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## STATUTORY INSTRUMENTS

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# 2008 No. 2698

## The Tribunal Procedure (Upper Tribunal) Rules 2008

### PART 4

#### Judicial review proceedings in the Upper Tribunal

##### **Application of this Part to judicial review proceedings transferred to the Upper Tribunal**

**27.**—(1) When a court transfers judicial review proceedings to the Upper Tribunal, the Upper Tribunal—

- (a) must notify each party in writing that the proceedings have been transferred to the Upper Tribunal; and
- (b) must give directions as to the future conduct of the proceedings.

(2) The directions given under paragraph (1)(b) may modify or disapply for the purposes of the proceedings any of the provisions of the following rules in this Part.

(3) In proceedings transferred from the Court of Session under section 20(1) of the 2007 Act, the directions given under paragraph (1)(b) must—

- (a) if the Court of Session did not make a first order specifying the required intimation, service and advertisement of the petition, state the Upper Tribunal's requirements in relation to those matters;
- (b) state whether the Upper Tribunal will consider summary dismissal of the proceedings; and
- (c) where necessary, modify or disapply provisions relating to permission in the following rules in this Part.

##### **Applications for permission to bring judicial review proceedings**

**28.**—(1) A person seeking permission to bring judicial review proceedings before the Upper Tribunal under section 16 of the 2007 Act must make a written application to the Upper Tribunal for such permission.

(2) Subject to paragraph (3), an application under paragraph (1) must be made promptly and, unless any other enactment specifies a shorter time limit, must be sent or delivered to the Upper Tribunal so that it is received no later than 3 months after the date of the decision<sup>[F1]</sup>, action or omission] to which the application relates.

(3) An application for permission to bring judicial review proceedings challenging a decision of the First-tier Tribunal may be made later than the time required by paragraph (2) if it is made within 1 month after the date on which the First-tier Tribunal sent—

- (a) written reasons for the decision; or
  - (b) notification that an application for the decision to be set aside has been unsuccessful, provided that that application was made in time.
- (4) The application must state—

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- (a) the name and address of the applicant, the respondent and any other person whom the applicant considers to be an interested party;
  - (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) details of the decision challenged (including the date, the full reference and the identity of the decision maker);
  - (e) that the application is for permission to bring judicial review proceedings;
  - (f) the outcome that the applicant is seeking; and
  - (g) the facts and grounds on which the applicant relies.
- (5) If the application relates to proceedings in a court or tribunal, the application must name as an interested party each party to those proceedings who is not the applicant or a respondent.
- (6) The applicant must send with the application—
- (a) a copy of any written record of the decision in the applicant's possession or control; and
  - (b) copies of any other documents in the applicant's possession or control on which the applicant intends to rely.
- (7) If the applicant provides the application to the Upper Tribunal later than the time required by paragraph (2) or (3) or by an extension of time allowed under rule 5(3)(a) (power to extend time)—
- (a) the application must include a request for an extension of time and the reason why the application was not provided in time; and
  - (b) unless the Upper Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Upper Tribunal must not admit the application.
- (8) [<sup>F2</sup>Except where rule 28A(2)(a) (special provisions for [<sup>F3</sup>immigration judicial review] proceedings) applies,] when the Upper Tribunal receives the application it must send a copy of the application and any accompanying documents to each person named in the application as a respondent or interested party.

#### Textual Amendments

- F1** Words in rule 28(2) inserted (1.4.2009) by [Tribunal Procedure \(Amendment\) Rules 2009 \(S.I. 2009/274\)](#), rules 1, 17
- F2** Words in rule 28(8) inserted (17.10.2011) by [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2011 \(S.I. 2011/2343\)](#), rules 1, 7
- F3** Words in rule 28(8) substituted (1.11.2013) by [The Tribunal Procedure \(Amendment No. 4\) Rules 2013 \(S.I. 2013/2067\)](#), rules 1, 10

#### [<sup>F4</sup>Special provisions for [<sup>F5</sup>immigration judicial review] proceedings

**28A.—**(1) The Upper Tribunal must not accept an application for permission to bring [<sup>F6</sup>immigration judicial review] proceedings unless it is either accompanied by any required fee or the Upper Tribunal accepts an undertaking that the fee will be paid.

(2) Within 9 days of making an application referred to in paragraph (1), an applicant must provide—

- (a) a copy of the application and any accompanying documents to each person named in the application as a respondent or an interested party; and
- (b) the Upper Tribunal with a written statement of when and how this was done.]

#### Textual Amendments

- F4** Rule 28A inserted (17.10.2011) by [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2011 \(S.I. 2011/2343\)](#), rules 1, **8**
- F5** Words in rule 28A heading substituted (1.11.2013) by [The Tribunal Procedure \(Amendment No. 4\) Rules 2013 \(S.I. 2013/2067\)](#), rules 1, **11(a)**
- F6** Words in rule 28A(1) substituted (1.11.2013) by [The Tribunal Procedure \(Amendment No. 4\) Rules 2013 \(S.I. 2013/2067\)](#), rules 1, **11(b)**

#### Acknowledgment of service

**29.**—(1) A person who is sent <sup>F7</sup>or provided with] a copy of an application for permission under rule 28(8) (application for permission to bring judicial review proceedings) <sup>F8</sup>or rule 28A(2) (a) (special provisions for <sup>F9</sup>immigration judicial review] proceedings)] and wishes to take part in the proceedings must <sup>F10</sup>provide] to the Upper Tribunal an acknowledgment of service so that it is received no later than 21 days after the date on which the Upper Tribunal sent<sup>F11</sup>, or in <sup>F9</sup>immigration judicial review] proceedings the applicant provided,] a copy of the application to that person.

(2) An acknowledgment of service under paragraph (1) must be in writing and state—

- (a) whether the person intends to <sup>F12</sup>support or] oppose the application for permission;
- (b) their grounds for any <sup>F13</sup>support or] opposition under sub-paragraph (a), or any other submission or information which they consider may assist the Upper Tribunal; and
- (c) the name and address of any other person not named in the application as a respondent or interested party whom the person providing the acknowledgment considers to be an interested party.

<sup>F14</sup>(2A) In <sup>F15</sup>immigration judicial review] proceedings, a person who provides an acknowledgement of service under paragraph (1) must also provide a copy to—

- (a) the applicant; and
- (b) any other person named in the application under rule 28(4)(a) or acknowledgement of service under paragraph (2)(c)

no later than the time specified in paragraph (1).]

(3) A person who is <sup>F16</sup>provided with] a copy of an application for permission under rule 28(8) <sup>F17</sup>or 28A(2)(a)] but does not provide an acknowledgment of service <sup>F18</sup>to the Upper Tribunal] may not take part in the application for permission <sup>F19</sup>unless allowed to do so by the Upper Tribunal], but may take part in the subsequent proceedings if the application is successful.

#### Textual Amendments

- F7** Words in rule 29(1) inserted (17.10.2011) by [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2011 \(S.I. 2011/2343\)](#), rules 1, **9(a)(i)**
- F8** Words in rule 29(1) inserted (17.10.2011) by [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2011 \(S.I. 2011/2343\)](#), rules 1, **9(a)(ii)**
- F9** Words in rule 29(1) substituted (1.11.2013) by [The Tribunal Procedure \(Amendment No. 4\) Rules 2013 \(S.I. 2013/2067\)](#), rules 1, **12(a)**
- F10** Word in rule 29(1) substituted (17.10.2011) by [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2011 \(S.I. 2011/2343\)](#), rules 1, **9(a)(iii)**
- F11** Words in rule 29(1) inserted (17.10.2011) by [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2011 \(S.I. 2011/2343\)](#), rules 1, **9(a)(iv)**

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- F12** Words in rule 29(2)(a) inserted (1.4.2009) by Tribunal Procedure (Amendment) Rules 2009 (S.I. 2009/274), rules 1, **18(a)**
- F13** Words in rule 29(2)(b) inserted (1.4.2009) by Tribunal Procedure (Amendment) Rules 2009 (S.I. 2009/274), rules 1, **18(b)**
- F14** Rule 29(2A) inserted (17.10.2011) by The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011 (S.I. 2011/2343), rules 1, **9(b)**
- F15** Words in rule 29(2A) substituted (1.11.2013) by The Tribunal Procedure (Amendment No. 4) Rules 2013 (S.I. 2013/2067), rules 1, **12(b)**
- F16** Words in rule 29(3) substituted (17.10.2011) by The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011 (S.I. 2011/2343), rules 1, **9(c)(i)**
- F17** Words in rule 29(3) inserted (17.10.2011) by The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011 (S.I. 2011/2343), rules 1, **9(c)(ii)**
- F18** Words in rule 29(3) inserted (17.10.2011) by The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011 (S.I. 2011/2343), rules 1, **9(c)(iii)**
- F19** Words in rule 29(3) inserted (1.4.2011) by The Tribunal Procedure (Amendment) Rules 2011 (S.I. 2011/651), rules 1(2)(a), **8(3)**

### Decision on permission or summary dismissal, and reconsideration of permission or summary dismissal at a hearing

**30.**—(1) The Upper Tribunal must send to the applicant, each respondent and any other person who provided an acknowledgment of service to the Upper Tribunal, and may send to any other person who may have an interest in the proceedings, written notice of—

- (a) its decision in relation to the application for permission; and
- [<sup>F20</sup>(b) the reasons for any—
  - (i) refusal of the application or refusal to admit the late application, or
  - (ii) limitations or conditions on permission.]

(2) In proceedings transferred from the Court of Session under section 20(1) of the 2007 Act, where the Upper Tribunal has considered whether summarily to dismiss of the proceedings, the Upper Tribunal must send to the applicant and each respondent, and may send to any other person who may have an interest in the proceedings, written notice of—

- (a) its decision in relation to the summary dismissal of proceedings; and
- (b) the reasons for any decision summarily to dismiss part or all of the proceedings, or any limitations or conditions on the continuation of such proceedings.

(3) Paragraph (4) applies where the Upper Tribunal, without a hearing—

- [<sup>F21</sup>(a) determines an application for permission to bring judicial review proceedings by—
  - (i) refusing permission or refusing to admit the late application, or
  - (ii) giving permission on limited grounds or subject to conditions]
  - (b) in proceedings transferred from the Court of Session, summarily dismisses part or all of the proceedings, or imposes any limitations or conditions on the continuation of such proceedings.

(4) [<sup>F22</sup>Subject to paragraph (4A), in] the circumstances specified in paragraph (3) the applicant may apply for the decision to be reconsidered at a hearing.

[<sup>F23</sup>(4A) Where the Upper Tribunal refuses permission to bring immigration judicial review proceedings [<sup>F24</sup>or refuses to admit a late application for permission to bring such 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.]

(5) An application under paragraph (4) must be made in writing and must be sent or delivered to the Upper Tribunal so that it is received within 14 days<sup>[F25]</sup>, or in <sup>[F26]</sup>immigration judicial review] proceedings 9 days,] after the date on which the Upper Tribunal sent written notice of its decision regarding the application to the applicant.

#### Textual Amendments

- F20** Rule 30(1)(b) substituted (6.4.2014) by The Tribunal Procedure (Amendment) Rules 2014 (S.I. 2014/514), rules 1, **11(a)**
- F21** Rule 30(3)(a) substituted (6.4.2014) by The Tribunal Procedure (Amendment) Rules 2014 (S.I. 2014/514), rules 1, **11(b)**
- F22** Words in rule 30(4) substituted (1.11.2013) by The Tribunal Procedure (Amendment No. 4) Rules 2013 (S.I. 2013/2067), rules 1, **13(a)**
- F23** Rule 30(4A) inserted (1.11.2013) by The Tribunal Procedure (Amendment No. 4) Rules 2013 (S.I. 2013/2067), rules 1, **13(b)**
- F24** Words in rule 30(4A) inserted (6.4.2014) by The Tribunal Procedure (Amendment) Rules 2014 (S.I. 2014/514), rules 1, **11(c)**
- F25** Words in rule 30(5) inserted (17.10.2011) by The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011 (S.I. 2011/2343), rules 1, **10**
- F26** Words in rule 30(5) substituted (1.11.2013) by The Tribunal Procedure (Amendment No. 4) Rules 2013 (S.I. 2013/2067), rules 1, **13(c)**

#### Responses

**31.—**(1) Any person to whom the Upper Tribunal has sent notice of the grant of permission under rule 30(1) (notification of decision on permission), and who wishes to contest the application or support it on additional grounds, must provide detailed grounds for contesting or supporting the application to the Upper Tribunal.

(2) Any detailed grounds must be provided in writing and must be sent or delivered to the Upper Tribunal so that they are received not more than 35 days after the Upper Tribunal sent notice of the grant of permission under rule 30(1).

#### Applicant seeking to rely on additional grounds

**32.** The applicant may not rely on any grounds, other than those grounds on which the applicant obtained permission for the judicial review proceedings, without the consent of the Upper Tribunal.

#### Right to make representations

- 33.** Each party and, with the permission of the Upper Tribunal, any other person, may—
- submit evidence, except at the hearing of an application for permission;
  - make representations at any hearing which they are entitled to attend; and
  - make written representations in relation to a decision to be made without a hearing.

#### <sup>[F27]</sup> Amendments and additional grounds resulting in transfer of proceedings to the High Court in England and Wales

**33A.—**(1) This rule applies only to judicial review proceedings arising under the law of England and Wales.

- (2) In relation to such proceedings—

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- (a) the powers of the Upper Tribunal to permit or require amendments under rule 5(3)(c) extend to amendments which would, once in place, give rise to an obligation or power to transfer the proceedings to the High Court in England and Wales under section 18(3) of the 2007 Act or paragraph (3);
  - (b) except with the permission of the Upper Tribunal, additional grounds may not be advanced, whether by an applicant or otherwise, if they would give rise to an obligation or power to transfer the proceedings to the High Court in England and Wales under section 18(3) of the 2007 Act or paragraph (3).
- (3) Where the High Court in England and Wales has transferred judicial review proceedings to the Upper Tribunal under any power or duty and subsequently the proceedings are amended or any party advances additional grounds—
- (a) if the proceedings in their present form could not have been transferred to the Upper Tribunal under the relevant power or duty had they been in that form at the time of the transfer, the Upper Tribunal must transfer the proceedings back to the High Court in England and Wales;
  - (b) subject to sub-paragraph (a), where the proceedings were transferred to the Upper Tribunal under section 31A(3) of the Senior Courts Act 1981 (power to transfer judicial review proceedings to the Upper Tribunal), the Upper Tribunal may transfer proceedings back to the High Court in England and Wales if it appears just and convenient to do so.]

#### Textual Amendments

**F27** [Rule 33A](#) inserted (17.10.2011) by [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2011 \(S.I. 2011/2343\)](#), rules 1, **11**

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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\(4\)](#)