to the fees payable in that court; or
- (c) in Northern Ireland, to the Taxing Office of the High Court of Northern Ireland for taxation on the standard basis or, if specified in the order, on the indemnity basis.

(8) In this rule “taxpayer” means a party who is liable to pay, or has paid, the tax, duty, levy or penalty to which the proceedings relate or part of such tax, duty, levy or penalty, or whose liability to do so is in issue in the proceedings;

Representatives

11.—(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Tribunal and to each other party to the proceedings written notice of the representative’s name and address.

(3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(4) A person who receives due notice of the appointment of a representative—

- (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and
- (b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party’s case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person (other than an appointed representative) who accompanies a party in accordance with paragraph (5).

(7) In this rule “legal representative” means an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990⁽²⁾, an advocate or solicitor in Scotland, or a barrister or solicitor in Northern Ireland.

Calculating time

12.—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971⁽³⁾.

Sending and delivery of documents

13.—(1) Any document to be provided to the Tribunal under these Rules, a practice direction or a direction must be—

(2) 1990 c.41.

(3) 1971 c.80.

- (a) sent by pre-paid post or document exchange, or delivered by hand, to the address specified for the proceedings; or
 - (b) sent or delivered by such other method as the Tribunal may permit or direct.
- (2) Subject to paragraph (3), if a party or representative provides a fax number, email address or other details for the electronic transmission of documents to them, that party or representative must accept delivery of documents by that method.
- (3) If a party informs the Tribunal and all other parties that a particular form of communication (other than pre-paid post or delivery by hand) should not be used to provide documents to that party, that form of communication must not be so used.
- (4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.
- (5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

Use of documents and information

- 14.** The Tribunal may make an order prohibiting the disclosure or publication of—
- (a) specified documents or information relating to the proceedings; or
 - (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

Evidence and submissions

- 15.—**(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Tribunal may give directions as to—
- (a) issues on which it requires evidence or submissions;
 - (b) the nature of the evidence or submissions it requires;
 - (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
 - (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
 - (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
 - (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
 - (f) the time at which any evidence or submissions are to be provided.
- (2) The Tribunal may—
- (a) admit evidence whether or not the evidence would be admissible in a civil trial in the United Kingdom; or
 - (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction;

(ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or

(iii) it would otherwise be unfair to admit the evidence.

(3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Summoning or citation of witnesses and orders to answer questions or produce documents

16.—(1) On the application of a party or on its own initiative, the Tribunal may—

(a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation;

(b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) A summons or citation under paragraph (1)(a) must—

(a) give the person required to attend at least 14 days' notice of the hearing, or such shorter period as the Tribunal may direct; and

(b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.

(3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.

(4) A person who receives a summons, citation or order may apply to the Tribunal for it to be varied or set aside if they did not have an opportunity to object to it before it was made or issued.

(5) A person making an application under paragraph (4) must do so as soon as reasonably practicable after receiving notice of the summons, citation or order.

(6) A summons, citation or order under this rule must—

(a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons, citation or order, if they did not have an opportunity to object to it before it was made or issued; and

(b) state the consequences of failure to comply with the summons, citation or order.

Withdrawal

17.—(1) Subject to any provision in an enactment relating to withdrawal or settlement of particular proceedings, a party may give notice to the Tribunal of the withdrawal of the case made by it in the Tribunal proceedings, or any part of that case—

(a) at any time before a hearing to consider the disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or

(b) orally at a hearing.

(2) The Tribunal must notify each other party in writing of a withdrawal under this rule.

(3) A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Tribunal within 28 days after—

(a) the date that the Tribunal received the notice under paragraph (1)(a); or

(b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

Lead cases

18.—(1) This rule applies if—

- (a) two or more cases have been started before the Tribunal;
- (b) in each such case the Tribunal has not made a decision disposing of the proceedings; and
- (c) the cases give rise to common or related issues of fact or law.

(2) The Tribunal may give a direction—

- (a) specifying one or more cases falling under paragraph (1) as a lead case or lead cases; and
- (b) staying (or, in Scotland, sisting) the other cases falling under paragraph (1) (“the related cases”).

(3) When the Tribunal makes a decision in respect of the common or related issues—

- (a) the Tribunal must send a copy of that decision to each party in each of the related cases; and
- (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) Within 28 days after the date that the Tribunal sent a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, that case.

(5) The Tribunal must give directions in respect of cases which are stayed or sisted under paragraph (2)(b), providing for the disposal of or further steps in those cases.

(6) If the lead case or cases are withdrawn or disposed of before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—

- (a) whether another case or other cases are to be heard as a lead case or lead cases; and
- (b) whether any direction affecting the related cases should be set aside or amended.