

2013 No. 2067 (L. 20)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment No. 4) Rules 2013

Made - - - - 27th August 2013

Laid before Parliament 29th August 2013

Coming into force - - 1st November 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 Tribunal, Courts and Enforcement Act 2007(a), having consulted in accordance with paragraph 28(1) of that Schedule.

The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of that Schedule.

Citation and commencement

1. These Rules may be cited as the Tribunal Procedure (Amendment No. 4) Rules 2013 and come into force on 1st November 2013.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

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

3. In the table of contents, in the entry for rule 28A(c), for “fresh claims” substitute “immigration judicial review”.

4. In rule 1 (citation, commencement, application and interpretation), in paragraph (3)(d)—

(a) omit the definition of “fresh claim proceedings”;

(b) after the definition of “immigration case” insert—

““immigration judicial review proceedings” means judicial review proceedings which are designated as an immigration matter—

(a) in a direction made in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005(e) specifying a class of case for the purposes of section 18(6) of the 2007 Act; or

(a) 2007 c.15.

(b) S.I. 2008/2698; relevant amending instruments are S.I. 2009/274, 2010/43, 2010/44, 2010/747, 2010/2653, 2011/2343, 2012/2890 and 2013/477.

(c) Inserted by S.I. 2011/2343.

(d) As amended by S.I. 2010/44, 2010/747 and 2011/2343.

(e) 2005 c.4.

- (b) in an order of the High Court in England and Wales made under section 31A(3) of the Senior Courts Act 1981(a), transferring to the Upper Tribunal an application of a kind described in section 31A(1) of that Act;”;
- (c) in the definition of “party”, before “Tribunal finally” insert “Upper”.
- 5.** In rule 8 (striking out a party’s case), for paragraph (1)(b)(b) substitute—
“(b) in immigration judicial review proceedings, when a fee has not been paid, as required, in respect of an application under rule 30(4) or upon the grant of permission.”.
- 6.** In rule 10 (orders for costs), in paragraph (10)(c), before “Tribunal” insert “Upper”.
- 7.** In rule 11 (representatives), in paragraphs (5A) and (5B)(d), for “fresh claim” substitute “immigration judicial review”.
- 8.** In rule 13 (sending and delivery of documents), in paragraph (7)(e), before “Tribunal” insert “Upper”.
- 9.** In rule 17A (appeal treated as abandoned etc), in paragraph (1)(f), before “Tribunal if” insert “Upper”.
- 10.** In rule 28 (applications for permission to bring judicial review proceedings), in paragraph (8)(g), for “fresh claim” substitute “immigration judicial review”.
- 11.** In rule 28A(h) (special provisions for fresh claim proceedings)—
(a) in the heading of that rule, for “fresh claim” substitute “immigration judicial review”;
(b) in paragraph (1), for “fresh claim” substitute “immigration judicial review”.
- 12.** In rule 29 (acknowledgment of service)—
(a) in paragraph (1)(i), for “fresh claim” at both places, substitute “immigration judicial review”;
(b) in paragraph (2A)(j), for “fresh claim” substitute “immigration judicial review”.
- 13.** In rule 30 (decision on permission or summary dismissal etc)—
(a) in paragraph (4), for “In” substitute “Subject to paragraph (4A), in”;
(b) after paragraph (4), insert—
“(4A) Where the Upper Tribunal refuses permission to bring immigration judicial review proceedings and considers the application to be totally without merit, it shall record that fact in its decision notice and, in those circumstances, the applicant may not request the decision to be reconsidered at a hearing.”;
(c) in paragraph (5)(k), for “fresh claim” substitute “immigration judicial review”.
- 14.** In rule 34 (decision with or without a hearing)—
(a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (3)”;

(a) 1981 c.54. Section 31A was inserted by section 19(1) of the Tribunals, Court and Enforcement Act 2007 (c.15), and amended by section 53(1) of the Borders, Citizenship and Immigration Act 2009 (c.11) and section 22(1) of the Crime and Courts Act 2013 (c.22).

(b) Substituted by S.I. 2011/2343.

(c) Inserted by S.I. 2013/477.

(d) Inserted by S.I. 2011/2343.

(e) Inserted by S.I. 2010/44.

(f) Inserted by S.I. 2010/44.

(g) As amended by S.I. 2011/2343.

(h) Inserted by S.I. 2011/2343.

(i) Inserted by S.I. 2011/2343.

(j) Inserted by S.I. 2011/2343.

(k) As amended by S.I. 2011/2343.

(b) after paragraph (2), insert—

“(3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.

(4) Paragraph (3) does not affect the power of the Upper Tribunal to—

- (a) strike out a party’s case, pursuant to rule 8(1)(b) or 8(2);
- (b) consent to withdrawal, pursuant to rule 17;
- (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
- (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.”

15. In rule 39 (consent orders), in paragraph (2)(a), before “Tribunal” insert “Upper”.

16. In rule 40 (decisions), after paragraph (1), insert—

“(1A) Subject to paragraph (1B), in immigration judicial review proceedings, a decision which disposes of proceedings shall be given at a hearing.

(1B) Paragraph (1A) does not affect the power of the Upper Tribunal to—

- (a) strike out a party’s case, pursuant to rule 8(1)(b) or 8(2);
- (b) consent to withdrawal, pursuant to rule 17;
- (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
- (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.”

17. In rule 43 (setting aside a decision which disposes of proceedings), in paragraph (3)(b), before “Tribunal sent” insert “Upper”.

18. In rule 44 (application for permission to appeal)—

- (a) in paragraph (1)(c), for “paragraph (4A)” substitute “paragraphs (4A) and (4B)”;
- (b) in paragraph (4)(d), for “ or (3D)” substitute “, (3D) or (4C)”;
- (c) for paragraph (4A)(e) substitute—

“(4A) Where a decision that disposes of immigration judicial review proceedings is given at a hearing, a party may apply at that hearing for permission to appeal, and the Upper Tribunal must consider at the hearing whether to give or refuse permission to appeal.

(4B) Where a decision that disposes of immigration judicial review proceedings is given at a hearing and no application for permission to appeal is made at that hearing—

- (a) the Upper Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal; and
- (b) if permission to appeal is given to a party, it shall be deemed for the purposes of section 13(4) of the 2007 Act to be given on application by that party.

(4C) Where a decision that disposes of immigration judicial review proceedings is given pursuant to rule 30 and the Upper Tribunal records under rule 30(4A) that the application is totally without merit, an application under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received within 7 days after the later of the dates on which the Upper Tribunal sent to the applicant—

(a) As amended by S.I. 2009/274.
(b) As amended by S.I. 2010/44.
(c) As amended by S.I. 2012/2890.
(d) As amended by S.I. 2010/747.
(e) As inserted by S.I. 2012/2890.

- (a) written reasons for the decision; or
- (b) notification of amended reasons for, or correction of, the decision following a review.”;
- (d) in paragraph (7)(a)(a), before “Tribunal” insert “Upper”.

19. In rule 45 (Upper Tribunal’s consideration of application for permission to appeal), in paragraphs (3) and (4), for “send” substitute “provide”.

20. In rule 48(b) (power to treat an application as a different type of application”, before “Tribunal” insert “Upper”.

21. In schedule 2(c) (additional procedure in national security certificate cases)—

- (a) in paragraph 10(c), before “Tribunal must” insert “Upper”;
- (b) in paragraph 11(b), before “Tribunal” insert “Upper”.

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

22. The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008(d) are amended as follows.

23. In rule 5 (case management powers), after paragraph (3)(a) insert—

- “(aa) extend the time within which an appeal must be brought under regulation 28(1) of the Child Benefit and Guardian’s Allowance (Decisions and Appeals) Regulations 2003(e)”

24. In rule 19(f) (confidentiality in child support or child fund cases) in paragraph (2), for sub-paragraphs (a) – (c) substitute—

- “(a) in the notice of appeal or when notifying the Secretary of State or the Tribunal of any subsequent change of address; or
- (b) within 14 days after an enquiry is made by the recipient of the notice of appeal or the notification referred to in sub-paragraph (a).”

25. In rule 22(g) (cases in which the notice of appeal is to be sent to the tribunal), in paragraph (6), after “rule 5(3)(a)” at both places, insert “or (aa)”.

26. In rule 23(h) (cases in which the notice of appeal is to be sent to the decision maker), after “rule 5(3)(a)” insert “or (aa)”.

Amendment to the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008

27. The Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008(i) are amended as follows.

28. In rule 36(j) (application for permission to appeal), in paragraph (2)(a)(ii), for “rule 3(5)(e)” substitute “rule 5(3)(e)”.

(a) As amended by S.I. 2012/2890.
 (b) Inserted by S.I. 2010/2653.
 (c) Inserted by S.I. 2010/43 and subsequently amended by S.I. 2010/747.
 (d) S.I. 2008/2685; relevant amending instruments are S.I. 2009/1975, 2012/500, 2012/2007 and 2013/477.
 (e) S.I. 2003/916. Regulation 28 was amended by S.I. 2008/2693.
 (f) As amended by S.I. 2012/2007.
 (g) As amended by S.I. 2013/477.
 (h) As amended by S.I. 2009/1975 and S.I. 2012/500.
 (i) S.I. 2008/2686, amended by S.I. 2013/477; there are other amending instruments but none is relevant.
 (j) As amended by S.I. 2013/477.

Transitional

29.—(1) The amendments made by rule 13(a) and (b) (relating to rule 30(4) and (4A) of the Tribunal Procedure (Upper Tribunal) Rules 2008) do not apply to fresh claim proceedings where—

- (a) an application for permission to bring judicial review proceedings was issued in the Upper Tribunal before 1st November 2013; or
- (b) an application for permission to apply for judicial review was transferred to the Upper Tribunal by the High Court under section 31A of the Senior Courts Act 1981 before 1st November 2013.

(2) Fresh claim proceedings has the meaning in rule 1(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as it was in force immediately before 1st November 2013.

We make these Rules,

Brian F J Langstaff
Douglas J May QC
Mark Rowland
Lesley Clare
M J Reed
W B Thompson
Philip Brook Smith QC

22nd August 2013

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

Lord McNally
Minister of State
Ministry of Justice

27th August 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), the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (S.I. 2008/2685) and the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 (S.I. 2008/2686).

The amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the “Upper Tribunal Rules”) are, for the most part, a consequence of the making of a direction by the Lord Chief Justice which transfers into the unified tribunal structure certain immigration and asylum judicial reviews from the High Court in England and Wales. The Lord Chief Justice’s direction is published at www.judiciary.gov.uk.

Rules 14 and 16 provide that any decision which disposes of “immigration judicial review proceedings”, subject to some limited exceptions, must be given at a hearing. Rule 18 provides that permission to appeal such Upper Tribunal decisions will also be dealt with at that hearing, whether or not such permission has been sought by either party.

Rule 18, together with rule 13, amends the Upper Tribunal Rules to remove a party’s right to have a decision of the Upper Tribunal refusing permission to bring immigration judicial review proceedings reviewed at a hearing where the Upper Tribunal considers the application to be totally without merit. Rule 29 provides that this amendment will not apply to applications in relation to

fresh claim proceedings which were issued in, or transferred to, the Upper Tribunal prior to 1st November 2013.

Rule 5 introduces a rule providing that in immigration judicial review proceedings a case will be struck out where a fee has not been paid as required.

The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 are amended by rules 23-26. Rules 23, 25 and 26 provide an express power to the First-tier Tribunal to extend the time within which an appeal can be brought under regulation 28(1) of the Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003 (S.I. 2003/916). The amendment provided for by rule 24 is consequential upon changes affecting certain child support appeals, which will result in notices of appeal being sent to the Tribunal instead of the decision maker. The process for notifying or enquiring as to the need for confidentiality in such cases are amended to reflect the change in process.

Rule 28 amends the rules of the First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber) to correct a cross-reference to the rule under which case management directions may be given to deal with an issue in proceedings as a preliminary issue.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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