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## STATUTORY INSTRUMENTS

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# 2010 No. 2600

## The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

### PART 2

#### General powers and provisions

##### Delegation to staff

4.—(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date on which the Tribunal sends notice of a decision made by a member of staff under paragraph (1) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge.

##### Case management powers

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

- (a) extend or shorten the time for complying with any rule or practice direction and order an extension even if the application for an extension is not made until after the time limit has expired;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case;
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information, evidence or submissions to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a separate or preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;

*Status: Point in time view as at 21/12/2017.*

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- (j) stay proceedings;
- (k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
  - (i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (l) suspend the effect of its own decision pending an appeal or review of that decision;
- (m) in an appeal, or an application for permission to appeal, against the decision of another tribunal, suspend the effect of that decision pending the determination of the application for permission to appeal, and any appeal; or
- (n) require any person, body or other tribunal whose decision is the subject of proceedings before the 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.

#### **Procedure for applying for and giving directions**

**6.—(1)** The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made—

- (a) by sending or delivering a written application to the Tribunal; or
- (b) orally during the course of a hearing.

(3) An application for a direction must include the reason for making that application.

(4) If a written application for a direction is made with the consent of every party, it must be accompanied by consents signed by or on behalf of each party.

(5) If a written application for a direction is not made with the consent of every party the applicant must provide—

- (a) a copy of the proposed application to every other party before it is made; and
- (b) confirmation to the Tribunal that the other parties have been notified that any objection they wish to make to the application must be provided in accordance with paragraph (6).

(6) A party who wishes to object to an application for a direction must within 10 days of being sent a copy of the application, send written notice of the objection to the Tribunal and the applicant.

(7) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction.

(8) If a party or any other person sent notice of the direction under paragraph (7) wishes to challenge a direction which the Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

#### **Failure to comply with rules etc.**

**7.—(1)** An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction, does not of itself render void the proceedings or any step taken in the proceedings.

(2) If any party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may, on the application of any party or on its own initiative, take such action as it considers just, which may include—

- (a) waiving the requirement;

- (b) requiring the failure to be remedied;
- (c) exercising its power under section 25 of the 2007 Act (supplementary powers of the Tribunal); or
- (d) exercising its power under rule 8 (striking out a party's case).

(3) A party will automatically be barred from taking further part in the proceedings or part of the proceedings if that party has failed to comply with a direction that stated that failure by that party to comply with the direction would lead to such a barring of that party.

(4) If a party has been barred under paragraph (3), that party may apply to the Tribunal for the lifting of the bar.

(5) An application made under paragraph (4) must be made in writing and received by the Tribunal within 14 days after the date on which the Tribunal sent notification of the bar to the parties.

(6) If a party has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that party, and may summarily determine any or all issues against that party.

### **Striking out a party's case**

**8.—**(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant, applicant or claimant has failed to comply with a direction that stated that failure by that party to comply with the direction would lead to the striking out of the proceedings or that part of them.

- (2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—
  - (a) does not have jurisdiction in relation to the proceedings or that part of them; and
  - (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
- (3) The Tribunal may strike out the whole or a part of the proceedings if—
  - (a) a party to the proceedings has failed to comply with a direction which stated that failure by that party to comply with the direction could lead to the striking out of the proceedings or part of them;
  - (b) the appellant, applicant or claimant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
  - (c) the Tribunal considers there is no reasonable prospect of the case of the appellant, applicant or claimant, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant, applicant or claimant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings have been struck out under paragraph (1) or (3)(a), the appellant, applicant or claimant may apply for the proceedings, or part of them, to be reinstated.

(6) An application made under paragraph (5) must be made in writing and received by the Tribunal within 14 days after the date on which the Tribunal sent notification of the striking out to the appellant, applicant or claimant.

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

**9.—**(1) The Tribunal may give a direction adding, substituting or removing a party in any proceedings.

(2) If the 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 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 the conditions (if any) applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a party.

### Orders for costs

[<sup>F1</sup>10.—(1) The Tribunal may make an order for costs on an application or on its own initiative.

(2) Any order under paragraph (1)—

(a) may only be made in accordance with the conditions or in the circumstances referred to in paragraphs (3) to (6);

(b) must, in a case to which section 4 of the 1961 Act applies, be in accordance with the provisions of that section.

(3) The Tribunal may in any proceedings make an order for costs—

(a) under section 29(4) of the 2007 Act (wasted costs) and for costs incurred in applying for an order for such costs;

(b) if the Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings; or

(c) in the circumstances to which paragraph (14) refers.

(4) Except in proceedings to which paragraph (5) or (6) apply, the Tribunal may—

(a) with the consent of the parties, or

(b) where there is a disparity of interest or resources between the parties,

direct that an order for costs may be made in the proceedings against one or more of the parties in respect of costs incurred following such a direction.

(5) The Tribunal may make an order for costs in judicial review proceedings.

(6) The Tribunal may make an order for costs in proceedings—

(a) for compensation for compulsory purchase;

(b) for injurious affection of land;

(c) under section 84 of the Law of Property Act 1925 (discharge or modification of restrictive covenants affecting land);

(d) on an appeal from a decision of the Valuation Tribunal for England or the Valuation Tribunal for Wales [<sup>F2</sup>;

(e) under Schedule 3A to the Communications Act 2003; and

(f) under the Riot Compensation Act 2016].

(7) Subject to paragraph (3), in proceedings to which paragraph (6) applies, the Tribunal may direct that no order for costs may be made against one or more specified parties in respect of costs subsequently incurred.

(8) In proceedings to which paragraph (6) applies, the Tribunal must have regard to the size and nature of the matters in dispute.

(9) A person making an application for an order for costs, or a direction regarding costs—

(a) must send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made;

- (b) must include in the application, where it is for a direction regarding costs, the person's reasons why the conditions or circumstances relevant to making such a direction under paragraph (4) or (7) apply; and
  - (c) may send or deliver with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (10) An application for an order for costs may be made at any time during the proceedings but may not be made later than 14 days after the date on which—
- (a) the Tribunal sends a decision notice recording the decision which finally disposes of all issues in the proceedings;
  - (b) the Tribunal sends notice under rule 20 (withdrawal) that a withdrawal which ends the proceedings has taken effect; or
  - (c) notice of withdrawal is sent to the Tribunal with the consent of all parties.
- (11) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (12) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
  - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”); or
  - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person—
    - (i) on the standard basis; or
    - (ii) on the indemnity basis, if so specified in the costs order, by the Tribunal or by the Senior Courts Costs Office or by a county court;
- and the Civil Procedure Rules 1998 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.
- (13) The Tribunal may order an amount to be paid on account before the costs are assessed.
- (14) The Tribunal may order a party to pay to another party costs of an amount equal to the whole or part of any fee paid (which has not been remitted by the Lord Chancellor under the Upper Tribunal (Lands Chamber) Fees Order 2009) in the proceedings by that other party that is not otherwise included in an award of costs.]

#### Textual Amendments

- F1** Rule 10 substituted (1.7.2013) by [The Tribunal Procedure \(Amendment No. 3\) Rules 2013 \(S.I. 2013/1188\)](#), [rules 1, 3](#) (with [rule 10](#))
- F2** Rule 10(6)(e)(f) inserted (coming into force in accordance with rule 3 of the amending S.I.) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2017 \(S.I. 2017/1168\)](#), [rules 1, 24](#)

#### Representatives

**11.—**(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Tribunal and to each other party to the proceedings written notice of the representative's name and address.

*Status: Point in time view as at 21/12/2017.*

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(3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(4) A person who receives notice of the appointment of a representative—

(a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and

(b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a party under paragraph (5).

(7) In this rule “legal representative” means a person who, for the purposes of the Legal Services Act 2007<sup>M1</sup>, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation within the meaning of that Act.

#### Marginal Citations

M1 2007 c. 29

### Calculating time

12.—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 5 pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this Rule “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971<sup>M2</sup>.

#### Marginal Citations

M2 1971 c. 80

### Sending and delivery of documents

13.—(1) Any document to be provided to the Tribunal under these Rules, a practice direction or a direction must be—

(a) sent by pre-paid post or by document exchange, or delivered by hand, to the address of the office of the Tribunal;

(b) sent by fax to the fax number of the office of the Tribunal; or

(c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by the relevant method.

(3) If a party informs the Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until it receives written notification to the contrary.

#### **Waiver or alternative method of service**

**14.** The Tribunal may waive a requirement under these Rules to send or deliver a notice or other document to a person or may make an order for service by an alternative method (whether by advertisement in a newspaper or otherwise) as the Tribunal may think fit—

- (a) if that person cannot be found after all diligent enquiries have been made;
- (b) if that person has died and has no personal representative; or
- (c) if for any other reason a notice or other document cannot readily be sent or delivered to that person in accordance with these Rules.

#### **Use of documents and information**

**15.** The Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

#### **Evidence and submissions**

**16.—(1)** Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Tribunal may give directions as to —

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (c) whether the parties are permitted to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
  - (i) orally at a hearing; or
  - (ii) by written submission or witness statement; and
- (f) the time by which any evidence or submissions are to be provided.

**(2)** The Tribunal may—

- (a) admit evidence whether or not—
  - (i) the evidence would be admissible in a civil trial in England or Wales; or
  - (ii) the evidence was available to a previous decision maker; or
- (b) exclude evidence that would otherwise be admissible where—
  - (i) the evidence was not provided within the time allowed by a direction or a practice direction;

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- (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
- (iii) it would otherwise be unfair to admit the evidence.

(3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

(4) A witness statement must contain the words “I believe that the facts stated in this witness statement are true”, and be signed by the person who makes it.

(5) Where a witness who has made a witness statement is called to give oral evidence, their witness statement shall stand as their evidence in chief unless the Tribunal directs otherwise, but the witness may with the permission of the Tribunal—

- (a) amplify the witness statement they have made; and
- (b) give evidence in relation to new matters which have arisen since the witness statement was provided to the other parties.

### **Expert evidence**

**17.—**(1) It is the duty of an expert to help the Tribunal on matters within the expert's expertise and this duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

(2) Subject to paragraph (3), no party may call more than one expert witness without the permission of the Tribunal.

(3) In proceedings relating to mineral valuations or business disturbance, no party may call more than two expert witnesses without the permission of the Tribunal.

(4) Expert evidence is to be given in a written report unless the Tribunal directs otherwise.

(5) A written report of an expert must—

- (a) contain a statement that the expert understands the duty in paragraph (1) and has complied with it,
- (b) contain the words “I believe that the facts stated in this report are true and that the opinions expressed are correct”,
- (c) comply with the requirements of any practice direction as regards its form and contents, and
- (d) be signed by the expert.

### **Summoning of witnesses and orders to answer questions or produce documents**

**18.—**(1) On the application of a party or on its own initiative, the Tribunal may—

- (a) by summons, require any person to attend as a witness at a hearing at the time and place specified in the summons; and
- (b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) A summons under paragraph (1)(a) must—

- (a) give the person required to attend 14 days' notice of the hearing or such shorter period as the Tribunal may direct; and
- (b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.

(3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law.

(4) A person who receives a summons or order may apply to the Tribunal for it to be varied or set aside if they did not have an opportunity to object to it before it was made or issued.

(5) A person making an application under paragraph (4) must do so as soon as reasonably practicable after receiving notice of the summons or order.

(6) A summons or order under this rule must—

- (a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons or order, if they did not have an opportunity to object to it before it was made or issued; and
- (b) state the consequences of failure to comply with the summons or order.

### Site inspections

**19.**—(1) Subject to paragraph (2), the Tribunal may, with the consent of the occupier, enter and inspect—

- (a) the land or property that is the subject of the proceedings; and
- (b) as far as practicable, any other land or property relevant to the proceedings to which the attention of the Tribunal is drawn.

(2) If the Tribunal proposes to enter any premises under paragraph (1) it must—

- (a) give reasonable notice to the occupier of the premises; and
- (b) give notice to the parties of the proposed inspection.

### Withdrawal

**20.**—(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—

- (a) <sup>F3</sup>...by sending or delivering to the Tribunal and all other parties a written notice of withdrawal; or
- (b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.

(3) The requirement in paragraph (2) does not apply to—

- (a) an application for permission to appeal; or
- (b) a notice of withdrawal to which all the parties to the proceedings consent.

(4) A party which has withdrawn its case or part of it may apply to the Tribunal for the case to be reinstated.

(5) An application under paragraph (4) must be made in writing and be received by the Tribunal within 1 month after—

- (a) the date on which the Tribunal received the notice under paragraph (1)(a); or
- (b) the date of the hearing at which the case (or part of it) was withdrawn orally under paragraph (1)(b).

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**Textual Amendments**

- F3** Words in rule 20(1)(a) omitted (1.7.2013) by virtue of [The Tribunal Procedure \(Amendment No. 3\) Rules 2013 \(S.I. 2013/1188\)](#), rules 1, 4 (with rule 10)

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