

**2009 No. 1975 (L. 19)**

**TRIBUNALS AND INQUIRIES**

**The Tribunal Procedure (Amendment No. 2) Rules 2009**

*Made* - - - - *16th July 2009*

*Laid before Parliament* *21st July 2009*

*Coming into force* - - *1st September 2009*

After consulting in accordance with paragraph 28(1) of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007<sup>(a)</sup> the Tribunal Procedure Committee has made the following Rules in exercise of the power conferred by sections 22 and 29(3) 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 2009 and come into force on 1st September 2009.

**Amendments to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008**

2. The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008<sup>(b)</sup> are amended as follows.

3. In rule 23 (cases in which the notice of appeal is to be sent to the decision maker) after paragraph (7) insert—

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

4. In the first row of the table in Schedule 1 (time limits for providing notices of appeal to the decision maker – cases other than those listed separately), in the second column for paragraph (c) substitute—

“(c) where the appellant made an application for revision of the decision under—

(i) regulation 17(1)(a) of the Child Support (Maintenance Assessment Procedure) Regulations 1992<sup>(c)</sup>;

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(a) 2007 c.15.  
(b) S.I. 2008/2685 (L.13).  
(c) S.I. 1992/1813.

- (ii) regulation 3(1) or (3) or 3A(1) of the Social Security and Child Support (Decision & Appeals) Regulations 1999(a); or
  - (iii) regulation 4 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(b)
- and that application was unsuccessful, one month of the date on which notice that the decision would not be revised was sent to the appellant”.

**Amendment to the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008**

5. In rule 21 of the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008(c) (notice of appeal), after paragraph (6) insert—

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

**Amendment to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008**

6. In the Schedule to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008(d), in the third row—

- (a) in the first column, after “Under section 166 of the Education Act 2002 (appeal against steps taken by the registration authority)” insert—
  - “Under section 124 of the Education and Skills Act 2008(e) (appeal against removal of a registered independent educational institution from the register)”;
- (b) in the second column for “and section 32(2) of the Health and Social Care Act 2008” substitute “, section 32(2) of the Health and Social Care Act 2008 and section 124 of the Education and Skills Act 2008”.

**Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008**

7. The Tribunal Procedure (Upper Tribunal) Rules 2008(f) are amended as follows.

8. In rule 1 (citation, commencement, application and interpretation)—

- (a) in paragraph (2) after “Upper Tribunal” insert “except proceedings in the Lands Chamber”; and
- (b) in paragraph (3)—
  - (i) after the definition of “applicant” insert—
    - ““appropriate national authority” means, in relation to an appeal, the Secretary of State, the Scottish Ministers or the Welsh Ministers, as the case may be;
    - “authorised person” means an examiner appointed by the Secretary of State under section 66A of the Road Traffic Act 1988(g), or a person acting under the direction of such an examiner, who has detained the vehicle to which an appeal relates;”;
  - (ii) in the definition of “respondent”, at sub-paragraph (b) after “any other decision” insert “except a decision of a traffic commissioner”; and

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(a) S.I. 1999/991. Regulation 3A was inserted by regulation 5 of the Child Support (Decision & Appeals) (Amendment) Regulations 2000 (S.I. 2000/3185).

(b) S.I. 2001/1002.

(c) S.I. 2008/2686 (L.14).

(d) S.I. 2008/2699 (L.16).

(e) 2008 c.25.

(f) S.I. 2008/2698 (L.15). The rules were amended by the Tribunal Procedure (Amendment) Rules 2009 (S.I. 2009/274).

(g) 1988 c. 52. Section 66A was inserted by section 9(1) of the Road Traffic Act 1991 (c. 40) and amended by paragraph 11 of Schedule 7 to the Goods Vehicles (Licensing of Operators) Act 1995 (c. 23).

- (iii) after the definition of “respondent” insert—  
““tribunal” does not include a traffic commissioner;”.

**9.** In rule 5(3) (case management powers) for sub-paragraph (n) substitute—

“(n) require any person, body or other tribunal whose decision is the subject of proceedings before the Upper Tribunal to provide reasons for the decision, or other information or documents in relation to the decision or any proceedings before that person, body or tribunal.”.

**10.** For rule 9 (substitution and addition of parties) substitute—

**“Addition, substitution and removal of parties**

**9.**—(1) The Upper Tribunal may give a direction adding, substituting or removing a party as an appellant, a respondent or an interested party.

(2) If the Upper Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) A person who is not a party may apply to the Upper Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to proceedings by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Upper Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.”.

**11.** In rule 10 (orders for costs)—

(a) in paragraph (1)—

(i) for “referred by or on appeal from” substitute “transferred or referred by, or on appeal from;”; and

(ii) in sub-paragraph (a) for “on appeal from” substitute “transferred by, or on appeal from;”; and

(b) in paragraph (3), omit sub-paragraph (b).

**12.** In rule 11(8)(b) (representatives) after “hospital” insert “or”.

**13.** In rule 14 (use of documents and information)—

(a) omit paragraph (4); and

(b) after paragraph (7) insert—

“(8) The Upper Tribunal may, on its own initiative or on the application of a party, give a direction that certain documents or information must or may be disclosed to the Upper Tribunal on the basis that the Upper Tribunal will not disclose such documents or information to other persons, or specified other persons.

(9) A party making an application for a direction under paragraph (8) may withhold the relevant documents or information from other parties until the Upper Tribunal has granted or refused the application.

(10) In a case involving matters relating to national security, the Upper Tribunal must ensure that information is not disclosed contrary to the interests of national security.

(11) The Upper Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of an order made under paragraph (1), a direction given under paragraph (2) or (8) or the duty imposed by paragraph (10).”.

**14.** After rule 20 (power to pay expenses and allowances) insert—

**“Procedure for applying for a stay of a decision pending an appeal**

**20A.**—(1) This rule applies where another enactment provides in any terms for the Upper Tribunal to stay or suspend, or to lift a stay or suspension of, a decision which is or may be the subject of an appeal to the Upper Tribunal (“the substantive decision”) pending such appeal.

(2) A person who wishes the Upper Tribunal to decide whether the substantive decision should be stayed or suspended must make a written application to the Upper Tribunal which must include—

- (a) the name and address of the person making the application;
- (b) the name and address of any representative of that person;
- (c) the address to which documents for that person should be sent or delivered;
- (d) the name and address of any person who will be a respondent to the appeal;
- (e) details of the substantive decision and any decision as to when that decision is to take effect, and copies of any written record of, or reasons for, those decisions; and
- (f) the grounds on which the person making the application relies.

(3) In the case of an application under paragraph (2) for a stay of a decision of a traffic commissioner—

- (a) the person making the application must notify the traffic commissioner when making the application;
- (b) within 7 days of receiving notification of the application the traffic commissioner must send or deliver written reasons for refusing or withdrawing the stay—
  - (i) to the Upper Tribunal; and
  - (ii) to the person making the application, if the traffic commissioner has not already done so.

(4) If the Upper Tribunal grants a stay or suspension following an application under this rule—

- (a) the Upper Tribunal may give directions as to the conduct of the appeal of the substantive decision; and
- (b) the Upper Tribunal may, where appropriate, grant the stay or suspension subject to conditions.

(5) Unless the Upper Tribunal considers that there is good reason not to do so, the Upper Tribunal must send written notice of any decision made under this rule to each party.”.

**15.** In rule 21 (application to the Upper Tribunal for permission to appeal) omit paragraph (1).

**16.** In rule 22 (decision in relation to permission to appeal) after paragraph (3)(a)(ii) insert—  
“(iia) the General Regulatory Chamber of the First-tier Tribunal;”.

**17.** In rule 23 (notice of appeal)—

(a) for paragraphs (1) and (2) substitute—

“(1) This rule applies—

- (a) to proceedings on appeal to the Upper Tribunal for which permission to appeal is not required, except proceedings to which rule 26A applies;
- (b) if another tribunal has given permission for a party to appeal to the Upper Tribunal; or
- (c) subject to any other direction by the Upper Tribunal, if the Upper Tribunal has given permission to appeal and has given a direction that the application for permission to appeal does not stand as the notice of appeal.

(2) The appellant must provide a notice of appeal to the Upper Tribunal so that it is received within 1 month after—

- (a) the date that the tribunal that gave permission to appeal sent notice of such permission to the appellant; or
  - (b) if permission to appeal is not required, the date on which notice of decision to which the appeal relates was sent to the appellant.”; and
- (b) for paragraph (6) substitute—
- “(6) When the Upper Tribunal receives the notice of appeal it must send a copy of the notice and any accompanying documents—
- (a) to each respondent; or
  - (b) in an appeal against the decision of a traffic commissioner, to—
    - (i) the traffic commissioner;
    - (ii) the appropriate national authority; and
    - (iii) in a case relating to the detention of a vehicle, the authorised person.”.

**18.** In rule 24 (response to the notice of appeal)—

- (a) for paragraph (1) substitute—
 

“(1) This rule and rule 25 do not apply to an appeal against a decision of a traffic commissioner, in respect of which Schedule 1 makes alternative provision.

(1A) Subject to any direction given by the Upper Tribunal, a respondent may provide a response to a notice of appeal.”;
- (b) in paragraph (2)(a) for “if the application for permission” substitute “if an application for permission to appeal”; and
- (c) in paragraph (3)(e) after “including” insert “(in the case of an appeal against the decision of another tribunal)”.

**19.** In rule 26A (cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent) for paragraph (1) substitute—

- “(1) Paragraphs (2) and (3) apply to—
- (a) a case transferred or referred to the Upper Tribunal from the First-tier Tribunal; or
  - (b) a case, other than an appeal or a case to which rule 26 (references under the Forfeiture Act 1982) applies, which is started by an application made directly to the Upper Tribunal.”.

**20.** In rule 37(4)(c) (public and private hearings) for “a direction under rule 14(2) (withholding information likely to cause harm)” substitute “the requirement at rule 14(11) (prevention of disclosure or publication of documents and information)”.

**21.** In rule 40 (decisions)—

- (a) in paragraph (3) for “14(2) (withholding harmful information)” substitute “14(11) (prevention of disclosure or publication of documents and information)”;
- (b) in paragraph (4) before “Tribunal” insert “Upper”.

**22.** At the end of the Rules insert—

**“SCHEDULE 1**

Rule 24(1)

**Procedure after the notice of appeal in appeals against decisions of traffic commissioners**

- 1.** This Schedule applies to an appeal against the decision of a traffic commissioner.

**2.** The only parties to the appeal are the appellant and any person added as a party under rule 9 (substitution and addition of parties).

**3.** On receipt of a copy of a notice of appeal under rule 23(6)(b), the traffic commissioner must send to the Upper Tribunal a copy (and, on request, further copies) of—

- (a) a written record of the decision appealed against and reasons for the decision;
- (b) all documents produced to the traffic commissioner in connection with the decision;
- (c) if a public inquiry was held, the transcript of the inquiry or, if no such transcript was produced, the traffic commissioner’s note of the inquiry; and
- (d) in an appeal under section 50 of the Public Passenger Vehicles Act 1981(a) or section 37 of the Goods Vehicles (Licensing of Operators) Act 1995(b), a list of the names and addresses of objectors and representors.

**4.** On receipt of a list under paragraph 3(d) the Upper Tribunal must send a copy of the notice of appeal—

- (a) where the appellant had applied for, or for the variation of, an operator’s licence, to each person who made an objection to the application;
- (b) where the appellant had made an objection to an application for, or (in the case of a goods vehicle operator’s licence) for the variation of, an operator’s licence, to the person who made the application and to every other person who made an objection to the application; and
- (c) in an appeal under section 37(5) of the Goods Vehicles (Licensing of Operators) Act 1995, each person who made representations under section 12(4) or 19(2) of that Act against the application for, or for the variation of, the operator’s licence in question.

**5.** The appropriate national authority and any person to whom the Upper Tribunal has sent a copy of the notice of appeal under paragraph 4 may apply for a direction under rule 9(2) adding them as a respondent.

**6.** An application under paragraph 5 must be sent or delivered to the Upper Tribunal so that it is received within 14 days of the date that the Upper Tribunal sent a copy of the notice of appeal to the person making the application.

**7.** If a person specified in paragraph 8 makes an application in accordance with paragraphs 5 and 6, the Upper Tribunal must give a direction under rule 9(2) adding that person as a respondent.

**8.** The persons specified for the purposes of paragraph 7 are—

- (a) the appropriate national authority;
- (b) an objector who was sent a copy of the notice of appeal under paragraph 4(a) or (b); and
- (c) a person who made an application and was sent a copy of the notice of appeal under paragraph 4(b).

**9.** The Upper Tribunal must notify each other party of any application under paragraph 3 and the Upper Tribunal’s decision in respect of each such application.

**10.** Any party may make a request to the Upper Tribunal for copies of specified documents provided by the traffic commissioner under paragraph 3.

**11.** On receiving a request under paragraph 9 the Upper Tribunal—

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(a) 1981 c. 14. Section 50 was substituted by section 31 of the Transport Act 2985 (c. 67) and amended by section 65(2) of, and paragraph 7 of Schedule 14 to, the Deregulation and Contracting Out Act 1994 (c. 40).  
(b) 1995 c. 23.

- (a) must provide the requested copies unless it considers the request unreasonable; and
- (b) if it considers the request unreasonable, give details of why it considers the request unreasonable.”.

*Patrick Elias*  
*Phillip Brook Smith Q.C.*  
*Lesley Clare*  
*Carolyn Kirby*  
*Peter Lane*  
*Douglas J. May*  
*Bronwyn McKenna*  
*M.J. Reed*  
*Mark Rowland*  
*Nicholas Warren*

I allow these Rules  
Signed by authority of the Lord Chancellor

16th July 2009

*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 (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (S.I. 2008/2685), the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 (S.I. 2008/2686), the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (S.I. 2008/2699) and the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698).

In relation to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, rule 3 of these Rules makes an amendment to clarify that the First-tier Tribunal may not extend the time for bringing certain types of appeal by more than 12 months, and rule 4 makes an amendment to correct a time limit.

In relation to the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008, rule 5 of these rules makes an amendment to clarify that the First-tier Tribunal may not extend the time for bringing certain types of appeal by more than 12 months.

In relation to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, rule 6 of these rules makes an amendment to provide for time limits in proceedings under a new appeal right to the First-tier Tribunal.

In relation to the Tribunal Procedure (Upper Tribunal) Rules 2008, rules 8(b), 9, 10, 11, 13, 14, 16, 17, 18(a) and (c), 20, 21(a) and 22 of these Rules make amendments to make provision for the Upper Tribunal to deal with new types of cases in Upper Tribunal from 1st September 2009. These cases could be appeals or applications made directly to the Upper Tribunal, or cases on appeal from, or transferred or referred by, the General Regulatory Chamber of the First-tier Tribunal.

Rules 8(a), 12, 15, 18(b), 19 and 22(b) of these Rules make minor amendments to correct and clarify the drafting of the Tribunal Procedure (Upper Tribunal) Rules 2008 as previously in force.

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