

The Tribunal Procedure (First Tier Tribunal) General Regulatory Chamber Rules 2009

1. **Introduction**

The Tribunal Procedure Committee are consulting on draft Procedure Rules for the General Regulatory Chamber Rules. The rules are included at Annex A of this document. In accordance with the Cabinet Office's Code of Practice on Consultation, the consultation will run for a period of 12 weeks from the date of this document. The document will be sent to Stakeholders of all the tribunals listed at para 4, and will also be available on the Tribunal Procedure Committee page of the Tribunal Service Website.

1.1. Appeals from the General Regulatory Chamber will be to the Upper Tribunal. The Upper Tribunal Rules and its amendments are attached at Annex B of this document.

2. This document sets out the:

- Background (to the creation of the General Regulatory Chamber)
- Jurisdictions covered by the General Regulatory Chamber Rules
- Intention of chamber rules
- Structure of Rules
- Additional information
- Consultation questions
- How to respond

3. **Background**

3.1 The Tribunals Service was established in 2006 as part of the Government's reform of the Tribunals system, to bring tribunals together in a single system separate from their sponsoring departments. Part 1 of The Tribunals Courts and Enforcement Act 2007 (TCE Act), paved the way for further integration of the administrative and judicial functions of tribunals, by establishing two new Tribunals -the First-tier Tribunal and Upper Tribunal – which most existing tribunal jurisdictions will transfer into.

3.2 The Act provided for both of the new tribunals to be divided into several "Chambers", which are groups of jurisdictions dealing with similar work or requiring similar skills.

3.3 The Government issued a consultation paper "*Transforming Tribunals:Implementing Part 1 of the Tribunals Courts and Enforcement Act 2007*" in November 2007, setting out its

detailed proposals for the chambers structure. The consultation paper explained that, in accordance with the TCE Act, each Chamber would be lead by a Chamber President and would operate under generic rules, supported by jurisdiction-specific practice directions.

- 3.4 The paper proposed five chambers in the First-tier Tribunal, including a General Regulatory Chamber. The proposed chamber structure was supported by respondents to the consultation, and the Government confirmed it would proceed with its proposals in the response to the consultation, published on 19 May 2008. Both documents are available on the Ministry of Justice web site.
- 3.5 Lord Justice Carnwath was appointed as the Senior President of Tribunals in 2007, and the new tribunals commenced on 3 November 2008, with the establishment of three chambers in the First-tier Tribunal – Social Entitlement, War Pensions and Armed Forces Compensation, and Health, Education and Social Care – and an Administrative Appeals Chamber in the Upper Tribunal.
- 3.6 Further chambers dealing with Tax and Lands Tribunal appeals are due to be established shortly. The General Regulatory Chamber is to be established in 2009 with jurisdictions transferring in between September 2009 and January 2010. This timetable has been approved by Ministers, but commencement of the chamber, and the transfer of its jurisdictions into the First-tier Tribunal, is subject to Parliamentary approval of statutory instruments transferring the tribunals into the new structure.
- 3.7. Upon transfer, existing rules for all of the tribunals will be replaced by chamber specific rules made by the Tribunal Procedure Committee established in accordance with Section 22 of the TCE Act. The chamber specific rules are the subject of this consultation. The committee will not give final approval to any procedure rules unless and until the Government receives Parliamentary approval for the transfer.

4. **Jurisdictions covered by the General Regulatory Chamber Rules**

4.1 Proposed implementation date: Sept 2009:

- The Charity Tribunal
- The Consumer Credit Appeals Tribunal
- Estate Agents Appeal Panel
- Transport Appeals Tribunal (appeals from the Driving Standards Agency (DSA)).
Please note, that decisions from the DSA will be transferred to the First-tier tribunal,

and be dealt with by the General Regulatory Chamber from September 2009. Appeals from Traffic Commissioner decisions will be dealt with by the Administrative Appeals Chamber of the Upper Tribunal. This will be provided for through amendments to primary legislation)

4.2 Proposed implementation date: Jan 2010

- The Information Tribunal
- Claims Management Services Tribunal
- Gambling Appeals Tribunal
- Immigration Services Tribunal
- Adjudication Panel for England (*This Tribunal is scheduled to move into the Tribunals Service for administrative purposes in April 2009. It's present rules will remain in force at that time and until the jurisdiction transfers into the General Regulatory Chamber*)

4.3. Other Tribunals listed in Transforming Tribunals: Implementing Part 1 of the Tribunals Courts and Enforcement Act 2007 for transfer into General Regulatory Chamber

- Sea Fish License Tribunal
- Aircraft & Shipping Tribunal
- Antarctic Act Tribunal
- NHS Medicines Appeal Tribunal
- Plant Varieties and Seeds Tribunal
- Insolvency Practitioners Tribunal
- Foreign Compensation Commission
- Chemical Weapons Licensing Appeal Tribunal
- Mines and Quarries Tribunal

These are jurisdictions not yet in Tribunals Service and their transfer to General Regulatory Chamber will be confirmed when announcements of transfer are made.

4.4. Regulatory Enforcement and Sanctions Act 2008

The General Regulatory Chamber will also deal with appeals to tribunals established in the Regulatory Enforcement and Sanctions Act 2008.

5. **Intention of chamber rules**

5.1 The intention behind the chamber rules is to create a single set of rules that can apply to all

jurisdictions within a chamber rather than have several sets of rules applying. It is intended that the rules should be simple and easy to follow and should not include provisions that contain unnecessary requirements or repeat requirements contained elsewhere.

5.2 It is not intended to radically overhaul the existing processes within tribunals through these rules. The aim is to put all the rules in one place and reflect existing processes as far as possible. In some instances there is a need for specific provisions to apply or disapply to one or more jurisdictions, as indicated in these rules, but for the most part the intention is that the provisions should apply to all jurisdictions and be expressed in the same manner so that the rules meet the overriding objective, to deal with cases fairly and justly, in a consistent manner across all jurisdictions.

5.3 Once the chamber is established the Tribunal Procedure Committee will have an ongoing role in reviewing the rules and processes that lie behind them and bringing forward proposals where it is considered that changes to the procedure rules would improve existing processes for the benefit of users.

5.4

Question 1: Do the rules, as drafted, meet the needs of the jurisdiction(s) you are concerned with? If not, what additional provisions to you require and why?

Question 2: Are there any rules, which as drafted, will not work in the jurisdiction(s) you are concerned with? If so, please explain why?

6. **Structure of Rules**

6.1 The rules are divided into four parts, and one schedule as follows:

7 **Part 1: Introduction**

This section sets out the overriding objective of the rules and gives definitions for terms that appear throughout the rules. The overriding objective reflects the requirements for tribunal procedure rules as set out in Section 22(4) of the TCE Act.

7.2 In accordance with the principle of simplifying rules where possible, the rules do not distinguish between appellants and applicants, but define the term “appellant” as including a person who commences proceedings by bringing an appeal, application, claim, complain, reference, or otherwise. The range of application types reflects the range of proceedings across the jurisdictions transferring into the chamber. The definition of “party” is similarly cast to have a broad definition and minimise the need to list all potential parties to proceedings in individual rules.

8 Part 2: General Powers and Provisions

This section of the rules sets out general powers and provisions that may apply at all stages of tribunal proceedings.

- 8.1 Rule 21: The Transforming Tribunals Consultation paper explained that in limited circumstances the Upper Tribunal would deal with first instance appeals. The intention is that it will do this where it is considered that: the appeal raises complex or unusual issues and the importance of the case would merit it being dealt with in the higher Tribunal. The consultation paper set out tribunal jurisdictions where the Government considered it may be appropriate for first instance appeals to be dealt with by the Upper Tribunal, and explained that this may be provided for either by way of amendments to primary legislation, or by Procedure Rules or Practice Directions issued by specified persons.
- 8.2 The consultation also asked for views on how the Information Tribunal should transfer into the new structure, setting out three options. The third option was for its jurisdiction to be conferred over both tiers to enable flexibility. The response to the consultation confirmed that the Government would proceed with this option. The response explained that the natural starting place for cases would be the First-tier Tribunal, but, recognising the diversity of its caseload, and its role in dealing with national security cases, some issues should be heard in the Upper Tribunal.
- 8.3 Of the other tribunals moving into this jurisdiction, it has also been suggested that a similar flexibility is required in appeals currently dealt with by the Charity Tribunal, and, as noted at 4.1 of this paper; appeals from Traffic Commissioners will in all instances be dealt with by the Upper Tribunal. It is not intended that there should be provision for first instance appeals in other jurisdictions in this chamber to be dealt with by the Upper Tribunal.
- 8.4 The process for deciding whether appeals should move straight to the Upper Tribunal is covered by rule 21 of the General Regulatory Chamber Rules. It envisages that the Tribunal may, with the consent of the parties, refer a case to the Chamber President with a request that the case be considered for transfer to the Upper Tribunal. Where the Chamber President is minded to agree to the request he may, with the concurrence of the President of the relevant Upper Tribunal Chamber direct that the case be transferred to and determined by the Upper Tribunal.

8.5 Views are sought on whether there are any types of proceedings in these jurisdictions which should always be dealt with by the Upper Tribunal, rather than through the discretionary powers in this rule. In particular, should the following always be dealt with by the Upper Tribunal:

- a) Appeals against National Security certificates under Section 28 of the Data Protection Act 1998, and Section 60 of the Freedom of Information Act 2000; and
- b) Matters falling within s.2A(4)(b) and Schedule 1D to the Charities Act 2003, being references by the Attorney General or with her consent the Charity Commission”?

8.6 Views are also sought on what role parties to a case should play in requests to transfer Charity and Information Tribunal proceedings. Should parties be able to apply for a case to be transferred, or should proceedings to transfer a case always be instigated by the tribunals with consent sought from the parties? Should the tribunal retain the power to transfer a case where a party does not consent?

Question 3:

- (a) Should National Security cases, and matters falling within s.2A(4)(b) and Schedule 1D to the Charities Act 2003, always be dealt with by the Upper Tribunal?**
- (b) Are there other categories of case that would be suitable for the Upper Tribunal in all instances?**
- (c) Should parties be able to apply for directions under Rule 21(1) for a case to be transferred to Upper Tribunal?**
- (d) Should the consent of all parties always be required before a case is transferred?**

9. Part 3: Proceedings before the Tribunal

This part is divided into four sections. Chapters 1 and 2 cover proceedings before the hearing. Chapter 1 deals with this for all jurisdictions in the chamber other than Charity. Chapter 2 deals specifically with the Charity jurisdiction.

9.1 The processes for hearings and decisions, covered in Chapters 3 and 4 respectively, is broadly common across all jurisdictions within the Chamber. The rules seek to preserve existing procedure, but in some instances provisions in current rules may have been

removed. This will normally be because the general powers and provisions in Part 2 of the rules provide for these processes to continue. In replying to questions 1 and 2 of this consultation, respondents are invited to comment if they consider that current practices are not covered in these rules, but should be, and are also asked for views on whether any of the provisions in the Chapters should not apply in their jurisdiction.

- 9.2 Charity jurisdictions are separately provided for in Chapter 2, as there are differences in proceedings for these cases. These include the requirement in Charity jurisdictions for parties to serve papers on other parties at the same time as they are served on the Tribunal, as well as the specific provisions in rules 28 to 31.
- 9.3 The term 'final decision' is used in the Charity Tribunal Rules 2008 and is also used in Section 2B of the Charities Act 1993, as amended by the Charities Act 2006. In the 2008 rules it is defined as the 'definitive decision of the Charity Commission.
- 9.4 Schedule 1C of the Charities Act 1993, as amended, provides that appeals can be made to the Tribunal against specified decisions of the Charity Commission listed in a table in that Schedule. The Schedule does not use the term 'final decision' and, for this reason, it has been omitted from these draft rules.
- 9.5 At present, before appeals are lodged with the Charity Tribunal, prospective appellants are requested to use the Charity Commission's internal review process if they are unhappy with a decision. Once the Commission has undertaken their internal review, their decision is known as the final decision of the Commission. When issuing this decision the Commission will notify an individual or group of their right to appeal to the Charity Tribunal. The omission of the definition from these draft rules does not affect current practice to use the internal review process before lodging an appeal.
- 9.6 Views are sought on whether the First-tier Tribunal should request all appellants in Charity proceedings to apply for an internal review before lodging appeals with the Tribunal, or whether such a process should be optional where, for example, the appeal is urgent or where it is desired to set a precedent for the sector rather than achieve a local resolution on the facts of that case alone.

Question 4:

- a) Should the First-tier Tribunal request all appellants in Charity proceedings to apply for an internal review before lodging appeals with the Tribunal?**
- b) Should such a process be optional where the appeal is urgent or may set a precedent for the sector? Are there any other instances where it should be optional?**

10 Part 4: Correcting, setting aside, reviewing and appealing Tribunal decisions

This part covers the process for amending and appealing against decisions of the tribunal.

- 10.1 Rules 42 to 45 deal with the procedure for applying to the First-tier Tribunal for permission to appeal to the Upper Tribunal. The appeal right to the Upper Tribunal replaces previous onward appeals from to the Court of Appeal from the Transport Tribunal, Claims Management Tribunal, and Consumer Credit Appeals Tribunal, and to the High Court from other jurisdictions in this Chamber.
- 10.2 Respondents are asked to note that in accordance with Section 11 of the TCE Act there will be no onward appeal from decisions under Section 28(4) or (6) of the Data Protection Act 1998, and Section 60(1) or (4) of the Freedom of Information Act 2000. These appeals are against national security certificates.
- 10.3 Respondents are also asked to note that as outlined in “*Transforming Tribunals: Implementing Part 1 of the Tribunals Courts and Enforcement Act 2007*” there will not be an appeal right from decisions of Immigration Services Tribunal, and such decisions may only be challenged by way of Judicial Review to the High Court.
- 10.4 The requirement to seek permission from the Tribunal is a new provision for appeals from the Estate Agents Appeals Panel, Transport Tribunal, and Adjudication Panel for England.
- 10.5 Rule 42 sets out the procedure to be followed where application for permission is sought. Rule 43 and 44 allow the Tribunal to carry out a review of its decision when it receives a permission application, if it is satisfied that there was an error of law in the original decision. Section 9 of the Tribunals, Courts and Enforcement Act sets out the actions the tribunal may take following a review of a decision. The tribunal may:
- a) correct accidental errors in the decision or record of decision;
 - b) amend reasons given for the decision; or
 - c) set the decision aside
- 10.6 Where it sets the decision aside it must either re-decide the matter or refer it to the Upper Tribunal. A re-decided appeal carries with it the same appeal rights as the original appeal decision.
- 10.7 Rule 45 allows the tribunal to treat applications for correcting, setting aside or review, and permission to appeal, to be treated as an application for any other one of those things. The intention of this rule is to ensure that the Tribunal can take appropriate action on an application where it appears to it that, for example, permission to appeal should be granted,

but an appellant has asked only for the original decision to be corrected to remove a perceived error.

- 10.8 Views are sought on the process for applying for permission to appeal to the Upper Tribunal and the powers of the Tribunal in relation to applications made under the provisions of Part 4 of the rules.

Question 5: Views are sought on the process for applying for permission to appeal to the Upper Tribunal and the powers of the Tribunal in relation to applications made under the provisions of Part 4 of the rules? Are further rules or guidance required in relation to the process?

11. Part 4: Upper Tribunal Rules

The Upper Tribunal Rules were established in 2008 to accompany commencement of the Administrative Appeals Chamber of the Upper Tribunal, and some minor amendments to the rules have recently been made ahead of the creation of the Finance and Tax Chamber in the Upper Tribunal.

- 11.1 The rules attached at Annex B will apply to all onward appeals from this Chamber, and also to first instance appeals from Traffic Commissioners, and some first instance appeals in the Information and Charity jurisdictions.

- 11.2 With the exception of the Charity jurisdiction, all onward appeals, and relevant first instance appeals will be dealt with by the Administrative Appeals Chamber. Charity Appeals will be dealt with by the Finance and Tax Chamber. Judges from the Chancery Division of the High Court will sit in this Chamber, and it is proposed that the name of the Chamber will be amended to reflect its wider remit. This proposal was raised in a letter to stakeholders of the Tribunal sent on 14 January 2009.

- 11.3 Views are sought from Transport, Information and Charity Tribunals stakeholders on whether the present Upper Tribunal Rules are appropriate for first instance appeals in their jurisdictions, and if not, what modifications they consider would be required.

- 11.4 **Question 6: Are the present Upper Tribunal Rules appropriate for first instance appeals in the Transport, Information and Charity Tribunals jurisdictions? If not, what modifications would you consider are required?**

Question 7: Are the rules appropriate for onward appeals, and if not, what modifications are required?

12. **Additional Questions**

- 12.1 Gambling Tribunal – Fee reimbursement. Rule 28(4) of the Gambling Appeals Tribunals Rules 2006 provide for the Tribunal to order reimbursement of fees by the Gambling Commission where an appeal is allowed but a costs order is not made against the Commission. Rule 28(5) of those rules provides that prior to making such an order, the Tribunal must allow the Commission to make representations against its making. This rule has not been replicated in the General Regulatory Chamber Rules, but it is intended that fees will continue to be payable for appeals in this jurisdiction. Views of stakeholders are sought on whether the Rules should continue to provide for the option of ordering reimbursement of fees by the Commission where an appeal is successful.

Question 8: Should rules continue to provide for the option of ordering reimbursement of fees by the Gambling Commission, where a Gambling appeal is successful?

12.2 Charity Tribunal – Vexatious Litigants

Rule 11 of the Charity Tribunal Rules 2008, has provisions allowing the Tribunal to make orders against vexatious litigants and setting out the process to be followed where it is considering making such an order. This rule has not been replicated in the General Regulatory Chamber rules, as there have been no vexatious-type applications in the year since the Charity Tribunal commenced work. Views are sought on whether the provisions in Rule 11 of the Charity Tribunal Rules 2008 should be replicated in these rules?

Question 9: Should the provisions in Rule 11 of the Charity Tribunal Rules 2008 be replicated in these rules?

CONSULTATION SUMMARY

13. Consultation Questions

Question 1: Do the rules, as drafted, meet the needs of the jurisdiction(s) you are concerned with? If not, what additional provisions do you require and why?

Question 2: Are there any rules, which as drafted, will not work in the jurisdiction(s) you are concerned with? If so, please explain why?

Question 3:

(a) Should National Security cases, and matters falling within s.2A(4)(b) and Schedule 1D to the Charities Act 2003, always be dealt with by the Upper Tribunal?

(b) Are there other categories of case that would be suitable for the Upper Tribunal in all instances?

(c) Should parties be able to apply for directions under Rule 21(1) for a case to be transferred to Upper Tribunal?

(d) Should the consent of all parties always be required before a case is transferred?

Question 4:

(a) Should the First-tier Tribunal request all appellants to apply for an internal review in Charity Appeals before lodging appeals with the Tribunal?

(b) Should such a process be optional where the appeal is urgent or may set a precedent for the sector? Are there any other instances where it should be optional?

Question 5: Views are sought on the process for applying for permission to appeal to the Upper Tribunal and the powers of the Tribunal in relation to applications made under the provisions of Part 4 of the rules? Are further rules or guidance required in relation to the process?

Question 6: Are the present Upper Tribunal Rules appropriate for first instance appeals in the Transport, Information and Charity Tribunals jurisdictions? If not, what modifications would you consider are required?

Question 7: Are the rules appropriate for onward appeals, and if not, what modifications are required?

Question 8: Should rules continue to provide for the option of ordering reimbursement of fees by the Gambling Commission, where a Gambling appeal is successful?

Question 9: Should the provisions in Rule 11 of the Charity Tribunal Rules 2008 be replicated in these rules?

14. How to Respond

Please send your response **by Friday 8th May 2009** to:

The TPC Secretariat
Area 551
5th Floor, Tower
102 Petty France
London SW1 9EX

Email: TPCSecretariat@justice.gsi.gov.uk

14.1. Extra copies

Further copies of this consultation can be obtained from this address and it is also available online at: <http://www.tribunals.gov.uk/Tribunals/Rules/rules.htm>

Annex A

The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

STATUTORY INSTRUMENTS

2009 No. 0000 (L. 00)

TRIBUNALS AND INQUIRIES

**The Tribunal Procedure (First-tier Tribunal) (General
Regulatory Chamber) Rules 2009**

<i>Made</i>	- - - -	2009
<i>Laid before Parliament</i>		2009
<i>Coming into force</i>	- -	2009

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After consulting in accordance with paragraph 28(1) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007^(a), the Tribunal Procedure Committee has made the following Rules in exercise of the power conferred by sections 9(3), 22 and 29(3) and (4) of, and Schedule 5 to, that Act and paragraph 7(2)(d) of Schedule 6 to the Data Protection Act 1998^(b).

(a) 2007 c.15.
(b) 1998 c.29.

The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

PART 1

Introduction

Citation, commencement, application and interpretation

1.—(1) These Rules may be cited as the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and come into force on [xxxx] 2009.

(2) These Rules apply to proceedings before the Tribunal which have been allocated to the General Regulatory Chamber by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008(a).

(3) In these Rules—

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“appellant” means a person who—

- (a) commences Tribunal proceedings, whether by making an appeal, an application, a claim, a complaint, a reference or otherwise; or
- (b) is substituted as an appellant under rule 9 (substitution and addition of parties);

“document” means anything in which information is recorded in any form, and an obligation under these Rules or any practice direction or direction to provide or allow access to a document or a copy of a document for any purpose means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

“General Regulatory Chamber” means the General Regulatory Chamber of the First-tier Tribunal established by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“interested party” means a person added as an interested party under rule 9 (substitution and addition of parties);

“notice of appeal” means a document which starts proceedings;

“party” means—

- (a) a person who is an appellant, respondent or interested party;
- (b) the Attorney General if—
 - (i) the Attorney General intervenes in, or argues a question in relation to, proceedings under section 2D of the Charities Act 1993(b); or
 - (ii) the Attorney General gives notice to the Tribunal that the Attorney General wishes to be a party to a reference made by the Charity Commission under Schedule 1D to the Charities Act 1993;
- (c) the Charity Commission if it gives notice to the Tribunal that it wishes to be a party to a reference made by the Attorney General under Schedule 1D to the Charities Act 1993;
- (d) if the proceedings have been concluded, a person who was a party under (a), (b) or (c) when the Tribunal finally disposed of all issues in the proceedings;

“practice direction” means a direction given under section 23 of the 2007 Act;

(a) S.I. 2008/XXXX. Article X was amended by the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2009 (S.I. 2009/XXXX).

(b) 1993 c.10.

“respondent” means—

- (a) in proceedings appealing against or challenging a decision, direction or order, the person who made the decision, direction or order appealed against or challenged;
- (b) a person against whom an appellant otherwise brings proceedings; or
- (c) a person added or substituted as a respondent under rule 9 (substitution and addition of parties);

“Tribunal” means the First-tier Tribunal.

Overriding objective and parties’ obligation to co-operate with the tribunal

2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.

Alternative dispute resolution and arbitration

3.—(1) The Tribunal should seek, where appropriate—

- (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and
- (b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of the procedure.

(2) Part 1 of the Arbitration Act 1996^(a) does not apply to proceedings before the Tribunal.

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.

(a) 1996 c.23.

(3) Within 14 days after the date that the Tribunal sends notice of a decision made by a member of staff pursuant to an approval 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, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment containing a time limit;
- (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 (whether under rule 18 or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a 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;
- (j) stay (or, in Scotland, sist) 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 the determination by the Tribunal or the Upper Tribunal of an application for permission to appeal against, and any appeal or review of, that decision;
- (m) vary or cancel a direction made under paragraph 9(3) of Schedule 5 or paragraph 8 of Schedule 7 to the Immigration and Asylum Act 1999 (interim directions pending the decision of the 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) 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.

(5) If a party or any other person sent notice of the direction under paragraph (4) 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, practice directions or tribunal directions

7.—(1) An irregularity resulting from a failure to comply with any provision of 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 a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 8 (striking out a party's case);
- (d) exercising its power under paragraph (3); or
- (e) barring or restricting a party's participation in the proceedings.

(3) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the 2007 Act in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—

- (a) to attend at any place for the purpose of giving evidence;
- (b) otherwise to make themselves available to give evidence;
- (c) to swear an oath in connection with the giving of evidence;
- (d) to give evidence as a witness;
- (e) to produce a document; or
- (f) to facilitate the inspection of a document or any other thing (including any premises).

Striking out a party's case

8.—(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by the appellant 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) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
- (b) the appellant 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 appellant's case, 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 an opportunity to make representations in relation to the proposed striking out.

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

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.

(7) This rule applies to a respondent as it applies to an appellant except that—

- (a) a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and
- (b) a reference to an application for the reinstatement of proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings.

(8) If a respondent 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 respondent.

Substitution and addition of parties

9.—(1) The Tribunal may give a direction substituting or removing a party if—

- (a) the wrong person has been named as a party; or
- (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.

(2) The Tribunal may give a direction adding a person to the proceedings as an interested party or a respondent.

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

(4) Any person who is not a party may apply to the Tribunal to be added or substituted as a party under paragraph (1) or (2).

Orders for costs

10.—(1) The Tribunal may make an order in respect of costs (or, in Scotland, expenses) only—

- (a) under section 29(4) of the 2007 Act (wasted costs);
- (b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings; or
- (c) where the Charity Commission is the respondent and a decision, direction or order of the Charity Commission is the subject of the proceedings, if the Tribunal considers that the decision, direction or order was unreasonable.

(2) The Tribunal may make an order under paragraph (1) on an application or on its own initiative.

(3) A person making an application for an order under this rule must—

- (a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and
- (b) send or deliver a schedule of the costs or expenses claimed with the application.

(4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal sends to the person making the application the decision notice recording the decision which finally disposes of all issues in the proceedings.

(5) The Tribunal may not make an order under paragraph (1) against a person (“the paying person”) without first—

- (a) giving that person an opportunity to make representations; and
- (b) if the paying person is an individual, considering that person’s financial means.

(6) The amount of costs or expenses to be paid under an order under paragraph (1) may be ascertained 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 or expenses (“the receiving person”); or
- (c) assessment of the whole or a specified part of the costs or expenses incurred by the receiving person, if not agreed.

(7) Following an order under paragraph (6)(c) a party may apply—

- (a) in England and Wales, to the county court for a detailed assessment of costs in accordance with the Civil Procedure Rules 1998(a) on the standard basis or, if specified in the order, on the indemnity basis;
- (b) in Scotland, to the Auditor of the Court of Session for the taxation of the expenses according to the fees payable in the Court of Session; or
- (c) in Northern Ireland, to the county court for the costs to be taxed.

Representatives

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

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

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

- (a) signing a witness statement; or
- (b) sending or delivering a notice under paragraph (2), if the representative is not an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990(b), an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland.

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

- (a) must provide to the representative any document which is required to be sent 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 until receiving written notification to the contrary 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).

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 before 5pm 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.

(a) S.I. 1998/3132.
(b) 1990 c.41.

(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(a).

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 prepaid post or delivered by hand to the address specified for the proceedings;
- (b) sent by fax to the number specified for the proceedings; 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 that 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 receiving written notification to the contrary.

Prevention of disclosure or publication of documents and information

14.—(1) 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.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be provided to the second party; and
- (b) provide to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) The Tribunal must conduct proceedings as appropriate in order to give effect to a direction given under paragraph (2).

(a) 1971 c.80.

(5) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (6).

(6) Documents or information disclosed to a representative in accordance with a direction under paragraph (5) must not be disclosed either directly or indirectly to any other person without the Tribunal's consent.

(7) The 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 Tribunal on the basis that the Tribunal will not disclose such documents or information to other persons, or specified other persons.

(8) A party making an application under paragraph (7) may withhold the relevant documents or information from other parties until the Tribunal has granted or refused the application.

Disclosure, evidence and submissions

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

- (a) the exchange between parties of lists of documents which are relevant to the appeal, or relevant to particular issues, and the inspection of such documents;
- (b) the provision by parties of statements of agreed matters;
- (c) issues on which it requires evidence or submissions;
- (d) the nature of the evidence or submissions it requires;
- (e) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (f) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (g) 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 submissions or witness statement; and
- (h) the time at 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 and 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;
 - (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.

Summoning or citation of witnesses and orders to answer questions or produce documents

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

- (a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation; or
 - (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 or citation 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 in the part of the United Kingdom where the proceedings are due to be determined.
- (4) A summons, citation 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, citation or order, if they have not had an opportunity to object to it; and
 - (b) state the consequences of failure to comply with the summons, citation or order.

Withdrawal

- 17.**—(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—
- (a) at any time before a hearing to consider the disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal 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) A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated.
- (4) An application under paragraph (3) must be made in writing and be received by the Tribunal within 28 days 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 was withdrawn orally under paragraph (1)(b).
- (5) The Tribunal must notify each party in writing of a withdrawal under this rule.

Lead cases

- 18.**—(1) This rule applies if—
- (a) two or more cases have been started before the Tribunal;
 - (b) in each such case the Tribunal has not made a decision disposing of the proceedings; and
 - (c) the cases give rise to common or related issues of fact or law.
- (2) The Tribunal may give a direction—
- (a) specifying one or more cases falling under paragraph (1) as a lead case or lead cases; and
 - (b) staying (or, in Scotland, sisting) the other cases falling under paragraph (1) (“the related cases”).
- (3) When the Tribunal makes a decision in respect of the common or related issues—
- (a) the Tribunal must send a copy of that decision to each party in each of the related cases; and
 - (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) Within 28 days after the date on which the Tribunal sent a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related case.

(5) The Tribunal must give directions in respect of cases which are stayed or sisted under paragraph (2)(b), providing for the disposal of or further directions in those cases.

(6) If the lead case or cases lapse or are withdrawn before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—

- (a) whether another case or other cases are to be specified as a lead case or lead cases; and
- (b) whether any direction affecting the related cases should be set aside or amended.

Power to award expenses

19.—(1) This rule applies to proceedings under—

- (a) section 131 of the Road Traffic Act 1988(a);
- (b) section 94 of the Postal Services Act 2000(b); and
- (c) regulation 6A of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007(c).

(2) The Tribunal may pay expenses reasonably incurred by an appellant in travelling to a hearing.

Entry directions

20.—(1) This rule applies to appeals under section 48 of the Data Protection Act 1998(d) (rights of appeal), section 57 of the Freedom of Information Act 2000(e) (appeals against notices sent under Part 4) and section 57 of that Act as applied, as modified, by regulation 18 of the Environmental Information Regulations 2004(f) (enforcement and appeal provisions).

(2) The Tribunal may give a direction (“an entry direction”) requiring the occupier of any premises (“the occupier”), including a party, to permit entry to specified persons in order to allow such persons to—

- (a) inspect, examine, operate or test relevant equipment;
- (b) inspect, examine or test relevant materials.

(3) In paragraph (2)—

“relevant equipment” means equipment on the premises used or intended to be used in connection with the processing of personal data, or the storage, recording or deletion of other information; and

“relevant materials” means any documents and other materials on the premises connected with the processing of personal data, or the storage, recording or deletion of other information.

(4) A direction under paragraph (2) may not require a person to permit the inspection, examination or testing of any document or other materials which a person could not be compelled to produce on the trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.

(5) A direction under paragraph (2) must specify the date and time at which the entry is to take place.

(6) The Tribunal must send a copy of the direction to the occupier so that it is received at least 7 days before the date specified for the entry.

(a) 1988 c.52.
(b) 2000 c.26.
(c) S.I. 2007/605.
(d) 1998 c. 29.
(e) 2000 c. 36.
(f) S.I. 2004/3391.

Transfer of cases to the Upper Tribunal

21.—(1) This rule applies to proceedings under the Charities Act 1993, the Data Protection Act 1998 and the Freedom of Information Act 2000.

(2) The Tribunal may, with the consent of the parties, refer a case to the President of the appropriate Chamber of the Upper Tribunal with a request that the case be considered for transfer to the Upper Tribunal.

(3) If a case has been referred by the Tribunal under paragraph (2), the President of the General Regulatory Chamber may, with the concurrence of the President of the appropriate Chamber of the Upper Tribunal direct that the case be transferred to and determined by the Upper Tribunal.

PART 3

Proceedings before the Tribunal

CHAPTER 1

Before the hearing – cases other than charities cases

Application of this Chapter

22. This Chapter applies to cases other than those brought under the Charities Act 1993.

The notice of appeal

23.—(1) An appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal so that it is received—

- (a) in proceedings under section 131(2) of the Road Traffic Act 1988 (appeal against refusal or revocation of driving instruction licence), within 14 days of the date on which notice of the decision was sent to the appellant; or
- (b) otherwise, within 28 days of the date on which notice of the act or decision to which the proceedings relate was sent to the appellant.

(2) The notice of appeal must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) the name and address of any respondent;
- (e) details of the decision or act, or failure to decide or act, to which the proceedings relate;
- (f) the result the appellant is seeking;
- (g) the grounds on which the appellant relies; and
- (h) any further information or documents required by a practice direction.

(3) If the proceedings challenge a decision, the appellant must provide with the notice of appeal a copy of any written record of that decision, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

(4) If the appellant provides the notice of appeal to the Tribunal later than the time required by paragraph (1) or by any extension of time 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 Tribunal extends time for the notice of appeal under rule 5(3)(a) (power to extend time) the Tribunal must not admit the notice of appeal.

(5) When the Tribunal receives the notice of appeal it must send a copy of the notice of appeal and any accompanying documents to each respondent.

The response

24.—(1) When a respondent receives a copy of the notice of appeal, the respondent must send or deliver to the Tribunal a response so that it is received—

- (a) in proceedings under the Data Protection Act 1998, the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, within 21 days after the date on which the respondent received the notice of appeal; or
- (b) otherwise, within 28 days after the date on which the respondent received the notice of appeal.

(2) The response must include—

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's representative (if any);
- (c) an address where documents for the respondent may be sent or delivered;
- (d) any further information or documents required by a practice direction or direction; and
- (e) whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(3) The response must include a statement as to whether the respondent opposes the appellant's case and, if so, any grounds for such opposition which are not contained in another document provided with the response.

(4) If the proceedings challenge a decision, the respondent must provide with the response a copy of any written record of that decision, and any statement of reasons for that decision, that the appellant did not provide with the notice of appeal and the respondent has or can reasonably obtain.

(5) If the respondent provides the response to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(6) The respondent must send or deliver a copy of the response and any accompanying documents to each other party at the same time as it provides the response to the Tribunal.

CHAPTER 2

Before the hearing – charities cases

Application of this Chapter

25. This Chapter applies to cases brought under the Charities Act 1993.

The notice of appeal

26.—(1) An appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal so that it is received—

- (a) if the appellant was the subject of the decision to which the proceedings relate, within 42 days of the date on which notice of the decision was sent to the appellant; or
- (b) if the appellant was not the subject of the decision to which the proceedings relate, within 42 days of the date on which the decision was published.

(2) The notice of appeal must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) the name and address of any respondent;
- (e) details of the decision or act, or failure to decide or act, to which the proceedings relate;

- (f) the result the appellant is seeking;
- (g) the grounds on which the appellant relies; and
- (h) any further information or documents required by a practice direction.

(3) If the proceedings challenge a decision, the appellant must provide with the notice of appeal a copy of any written record of that decision, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

(4) If the notice of appeal relates to a reference under Schedule 1D of the Charities Act 1993—

- (a) if the appellant is the Charity Commission, it must send evidence of the Attorney General's consent to the reference with the notice of appeal; and
- (b) on receiving the notice of appeal the Tribunal must publish details of the reference and information as to how a person likely to be affected by the reference can apply to be added as a party to the proceedings.

(5) If the appellant provides the notice of appeal to the Tribunal later than the time required by paragraph (1) or by any extension of time 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 Tribunal extends time for the notice of appeal under rule 5(3)(a) (power to extend time) the Tribunal must not admit the notice of appeal.

(6) The appellant must send or deliver a copy of the notice of appeal and any accompanying documents to the respondent at the same time as it provides the notice of appeal to the Tribunal.

The response

27.—(1) When the respondent receives a copy of the notice of appeal, the respondent must send or deliver to the Tribunal a response so that it is received within 28 days after the date on which the respondent received the notice of appeal.

(2) The response must include—

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's representative (if any);
- (c) an address where documents for the respondent may be sent or delivered;
- (d) any further information or documents required by a practice direction or direction; and
- (e) whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(3) The response must include a statement as to whether the respondent opposes the appellant's case and, if so, any grounds for such opposition which are not contained in another document provided with the response.

(4) If the proceedings challenge a decision, the respondent must provide with the response a copy of any written record of that decision, and any statement of reasons for that decision, that the appellant did not provide with the notice of appeal and the respondent has or can reasonably obtain.

(5) If the proceedings challenge a decision, the respondent must provide with the response a list of—

- (a) the documents relied upon by the respondent when reaching the decision; and
- (b) any other documents which the respondent considers could adversely affect its case or support the appellant's case.

(6) If the respondent provides the response to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(7) The respondent must send or deliver a copy of the response and any accompanying documents to each other party at the same time as it provides the response to the Tribunal.

Appellant's reply

28.—(1) The appellant must send or deliver to the Tribunal a reply to the respondent's response so that it is received within 28 days after the date on which the respondent sent the response to the appellant.

(2) The reply must—

- (a) identify each matter in the response which is disputed by the appellant;
- (b) state the reason for each such dispute; and
- (c) be accompanied by a list of the documents relied upon by the appellant.

(3) If the appellant provides the notice of appeal to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time) 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.

(4) The appellant must send or deliver a copy of the reply and any accompanying documents to each respondent at the same time as it provides the reply to the Tribunal.

Secondary disclosure by the respondent

29.—(1) The respondent must send or deliver to the Tribunal, so that it is received within 14 days after the date on which the respondent received the appellant's reply, a list of any further material which—

- (a) might reasonably be expected to assist that appellant's case as disclosed by that appellant's reply; and
- (b) was not included in a list of documents provided by the respondent with the response.

(2) If the respondent provides the list to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(3) The respondent must send or deliver a copy of the list to each other party at the same time as it provides the response to the Tribunal.

Provision of copy documents

30.—(1) If a party has filed a list under rule 27, 28 or 29, that party must within 7 days of receiving a request from another party—

- (a) provide that other party with a copy of any document specified in the list; or
- (b) make such document available to that party to read or copy.

Involvement of the Attorney General under section 2D of the Charities Act 1993

31.—(1) If the Tribunal directs that all the necessary papers in proceedings be sent to the Attorney General under section 2D(2) and (3) of the Charities Act 1993, the Attorney General must notify the Tribunal whether the Attorney General intends to intervene in the proceedings within 28 days of receiving the papers.

(2) The Attorney General may at any time notify the Tribunal that the Attorney General intends to intervene in the proceedings on the Attorney General's own initiative.

(3) If the Tribunal requests that the Attorney General argue a question in relation to the proceedings under section 2D(4)(b) of the Charities Act 1993, the Tribunal must provide to the Attorney General—

- (a) a statement of the question;
- (b) an account of the proceedings to date;
- (c) the reasons the Tribunal considers it necessary to have the question fully argued; and
- (d) copies of the documents the Tribunal considers necessary to enable the Attorney General to decide whether it is appropriate to argue the question.

(4) If the Attorney General notifies the Tribunal that the Attorney General intends to intervene in, or to argue a question in relation to, proceedings under section 2D(4) of the Charities Act 1993—

- (a) the Attorney General must be joined as a party to the proceedings; and
- (b) the Tribunal must hold a case management hearing.

CHAPTER 3

Hearings

Decision with or without a hearing

32.—(1) Subject to paragraphs (2) to (5), the Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to the matter being determined without a hearing; and
- (b) the Tribunal is satisfied that it can properly determine the issues without a hearing.

(2) In proceedings under section 28 of the Data Protection Act 1998, section 60 of the Freedom of Information Act 2000 or regulation 18(7) of the Environmental Information Regulations 2004, the Tribunal may dispose of the proceedings without a hearing if—

- (a) it appears to the Tribunal that the issues raised in the proceedings have been determined in previous proceedings brought by the appellant on the basis of facts which did not materially differ from those to which the current proceedings relate; and
- (b) the Tribunal has given the parties an opportunity to make representations that the proceedings should not be disposed of without a hearing.

(3) In other proceedings under the Data Protection Act 1998, the Freedom of Information Act 2000 or the Environmental Information Regulations 2004—

- (a) the Tribunal may dispose of the proceedings without a hearing if the Tribunal is satisfied that the proceedings can properly be disposed of without a hearing; and
- (b) if a party has requested a hearing but the Tribunal nevertheless proposes to dispose of the proceedings without a hearing under sub-paragraph (a), the Tribunal must send written notice of its refusal of the request for the hearing, and the reason for that refusal, to the party that made the request.

(4) This rule does not apply to a decision under Part 4 (correcting, setting aside, reviewing and appealing Tribunal decisions).

(5) The Tribunal may in any event dispose of proceedings without a hearing under rule 8 (striking out a party's case).

(6) Notwithstanding any other provision in these Rules, if the Tribunal holds a hearing to consider a preliminary issue, and following the disposal of that preliminary issue no further issue remains to be determined, the Tribunal may dispose of the proceedings without holding any further hearing.

Entitlement to attend and take part in a hearing

33.—(1) Subject to rule 35(4) (exclusion of a person from a hearing) each party is entitled to—

- (a) attend any hearing that is held; and
- (b) send written representations to the Tribunal and each other party prior to the hearing.

(2) The Tribunal may give a direction permitting or requesting any person to—

- (a) attend and take part in a hearing to such extent as the Tribunal considers proper; or
- (b) make written submissions in relation to a particular issue.

Notice of hearings

34.—(1) The Tribunal must give each person entitled, permitted or requested to attend a hearing (including any adjourned or postponed hearing) reasonable notice of the time and place of the hearing and any changes to the time and place of the hearing.

(2) The period of notice under paragraph (1) in relation to a hearing to consider disposal of the proceedings must be at least 14 days, except that the Tribunal may give shorter notice—

- (a) with the parties' consent; or
- (b) in urgent or exceptional circumstances.

Public and private hearings

35.—(1) Subject to the following paragraphs, all hearings must be held in public.

(2) The Tribunal may give a direction that a hearing, or part of it, is to be held in private.

(3) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

(4) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 14(2) (withholding information likely to cause harm); or
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person.

(5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

Hearings in a party's absence

36. If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

CHAPTER 4

Decisions

Consent orders

37.—(1) The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

Decisions

38.—(1) The Tribunal may give a decision orally at a hearing.

(2) Subject to rule 14(2) (withholding information likely to cause harm), the Tribunal must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings (except a decision under Part 4)—

- (a) a decision notice stating the Tribunal’s decision;
- (b) written reasons for the decision; and
- (c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(3) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

PART 4

Correcting, setting aside, reviewing and appealing Tribunal decisions

Interpretation

39. In this Part—

“appeal” means the exercise of a right of appeal on a point of law under section 11 of the 2007 Act; and

“review” means the review of a decision by the Tribunal under section 9 of the 2007 Act.

Clerical mistakes and accidental slips or omissions

40. The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by—

- (a) sending notification of the amended decision or direction, or a copy of the amended document, to each party; and
- (b) making any necessary amendment to any information published in relation to the decision, direction or document.

Setting aside a decision which disposes of proceedings

41.—(1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if—

- (a) the Tribunal considers that it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party’s representative;
- (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
- (c) a party, or a party’s representative, was not present at a hearing related to the proceedings; or
- (d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 28 days after the date on which the Tribunal sent notice of the decision to the party.

Application for permission to appeal

42.—(1) This rule does not apply to proceedings under Part 5 of the Immigration and Asylum Act 1999, section 28 of the Data Protection Act 1998 and section 60 of the Freedom of Information Act 2000.

(2) A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal.

(3) An application under paragraph (2) must be sent or delivered to the Tribunal so that it is received no later than 28 days after the latest of the dates that the Tribunal sends to the person making the application—

- (a) written reasons for the decision;
- (b) notification of amended reasons for, or correction of, the decision following a review; or
- (c) notification that an application for the decision to be set aside has been unsuccessful.

(4) The date in paragraph (3)(c) applies only if the application for the decision to be set aside was made within the time stipulated in rule 41 (setting aside a decision which disposes of proceedings) or any extension of that time granted by the Tribunal.

(5) If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required by paragraph (3) 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 under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application.

(6) An application under paragraph (2) must—

- (a) identify the decision of the Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state the result the party making the application is seeking.

Tribunal's consideration of application for permission to appeal

43.—(1) On receiving an application for permission to appeal the Tribunal must first consider, taking into account the overriding objective in rule 2, whether to review the decision in accordance with rule 44 (review of a decision).

(2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Tribunal refuses permission to appeal it must send with the record of its decision—

- (a) a statement of its reasons for such refusal; and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.

(5) The Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission.

Review of a decision

44.—(1) This rule does not apply to proceedings under Part 5 of the Immigration and Asylum Act 1999, section 28 of the Data Protection Act 1998 and section 60 of the Freedom of Information Act 2000.

(2) The Tribunal may only undertake a review of a decision—

(a) pursuant to rule 43(1) (review on an application for permission to appeal); and

(b) if it is satisfied that there was an error of law in the decision.

(3) The Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.

(4) If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (3) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

Power to treat an application as a different type of application

45. The Tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other one of those things.

Annex B

**Upper Tribunal Rules (please see separate PDF document)
and
Upper Tribunal Rules Amendments**

2009 No. 0000 (L.00)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (Amendment) Rules 2009

Made - - - - - ***

Laid before Parliament ***

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

After consulting in accordance with paragraph 28(1) of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(a) the Tribunal Procedure Committee has made the following Rules in exercise of the power conferred by sections 16(9), 22 and 29(3) and (4) 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) Rules 2009 and come into force on 1st April 2009.

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

2. In rule 1(3) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008(b) (interpretation) in the definition of “asylum support case” for “or his or her dependants” substitute “, a failed asylum seeker or a person designated under section 130 of the Criminal Justice and Immigration Act 2008(c) (designation), or the dependants of any such person”.

Amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008

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

4. In the table of contents—

- (a) in the heading below “PART 3” for “Appeals and references to” substitute “Procedure for cases in”; and
- (b) after the entry for rule 26 insert—

(a) 2007 c.15.
(b) S.I. 2008/2685 (L.13).
(c) 2008 c. 4.
(d) S.I. 2008/2698 (L.15).

“26A. Cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent”.

5. In rule 1(3) (interpretation)—

(a) for the definition of “appellant” substitute—

““appellant” means—

- (a) a person who makes an appeal, or applies for permission to appeal, to the Upper Tribunal;
- (b) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who started the proceedings in the First-tier Tribunal; or
- (c) a person substituted as an appellant under rule 9(1) (substitution and addition of parties);”;

(b) omit the definition of “disability discrimination in schools case”;

(c) omit the definition of “legal representative”;

(d) in the definition of “respondent”—

- (i) omit sub-paragraph (a)(ii); and
- (ii) after sub-paragraph (c) insert—

“(ca) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who was a respondent in the proceedings in the First-tier Tribunal;”;

(e) omit the definition of “special educational needs case”.

6.—(1) Rule 8 (striking out a party’s case) is amended as follows.

(2) In paragraph (7)—

- (a) after “to a respondent” insert “or an interested party”;
- (b) in sub-paragraphs (a) and (b) after “respondent” insert “or interested party”; and
- (c) in sub-paragraph (b) omit “from”.

(3) In paragraph (8)—

- (a) after “a respondent” insert “or an interested party”; and
- (b) after “that respondent” insert “or interested party, and may summarily determine any or all issues against that respondent or interested party”.

7. For rule 10 (orders for costs) substitute—

“Orders for costs

10.—(1) The Upper Tribunal may not make an order in respect of costs (or, in Scotland, expenses) in proceedings referred by or on appeal from another tribunal except—

- (a) in proceedings on appeal from the Tax Chamber of the First-tier Tribunal; or
- (b) to the extent and in the circumstances that the other tribunal had the power to make an order in respect of costs (or, in Scotland, expenses).

(2) The Upper Tribunal may not make an order in respect of costs or expenses under section 4 of the Forfeiture Act 1982(a).

(3) In other proceedings, the Upper Tribunal may not make an order in respect of costs or expenses except—

- (a) in judicial review proceedings;
- (b) in proceedings transferred from the Tax Chamber of the First-tier Tribunal;

(a) 1982 c.34.

- (c) under section 29(4) of the 2007 Act (wasted costs); or
 - (d) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings.
- (4) The Upper Tribunal may make an order for costs (or, in Scotland, expenses) on an application or on its own initiative.
- (5) A person making an application for an order for costs or expenses must—
- (a) send or deliver a written application to the Upper Tribunal and to the person against whom it is proposed that the order be made; and
 - (b) send or deliver with the application a schedule of the costs or expenses claimed sufficient to allow summary assessment of such costs or expenses by the Upper Tribunal.
- (6) An application for an order for costs or expenses may be made at any time during the proceedings but may not be made later than 1 month after the date on which the Upper Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of a withdrawal under rule 17 which ends the proceedings.
- (7) The Upper Tribunal may not make an order for costs or expenses against a person (the “paying person”) without first—
- (a) giving that person an opportunity to make representations; and
 - (b) if the paying person is an individual and the order is to be made under paragraph (3)(a), (b) or (d), considering that person’s financial means.
- (8) The amount of costs or expenses to be paid under an order under this rule may be ascertained by—
- (a) summary assessment by the Upper Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses (“the receiving person”); or
 - (c) assessment of the whole or a specified part of the costs or expenses incurred by the receiving person, if not agreed.
- (9) Following an order for assessment under paragraph (8)(c), the paying person or the receiving person may apply—
- (a) in England and Wales, to the High Court or the Costs Office of the Supreme Court (as specified in the order) for a detailed assessment of the costs on the standard basis or, if specified in the order, on the indemnity basis; and the Civil Procedure Rules 1998(a) 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;
 - (b) in Scotland, to the Auditor of the Court of Session for the taxation of the expenses according to the fees payable in that court; or
 - (c) in Northern Ireland, to the Taxing Office of the High Court of Northern Ireland for taxation on the standard basis or, if specified in the order, on the indemnity basis.”

8. In rule 11 (representatives)—

- (a) in paragraph (2) omit “and to each other party”;
- (b) after paragraph (2) insert—
 - “(2A) If the Upper Tribunal receives notice that a party has appointed a representative under paragraph (2), it must send a copy of that notice to each other party.”; and

(a) S.I. 1998/3132.

(c) after paragraph (8) insert—

“(9) In this rule “legal representative” means an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990^(a), an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland.”

9. After rule 12(4) (calculating time) insert—

“(5) In this rule—

“disability discrimination in schools case” means proceedings concerning disability discrimination in the education of a child or related matters; and

“special educational needs case” means proceedings concerning the education of a child who has or may have special educational needs.”

10. In rule 13(1)(a) (sending and delivery of documents) for “delivered by hand” substitute “by document exchange, or delivered by hand.”

11. For rule 16(4) (summoning or citation of witnesses and orders to answer questions or produce documents) substitute—

“(4) A person who receives a summons, citation or order may apply to the Upper 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, citation or order.

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

(a) state that the person on whom the requirement is imposed may apply to the Upper Tribunal to vary or set aside the summons, citation 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, citation or order.”

12. In rule 20(1) (power to pay expenses and allowances) omit “which are not an appeal from the decision of another tribunal or judicial review proceedings”.

13. In the heading of Part 3, for “Appeals and references to” substitute “Procedure for cases in”.

14. For rule 22(3) (decision in relation to permission to appeal) substitute—

“(3) Paragraph (4) applies where the Upper Tribunal, without a hearing, determines an application for permission to appeal—

(a) against a decision of—

(i) the Tax Chamber of the First-tier Tribunal;

(ii) the Health, Education and Social Care Chamber of the First-tier Tribunal^(b);

(iii) the Mental Health Review Tribunal for Wales; or

(iv) the Special Educational Needs Tribunal for Wales; or

(b) under section 4 of the Safeguarding Vulnerable Groups Act 2006.”

15. In rule 24(4) (response to the notice of appeal) for “notice” substitute “response”.

16. After rule 26 (references under the Forfeiture Act 1982) insert—

^(a) 1990 c. 41.

^(b) S.I. 2008/2684. The Order is amended by the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2009 (S.I. 2009/196).

“Cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent

26A.—(1) Paragraphs (2) and (3) apply to a case which—

- (a) has been transferred or referred to the Upper Tribunal from the First-tier Tribunal; or
- (b) is 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.

(2) In a case to which this paragraph applies—

- (a) the Upper Tribunal must give directions as to the procedure to be followed in the consideration and disposal of the proceedings; and
- (b) the preceding rules in this Part will only apply to the proceedings to the extent provided for by such directions.

(3) If a case or matter to which this paragraph applies is to be determined without notice to or the involvement of a respondent—

- (a) any provision in these Rules requiring a document to be provided by or to a respondent; and
- (b) any other provision in these Rules permitting a respondent to participate in the proceedings

does not apply to that case or matter.”

17. In rule 28(2) (applications for permission to bring judicial review proceedings) after “decision” insert “, action or omission”.

18. In rule 29(2) (acknowledgment of service)—

- (a) in sub-paragraph (a), after “intends to” insert “support or”; and
- (b) in sub-paragraph (b), after “grounds for any” insert “support or”.

19. In rule 37(4) (public and private hearings)—

- (a) omit “or” after sub-paragraph (c); and
- (b) after sub-paragraph (d) insert—
“; or
- (e) a person under the age of eighteen years.”

20. In rule 39(2) (consent orders) omit “, or provide reasons for the order”.

21. In rule 40 (decisions)—

- (a) in paragraph (2) omit “Subject to rule 14(2) (withholding harmful information),”; and
- (b) in paragraph (3) before “The Upper Tribunal must” insert “Subject to rule 14(2) (withholding harmful information),”.

22. In rule 41 (interpretation), in the definition of “appeal” before “means” insert “, except in rule 44(2) (application for permission to appeal),”.

23. In rule 44(2) (application for permission to appeal)—

- (a) at the end of sub-paragraph (b) omit “or”; and
- (b) after sub-paragraph (b) insert—
“(ba) on an appeal against a decision of a Pensions Appeal Tribunal for Scotland or Northern Ireland; or”.

Patrick Elias
Philip Brook Smith Q.C.
Carolyn Kirby
Nicholas Warren
Douglas J May
Newton of Braintree
Nuala Brice
Mark Rowland
M J Reed

I allow these Rules
Signed by authority of the Lord Chancellor

Date

Name
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) 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 2 of these Rules amends the definition of “asylum support case” in order to ensure that it is clear that proceedings brought by those persons with the same appeal rights as asylum seekers are included within the definition.

In relation to the Tribunal Procedure (Upper Tribunal) Rules 2008, rules 4, 5, 7, 8, 10, 13, 14, 16 and 22 of these Rules make amendments to make provision for the Upper Tribunal to deal with cases allocated to the Finance and Tax Chamber of the Upper Tribunal. These cases could be applications made directly to the Upper Tribunal, appeals from decisions of the Tax Chamber of the First-tier Tribunal or complex cases started in the Tax Chamber of the First-tier Tribunal but transferred to the Upper Tribunal for determination.

Rules 5 to 9, 11, 12, 15, 17 to 21 and 23 of these Rules make minor amendments to correct and clarify the drafting of the Tribunal Procedure (Upper Tribunal) Rules 2008 as originally made.