

2017 No. 723 (L. 8)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment) Rules 2017

Made - - - - - *5th July 2017*

Laid before Parliament *6th July 2017*

Coming into force - - - *In accordance with rule 1*

The Tribunal Procedure Committee has made 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. These Rules may be cited as the Tribunal Procedure (Amendment) Rules 2017 and come into force 21 days after the day on which they are laid.

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

2. In the Schedule (Cases in which the Time for Providing the Application Notice is Within 3 Months after Written Notice of the Decision Being Challenged was Sent to the Applicant) to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008(b) omit—

“An appeal under section 68 of the Care Standards Act 2000(c) against a refusal to register a person as a social worker under section 58(d) of that Act (grant of refusal of registration).”.

(a) 2007 c. 15.
(b) S.I. 2008/2699. The Schedule was substituted by S.I. 2011/651 and amended by S.I. 2014/2128; there are other amending instruments but none is relevant.
(c) 2000 c. 14; section 68 was amended by section 230(1) of, and paragraphs 1 and 16 of Schedule 15 to, the Health and Social Care Act 2012 (c. 7), S.I. 2007/3101 and 2016/1030. It was repealed by section 185 of, and paragraphs 40 and 41(b) of Schedule 3 to, the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2).
(d) Section 58 was amended by section 63(1) of, and paragraph 16 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c. 47), section 230(1) of, and paragraphs 1 and 5 of Schedule 15 to, the Health and Social Care Act 2012, S.I. 2007/3101 and 2016/1030. It was repealed by section 185 of, and paragraphs 40 and 41(a) of Schedule 3 to, the Regulation and Inspection of Social Care (Wales) Act 2016.

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

3. The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013(a) are amended as follows.

4. In rule 1 (citation, commencement and interpretation) in the definition of “residential property case”(b) for “or the 2004 Act” substitute “, the 2004 Act or the Housing and Planning Act 2016(c)”.

Amendment to the Tribunal Procedure (Upper Tribunal) Rules 2008

5. The Tribunal Procedure (Upper Tribunal) Rules 2008(d) are amended as follows.

6. In the table of contents(e)—

(a) after the entry for 26B insert—

“26C. Financial sanctions cases”;

(b) after the entry for Schedule 3 insert—

“SCHEDULE 4 - Procedure in financial sanctions cases”.

7. In rule 1(3)(f) (citation, commencement, application and interpretation)—

(a) insert at the appropriate place—

““financial sanctions case” means an appeal to the Upper Tribunal under section 147(6) of the Policing and Crime Act 2017(g).”;

(b) in the definition of “interested party” insert after paragraph (c) —

“(d) in a financial sanctions case, any person other than the appellant upon whom the Treasury has imposed a monetary penalty under Part 8 of the Policing and Crime Act 2017 in connection with the same matters as led to the decision that is the subject of the appeal and who has been added or substituted as an interested party under rule 9 (addition, substitution and removal of parties).”.

8. In rule 5 (case management powers) after paragraph (5)(h) insert—

“(5A) In a financial sanctions case, the Upper Tribunal may direct that the payment of a monetary penalty that is the subject of an appeal be suspended pending the determination of the appeal or its withdrawal.”.

9. In rule 10 (orders for costs)(i) in paragraph (3)—

(a) omit “or” at the end of sub-paragraph (d);

(b) insert “; or” at the end of sub-paragraph (e); and

(c) after sub-paragraph (e) insert—

“(f) if, in a financial sanctions case, the Upper Tribunal considers that the decision to impose or uphold a monetary penalty in respect of which the appeal was made was unreasonable.”.

10. In rule 23 (notice of appeal) in paragraph (1)(a)(j) for “or 26B” substitute “, 26B or 26C”.

(a) S.I. 2013/1169.

(b) The definition of “residential property case” was amended by S.I. 2014/2028.

(c) 2016 c. 22.

(d) S.I. 2008/2698.

(e) The table of contents was amended by S.I. 2010/747.

(f) Rule 1(3) was amended by section 59(5) of, and paragraph 1(2) of Schedule 11 to the Constitutional Reform Act 2005 (c. 4), S.I. 2010/44, 2010/747 and 2014/514; there are other amendments but none is relevant.

(g) 2017 c. 3.

(h) Rule 5(5) was inserted by S.I. 2010/747 and amended by S.I. 2013/606.

(i) Rule 10 was substituted by S.I. 2009/274 and amended by S.I. 2009/1975, 2010/747, 2013/477 and 2014/514; there are other amendments but none is relevant.

(j) Rule 23(1) was substituted by S.I. 2009/1975 and amended by S.I. 2010/747.

- 11.** In rule 24 (response to the notice of appeal) for paragraph (1)(a) substitute—
- “(1) This rule and rule 25 do not apply to—
- (a) a road transport case, in respect of which Schedule 1 makes alternative provision; or
 - (b) a financial sanctions case in respect of which Schedule 4 makes alternative provision.”.

12. After rule 26B(b) insert—

“Financial sanctions cases

26C Schedule 4 makes provision for financial sanctions cases.”.

13. After Schedule 3 insert—

“SCHEDULE 4

Rule 26C

Procedure in financial sanctions cases

Interpretation

- 1.** In this Schedule—
- “2017 Act” means the Policing and Crime Act 2017.
- “financial sanctions legislation” has the meaning provided by section 143(4) of the 2017 Act.
- “further material” means documents which-
- (a) were considered by the Treasury in reaching a decision under section 147(3) of the 2017 Act to impose the monetary penalty that is the subject of the appeal; or
 - (b) were considered by the Minister in reaching a decision under section 147(4) of the 2017 Act to uphold the monetary penalty that is the subject of the appeal; or
 - (c) were obtained by either the Treasury or the Minister in connection with a decision described above (whether they were obtained before or after making the decision) but which were not considered by them in reaching that decision, but does not include documents on which the respondent relies in support of the decision made.

Notice of Appeal

- 2.—**(1) A notice of appeal must be made in writing and received by the Upper Tribunal no later than 28 days after notice was given of the decision under challenge.
- (2) The notice of appeal must state—
- (a) the name and address of the appellant;
 - (b) the name and address of the appellant’s representative (if any);
 - (c) if no representative is named under sub-paragraph (b), an address where documents for the appellant may be sent or delivered;
 - (d) details (including the full reference) of the decision challenged; and
 - (e) the grounds on which the appellant relies.
- (3) The appellant must provide with the notice of appeal a copy of—

(a) Rule 24(1) was substituted by S.I. 2009/1975 and amended by S.I. 2012/1363.
(b) Rule 26B was inserted by S.I. 2010/747 and amended by S.I. 2014/514.

- (a) any written record of the Treasury's decision under section 147(3) of the 2017 Act;
- (b) any written record of the Minister's decision under section 147(4) of the 2017 Act;
- (c) any separate written statement of reasons for either of those decisions.

(4) If the appellant provides the notice of appeal to the Upper Tribunal later than the time required by sub-paragraph (1) or by an extension of time allowed under rule 5(3)(a) (power to extend time)—

- (a) the notice of appeal must include a request for an extension of time and the reason why the notice of appeal 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 notice of appeal.

(5) At the same time as it sends the notice to the Upper Tribunal, the appellant must send a copy of the notice and any accompanying documents to the respondent.

Respondent's statement of case

3.—(1) On receipt of a copy of a notice of appeal, the respondent must send or deliver a written statement ("a statement of case") in support of the decision taken 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 copy of the notice of appeal.

(2) The statement of case must—

- (a) identify the provisions of the financial sanctions legislation by reference to which the decision was made;
- (b) state the reasons for the decision; and
- (c) set out all the matters and facts upon which the respondent relies to support the decision.

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

- (a) any documents (or relevant extracts) on which the respondent relies in support of the decision; and
- (b) any further material (or relevant extracts) which in the opinion of the respondent might undermine the decision taken.

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

Appellant's reply

4.—(1) The appellant must send or deliver a written reply so that it is received by the Upper Tribunal no later than 28 days after the date on which the appellant received a copy of the statement of case.

(2) The reply must—

- (a) identify all matters contained in the respondent's statement of case which are disputed by the appellant; and
- (b) state the appellant's reasons for disputing them.

(3) The appellant must send with the reply a list of all the documents (or relevant extracts) on which the appellant relies in support of the appellant's case.

(4) At the same time as it sends or delivers the written reply required by sub-paragraph (1) to the Upper Tribunal, the appellant must send to the respondent a copy of the reply and of the list referred to in sub-paragraph (3).

Secondary disclosure by the respondent

5.—(1) After the appellant’s reply has been sent or delivered, if there is any further material (or relevant extracts) which might reasonably be expected to assist the appellant’s case as disclosed by the appellant’s reply and which is not listed in the list provided in accordance with paragraph 4(3), the respondent must send or deliver to the Upper Tribunal a list of such further material (or relevant extracts).

(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 received the appellant’s reply.

(3) At the same time as it sends or delivers any list required by sub-paragraph (1) to the Upper Tribunal, the respondent must send a copy to the appellant.

Exceptions to disclosure

6.—(1) A list provided in accordance with paragraph 3(3), 4(3) or 5(1) need not include any document:

- (a) 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; or
- (b) in respect of which an application has been or is being made under sub-paragraph (2).

(2) 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 3(3), 4(3) or 5(1) a document on the ground that disclosure of the document—

- (a) would not be in the public interest; or
- (b) should not otherwise be given.

(3) For the purpose of deciding an application by a party under sub-paragraph (2), the Upper Tribunal may—

- (a) require the document to be produced to the Upper Tribunal together with a statement of the reasons why—
 - (i) in the case of an application under sub-paragraph (2)(a), its disclosure would not be in the public interest; or
 - (ii) in the case of an application under sub-paragraph (2)(b), its disclosure should not be given; and
- (b) invite the other party to make representations.

(4) If the Upper Tribunal refuses an application under sub-paragraph (2), 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 the other party.

(7) A party (“P”) who has sent or delivered a list under paragraph 3(3), 4(3) or 5(1) must, upon the request of the other party, provide that 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 in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications as between client and professional legal adviser, could be maintained in legal proceedings”.

Saving provision

14. The amendment made by rule 2 has no effect in relation to an appeal against a decision under section 58 of the Care Standards Act 2000 where the decision was made before 3rd April 2017.

We make these Rules

Peter Roth
Michael J Reed
Jane Shillaker
Simon Ennals
Donald W Ferguson
Philip Brook Smith QC
Jayam Dalal

7th June 2017

I allow these Rules

Dominic Raab
Minister of State
Ministry of Justice

5th July 2017

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the rules of procedure which apply in certain chambers of the First-tier Tribunal and Upper Tribunal. They update those rules of procedure to reflect recent changes in primary legislation.

Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (“the 2008 Rules”) (S.I. 2008/2699) provides the time limit for sending an application notice to the First-tier Tribunal. For cases listed in the Schedule to the 2008 Rules, it says the time limit is three months from the date written notice of the decision being challenged was sent to the applicant. Rule 2 amends the Schedule to the 2008 Rules to omit the entry for an appeal against a refusal to register a person as a social worker under section 68 of the Care Standards Act 2000 (c. 14). This amendment is consequential on the repeal of that section by the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2).

Rules 3 and 4 amend the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013/1169) to reflect the conferral of further jurisdiction by the Housing and Planning Act 2016 (c. 22).

Rules 5 to 13 amend the Tribunal Procedure (Upper Tribunal) Rules 2008 to introduce a procedure for the new appeal for financial sanctions cases in Part 8 of the Policing and Crime Act 2017 (c. 3) and make related provision.

Rule 14 is a saving provision that the amendment made by rule 2 does not apply to appeals made before 3 April 2017.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.