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STATUTORY INSTRUMENTS

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**2008 No. 2698**

**The Tribunal Procedure (Upper Tribunal) Rules 2008**

**PART 2**

General powers and provisions

**[<sup>F1</sup>Orders for costs**

**10.**—(1) The Upper Tribunal may not make an order in respect of costs (or, in Scotland, expenses) in proceedings [<sup>F2</sup>transferred or referred by, or on appeal from,] another tribunal except—

- (aa) [<sup>F3</sup>in a national security certificate appeal, to the extent permitted by paragraph (1A);]
- (a) in proceedings [<sup>F4</sup>transferred by, or 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).

[<sup>F5</sup>(1A) In a national security certificate appeal—

- (a) the Upper Tribunal may make an order in respect of costs or expenses in the circumstances described at paragraph (3)(c) and (d);
- (b) if the appeal is against a certificate, the Upper Tribunal may make an order in respect of costs or expenses against the relevant Minister and in favour of the appellant if the Upper Tribunal allows the appeal and quashes the certificate to any extent or the Minister withdraws the certificate;
- (c) if the appeal is against the application of a certificate, the Upper Tribunal may make an order in respect of costs or expenses—
  - (i) against the appellant and in favour of any other party if the Upper Tribunal dismisses the appeal to any extent; or
  - (ii) in favour of the appellant and against any other party if the Upper Tribunal allows the appeal to any extent.]

(2) The Upper Tribunal may not make an order in respect of costs or expenses under section 4 of the Forfeiture Act 1982 <sup>M1</sup>.

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

- (a) in judicial review proceedings;
- <sup>F6</sup>(b) .....
- (c) under section 29(4) of the 2007 Act (wasted costs) [<sup>F7</sup>and costs incurred in applying for such costs]; <sup>F8</sup>...
- (d) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings; <sup>F9</sup>...

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- [<sup>F10</sup>(e) if, in a financial services case [<sup>F11</sup> or a wholesale energy case], the Upper Tribunal considers that the decision in respect of which the reference was made was unreasonable[<sup>F12</sup>; or]]
- [<sup>F13</sup>(f) if, in a financial sanctions case, the Upper Tribunal considers that the decision to impose or uphold a monetary penalty in respect of which the appeal was made was unreasonable.]
- (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) [<sup>F14</sup>notice under rule 17(5) that a withdrawal which ends the proceedings has taken effect.]
- (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[<sup>F15</sup>, including the costs or expenses of the assessment,] 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 <sup>M2</sup> 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.]
- [<sup>F16</sup>(10) Upon making an order for the assessment of costs, the [<sup>F17</sup>Upper] Tribunal may order an amount to be paid on account before the costs or expenses are assessed.]

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### Textual Amendments

- F1** Rule 10 substituted (1.4.2009) by [Tribunal Procedure \(Amendment\) Rules 2009 \(S.I. 2009/274\)](#), rules 1, 7
- F2** Words in rule 10(1) substituted (1.9.2009) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2009 \(S.I. 2009/1975\)](#), rules 1, **11(a)(i)**
- F3** Rule 10(1)(aa) inserted (18.1.2010) by [The Tribunal Procedure \(Amendment\) Rules 2010 \(S.I. 2010/43\)](#), rules 1, **7(a)**
- F4** Words in rule 10(1)(a) substituted (1.9.2009) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2009 \(S.I. 2009/1975\)](#), rules 1, **11(a)(ii)**
- F5** Rule 10(1A) inserted (18.1.2010) by [The Tribunal Procedure \(Amendment\) Rules 2010 \(S.I. 2010/43\)](#), rules 1, **rule 7(b)**
- F6** Rule 10(3)(b) omitted (1.9.2009) by virtue of [The Tribunal Procedure \(Amendment No. 2\) Rules 2009 \(S.I. 2009/1975\)](#), rules 1, **11(b)**
- F7** Words in rule 10(3)(c) inserted (1.4.2013) by [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), rules 1(2)(c), **50**
- F8** Word in rule 10(3) omitted (6.4.2010) by virtue of [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2010 \(S.I. 2010/747\)](#), rules 1, **6(a)**
- F9** Word in rule 10(3)(d) omitted (27.7.2017) by virtue of [The Tribunal Procedure \(Amendment\) Rules 2017 \(S.I. 2017/723\)](#), rules 1, **9(a)**
- F10** Rule 10(3)(e) and word inserted (6.4.2010) by [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2010 \(S.I. 2010/747\)](#), rules 1, **6(b)**
- F11** Words in rule 10(3)(e) inserted (6.4.2014) by [The Tribunal Procedure \(Amendment\) Rules 2014 \(S.I. 2014/514\)](#), rules 1, **6**
- F12** Word in rule 10(3)(e) inserted (27.7.2017) by [The Tribunal Procedure \(Amendment\) Rules 2017 \(S.I. 2017/723\)](#), rules 1, **9(b)**
- F13** Rule 10(3)(f) inserted (27.7.2017) by [The Tribunal Procedure \(Amendment\) Rules 2017 \(S.I. 2017/723\)](#), rules 1, **9(c)**
- F14** Rule 10(6)(b) substituted (1.4.2013) by [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), rules 1(2)(c), **51**
- F15** Words in rule 10(8)(c) inserted (1.4.2013) by [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), rules 1(2)(c), **52**
- F16** Rule 10(10) inserted (1.4.2013) by [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), rules 1(2)(c), **53**
- F17** Word in rule 10(10) inserted (1.11.2013) by [The Tribunal Procedure \(Amendment No. 4\) Rules 2013 \(S.I. 2013/2067\)](#), rules 1, **6**

### Marginal Citations

- M1** 1982 c.34.
- M2** S.I. 1998/3132.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 5 inserted by [S.I. 2024/588 rule 2\(5\)](#)
- rule 1(2A) inserted by [S.I. 2024/588 rule 2\(2\)\(a\)](#)
- rule 26D inserted by [S.I. 2024/588 rule 2\(4\)](#)