

2022 No. 1030 (L. 11)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment No. 2) Rules 2022

Made - - - - - *10th October 2022*

Laid before Parliament *11th October 2022*

Coming into force - - *1st November 2022*

The Tribunal Procedure Committee makes the following Rules, in exercise of the powers conferred by sections 22 and 29(3) of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(a), having consulted in accordance with paragraph 28(1) of 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 No. 2) Rules 2022 and come into force on 1st November 2022.

Amendments to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

2.—(1) The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(b) are amended as follows.

(2) In rule 1(3) (citation, commencement, application and interpretation) for the definition of “charities case” substitute—

““charities case” means—

- (a) an appeal or application in respect of a decision, order or direction of the Charity Commission listed in column 1 of Schedule 6 to the Charities Act 2011;
- (b) a reference under section 325 or 326 of the Charities Act 2011; or
- (c) an application under section 324A of the Charities Act 2011(c);”.

(3) In rule 9(5) (addition, substitution and removal of parties) for “Schedule 1D of the Charities Act 1993” substitute “section 325 or 326 of the Charities Act 2011”.

(4) After rule 25 (application of this chapter) insert—

(a) 2007 c. 15. There are amendments to the Act but none is relevant to this instrument.

(b) S.I. 2009/1976; relevant amending instrument is S.I. 2012/500.

(c) 2011 c. 25. Section 324A will be inserted by section 36 of the Charities Act 2022 (c. 6) when brought into force.

“Application for an authorised costs order

25A.—(1) This rule applies to an application by a charity or charity trustees of a charity for an order under section 324A (power to authorise costs to be incurred in relation to proceedings) of the Charities Act 2011 (“authorised costs order”).

(2) An applicant for an authorised costs order must start proceedings before the Tribunal by sending or delivering to the Tribunal an application which must include—

- (a) the name and address of the applicant;
- (b) the name and address of the applicant’s representative (if any);
- (c) an address where documents for the applicant may be sent or delivered;
- (d) the basis on which the applicant has standing to start proceedings before the Tribunal;
- (e) the name and address of any respondent and any other interested party in the proceedings to which the application relates;
- (f) details of the proceedings brought, or proposed to be brought, before the Tribunal to which the application relates;
- (g) the result the applicant is seeking;
- (h) the grounds on which the applicant relies;
- (i) whether the applicant wants the application to be determined at a hearing; and
- (j) any further information or documents required by a practice direction.

(3) The applicant must send or deliver a copy of the application (but need not send the further information or documents referred to in paragraph (2)(j)) to the respondent and any other interested party in the proceedings to which the application relates at the same time as it provides the application to the Tribunal.

(4) In this rule, references to “charity” and “charity trustees” have the meanings given by the Charities Act 2011.”.

(5) In rule 26(4) (notice of appeal) for “Schedule 1D of the Charities Act 1993” substitute “section 325 or 326 of the Charities Act 2011”.

(6) In rule 31 (involvement of the Attorney General under section 2D of the Charities Act 1993)—

- (a) in the heading, for “section 2D of the Charities Act 1993” substitute “section 318 of the Charities Act 2011”;
- (b) in paragraph (1), for “section 2D(2) and (3) of the Charities Act 1993” substitute “section 318(2) and (3) of the Charities Act 2011”;
- (c) in paragraph (3), for “section 2D(4)(b) of the Charities Act 1993” substitute “section 318(4)(b) of the Charities Act 2011”; and
- (d) in paragraph (4), for “section 2D(4) of the Charities Act 1993” substitute “section 318(4) of the Charities Act 2011”.

(7) In rule 32 (decision with or without a hearing)—

- (a) in paragraph (1), after the word “paragraphs” insert “(1A),”;
- (b) after paragraph (1), insert—

“(1A) The Tribunal may dispose of an application under rule 25A (application for an authorised costs order) without a hearing if the Tribunal is satisfied that it can properly determine the issues without a hearing.”.

(8) In rule 42 (application for permission to appeal) after paragraph (2A) insert—

“(2B) The Tribunal may direct that the 28 days within which a party may send or deliver to the Tribunal an application for permission to appeal against a decision that disposes of an application under rule 25A (application for an authorised costs order) shall run from the

date of the decision that disposes of all issues in the proceedings brought, or proposed to be brought, before the Tribunal to which the application under rule 25A relates.”.

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

3.—(1) The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008(a) are amended as follows.

(2) In rule 37(1) (time and place of hearings) for “7” substitute “10”.

Amendments to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

4.—(1) The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013(b) are amended as follows.

(2) In rule 1(3) (citation, commencement and interpretation), after the definition of “Tribunal” insert—

““unresponsive grantor case” means an application for an order under paragraph 27D of Part 4A (code rights in respect of land connected to leased premises: unresponsive occupiers) of Schedule 3A to the Communications Act 2003(c).”

(3) In rule 13 (orders for costs, reimbursement of fees and interest on costs)—

(a) in paragraph (1)—

(i) at the beginning, insert “Subject to paragraph (1ZA),”;

(ii) in sub-paragraph (b), after “proceedings”, omit the words from “in” to the end of that sub-paragraph;

(b) after paragraph (1) insert—

“(1ZA) The Tribunal may not make an order for costs under paragraph (1)(b) in proceedings under—

(a) Part 5 of the Rent Act 1977(d) (rents under restricted contracts); or

(b) Part 1 of the Housing Act 1988(e) (assured tenancies, shorthold and non-shorthold).”

(4) In rule 31(3) (decision with or without a hearing), in sub-paragraph (a) after “28 days’ notice” insert “or, in an unresponsive grantor case, not less than 14 days’ notice,”.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

5.—(1) The Tribunal Procedure (Upper Tribunal) Rules 2008(f) are amended as follows.

(2) After Rule 20A (procedure for applying for a stay of a decision pending an appeal) insert—

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- (a) S.I. 2008/2699; relevant amending instrument is S.I. 2020/416.
(b) S.I. 2013/1169; relevant amending instruments are S.I. 2019/925, S.I. 2021/322 and S.I. 2021/1183.
(c) 2003 c. 21; Part 4A of Schedule 3A will be inserted by section 1 of the Telecommunications Infrastructure (Leasehold Property) Act 2021 (c. 7) when brought into force.
(d) 1977 c. 42. This Act is amended by the Transfer of Functions Order 2013 (S.I. 2013/1036), which under Article 2(1) transfers the functions of rent assessment committees for areas in England to the First-tier Tribunal or, where determined by or under tribunal procedure rules in any particular case, the Upper Tribunal.
(e) 1988 c. 50. This Act is amended by S.I. 2013/1036 which transfers the functions of rent assessment committees for areas in England to the First-tier Tribunal or, where determined by or under tribunal procedure rules in any particular case, the Upper Tribunal.
(f) S.I. 2008/2698; relevant amending instrument is S.I. 2012/500.

“Application for an authorised costs order

20B.—(1) This rule applies to an application by a charity or charity trustees of a charity for an order under section 324A (power to authorise costs to be incurred in relation to proceedings) of the Charities Act 2011 (“authorised costs order”).

(2) An applicant for an authorised costs order must start proceedings before the Upper Tribunal by sending or delivering to the Upper Tribunal an application which must include—

- (a) the name and address of the applicant;
- (b) the name and address of the applicant’s representative (if any);
- (c) an address where documents for the applicant may be sent or delivered;
- (d) the name and address of any respondent and any other interested party in the proceedings to which the application relates;
- (e) details of the proceedings brought, or proposed to be brought, before the Upper Tribunal to which the application relates with details (including the full reference) of the decision challenged;
- (f) a copy of any authorised costs order or refusal of any authorised costs order made by the First-tier Tribunal;
- (g) the result the applicant is seeking;
- (h) the grounds on which the applicant relies;
- (i) whether the applicant wants the application to be determined at a hearing; and
- (j) any further information or documents required by a practice direction.

(3) The applicant must send or deliver a copy of the application (but need not send the further information or documents referred to in paragraph (2)(j)) to the respondent and any other interested party in the proceedings to which the application relates at the same time as it provides the application to the Upper Tribunal.

(4) In this rule, references to “charity” and “charity trustees” have the meanings given by the Charities Act 2011.”.

(3) In rule 26A(2) (cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal, cases where an offence has been certified and proceedings without notice to a respondent), in subparagraph (aa) for “Schedule 1D of the Charities Act 1993” substitute “section 325 or 326 of the Charities Act 2011”.

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

6.—(1) The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010(a) are amended as follows.

(2) In rule 1(3) (citation, commencement, application and interpretation)—

(a) in the definition of “applicant”, after sub-paragraph (b) insert—

“(ba) makes an application under section 130 or 135 of the Environment Act 2021(b);”;

(b) in the definition of “objector”, from “section” to the end substitute—

“—

(a) section 84 of the Law of Property Act 1925(c); or

(b) section 130 or 135 of the Environment Act 2021;”.

(a) S.I. 2010/2600; there are amending instruments but none is relevant to this instrument.

(b) 2021 c. 30.

(c) 1925 c. 25.

(3) After Part 6 (applications under section 84 of the Law of Property Act 1925 (discharge or modification of restrictive covenants)) insert—

“PART 6A

Applications under section 130 or 135 of the Environment Act 2021 (discharge or modification of an obligation under a conservation covenant, and declarations about conservation covenants)

Interpretation

39A. In this Part references to a section or Schedule by number only are to the section or Schedule so numbered in the Environment Act 2021, and “conservation covenant” and “conservation covenant agreement” used in this Part have the meanings given in that Act, and—

“application covenant” means a conservation covenant to which an application relates;

“application land” means the land to which an application relates;

“landowner” means a person bound by an obligation under an application covenant;

“relevant obligation” means the obligation under an application covenant to which an application relates;

“responsible body” means the responsible body in relation to an application covenant.

Method of making application

39B.—(1) An application under section 130 or 135 is made by sending or delivering to the Tribunal an application which must be signed and dated and must state—

- (a) the name and address of the applicant and, if represented—
 - (i) the name and address of the applicant’s representative; and
 - (ii) the professional capacity, if any, in which the applicant’s representative acts;
- (b) an address where documents for the applicant may be sent or delivered;
- (c) the address or description of the application land;
- (d) whether the applicant is a landowner or a responsible body;
- (e) the relevant obligation;
- (f) the name and address of any person who is bound by the relevant obligation, or any person who the applicant believes may be so bound, and the reasons for that belief;
- (g) if the applicant is a landowner—
 - (i) the applicant’s interest in the application land;
 - (ii) the name and address of any other person with an interest in the application land and what is their interest;
 - (iii) the name and address of the responsible body;
- (h) if the applicant is applying to discharge or modify the relevant obligation under section 130, details of the discharge or modification sought, and details of the matters in paragraph 3 or 9 of Schedule 18 on which the applicant relies;
- (i) if the applicant is applying for a declaration under section 135, details of the declaration and the reasons for seeking it.

- (2) The applicant must provide with the application—
- (a) a copy of the conservation covenant agreement imposing the application covenant including any attached plan coloured in accordance with the original;
 - (b) a plan identifying the application land; and
 - (c) the fee payable to the Tribunal.
- (3) An application may be made jointly by two or more persons if—
- (a) each of those persons is entitled to make an application under section 130 or 135;
 - (b) the application is (for each person) the same land or different parts of the same land; and
 - (c) the application covenant is (for each person) the same conservation covenant.
- (4) When the Tribunal receives an application under this Part, it must send a copy of the application and any accompanying documents to any person, other than the applicant, that is identified in the application either as landowner having an interest in the application land or in other land to which the application relates, or as a responsible body.

Notice of objection

39C.—(1) Notice of an objection to an application and any claim for compensation must be in writing and must be sent or delivered to the Tribunal and to the applicant, so that it is received by the Tribunal within one month of the date on which the Tribunal sent a copy of the application to the objector.

- (2) The notice of objection must be signed and dated and must state—
- (a) the name and address of the objector and, if represented—
 - (i) the name and address of the objector’s representative; and
 - (ii) the professional capacity, if any, in which the objector’s representative acts;
 - (b) an address where documents for the objector may be sent or delivered;
 - (c) any ground of objection; and
 - (d) whether the objector wants the case to be determined at a hearing.
- (3) After receipt of a notice of objection the Tribunal must give such case management directions as may be appropriate.

Orders where compensation is payable

39D. Where the Tribunal orders the discharge or modification of a relevant obligation subject to the payment of compensation—

- (a) the discharge or modification must not take effect until the Tribunal has endorsed on the order that the compensation has been paid; and
- (b) the Tribunal may direct that the order must cease to have effect if the compensation is not paid within a specified time.”.

We make these Rules

Stephen Smith
Susan Humble
Philip Brook Smith
Mark Loveday
Elizabeth Stuart Cole
Joanna Smith
Timothy Peter Fagg
TPC Members

5th October 2022

I allow these Rules

Mike Freer
Parliamentary Under Secretary of State
Ministry of Justice

10th October 2022

EXPLANATORY NOTE

(This note is not part of the Rules)

Rule 2 amends the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) (“the GRC Rules”) and Rule 5 amends the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698) to correct cross-referencing to reflect legislative changes and to introduce provisions for applications for authorised cost orders to be made under section 324A (power to authorise costs to be incurred in relation to proceedings) of the Charities Act 2011 (c. 25) to the Tribunal and the Upper Tribunal, respectively. Rule 2(7) amends Rule 32 (decision with or without a hearing) of the GRC Rules to permit such proceedings to be disposed of without a hearing where appropriate.

Rule 3 amends Rule 37(1) (time and place of hearings) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (S.I. 2008/2699) to extend the period within which the Tribunal is required to list proceedings made under section 66(1)(a) of the Mental Health Act 1983 (c. 20) from 7 days to 10 days after the date the Tribunal receives an application notice.

Rule 4 amends the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013/1169).

Rule 4(2) and (4) introduce provisions to allow the Tribunal to dispose of applications made under paragraph 27D of Part 4A (code rights in respect of land connected to leased premises: unresponsive occupiers) of Schedule 3A to the Communications Act 2003 (c. 21) to the Tribunal without a hearing after giving 14 days’ notice.

Rule 4(3) amends Rule 13 (orders for costs, reimbursement of fees and interest on costs) to provide the Tribunal the power to make unreasonable cost orders as a default for all jurisdictions. The amendments preserve the existing position in relation to costs in proceedings under Part 5 of the Rent Act 1977 (c. 42) and Part 1 of the Housing Act 1988 (c. 50), by expressly exempting unreasonable cost orders from being awarded in such proceedings.

Part 7 of and Schedule 18 to the Environment Act 2021 (c. 30) introduces a legislative framework for conservation covenants. Conservation covenants allow landowners to set legally binding obligations on their land for themselves and subsequent owners to secure environmental benefits for the long term. Rule 6 amends the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (S.I. 2010/2600) to introduce a new Part 6A, which makes provisions for applications to be made to the Lands Chamber of the Upper Tribunal under section 130 and 135 of the Environment Act 2021 for the discharge or modification of obligations under conservation covenants, and declarations about conservation covenants.

No impact assessment has been carried out for these amendments as no, or no significant impact, on the private, voluntary, or public sectors is foreseen.

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