STATUTORY INSTRUMENTS

2017 No. 1168 (L. 19)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment No. 2) Rules 2017

Made - - - -	*28th November 2017*
Laid before Parliament	*30th November 2017*
Coming into force in accordance with article 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 No. 2) Rules 2017 and subject to rules 2 and 3 come into force 21 days after the day on which they are laid.

2. Rules 11 to 21 come into force on the day on which, and immediately after the following provisions of the Immigration Act 2016(**b**) come into force—

(a) section 61(1) and (2) (immigration bail) except insofar as it relates to the provisions of Schedule 10 to the Immigration Act 2016 listed in sub-paragraphs (i) to (iv) of paragraph (b) below;

(b) Schedule 10 (immigration bail), except for—

(i) sub-paragraphs (2), (3) and (5) of paragraph 2 (conditions of immigration bail);

(ii) paragraph 7 (removal etc of electronic monitoring condition: bail managed by Secretary of State);

(iii) paragraph 8 (amendment etc of electronic monitoring condition: bail managed by First-tier Tribunal); and

(iv) paragraph 25 to the extent that it applies, in a modified form, the provisions set out in sub-paragraphs (i) to (iii) above.

3. Insofar as they relate to proceedings under Schedule 3A to the Communications Act 2003(**c**), rules 22 to 25 come into force on the day on which, and immediately after, section 4 of and Schedule 1 to the Digital Economy Act 2017(**d**) come into force.

(**a**) 2007 c. 15.
(**b**) 2016 c. 19.
(**c**) 2003 c. 21; Schedule 3A was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).
(**d**) 2017 c. 30.

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

4. The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008(**a**) are amended as follows.

5. In rule 1(3)(**b**) (citation, commencement, application and interpretation)—

(a) omit "or" at the end of paragraph (db);

(b) after paragraph (db) insert—

"(dc) in an application under section 127(5) of the Education and Skills Act 2008, the Secretary of State; or".

6. In rule 20 (the application notice)—

(a) in paragraph (1), after "(1A)" insert "or (1B)";

(b) after paragraph (1A) insert—

"(1B) An application under section 127(5) of the Education and Skills Act 2008(**c**) may be made at any time when the relevant restriction has effect.".

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

7. The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009(**d**) are amended as follows.

8. In rule 1(3)(**e**) (citation, commencement, application and interpretation)—

(a) insert at the appropriate place—

""devolved Welsh case" means an appeal, referral or application under—

(a) a Measure or Act of the National Assembly for Wales; or

(b) an instrument made under a Measure or Act of the National Assembly for Wales;

"WRA" means the Welsh Revenue Authority.";

(b) in the definition of "respondent"(**f**)—

(i) in paragraph (a) after "an MP expenses case" insert "or a devolved Welsh case";

(ii) omit "and" at the end of paragraph (b);

(iii) after paragraph (b) insert—

"(ba) in a devolved Welsh case—

(i) WRA, where WRA is not an appellant;

(ii) in proceedings brought by WRA alone, a person against whom the proceedings are brought or to whom the proceedings relate; and";

(c) omit the full stop after the definition of "Tribunal".

(**a**) S.I. 2008/2699. Rule 20 was amended by S.I. 2011/651; there are other amending instruments but none is relevant.
(**b**) The definition of "respondent" in rule 1(3) was amended by S.I. 2010/2653, 2011/651 2013/477 and 2015/1510; there are other amending instruments but none is relevant.
(**c**) 2008 c. 25.
(**d**) S.I. 2009/273.
(**e**) Rule 1(3) was amended by S.I. 2010/2653; there are other amending instruments but none is relevant.
(**f**) The definition of "respondent" in rule 1(3) was substituted by S.I. 2010/2653; there are other amending instruments but none is relevant.

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

9. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(**a**) are amended as follows.

10. In rule 22 (the notice of appeal) after paragraph (6)(c) insert—

"(cc) in an appeal under section 57(4) of the Freedom of Information Act 2000(**b**) as it applies by reason of regulation 19 of the Re-use of Public Sector Information Regulations 2015(**c**), within 28 days of the latest date by which the public sector body is required to comply with section 50(4) of that Act.".

Amendment to Part 5 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

11. The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014(**d**) are amended as follows.

12. In the table of contents—

(a) before the entry for rule 42 insert "**41A.** Power to vary bail conditions";

(b) for the entry for rule 42, substitute "**42.** Financial conditions".

13. In rule 37 (scope of this Part and interpretation)—

(a) for paragraph (2), substitute—

"(2) In this Part—

"the 2016 Act" means the Immigration Act 2016(**e**);

"bail application" includes a reference to the Tribunal under paragraph 11 of Schedule 10 to the 2016 Act;

"bail party" means—

(a) a person released on bail or applying to the Tribunal to be released on bail; or

(b) a person in respect of whom a reference has been made to the Tribunal under paragraph 11 of Schedule 10 to the 2016 Act; and

"financial condition" has the meaning given in paragraph 5 of Schedule 10 to the 2016 Act.";

(b) for paragraph (4), substitute—

"(4) Where the proceedings concern payment of a sum under a financial condition, the parties are the Secretary of State, the bail party and any other person who is liable to make payment under the financial condition.".

14. In rule 38 (bail applications)—

(a) omit paragraph (2)(c);

(b) for paragraph (2)(d), substitute—

"(d) payment of a sum under a financial condition; or

(e) a reference for consideration under paragraph 11 of Schedule 10 to the 2016 Act.";

(c) in paragraph (3)—

(i) in the opening words for "paragraph (4)" substitute "paragraphs (4) and (4A)";

(**a**) S.I. 2009/1976. Rule 22 was amended by S.I. 2010/43 and S.I. 2010/2653, S.I. 2012/500; there are other amending instruments but none is relevant.
(**b**) 2000 c. 36.
(**c**) S.I. 2015/1415.
(**d**) S.I. 2014/2604.
(**e**) 2016 c. 19.

(ii) for sub-paragraph (d) substitute—

"(d) the terms of the financial condition to which the bail party is, or is proposed to be, subject;";

(iii) for sub-paragraph (f), substitute—

"(f) the full name, address, date of birth and any occupation of any person other than the bail party who is, or is proposed to be, subject to a financial condition.";

(iv) in sub-paragraph (g) for "as a condition of bail to co-operate with electronic monitoring under section 36 of the 2004 Act" substitute "to co-operate with an electronic monitoring condition under paragraph 2 of Schedule 10 to the 2016 Act.";

(d) in paragraph (4), for "forfeiture of a recognizance" substitute "payment of a sum under a financial condition";

(e) after paragraph (4) insert—

"(4A) Where the application is a reference under paragraph 11 of Schedule 10 to the 2016 Act—

(a) paragraph (3) applies except for sub-paragraph (h); and

(b) the application must also contain—

(i) details of the provision or provisions under which the bail party is detained;

(ii) a copy of any previous Secretary of State decision on whether to grant bail; and

(iii) any documents relevant to (i) or (ii).";

(f) for paragraph (6) substitute—

"(6) On receipt of a bail application, the Tribunal must record the date on which it was received and provide a copy of the application as soon as reasonably practicable to—

(a) the Secretary of State, the bail party and any other person subject to a financial condition, in the case of an application to vary a financial condition;

(b) the bail party, in the case of a reference under paragraph 11 of Schedule 10 to the 2016 Act; and

(c) the Secretary of State, in the case of other bail applications.".

15. In rule 39 (bail hearings)—

(a) in paragraph (1) after "released on bail" insert "or is a reference under paragraph 11 of Schedule 10"; and

(b) omit paragraph (4).

16. In rule 40 (response to a bail application) insert after paragraph (2)—

"(3) If the bail party intends to respond to a reference under paragraph 11 of Schedule 10 to the 2016 Act, the bail party must provide the Tribunal and the Secretary of State with a written statement—

(a) not later than 2.00 pm on the working day before the hearing; or

(b) if the bail party was provided with notice of the hearing less than 24 hours before that time, as soon as reasonably practicable.".

17. In rule 41 (decision in bail proceedings)—

(a) for paragraph (2) substitute—

"(2) Where bail is granted or varied, the notice must state—

(a) when the grant of bail commences;

(b) any bail conditions, including any amounts payable under a financial condition; and

(c) the information required under rule 42.";

(b) in paragraph (3) for "forfeiture of the recognizance" substitute "payment of a sum under a financial condition";

(c) omit paragraph (4).

18. After rule 41 insert—

"**Power to vary bail conditions**

41A.—(1) Subject to paragraph (2), where bail is granted by the Tribunal, the Tribunal may direct that the Secretary of State has the power to amend or remove bail conditions or impose new bail conditions.

(2) The Tribunal may not give a direction under paragraph (1) without first giving the bail party and any other person subject to a financial condition an opportunity to make representations.

(3) Where the Tribunal has made a direction under paragraph (1), it may not amend or remove bail conditions or impose new bail conditions in relation to the bail party.".

19. For rule 42 (recognizances) substitute—

"**42.** Financial conditions

(1) Any financial condition must be in writing and must state—

(a) the bail conditions, including the sum of money to be paid under the financial condition;

(b) when it is to be paid;

(c) the form and manner in which it is to be paid; and

(d) that the bail party, and any other person who is liable to make payment under it, understand the bail conditions and that, if the bail party fails to comply with those conditions, they may be liable to make payment under it.

(2) The financial condition must be signed by the bail party and any other person who is liable to make payment under it and provided to the Tribunal, and a copy provided to—

(a) the parties, and

(b) any person having custody of the bail party.".

20. In rule 43 (release of a bail party)—

(a) omit paragraph (b)(ii); and

(b) renumber paragraph (b)(i) as paragraph (b).

21. Omit rule 44 (application of this Part to Scotland).

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

22. The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010(**a**) are amended as follows.

23. In the table of contents to Part 5 before the entry for rule 27 insert—
"26A. Interpretation".

24. In rule 10(**b**) (orders for costs) after paragraph (6)(d) insert—

";

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

(**a**) S.I. 2010/2600.
(**b**) Rule 10 was substituted by S.I. 2013/1188.
(**c**) 2003 c. 21; Schedule 3A was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(f) under the Riot Compensation Act 2016(**a**)".

25. Insert before rule 27 (application of Part 5)—

"Interpretation

26A. In this Part, "reference" includes—

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

(b) proceedings under the Riot Compensation Act 2016.".

26. In rule 28 (notice of reference)—

(a) in paragraph (3)—

(i) after sub-paragraph (b) insert—

"(bb) the name and address of any person named as a party other than the person making the reference;";

(ii) for sub-paragraph (d) substitute—

"(d) the name and address of every person—

(i) with an interest in the land or property; or

(ii) in occupation of the land or property.";

(iii) for sub-paragraph (e) substitute—

"(e) the nature of the—

(i) interest in the land or property; and

(ii) the right of occupation;";

(iv) in sub-paragraph (h) after "seeking that determination" insert "and, where the reference is an appeal under the Riot Compensation Act 2016, the grounds of appeal on which the applicant relies.";

(b) in paragraph (7) after sub-paragraph (d)(**b**) insert—

"(e) the date of the decision against which the appeal is brought, where the reference is an appeal under the Riot Compensation Act 2016.".

We make these Rules

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

I allow these Rules

David Lidington
Lord Chancellor

28th November 2017

(**a**) 2016 c. 8.
(**b**) Rule 28(7)(d) was inserted by S.I. 2012/500.

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.

Rules 1 to 3 deal with citation and commencement. Rules 2 and 3 make provision for specified rules to commence at the same time as the primary legislation to which they relate.

Rule 4 amends the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (S.I. 2008/2699) to extend the definition of "respondent" to the Secretary of State in applications under section 127(5) of the Education and Skills Act 2008 (c.25) ("the Act"). The First-tier Tribunal may impose a relevant restriction on the proprietor of a registered independent educational institution under sections 124, 125 and 126 of the Act. If the First-tier Tribunal exercises this power, a proprietor can apply to the First Tier Tribunal under section 127(5) of the Act to revoke or vary the relevant restriction. Rules 5 and 6 amend rule 20 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 so that such an application under section 127(5) of the Act can be made at any time the relevant restriction has effect.

Rules 7 and 8 amend the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273) to extend the definition of "respondent" to the Welsh Revenue Authority in appeals under legislation made by the National Assembly for Wales.

Rules 9 and 10 amend rule 22 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) in relation to the time limit for an appeal following failure to provide a notification under section 50(4) of the Freedom of Information Act 2000 (c.36) as it applies by reason of regulation 19 of the Re-use of Public Sector Information Regulations 2015 (S.I. 2015/1415).

Rules 11 to 21 amend the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (S.I. 2014/2604) pursuant to the new arrangements for immigration bail in Schedule 10 to the Immigration Act 2016 (c.19), in particular, the replacement of recognizances with financial conditions under paragraph 5, the First-tier Tribunal power to direct the Secretary of State to vary bail conditions under paragraph 6 and the Secretary of State power to make a reference to the First-tier Tribunal under paragraph 11.

Rules 22 to 26 amend the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (S.I. 2010/2600). Paragraph 95 of Electronic Communications Code ("the code") in Schedule 3A to the Communications Act 2003 (c. 21) enables the Secretary of State to make regulations to confer jurisdiction on the Upper Tribunal so that functions conferred by the code on the court may be exercisable by Upper Tribunal. The rules introduce provisions for applications under the code and for appeals under the Riot Compensation Act 2016 (c. 8).

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