

2022 No. 312 (L. 5)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment) Rules 2022

<i>Made</i> - - - -	<i>15th March 2022</i>
<i>Laid before Parliament</i>	<i>16th March 2022</i>
<i>Coming into force</i> - -	<i>6th April 2022</i>

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) Rules 2022 and come into force on 6th April 2022.

Amendments to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

2.—(1) The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014(b) are amended as follows.

(2) In rule 1(4) (citation, commencement, application and interpretation), after the definition of “appellant” insert—

““appointment” means (except in rule 10(5)), a case management meeting conducted by a member of the Tribunal’s staff authorised to carry out functions of a judicial nature pursuant to rule 3(2), held for the purpose of carrying out any of those functions;”.

(3) In rule 4(3) (case management powers) after “hearing” where it appears in sub-paragraphs (f), (g), (h) and (i) insert “or appointment”.

(4) In rule 8(1) (substitution and addition of parties) for “respondent” in the two places where it occurs, substitute “party”.

(5) In rule 12(1) (sending, delivery and language of documents)—

(a) omit sub-paragraph (c);

(a) 2007 c. 15. Paragraph 3 of Schedule 5 is amended and Paragraph 28A is inserted by Part 2 of Schedule 1 to the Courts and Tribunals (Judiciary and functions of Staff) Act 2018 (c. 33). There are other amendments to the Act but none are relevant to this instrument.

(b) S.I. 2014/2604; relevant amending instruments are S.I. 2017/1168, S.I. 2018/511, S.I. 2020/61, 1213 and 1372.

- (b) at the end of sub-paragraph (d) omit “or”;
- (c) after sub-paragraph (d) insert—
 - “(da) uploaded to the Tribunal’s secure portal in a compatible file format; or”.
- (6) After rule 12 (sending, delivery and language of documents) insert—

“Providing contact details

- 12A.**—(1) An appellant must provide the Tribunal with—
- (a) the postal address at which they are living, if they have one; and
 - (b) their email address, if they have one.
- (2) The Tribunal must be notified of any change to the details provided under paragraph (1) as soon as reasonably practicable.
- (3) If the appellant has a representative, the representative shall take all reasonable steps to ensure that the appellant complies with paragraphs (1) and (2).
- (4) If the respondent decides to remove or deport an appellant from the United Kingdom whilst proceedings before the Tribunal, including any application for permission to appeal, are pending the respondent must inform the Tribunal of that fact and take all reasonable steps before any removal or deportation—
- (a) to obtain from the appellant an email address and postal address in the country to which it is intended to remove or deport the appellant to which correspondence may be sent to the appellant; and
 - (b) to provide that information to the Tribunal and to the appellant’s representative, if they have one, as soon as reasonably practicable and in any event before removal or deportation.”.
- (7) In rule 19 (notice of appeal)—
- (a) in paragraph (4)—
 - (i) in sub-paragraph (a), for “set out the grounds of appeal” substitute “identify which of the available statutory grounds of appeal are relied upon”;
 - (ii) omit sub-paragraphs (d), (e) and (f);
 - (b) after paragraph (7) insert—
 - “(8) A practice direction may require that, in a specified category of case, the notice of appeal must also set out the grounds of appeal.”.
- (8) In rule 23 (response: entry clearance cases), in paragraph (2)—
- (a) omit sub-paragraph (b);
 - (b) at the end of sub-paragraph (e), omit “and”;
 - (c) at the end of sub-paragraph (f), omit the full stop and insert—
 - “; and
 - (g) any documents provided to the respondent in support of the original application.”.
- (9) In rule 24 (response: other cases)—
- (a) in paragraph (1)—
 - (i) at the end of sub-paragraph (d) omit “and”;
 - (ii) at the end of sub-paragraph (e) omit the full stop and insert—
 - “; and
 - (f) any documents provided to the respondent in support of the original application.”;
 - (b) omit paragraph (2);
 - (c) in paragraph (3) omit “and any statement required under paragraph (2)”.
- (10) After rule 24 (response: other cases) insert—

“Further Steps

24A.—(1) If the appellant is represented, upon the respondent complying with rule 23(2) or rule 24(1), as the case may be, the appellant must provide the Tribunal with—

- (a) an appeal skeleton argument which complies with any relevant practice direction; and
- (b) copies of the evidence relied upon in the appeal skeleton argument, insofar as that evidence is not already contained in the documents provided by the respondent under rule 23(2) or rule 24(1).

(2) The documents in paragraph (1) are to be provided to the Tribunal within 28 days after the respondent complies with rule 23(2) or rule 24(1), as the case may be, or within 42 days after the notice of appeal is provided to the Tribunal, whichever is later.

(3) The respondent must no later than 14 days after compliance with paragraph (1) provide to the Tribunal and the appellant a written statement which complies with any relevant practice direction, of whether the respondent opposes all or part of the appellant’s case and if so the grounds for such opposition.

(4) A practice direction may disapply the requirement in paragraph (1) in a specified category of case.”.

(11) In rule 33(7) (application for permission to appeal to the Upper Tribunal), after “out of time,” insert “or the application for permission was received out of time,”.

(12) In rule 38(3) (bail applications), in sub-paragraph (h) after “was refused and” insert “, where the previous refusal took place less than 28 days before the application,”.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

3.—(1) The Tribunal Procedure (Upper Tribunal) Rules 2008(a) are amended as follows.

(2) In rule 13 (sending and delivery of documents), after paragraph (7) insert—

“(8) In judicial review proceedings, unless the contrary is proved, a document sent by first class post will be deemed to be provided or received on the second working day after it was posted.”.

(3) In rule 21 (application to the Upper Tribunal for permission to appeal), before paragraph (2) insert—

“(1A) This rule does not apply to an application for permission to appeal to the Upper Tribunal if such application is made under rule 24 (response to notice of appeal).”.

(4) In rule 22 (decision in relation to permission to appeal)—

- (a) at the beginning of paragraph (4), insert “Subject to paragraph (4A),”;
- (b) after paragraph (4) insert—

“(4A) Where the Upper Tribunal considers the whole or part of an application to be totally without merit, it shall record that fact in its decision notice and, in those circumstances, the person seeking permission may not request the decision or part of the decision (as the case may be) to be reconsidered at a hearing.”.

(5) In rule 24 (response to the notice of appeal)—

- (a) in paragraph (1A) after “a respondent may” insert “, and if paragraph (1B) applies must,”;
- (b) after paragraph (1A) insert—

“(1B) In the case of an appeal against the decision of another tribunal, a respondent must provide a response to a notice of appeal if the respondent—

(a) S.I. 2008/2698; relevant amending instruments are S.I. 2009/274, 1975, S.I. 2010/43, 44, S.I. 2013/2067, S.I. 2014/514, 2128, S.I. 2015/1510, S.I. 2017/723 and S.I. 2020/651.

- (a) wishes the Upper Tribunal to uphold the decision for reasons other than those given by the tribunal; or
- (b) relies on any grounds on which the respondent was unsuccessful in the proceedings which are the subject of the appeal.

(1C) If paragraph (1B) applies, to the extent that the respondent needs any permission, including permission to appeal to the Upper Tribunal, the response must include an application to the Upper Tribunal for such permission.”.

- (c) in paragraph (3)—
 - (i) in sub-paragraph (e) from “on which the respondent” to the end of that sub-paragraph substitute—
 - “(i) to uphold the decision for reasons other than those given by the tribunal; or
 - (ii) on which the respondent was unsuccessful in the proceedings which are the subject of the appeal;”;
 - (ii) after sub-paragraph (e) insert—
 - “(ea) the reasons why any permission applied for under paragraph (1C) should be given; and”.

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

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

- (2) In rule 10(6) (orders for costs), after sub-paragraph (a) insert—
 - “(aa) under section 18 of the 1961 Act(b);”.

We make these Rules

Joanna Smith
Donald W Ferguson
Mark Loveday
Susan Humble
Philip Brook Smith
TPC Members

3rd March 2022

I allow these Rules

James Cartlidge
Parliamentary Under Secretary of State
Ministry of Justice

15th March 2022

EXPLANATORY NOTE

(This note is not part of the Rules)

Rule 2 amends the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (S.I. 2014/2604).

Rule 2(2) and 2(3) make amendments to introduce case management appointments, which are intended to be conducted by Tribunal Caseworkers to allow parties to make representations to Tribunal Caseworkers who are exercising case management powers. It serves to maintain a clear

(a) S.I. 2010/2600; relevant amending instruments are S.I. 2013/1188, S.I. 2017/1168 and S.I. 2018/511.
(b) ‘the 1961 Act’ means the Land Compensation Act 1961 (c. 33).

distinction between Tribunal Caseworkers and Judges and their different roles in dealing with appeals.

Rule 2(4) clarifies that the Tribunal may substitute the name of an appellant once proceedings are underway.

Rule 2(5) makes express provision for the use of the Tribunal's online portal.

Rule 2(6) inserts a new Rule 12A (providing contact details), which requires appellants to provide the Tribunal with contact details. It creates an express duty on the respondent to notify the Tribunal where an appellant is removed or deported, whilst Tribunal proceedings are underway. It also requires the respondent to obtain contact details for the appellant in the country to which they are removed or deported and to provide these details to the Tribunal.

Rule 2(7) makes amendments to Rule 19 (notice of appeal) to simplify the information that must be provided when an appeal is initially lodged, and inserts a new paragraph (8) to Rule 19 to allow practice directions to require specified categories of case to set out full grounds of appeal.

Rule 2(8) amends Rule 23 (response: entry clearance cases) and Rule 2(9) amends Rule 24 (response: other cases) to require the respondent to provide the Tribunal with any document that has been provided by the appellant in support of their application.

Rule 2(10) inserts a new Rule 24A (further steps) to require represented appellants to submit an appeal skeleton argument and to make provision for dealing with the respondent's written statement in reply to that appeal skeleton argument.

Rule 2(11) amends Rule 33(7) (application for permission to appeal to the Upper Tribunal) to make express the Tribunal's power to refuse to admit a late application for permission to appeal.

Rule 2(12) amends Rule 38(3) (bail applications) to require bail applications to include details of any material change in circumstances where an application was previously refused less than 28 days before the application.

Rule 3 amends the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698).

Rule 3(2) amends Rule 13 (sending and delivery of documents) to clarify when documents are deemed to be received by the Tribunal in judicial review proceedings.

Rule 3(4) amends Rule 22 (decision in relation to permission to appeal) to confer a power on Upper Tribunal judges when refusing applications for permission to appeal, to certify the application as being "totally without merit". The consequence of such certification is to remove the right for an applicant to seek to renew the application at an oral hearing.

Rule 3(5) amends Rule 24 (response to the notice of appeal) to widen the terms of the rule so as to conform more closely with Rule 52.13(2) of the Civil Procedure Rules 1998 (S.I. 1998/3132) and to accommodate applications for permission to appeal. Rule 3(3) amends Rule 21 (application to the Upper Tribunal for permission to appeal) as a consequence of the amendments to Rule 24.

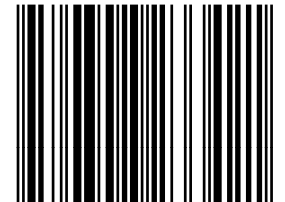
Rule 4 amends the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (S.I. 2010/2600). Rule 4(2) amends Rule 10(6) (orders for costs) to allow the Tribunal to make orders for costs in appeals brought under section 18 of the Land Compensation Act 1961 (c. 33).

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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