

2010 No. 44

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment No. 2) Rules 2010

Made - - - - *10th January 2010*

Laid before Parliament *12th January 2010*

Coming into force - - *15th February 2010*

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 section 22 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 No. 2) Rules 2010 and come into force on 15 February 2010.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

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

3. In rule 1(3) (interpretation)—

(a) after the definition of “appropriate national authority” insert—

““asylum case” means proceedings before the Upper Tribunal on appeal against a decision in proceedings under section 82, 83 or 83A of the Nationality, Immigration and Asylum Act 2002(c) in which a person claims that removal from, or a requirement to leave, the United Kingdom would breach the United Kingdom’s obligations under the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;”;

(b) after the definition of “hearing” insert—

““immigration case” means proceedings before the Upper Tribunal on appeal against a decision in proceedings under section 40A of the British Nationality Act 1981(d), section

(a) 2007 c. 15.

(b) S.I. 2008/2698 as amended by the Tribunal Procedure (Amendment) Rules 2009 (S.I. 2009/274), the Tribunal Procedure (Amendment No. 2) Rules 2009 (S.I. 2009/1975) and the Tribunal Procedure (Amendment) Rules 2010 (S.I. 2010/XX).

(c) 2002 c. 41. Section 82 was amended by sections 26(2) and 31 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19); sections 2, 11(6), 47(6), 57(2) and 61 of the Immigration, Asylum and Nationality Act 2006 (c. 13), and section 35(1) and (3) of the UK Borders Act 2007 (c. 30). Section 83A was inserted by section 1 of the Immigration, Asylum and Nationality Act 2006.

(d) 1981 c. 61.

82 of the Nationality, Immigration and Asylum Act 2002, or regulation 26 of the Immigration (European Economic Area) Regulations 2006^(a) that are not an asylum case;”;
and

(c) after the definition of “document” insert—

““fast-track case” means an asylum case or an immigration case where the person who appealed to the First-tier Tribunal—

- (a) was detained under the Immigration Acts at a place specified in Schedule 2 to the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005^(b) when the notice of decision that was the subject of the appeal to the First-tier Tribunal was served on the appellant;
- (b) remains so detained; and
- (c) the First-tier Tribunal or the Upper Tribunal has not directed that the case cease to be treated as a fast-track case;”.

4. After rule 5(3) (case management powers) insert—

“(4) The Upper Tribunal may direct that a fast-track case cease to be treated as a fast-track case if—

- (a) all the parties consent;
- (b) the Upper Tribunal is satisfied that there are exceptional circumstances which suggest that the appeal or application could not be justly determined if it were treated as a fast-track case; or
- (c) the Secretary of State for the Home Department has failed to comply with a provision of these Rules or a direction of the First-tier Tribunal or the Upper Tribunal, and the Upper Tribunal is satisfied that the other party would be prejudiced if the appeal or application were treated as a fast-track case.”.

5. In rule 7(2)(d) (failure to comply with rules etc.) for “mental health cases” substitute “a mental health case, an asylum case or an immigration case”.

6. In rule 8 (striking out a party’s case) before paragraph (1) insert—

“(1A) Except for paragraph (2), this rule does not apply to an asylum case or an immigration case.”.

7. In rule 9 (addition, substitution and removal of parties) after paragraph (4) insert—

“(5) In an asylum case, the United Kingdom Representative of the United Nations High Commissioner for Refugees (“the United Kingdom Representative”) may give notice to the Upper Tribunal that the United Kingdom Representative wishes to participate in the proceedings.

(6) If the United Kingdom Representative gives notice under paragraph (5)—

- (i) the United Kingdom Representative is entitled to participate in any hearing;
and
- (ii) all documents which are required to be sent or delivered to parties must be sent or delivered to the United Kingdom Representative.”.

8. In rule 11 (representatives)—

- (a) in paragraph (1), after “proceedings” insert “save that a party in an asylum or immigration case may not be represented by any person prohibited from representing by section 84 of the Immigration and Asylum Act 1999^(c)”;

(a) S.I. 2006/1003.
(b) S.I. 2005/560.
(c) 1999 c. 33.

- (b) in paragraph (9), after “that Act,” insert “a qualified person as defined in section 84(2) of the Immigration and Asylum Act 1999;” and
- (c) after paragraph (9) insert—
 - “(10) In an asylum case or an immigration case, an appellant’s representative before the First-tier Tribunal will be treated as that party’s representative before the Upper Tribunal, unless the Upper Tribunal receives notice—
 - (a) of a new representative under paragraph (2) of this rule; or
 - (b) from the appellant stating that they are no longer represented.”.

9. In rule 12 (calculating time)—

- (a) after paragraph (3) insert—
 - “(3A) In an asylum case or an immigration case, when calculating the time by which an act must be done, in addition to the days specified in the definition of “working days” in rule 1 (interpretation), the following days must also not be counted as working days—
 - (a) 27th to 31st December inclusive; and
 - (b) in a fast-track case, 24th December, Maundy Thursday, or the Tuesday after the last Monday in May.”; and
- (b) in paragraph (4), after “paragraph (3)” insert “or (3A)”.

10. In rule 13 (sending and delivery of documents) after paragraph (5) insert—

- “(6) Subject to paragraph (7), if a document submitted to the Upper Tribunal is not written in English, it must be accompanied by an English translation.
- (7) In proceedings that are in Wales or have a connection with Wales, a document or translation may be submitted to the Tribunal in Welsh.”.

11. In rule 15 (evidence and submissions) after paragraph (2) insert—

- “(2A) In an asylum case or an immigration case—
- (a) if a party wishes the Upper Tribunal to consider evidence that was not before the First-tier Tribunal, that party must send or deliver a notice to the Upper Tribunal and any other party—
 - (i) indicating the nature of the evidence; and
 - (ii) explaining why it was not submitted to the First-tier Tribunal; and
- (b) when considering whether to admit evidence that was not before the First-tier Tribunal, the Upper Tribunal must have regard to whether there has been unreasonable delay in producing that evidence.”.

12. After rule 17 (withdrawal) insert—

“Appeal treated as abandoned or finally determined in an asylum case or an immigration case

17A.—(1) A party to an asylum case or an immigration case before the Upper Tribunal must notify the Tribunal if they are aware that—

- (a) the appellant has left the United Kingdom;
- (b) the appellant has been granted leave to enter or remain in the United Kingdom;
- (c) a deportation order has been made against the appellant; or
- (d) a document listed in paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2006(a) has been issued to the appellant.

(a) S.I. 2006/1003.

(2) Where an appeal is treated as abandoned pursuant to section 104(4) or (4A) of the Nationality, Immigration and Asylum Act 2002^(a) or paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2006, or as finally determined pursuant to section 104(5) of the Nationality, Immigration and Asylum Act 2002, the Upper Tribunal must send the parties a notice informing them that the appeal is being treated as abandoned or finally determined.

(3) Where an appeal would otherwise fall to be treated as abandoned pursuant to section 104(4A) of the Nationality, Immigration and Asylum Act 2002, but the appellant wishes to pursue their appeal, the appellant must send or deliver a notice, which must comply with any relevant practice directions, to the Upper Tribunal and the respondent so that it is received within thirty days of the date on which the notice of the grant of leave to enter or remain in the United Kingdom was sent to the appellant.

(4) Where a notice of grant of leave to enter or remain is sent electronically or delivered personally, the time limit in paragraph (3) is twenty eight days.

(5) Notwithstanding rule 5(3)(a) (case management powers) and rule 7(2) (failure to comply with rules etc.), the Upper Tribunal must not extend the time limits in paragraph (3) and (4).”.

13. Rule 21 (application to the Upper Tribunal for permission to appeal) is amended as follows—

(a) after paragraph (3)(a)—

(i) omit “or”; and

(ii) insert—

“(aa) subject to paragraph (3A), in an asylum case or an immigration case where the appellant is in the United Kingdom at the time that the application is made—

(i) seven working days after the date on which notice of the First-tier Tribunal’s refusal of permission was sent to the appellant; or

(ii) if the case is a fast-track case, four working days after the date on which notice of the First-tier Tribunal’s refusal of permission was sent to the appellant;

(ab) subject to paragraph (3A), in an asylum case or an immigration case where the appellant is outside the United Kingdom at the time that the application is made, fifty six days after the date on which notice of the First-tier Tribunal’s refusal of permission was sent to the appellant; or”;

(b) after paragraph (3) insert—

“(3A) Where a notice of decision is sent electronically or delivered personally, the time limits in paragraph (3)(aa) and (ab) are—

(a) in sub-paragraph (aa)(i), five working days;

(b) in sub-paragraph (aa)(ii), two working days; and

(c) in sub-paragraph (ab), twenty eight days.”.

14. In rule 23 (notice of appeal) after paragraph (1) insert—

“(1A) In an asylum case or an immigration case in which the First-tier Tribunal has given permission to appeal, subject to any direction of the First-tier Tribunal or the Upper Tribunal, the application for permission to appeal sent or delivered to the First-tier Tribunal stands as the notice of appeal and accordingly paragraphs (2) to (6) of this rule do not apply.”.

15. In rule 24(2) (response to the notice of appeal)—

(a) 2002 c.41. Section 104(4) was substituted by, and section 104(4A) to (4C) was inserted by, section 9 of the Immigration, Asylum and Nationality Act 2006.

- (a) for paragraph (a) substitute—
 - “(a) if an application for permission to appeal stands as the notice of appeal, no later than one month after the date on which the respondent was sent notice that permission to appeal had been granted;”;
- (b) after paragraph (a) omit “or”; and
- (c) insert—
 - “(aa) in a fast-track case, one day before the hearing of the appeal; or”.

16. For rule 25 (appellant’s reply)—

- (a) in paragraph (2), for “Any” substitute “Subject to paragraph (2A), any”; and
- (b) insert—
 - “(2A) In an asylum case or an immigration case, the time limit in paragraph (2) is—
 - (a) one month after the date on which the Upper Tribunal sent a copy of the response to the appellant, or five days before the hearing of the appeal, whichever is the earlier; and
 - (b) in a fast-track case, the day of the hearing.”.

17. In rule 36(2) (notice of hearings)—

- (a) after paragraph (a)—
 - (i) omit “and”; and
 - (ii) insert—
 - “(aa) in a fast-track case the period of notice must be at least one working day; and”;
 - and
- (b) before “the” in paragraph (b) insert “in any case other than a fast-track case”.

18. After rule 36 (notice of hearings) insert—

“Special time limits for hearing an appeal in a fast-track case

36A.—(1) Subject to rule 36(2)(aa) (notice of hearings) and paragraph (2) of this rule, where permission to appeal to the Upper Tribunal has been given in a fast-track case, the Upper Tribunal must start the hearing of the appeal not later than—

- (a) four working days after the date on which the First-tier Tribunal or the Upper Tribunal sent notice of its grant of permission to appeal to the appellant; or
- (b) where the notice of its grant of permission to appeal is sent electronically or delivered personally, two working days after the date on which the First-tier Tribunal or the Upper Tribunal sent notice of its grant of permission to appeal to the appellant.

(2) If the Upper Tribunal is unable to arrange for the hearing to start within the time specified in paragraph (1), it must set a date for the hearing as soon as is reasonably practicable.”.

19. In rule 40(2) (decisions) at the beginning insert “Except where rule 40A (special procedure for providing notice of a decision relating to an asylum case) applies,”.

20. After rule 40 (decisions) insert—

“Special procedure for providing notice of a decision relating to an asylum case

40A.—(1) This rule applies to an appeal before the Upper Tribunal under section 11 of the 2007 Act in an asylum case where—

- (a) the person who appealed to the First-tier Tribunal is in the United Kingdom; and
- (b) the case is not a fast-track case.

(2) The Upper Tribunal must provide to the Secretary of State for the Home Department as soon as reasonably practicable—

- (a) a decision notice stating the Upper Tribunal’s decision; and
- (b) a statement of any right of appeal against the decision and the time and manner in which such a right of appeal may be exercised.

(3) The Secretary of State must, subject to paragraph (5)—

- (a) send the documents listed in paragraph (2) to the other party not later than 30 days after the Upper Tribunal sent them to the Secretary of State for the Home Department; and
- (b) as soon as practicable after sending the documents listed in paragraph (2), notify the Upper Tribunal on what date and by what means they were sent.

(4) If the Secretary of State does not notify the Upper Tribunal under paragraph (3)(b) within 31 days after the documents listed in paragraph (2) were sent, the Upper Tribunal must send the notice of decision to the other party as soon as reasonably practicable.

(5) If the Secretary of State applies for permission to appeal under section 13 of the 2007 Act, the Secretary of State must send the documents listed in paragraph (2) to the other party no later than the date on which the application for permission is sent to the Upper Tribunal.”.

21. In rule 43 (setting aside a decision which disposes of proceedings)—

- (a) in paragraph (3) at the beginning insert “Except where paragraph (4) applies,”; and
- (b) after paragraph (3) insert—

“(4) In an asylum case or an immigration case, the written application referred to in paragraph (3) must be sent or delivered so that it is received by the Upper Tribunal—

- (a) where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application is made, no later than twelve days after the date on which the Upper Tribunal or, as the case may be in an asylum case, the Secretary of State for the Home Department, sent notice of the decision to the party making the application; or
- (b) where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application is made, no later than thirty eight days after the date on which the Upper Tribunal sent notice of the decision to the party making the application.

(5) Where a notice of decision is sent electronically or delivered personally, the time limits in paragraph (4) are ten working days.”.

22.—(1) Rule 44 (application for permission to appeal) is amended as follows.

(2) After paragraph (3) insert—

“(3A) An application under paragraph (1) in respect of a decision in an asylum case or an immigration case must be sent or delivered to the Upper Tribunal so that it is received within the appropriate period after the Upper Tribunal or, as the case may be in an asylum case, the Secretary of State for the Home Department, sent any of the documents in paragraph (3) to the party making the application.

(3B) The appropriate period referred to in paragraph (3A) is as follows—

- (a) where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application is made—
 - (i) twelve days; or
 - (ii) if the party making the application is in detention under the Immigration Acts, seven working days; and
- (b) where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application is made, thirty eight days.

(3C) Where a notice of decision is sent electronically or delivered personally, the time limits in paragraph (3B) are—

- (a) in sub-paragraph (a)(i), ten working days;
- (b) in sub-paragraph (a)(ii), five working days; and
- (c) in sub-paragraph (b), ten working days.”.

(3) In paragraph (4), after “paragraph (3)” insert “or (3A)”.

(4) In paragraph (6), after “paragraph (3)” insert “, (3A)”.

Amendments to the Asylum and Immigration Tribunal (Procedure) Rules 2005

23. The Asylum and Immigration Tribunal (Procedure) Rules 2005(a) are amended as follows.

24. In rule 24 (application for permission to appeal to the Upper Tribunal)—

(a) for paragraph (2) substitute—

“(2) Subject to paragraph (3), an application under paragraph (1) must be sent or delivered to the Tribunal so that it is received no later than 5 days after the date on which the party making the application is deemed to have been served with written reasons for the decision.”; and

(b) in paragraph (3), after “time limit for” insert “that person”.

25. For rule 25(4) (tribunal’s consideration of an application for permission to appeal to the Upper Tribunal) substitute—

“(4) Subject to rule 27, the Tribunal must send to the parties—

- (a) written reasons for a decision under this rule; and
- (b) if the application is refused, notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.”.

Amendments to the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005

26. The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005(b) are amended as follows.

27. In rule 16(a) (application of the Principal Rules to this Part) for “paragraph (2)” substitute “paragraphs (2) and (4)”.

28. For rule 17 (time limits for making an application for permission to appeal) substitute—

“**17.**—(1) An application under rule 24(1) of the Principal Rules must be sent or delivered to the Tribunal so that it is received no later than 2 days after the date on which the party is served with written reasons for the decision.

(2) If a person makes an application under rule 24(1) of the Principal Rules later than the time required by paragraph (1)—

- (a) the Tribunal may extend the time for appealing if satisfied that by reason of special circumstances it would be unjust not to do so; and
- (b) unless the Tribunal extends time under sub-paragraph (a), the Tribunal must not admit the application.”.

(a) S.I. 2005/230. Rules 24 and 25 were substituted by paragraph 8 of Schedule 2 to the Transfer of Functions (Asylum and Immigration Tribunal) Order 2010 (S.I. 2010/21).

(b) S.I. 2005/560. Rules 16 and 17 were substituted by paragraph 18 of Schedule 2 to the Transfer of Functions (Asylum and Immigration Tribunal) Order 2010 (S.I. 2010/21).

Carolyn Kirby
Philip Brook-Smith QC
Peter Lane
Bronwyn McKenna
Douglas May QC
Mark Rowland
Alison McKenna

I allow these Rules
Signed by authority of the Lord Chancellor

10th January 2010

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 (Upper Tribunal) Rules 2008, Asylum and Immigration Tribunal (Procedure) Rules 2005 and Asylum and Immigration Tribunal (Fast track Procedure) Rules 2005.

Rules 3 to 22 of these Rules make amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 to reflect the transfer of functions of the Asylum and Immigration Tribunal in the Transfer of Asylum and Immigration Tribunal Functions Order 2010.

Rules 24 and 25 make minor amendments to the Asylum and Immigration Tribunal (Procedure) Rules 2005, and rules 27 and 28 to the Asylum and Immigration Tribunal (Fast track Procedure) Rules 2005 as amended by the Transfer of Asylum and Immigration Tribunal Functions Order 2010.

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STATUTORY INSTRUMENTS

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The Tribunal Procedure (Amendment No. 2) Rules 2010

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