

[^{F1}SCHEDULE 3

Rule 26B

Procedure in financial services cases

Textual Amendments

F1 Sch. 3 inserted (6.4.2010) by [The Tribunal Procedure \(Upper Tribunal\) \(Amendment\) Rules 2010 \(S.I. 2010/747\)](#), rules 1, 13

Interpretation

1. In this Schedule—

[^{F2}“further material” means—

(a) in a single regulator case, documents which—

- (i) were considered by the respondent in reaching or maintaining the decision to give the notice in respect of which the reference has been made; or
- (ii) were obtained by the respondent in connection with the matter to which that notice relates (whether they were obtained before or after giving the notice) but which were not considered by it in reaching or maintaining that decision;

but does not include documents on which the respondent relies in support of the referred action;

(b) in a multiple regulator case—

(i) in relation to a respondent who is the primary regulator, documents which—

- (aa) were considered by that regulator in reaching or maintaining its decision to give the notice in respect of which the reference has been made; or
- (bb) were obtained by that regulator in connection with the matter to which that notice relates (whether they were obtained before or after the notice was given) but which were not considered by that regulator in reaching or maintaining its decision;

(ii) in relation to a respondent who is the secondary regulator, documents which—

- (aa) were considered by that regulator in reaching or maintaining its decision to take the secondary regulator action in relation to the notice in respect of which the reference has been made; or
- (bb) were obtained by that regulator in connection with the matter to which that notice relates (whether they were obtained before or after the notice was given) but which were not considered by that regulator in reaching or maintaining its decision;

but does not include documents on which either the primary regulator or the secondary regulator relies;]

[^{F3}“multiple regulator case” means a case where—

(a) any of the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England has given the notice in respect of which the reference has been made; and

(b) such notice stated that another of those regulators had decided to take one of the following actions—

- (i) to refuse a consent where such consent is required under the 2000 Act;
- (ii) to give a conditional consent under the 2000 Act; or

Status: Point in time view as at 01/04/2013.

Changes to legislation: The Tribunal Procedure (Upper Tribunal) Rules 2008, SCHEDULE3 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(iii) to direct another regulator to take an action or not to take an action under the 2000 Act;”]

[^{F3}“primary regulator” means, in a multiple regulator case, the regulator giving the notice;]

[^{F3}“secondary regulator action” means an action taken by a secondary regulator, as stated in the notice given by the primary regulator;]

[^{F3}“secondary regulator” means, in a multiple regulator case, a regulator specified in the notice other than the primary regulator;]

[^{F3}“single regulator case” means a case that is not a multiple regulator case;]

“reference notice” means the written notice required in making a reference in a financial services case;

[^{F4}“referred action” means—

- (a) in a single regulator case, the act (or proposed act) on the part of the respondent that gave rise to the reference; and
- (b) in a multiple regulator case, the act (or proposed act) on the part of the primary regulator that gave rise to the reference;]

“the 2000 Act” means the Financial Services and Markets Act 2000.

Textual Amendments

- F2** Words in Sch. 3 para. 1 substituted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **rule 2(4)(b)**
- F3** Words in Sch. 3 para. 1 inserted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **2(4)(a)**
- F4** Words in Sch. 3 para. 1 substituted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **rule 2(4)(c)**

Reference notice

2.—(1) A reference notice must be signed by or on behalf of the applicant and sent or delivered by the applicant to the Upper Tribunal.

(2) A reference notice must be received by the Upper Tribunal no later than 28 days after notice was given of the decision in respect of which the reference is made.

(3) The reference notice must state—

- (a) the name and address of the applicant;
- (b) the name and address of the applicant’s representative (if any);
- (c) if no representative is named under sub-paragraph (b), an address where documents for the applicant may be sent or delivered; and
- (d) the issues that the applicant wishes the Upper Tribunal to consider.

(4) The applicant must send or deliver to the Upper Tribunal with the reference notice a copy of the notice of the decision in respect of which the reference has been made.

[^{F5}(5) At the same time the applicant must send a copy of the reference notice—

- (a) in a single regulator case, to the respondent; and
- (b) in a multiple regulator case, to each of the primary and secondary regulators.]

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Textual Amendments

F5 Sch. 3 para. 2(5) substituted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **2(5)**

Register of references and decisions

3.—(1) The Upper Tribunal must keep a register of references and decisions in financial services cases.

(2) The register must be open to inspection by any person without charge and at all reasonable hours.

(3) The Upper Tribunal may direct that the register is not to include particulars of a reference if it is satisfied that it is necessary to do so having regard in particular to any unfairness to the applicant or prejudice to the interests of consumers that might otherwise result.

(4) Upon receiving a reference notice, the Upper Tribunal must—

- (a) subject to any direction given under sub-paragraph (3), enter particulars of the reference in the register; and
- (b) notify the parties either that it has done so or that it will not include particulars in the register, as the case may be.

[^{F6}(5) In a multiple regulator case, notification under sub-paragraph (4)(b) must be given to each of the primary and secondary regulators.]

Textual Amendments

F6 Sch. 3 para. 3(5) inserted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **2(6)**

[^{F7}Respondent's statement of case in a single regulator case]

4.—(1) The respondent [^{F8}in a single regulator case] must send or deliver a written statement (“a statement of case”) in support of the referred action so that it is received by the Upper Tribunal no later than 28 days after the day on which the respondent received from the Upper Tribunal the notification required by paragraph 3(4)(b).

(2) The statement of case must—

- (a) identify the statutory provisions providing for the referred action;
- (b) state the reasons for the referred action; and
- (c) set out all the matters and facts upon which the respondent relies to support the referred action.

(3) The respondent must provide with the statement of case a list of—

- (a) any documents on which the respondent relies in support of the referred action; and
- (b) any further material which in the opinion of the respondent might undermine the decision to take that action.

(4) At the same time as it sends or delivers the statement of case, the respondent must send to the applicant a copy of the statement of case and of the list referred to in sub-paragraph (3).

Status: Point in time view as at 01/04/2013.

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Textual Amendments

- F7** Sch. 3 para. 4 heading substituted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **2(7)(a)**
- F8** Words in Sch. 3 para. 4(1) inserted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **rule 2(7)(b)**

[^{F9} Respondents' statements of case in a multiple regulator case

- 4A.—**(1) This paragraph applies in a multiple regulator case.
- (2) The primary regulator must send or deliver either—
- (a) a written statement (a “statement of case”) in support of the referred action; or
 - (b) a written notification that it does not itself advance a case in support of the referred action, so that it is received by the Upper Tribunal no later than 28 days after the day on which the primary regulator received from the Upper Tribunal the notification required by paragraph 3(4)(b).
- (3) A primary regulator providing a written notification under sub-paragraph (2)(b) must send or deliver a copy to the secondary regulator and the applicant and upon so doing—
- (a) the primary regulator shall not be required to take further steps in the proceedings unless the Upper Tribunal gives a direction to the contrary under rule 6; and
 - (b) the respondent shall be the secondary regulator unless the Upper Tribunal orders otherwise.
- (4) The secondary regulator must send or deliver a written statement (“a statement of case”) in support of its decision to take the secondary regulator action so that it is received by the Upper Tribunal no later than 28 days after the day on which the secondary regulator received from the Upper Tribunal the notification required by paragraph 3(4)(b).
- (5) A statement of case must—
- (a) identify the statutory provisions providing for the referred action;
 - (b) state the reasons in support for the referred action; and
 - (c) set out all the matters and facts upon which the regulator relies to support the referred action.
- (6) A regulator must provide with the statement of case a list of—
- (a) all documents on which it relies in support of the referred action;
 - (b) any further material which, in the opinion of the regulator, might undermine its decision to—
 - (i) in the case of a primary regulator; take the referred action; and
 - (ii) in the case of a secondary regulator; take the secondary regulator action.
- (7) The primary regulator and the secondary regulator must send to the applicant and the other regulator a copy of any statement of case required by sub-paragraphs (2) and (4) above and of the list referred to in sub-paragraph (6).]

Textual Amendments

- F9** Sch. 3 para. 4A inserted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **rule 2(8)**

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Applicant's reply

5.—(1) The applicant must send or deliver a written reply so that it is received by the Upper Tribunal no later than 28 days after—

[^{F10}(a) in a single regulator case, on the date on which the applicant received a copy of the statement of case;]

[in a multiple regulator case, on the first date on which the applicant was in receipt of all the ^{F10}(aa) statements and, where relevant, notifications required under paragraphs 4A(2) and 4A(4); or]

(b) if [^{F11}a respondent] amends its statement of case, the date on which the applicant received a copy of the amended statement of case.

(2) The reply must—

(a) state the grounds on which the applicant relies in the reference;

(b) identify all matters contained in [^{F12}the respondent's statement of case (or, where applicable, respondents' statements of case)] which are disputed by the applicant; ^{F13}...

(c) state the applicant's reasons for disputing them.

(3) The applicant must send with the reply a list of all the documents on which the applicant relies in support of his case.

(4) At the same time the applicant must send to [^{F14}all other parties] a copy of the reply and of the list referred to in sub-paragraph (3).

[^{F15}(5) Where the primary regulator has provided a written notification under paragraph 4A(2) (b), if the applicant wishes the Tribunal to direct that further steps in the proceedings be taken by the primary regulator, an application must be made at the time of sending the reply.]

Textual Amendments

F10 Sch. 3 para. 5(1)(a)(aa) substituted for Sch. 3 para. 5(1)(a) (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(9)(a)(i)**

F11 Words in Sch. 3 para. 5(1)(b) substituted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(9)(a)(ii)**

F12 Words in Sch. 3 para. 5(2)(b) substituted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(9)(b)(i)**

F13 Word in Sch. 3 para. 5(2)(b) omitted (1.4.2013) by virtue of The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(9)(b)(ii)**

F14 Words in Sch. 3 para. 5(4) substituted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(9)(c)**

F15 Sch. 3 para. 5(5) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(9)(d)**

Secondary disclosure by [^{F16}a respondent]

6.—(1) After the applicant's reply has been sent or delivered, if there is any further material which might reasonably be expected to assist the applicant's case as disclosed by the applicant's reply and which is not listed in the list [^{F17}(or lists)] provided in accordance with paragraph 4(3) [^{F18}(or paragraph 4A(6) where applicable)], the respondent [^{F19}(or the respondents)] must send or deliver to the Upper Tribunal a list [^{F20}(or lists)] of such further material.

Status: Point in time view as at 01/04/2013.

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(2) Any list required to be sent or delivered by sub-paragraph (1) must be sent or delivered so that it is received no later than 14 days after the day on which the respondent [F21in question] received the applicant's reply.

(3) At the same time as it sends or delivers any list required by sub-paragraph (1) [F22a respondent must send a copy to the applicant (and where applicable the other parties)].

Textual Amendments

- F16** Words in Sch. 3 para. 6 heading substituted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(10)(a)**
- F17** Words in Sch. 3 para. 6(1) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(10)(b)(i)**
- F18** Words in Sch. 3 para. 6(1) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(10)(b)(ii)**
- F19** Words in Sch. 3 para. 6(1) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(10)(b)(iii)**
- F20** Words in Sch. 3 para. 6(1) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(10)(b)(iv)**
- F21** Words in Sch. 3 para. 6(2) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(10)(c)**
- F22** Words in Sch. 3 para. 6(3) substituted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(10)(d)**

Exceptions to disclosure

7.—(1) A list provided in accordance with paragraph 4(3)[F23, 4A(6)] or 6(1) need not include any document that relates to a case involving a person other than the applicant which was taken into account by the respondent [F24providing the list] in the applicant's case only for the purposes of comparison with other cases.

(2) A list provided in accordance with paragraph 4(3)[F25, 4A(6)], 5(3) or 6(1) need not include any document that is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000.

(3) A list provided in accordance with paragraph 4(3)[F26, 4A(6)], 5(3) or 6(1) need not include any document in respect of which an application has been or is being made under sub-paragraph (4).

(4) A party may apply to the Upper Tribunal (without giving notice to any other party) for a direction authorising the party making the application not to include in the list required by paragraph 4(3)[F27, 4A(6)], 5(3) or 6(1) a document on the ground that disclosure of the document—

- (a) would not be in the public interest; or
- (b) would not be fair, having regard to—
 - (i) the likely significance of the document to the applicant in relation to the matter referred to the Upper Tribunal; and
 - (ii) the potential prejudice to the commercial interests of a person other than the applicant which would be caused by disclosure of the document.

(5) For the purpose of deciding an application by a party under sub-paragraph (4), the Upper Tribunal may—

- (a) require the document to be produced to the Upper Tribunal together with a statement of the reasons why its inclusion in the list would—

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- (i) in the case of an application under sub-paragraph (4)(a), not be in the public interest;
or
- (ii) in the case of an application under sub-paragraph (4)(b), not be fair; and
- (b) invite any other party to make representations.
- (6) If the Upper Tribunal refuses an application under sub-paragraph (4), it must direct the party—
- (a) to revise its list so as to include the document; and
- (b) to send or deliver a copy of the revised list to the Upper Tribunal and to any other party.
- [^{F28}(7) A party (“P”) who has sent or delivered a list under paragraph 4(3), 4A(6), 5(3) or 6(1) must, upon the request of another party, provide that other party with a copy of any document which P has which is specified in the list, or make it available for inspection or copying, and if P does not have it, tell the other party where to the best of P’s knowledge and belief it may be found.]
- (8) Sub-paragraph (7) does not apply to any document that is a protected item.
- (9) In this paragraph “protected item” has the meaning provided by section 413 of the 2000 Act, section 311(2) of the Pensions Act 2004 or article 283(2) of the Pensions (Northern Ireland) Order 2005.

Textual Amendments

- F23** Words in Sch. 3 para. 7(1) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(11)(a)(i)**
- F24** Words in Sch. 3 para. 7(1) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(11)(a)(ii)**
- F25** Words in Sch. 3 para. 7(2) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(11)(b)**
- F26** Words in Sch. 3 para. 7(3) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(11)(c)**
- F27** Words in Sch. 3 para. 7(4) inserted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(11)(d)**
- F28** Sch. 3 para. 7(7) substituted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(11)(e)**

Subsequent notices in relation to the referred action

8. Where, after a reference notice has been sent or delivered, [^{F29}a respondent] gives the applicant any further, amended or supplementary notice in relation to the referred action, [^{F30}that respondent] must without delay send or deliver a copy of that notice to the Upper Tribunal.

Textual Amendments

- F29** Words in Sch. 3 para. 8 substituted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(12)(a)**
- F30** Words in Sch. 3 para. 8 substituted (1.4.2013) by The Tribunal Procedure (Amendment No. 2) Rules 2013 (S.I. 2013/606), rules 1, **2(12)(b)**

References by third parties

9.—(1) In the case of any reference made by an applicant under section 393 of the 2000 Act (third party rights) these rules apply subject to the modifications set out in this paragraph.

Status: Point in time view as at 01/04/2013.

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(2) In this paragraph—

- (a) if the reference was made under section 393(9) of the 2000 Act (reference to the Upper Tribunal by a third party to whom a decision notice was copied), the notice of the decision in respect of which the reference has been made is the decision notice which was copied to the applicant by the respondent [^{F31}that gave the notice]; and
- (b) if the reference was made under section 393(11) of the 2000 Act (reference to the Upper Tribunal by a third party who alleges that they were not given a copy of a decision notice), the notice of the decision in respect of which the reference has been made is the decision notice which the applicant alleges was not copied to them.

(3) If the reference was made under section 393(11) of the 2000 Act, paragraph 2(4) does not apply.

[^{F32}(4) The duties of a respondent to—

- (a) set out information under paragraphs 4(2), 4A(2), 4A(4) or 4A(5); or
- (b) list material under paragraphs 4(3), 4A(6) or 6(1);

apply only to information or material which relate to the matters referred to the Upper Tribunal in accordance with section 393(9) or (as the case may be) section 393(11) of the 2000 Act.]]

Textual Amendments

- F31** Words in Sch. 3 para. 9(2)(a) inserted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **2(13)(a)**
- F32** Sch. 3 para. 9(4) substituted (1.4.2013) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/606\)](#), rules 1, **2(13)(b)**

Status:

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Changes to legislation:

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