

**2009 No. 274 (L. 2)**

**TRIBUNALS AND INQUIRIES**

**The Tribunal Procedure (Amendment) Rules 2009**

*Made* - - - - *5th February 2009*

*Laid before Parliament* *13th February 2009*

*Coming into force* - - *1st April 2009*

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 power conferred by sections 16(9), 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 Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

**Citation and commencement**

1. These Rules may be cited as the Tribunal Procedure (Amendment) Rules 2009 and come into force on 1st April 2009.

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

2. In rule 1(3) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008(b) (interpretation) in the definition of “asylum support case” for “or his or her dependants” substitute “, a failed asylum seeker or a person designated under section 130 of the Criminal Justice and Immigration Act 2008(c) (designation), or the dependants of any such person”.

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

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

4. In the table of contents—

- (a) in the heading below “PART 3” for “Appeals and references to” substitute “Procedure for cases in”; and
- (b) after the entry for rule 26 insert—

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(a) 2007 c.15.  
(b) S.I. 2008/2685 (L.13).  
(c) 2008 c. 4.  
(d) S.I. 2008/2698 (L.15).

“26A. Cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent”.

**5.** In rule 1(3) (interpretation)—

(a) for the definition of “appellant” substitute—

““appellant” means—

- (a) a person who makes an appeal, or applies for permission to appeal, to the Upper Tribunal;
- (b) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who started the proceedings in the First-tier Tribunal; or
- (c) a person substituted as an appellant under rule 9(1) (substitution and addition of parties);”;

(b) omit the definition of “disability discrimination in schools case”;

(c) omit the definition of “legal representative”;

(d) in the definition of “respondent”—

- (i) omit sub-paragraph (a)(ii); and
- (ii) after sub-paragraph (c) insert—

“(ca) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who was a respondent in the proceedings in the First-tier Tribunal;”;

(e) omit the definition of “special educational needs case”.

**6.—**(1) Rule 8 (striking out a party’s case) is amended as follows.

(2) In paragraph (7)—

- (a) after “to a respondent” insert “or an interested party”;
- (b) in sub-paragraphs (a) and (b) after “respondent” insert “or interested party”; and
- (c) in sub-paragraph (b) omit “from”.

(3) In paragraph (8)—

- (a) after “a respondent” insert “or an interested party”; and
- (b) after “that respondent” insert “or interested party, and may summarily determine any or all issues against that respondent or interested party”.

**7.** For rule 10 (orders for costs) substitute—

**“Orders for costs**

**10.—**(1) The Upper Tribunal may not make an order in respect of costs (or, in Scotland, expenses) in proceedings referred by or on appeal from another tribunal except—

- (a) in proceedings on appeal from the Tax Chamber of the First-tier Tribunal; or
- (b) to the extent and in the circumstances that the other tribunal had the power to make an order in respect of costs (or, in Scotland, expenses).

(2) The Upper Tribunal may not make an order in respect of costs or expenses under section 4 of the Forfeiture Act 1982(a).

(3) In other proceedings, the Upper Tribunal may not make an order in respect of costs or expenses except—

- (a) in judicial review proceedings;
- (b) in proceedings transferred from the Tax Chamber of the First-tier Tribunal;

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(a) 1982 c.34.

- (c) under section 29(4) of the 2007 Act (wasted costs); or
  - (d) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings.
- (4) The Upper Tribunal may make an order for costs (or, in Scotland, expenses) on an application or on its own initiative.
- (5) A person making an application for an order for costs or expenses must—
- (a) send or deliver a written application to the Upper 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 sufficient to allow summary assessment of such costs or expenses by the Upper Tribunal.
- (6) An application for an order for costs or expenses may be made at any time during the proceedings but may not be made later than 1 month after the date on which the Upper 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 which ends the proceedings.
- (7) The Upper Tribunal may not make an order for costs or expenses 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 and the order is to be made under paragraph (3)(a), (b) or (d), considering that person’s financial means.
- (8) The amount of costs or expenses to be paid under an order under this rule may be ascertained by—
- (a) summary assessment by the Upper 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.
- (9) Following an order for assessment under paragraph (8)(c), the paying person or the receiving person may apply—
- (a) in England and Wales, to 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(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;
  - (b) in Scotland, to the Auditor of the Court of Session 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 rule 11 (representatives)—**

- (a) in paragraph (2) omit “and to each other party”;
- (b) after paragraph (2) insert—
  - “(2A) If the Upper Tribunal receives notice that a party has appointed a representative under paragraph (2), it must send a copy of that notice to each other party.”; and

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(a) S.I. 1998/3132.

(c) after paragraph (8) insert—

“(9) 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<sup>(a)</sup>, an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland.”

9. After rule 12(4) (calculating time) insert—

“(5) In this rule—

“disability discrimination in schools case” means proceedings concerning disability discrimination in the education of a child or related matters; and

“special educational needs case” means proceedings concerning the education of a child who has or may have special educational needs.”

10. In rule 13(1)(a) (sending and delivery of documents) for “delivered by hand” substitute “by document exchange, or delivered by hand,”.

11. For rule 16(4) (summoning or citation of witnesses and orders to answer questions or produce documents) substitute—

“(4) A person who receives a summons, citation or order may apply to the Upper 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 Upper 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.”.

12. In rule 20(1) (power to pay expenses and allowances) omit “which are not an appeal from the decision of another tribunal or judicial review proceedings”.

13. In the heading of Part 3, for “Appeals and references to” substitute “Procedure for cases in”.

14. For rule 22(3) (decision in relation to permission to appeal) substitute—

“(3) Paragraph (4) applies where the Upper Tribunal, without a hearing, determines an application for permission to appeal—

(a) against a decision of—

(i) the Tax Chamber of the First-tier Tribunal;

(ii) the Health, Education and Social Care Chamber of the First-tier Tribunal<sup>(b)</sup>;

(iii) the Mental Health Review Tribunal for Wales; or

(iv) the Special Educational Needs Tribunal for Wales; or

(b) under section 4 of the Safeguarding Vulnerable Groups Act 2006.”

15. In rule 24(4) (response to the notice of appeal) for “notice” substitute “response”.

16. After rule 26 (references under the Forfeiture Act 1982) insert—

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<sup>(a)</sup> 1990 c. 41.

<sup>(b)</sup> S.I. 2008/2684. The Order is amended by the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2009 (S.I. 2009/196).

**“Cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent**

**26A.**—(1) Paragraphs (2) and (3) apply to a case which—

- (a) has been transferred or referred to the Upper Tribunal from the First-tier Tribunal; or
- (b) is a case, other than an appeal or a case to which rule 26 (references under the Forfeiture Act 1982) applies, which is started by an application made directly to the Upper Tribunal.

(2) In a case to which this paragraph applies—

- (a) the Upper Tribunal must give directions as to the procedure to be followed in the consideration and disposal of the proceedings; and
- (b) the preceding rules in this Part will only apply to the proceedings to the extent provided for by such directions.

(3) If a case or matter to which this paragraph applies is to be determined without notice to or the involvement of a respondent—

- (a) any provision in these Rules requiring a document to be provided by or to a respondent; and
- (b) any other provision in these Rules permitting a respondent to participate in the proceedings

does not apply to that case or matter.”

**17.** In rule 28(2) (applications for permission to bring judicial review proceedings) after “decision” insert “, action or omission”.

**18.** In rule 29(2) (acknowledgment of service)—

- (a) in sub-paragraph (a), after “intends to” insert “support or”; and
- (b) in sub-paragraph (b), after “grounds for any” insert “support or”.

**19.** In rule 37(4) (public and private hearings)—

- (a) omit “or” after sub-paragraph (c); and
- (b) after sub-paragraph (d) insert—
  - “; or
  - (e) a person under the age of eighteen years.”

**20.** In rule 39(2) (consent orders) omit “, or provide reasons for the order”.

**21.** In rule 40 (decisions)—

- (a) in paragraph (2) omit “Subject to rule 14(2) (withholding harmful information),”; and
- (b) in paragraph (3) before “The Upper Tribunal must” insert “Subject to rule 14(2) (withholding harmful information),”.

**22.** In rule 41 (interpretation), in the definition of “appeal” before “means” insert “, except in rule 44(2) (application for permission to appeal),”.

**23.** In rule 44(2) (application for permission to appeal)—

- (a) at the end of sub-paragraph (b) omit “or”; and
- (b) after sub-paragraph (b) insert—
  - “(ba) on an appeal against a decision of a Pensions Appeal Tribunal for Scotland or Northern Ireland; or”.

*Patrick Elias*  
*Philip Brook Smith Q.C.*  
*Carolyn Kirby*  
*Nicholas Warren*  
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*Nuala Brice*  
*Mark Rowland*  
*MJ Reed*

I allow these Rules  
Signed by authority of the Lord Chancellor

5th February 2009

*Bridget Prentice*  
Parliamentary Under Secretary of State  
Ministry of Justice

## EXPLANATORY NOTE

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

These Rules amend the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (S.I. 2008/2685) and the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698).

In relation to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, rule 2 of these Rules amends the definition of “asylum support case” in order to ensure that it is clear that proceedings brought by those persons with the same appeal rights as asylum seekers are included within the definition.

In relation to the Tribunal Procedure (Upper Tribunal) Rules 2008, rules 4, 5, 7, 8, 10, 13, 14, 16 and 22 of these Rules make amendments to make provision for the Upper Tribunal to deal with cases allocated to the Finance and Tax Chamber of the Upper Tribunal. These cases could be applications made directly to the Upper Tribunal, appeals from decisions of the Tax Chamber of the First-tier Tribunal or complex cases started in the Tax Chamber of the First-tier Tribunal but transferred to the Upper Tribunal for determination.

Rules 5 to 9, 11, 12, 15, 17 to 21 and 23 of these Rules make minor amendments to correct and clarify the drafting of the Tribunal Procedure (Upper Tribunal) Rules 2008 as originally made.

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STATUTORY INSTRUMENTS

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