

2019 No. 925

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment) Rules 2019

Made - - - - *9th May 2019*

Laid before Parliament *13th May 2019*

Coming into force in accordance with regulation 1

The Tribunal Procedure Committee makes the following Rules, in exercise of the powers conferred by section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(a), having consulted in accordance with paragraph 28(1) of 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.—(1) These Rules may be cited as the Tribunal Procedure (Amendment) Rules 2019.
(2) These Rules come into force on the twenty-first day after the day on which they are laid.

Amendment to the Tribunal Procedure (Upper Tribunal) Rules 2008

2.—(1) Subject to rule 6 (transitional provision), the Tribunal Procedure (Upper Tribunal) Rules 2008(b) are amended as follows.

- (2) In rule 1 (citation, commencement, application and interpretation), paragraph (3)—
- (a) in the definition of “interested party”—
 - (i) at the end of sub-paragraph (b) omit “and”;
 - (ii) at the end of sub-paragraph (d) insert “and”;
 - (iii) after sub-paragraph (d) insert—
 - “(e) in a trade remedies case, any person other than the appellant who could have appealed to the Upper Tribunal and who has been added or substituted as an interested party under rule 9 (addition, substitution and removal of parties);”;

(a) 2007 c. 15. Paragraph 12(2)(b) of Schedule 5 was amended by paragraph 52(1)(b) of Schedule 9 to the Crime and Courts Act 2013 (c. 22); paragraph 14 of Schedule 5 was amended by S.I. 2010/220; paragraph 21 of Schedule 5 was amended by S.I. 2013/2042. Paragraph 3 of Schedule 5 will be amended, and paragraph 28A will be inserted, by Part 2 of Schedule 1 to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33) when brought into force.

(b) S.I. 2008/2698. In rule 1(3), the definition of “interested party” was amended by section 59(5) of, and paragraph 1(2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and by S.I. 2010/747, 2014/514 and 2017/723, the definition of “road transport case” was inserted by S.I. 2012/1363 and the definition of “special educational needs case” was inserted by S.I. 2014/2128 and amended by S.I. 2015/1510. There are other amendments to rule 1(3) that are not relevant. Rule 14 was amended by S.I. 2009/1975. Rule 23 was amended by S.I. 2009/1975, 2010/44, 2012/1363, 2015/1510 and 2017/723. Rule 26A was inserted by S.I. 2009/274 and amended by S.I. 2009/1975, 2010/43 and 2012/500.

- (b) for the definition of “road transport case”, substitute—
- ““road transport case” means an appeal against a decision of—
- (a) a traffic commissioner, other than an appeal pursuant to—
- (i) section 6F of the Transport Act 1985(a), or
- (ii) section 123T of the Transport Act 2000(b), or
- (b) the Department of the Environment in Northern Ireland;”, and
- (c) after the definition of “special educational needs case”, insert—
- ““TRA” means the Trade Remedies Authority;
- “trade remedies case” means an appeal pursuant to the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019(c) against a decision made by the TRA or a determination of the Secretary of State;”.
- (3) In rule 14 (use of documents and information), after paragraph (8), insert—
- “(8A) In a trade remedies case, the Upper Tribunal may give a direction under paragraph (8) if the Upper Tribunal is satisfied that—
- (a) where such documents or information have been supplied to the TRA, the TRA is treating such documents or information as confidential in accordance with—
- (i) regulation 45 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019(d);
- (ii) regulation 16 of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019(e); or
- (iii) regulation 5 of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019; or
- (b) where such documents or information have not been supplied to the TRA, if such documents or information were to be supplied to the TRA in accordance with regulation 5 of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019, the TRA would be entitled to treat such documents or information as confidential in accordance with that regulation,
- and the Upper Tribunal is not precluded from considering such documents or information in making its decision in the case.”.
- (4) In rule 23 (notice of appeal)—
- (a) in paragraph (2)(b)—
- (i) at the end of paragraph (i), omit “or”;
- (ii) at the end of paragraph (ii), for the full stop substitute “, or”;
- (iii) after paragraph (ii), insert—
- “(iii) in a trade remedies case—
- (aa) where the appeal is against a decision made by the TRA and notice is required to be published in accordance with the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019, the date of such publication or (if later) when the notice comes into effect;
- (bb) where the appeal is against a decision made by the TRA and no notice is required to be published in accordance with the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019, the date on which the appellant is notified of the decision, or

(a) 1985 c. 67. Section 6F was inserted by section 13 of the Bus Services Act 2017 (c. 21).

(b) 2000 c. 38. Section 123T was inserted by section 4 of the Bus Services Act 2017.

(c) S.I. 2019/910.

(d) S.I. 2019/450.

(e) S.I. 2019/449.

- (cc) where the appeal is against a determination of the Secretary of State under the Taxation (Cross-border Trade) Act 2018(a), the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 or the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (as the case may be), the date on which the notice is published in accordance with the relevant provision or (if later) when the notice comes into effect;”;
- (b) in paragraph (6)—
 - (i) at the end of sub-paragraph (a), omit “or”;
 - (ii) at the end of sub-paragraph (b), insert—
 - “; or
 - (c) in an appeal against a decision of a traffic commissioner pursuant to section 6F of the Transport Act 1985 or section 123T of the Transport Act 2000, to—
 - (i) the respondent, and
 - (ii) the traffic commissioner who was the decision maker.
- (6A) In a case to which paragraph (6)(c) applies, the Upper Tribunal must at the same time require such commissioner to—
 - (a) send or deliver to the Upper Tribunal (within such time as the Upper Tribunal may specify)—
 - (i) a copy of any written record of the decision under challenge, and any statement of reasons for that decision, and
 - (ii) copies of all documents relevant to the case in such commissioner’s possession, and
 - (b) provide copies of such documents to each other party at the same time as they are provided to the Upper Tribunal.”.
- (5) 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)—
 - (a) in the heading above that rule, after “directly to the Upper Tribunal”, insert “, cases where an offence has been certified”;
 - (b) in paragraph (1)—
 - (i) at the end of sub-paragraph (a), omit “or”;
 - (ii) at the end of sub-paragraph (b), for the full stop substitute “; or”;
 - (iii) after sub-paragraph (b), insert—
 - “(c) a case where an offence has been certified to the Upper Tribunal.”.

Amendment to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

3.—(1) The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(b) are amended as follows.

(a) 2018 c. 22. The effect of the Act is modified by S.I. 2019/429.
 (b) S.I. 2009/1976. Rule 1(2) was substituted by S.I. 2010/2653; there are amendments to rule 1(3) that are not relevant. There are amendments to rule 22 that are not relevant. There are other amending instruments but none is relevant to these Rules.

- (2) In rule 1 (citation, commencement, application and interpretation)—
- (a) in paragraph (2), after “First-tier Tribunal” insert “, including where the Tribunal exercises its jurisdiction under section 61(4) of the Freedom of Information Act 2000(a) and section 202(2) of the Data Protection Act 2018(b)”;
 - (b) in paragraph (3), after the definition of “appellant”, insert—
““certification case” means a case in which the Tribunal may certify an offence to the Upper Tribunal under section 61(4) of the Freedom of Information Act 2000 or section 202(2) of the Data Protection Act 2018;”.
- (3) After rule 7 (failure to comply with rules, practice directions or tribunal directions), insert—

“Certification

7A.—(1) This rule applies to certification cases.

(2) An application for the Tribunal to certify an offence to the Upper Tribunal must be made in writing and must be sent or delivered to the Tribunal so that it is received no later than 28 days after the relevant act or omission (as the case may be) first occurs.

(3) The application must include—

- (a) details of the proceedings giving rise to the application;
- (b) details of the act or omission (as the case may be) relied on;
- (c) if the act or omission (as the case may be) arises following, and in relation to, a decision of the Tribunal, a copy of any written record of that decision;
- (d) if the act or omission (as the case may be) arises following, and in relation to, an order of the Tribunal under section 166(2) of the Data Protection Act 2018 (orders to progress complaints), a copy of the order;
- (e) the grounds relied on in contending that if the proceedings in question were proceedings before a court having power to commit for contempt, the act or omission (as the case may be) would constitute contempt of court;
- (f) a statement as to whether the applicant would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate, and
- (g) any further information or documents required by a practice direction.

(4) If an application is provided to the Tribunal later than the time required by paragraph (2) or by any extension of time 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 Tribunal extends time for the application, the Tribunal must not admit the application.

(5) When the Tribunal admits the application, it must send a copy of the application and any accompanying documents to the respondent and must give directions as to the procedure to be followed in the consideration and disposal of the application.

(6) A decision disposing of the application will be treated by the Tribunal as a decision which finally disposes of all issues in the proceedings comprising the certification case and rule 38 (decisions) will apply.”.

(4) In the heading above rule 21 (application of Chapter 1), after “charities cases” insert “or certification cases”.

(5) In rule 21, after “charities cases” insert “or certification cases (to which rule 7A applies)”.

(6) In rule 22 (the notice of appeal), after paragraph (2), insert—

(a) 2000 c. 36. Section 61 was substituted by paragraph 60 of Schedule 19 to the Data Protection Act 2018 (c. 12).
(b) 2018 c. 12. Section 166 is due to be amended by S.I. 2019/419 (to come into force in full on exit day in accordance with regulation 1(2)).

“(2A) If the proceedings are an application under section 166(2) of the Data Protection Act 2018 (orders to progress complaints), the appellant must provide with the notice of appeal copies of—

- (a) the complaint made to the Information Commissioner, and
- (b) any information provided by the Information Commissioner to the appellant about progress on the complaint or of the outcome of the complaint.”.

Amendment to the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

4.—(1) The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010(a) are amended as follows.

(2) In rule 41 (method of making application)—

(a) for paragraph (1)(e), substitute—

“(e) whether the relevant register of local land charges is kept by the Chief Land Registrar or the local authority in whose area the dominant building is situated, and if kept by a local authority the name of that local authority;”.

(b) in paragraph (2)(a), omit “to the local authority in whose area the dominant building is situated”.

Amendment to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

5.—(1) The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013(b) are amended as follows.

(2) In rule 1(3) (interpretation)—

(a) in paragraph (e) of the definition of “respondent”, after “residential property cases” insert “, tenant fees cases”, and

(b) after the definition of “respondent”, insert—

““tenant fees case” means an application brought under section 15 of the Tenant Fees Act 2019(c) (recovery by relevant person of amount paid) or an appeal brought under paragraph 6 of Schedule 3 to that Act (appeals against penalties);”.

(3) In rule 13(1)(b) (orders for costs, reimbursement of fees and interest on costs)—

(a) at the end of paragraph (ii), omit “or”;

(b) after paragraph (iii), insert—

“(iv) a tenant fees case; or”.

(4) In rule 26(3) (starting proceedings), after “residential property cases” insert “, tenant fees cases”.

Transitional provision

6. Until the Trade Remedies Authority is established, the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended by these Rules have effect as if—

(a) in rule 1(3) (interpretation)—

(i) the definition of “TRA” were omitted, and

(ii) in the definition of “trade remedies case”, for “a decision made by the TRA or a determination of the Secretary of State”, there were substituted “a decision of the Secretary of State”;

(a) S.I. 2010/2600, to which there are amendments not relevant to these Rules.

(b) S.I. 2013/1169. Rule 1 was amended by S.I. 2014/2128 and 2017/723. There are other amending instruments but none is relevant to these Rules.

(c) 2019 c. 4. Section 15 and Schedule 3 are to be commenced on a date to be appointed by regulations under section 34(1).

- (b) in rule 14(8A) (use of documents and interpretation), for “the TRA” (in each place where this occurs) there were substituted “the Secretary of State”;
- (c) in rule 23(2)(b)(iii) (notice of appeal)—
 - (i) sub-paragraph (aa) were omitted;
 - (ii) in sub-paragraph (bb), for “the TRA” there were substituted “the Secretary of State”, and
 - (iii) in sub-paragraph (cc), for “determination” there were substituted “decision”.

We make these Rules

Tim Fagg
Jayam Dalal
Donald Ferguson
Gabriella Bettiga
Philip Brook Smith
Mark Loveday
Peter Roth
TPC Members

29th April 2019

I allow these Rules

Lucy Frazer
Parliamentary Under Secretary of State
Ministry of Justice

9th May 2019

EXPLANATORY NOTE

(This note is not part of the Rules)

Rule 2 amends the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698).

Rules 2(2)(a) and (c), 2(3), 2(4)(a) and (b) and 6 make amendments in respect of trade remedies appeals against decisions of the Trade Remedies Authority or the Secretary of State. Rule 2(2)(a) amends the definition of “interested party” to insert a new definition in respect of a trade remedies case, and rule 2(2)(c) inserts new definitions of “TRA” and “trade remedies case”. Rule 2(3) amends rule 14 (use of documents and information), and rule 2(4)(a) and (b) amends rule 23 (notice of appeal) in respect of trade remedies cases. Rule 6 makes transitional modifications to the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of trade remedies appeals until the Trade Remedies Authority is established.

Rules 2(2)(b) and 2(4)(c) make amendments in respect of bus services. Rule 2(2)(b) amends the definition of “road transport case”, and rule 2(4)(c) amends rule 23 (notice of appeal) in respect of certain bus services appeals.

Rule 2(5) amends rule 26A (cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent) to make provision for cases where offences are certified to the Upper Tribunal by the First-tier Tribunal (see rule 3).

Rule 3 amends the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) to make provision for the certification of offences by the First-tier Tribunal to the Upper Tribunal in respect of certain acts or omissions under the Freedom of Information Act 2000 (c. 36) and the Data Protection Act 2018 (c. 12) which would constitute contempt of court if the proceedings had been before a court having power to commit for contempt. Rule 3 amends rule 1 (citation, commencement, application and interpretation), rule 21 (application of chapter 1) and rule 22 (the notice of appeal), and inserts a new rule 7A (certification).

Rule 4 amends the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (S.I. 2010/2698). Rule 4(2) amends rule 41 (method of making application) to reflect changes made by

the Infrastructure Act 2015 (c. 7) such that the register of local land charges will be transferred over time from being kept by local authorities to being kept by the Chief Land Registrar.

Rule 5 amends the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013/1169) in respect of new appeal routes introduced by the Tenant Fees Act 2019 (c. 4). Rule 5(2)(b) inserts a new definition of “tenant fees case” and rule 5(2)(a), (3) and (4) makes amendments to the Rules in respect of such cases.

No impact assessment has been carried out for these amendments as no, or no significant, impact on the private, voluntary, or public sectors is foreseen.

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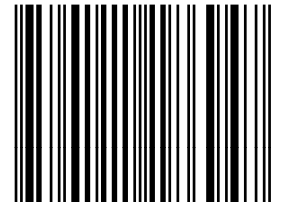
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