

**2011 No. 2840 (L. 20)**

**TRIBUNALS AND INQUIRIES**

**The Tribunal Procedure (Amendment) (No.2) Rules 2011**

*Made* - - - - 23rd November 2011

*Laid before Parliament* 28th November 2011

*Coming into force* - - 19th December 2011

The Tribunal Procedure Committee has made the following Rules in exercise of the powers conferred by section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(a), having consulted in accordance with paragraph 28(1) of that Schedule to that Act.

The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of that Schedule to that Act.

**Citation and commencement**

1. These Rules may be cited as the Tribunal Procedure (Amendment) (No.2) Rules 2011 and shall come into force on 19 December 2011.

**Amendments to the Asylum and Immigration Tribunal (Procedure) Rules 2005**

2. The Asylum and Immigration Tribunal (Procedure) Rules 2005(b) are amended as follows.

3. In rule 2 (interpretation)—

(a) after the definition of “business day” insert—

““certificate of fee satisfaction” means a certificate of fee satisfaction issued by the Lord Chancellor under article 8 of the Fees Order;”;

(b) after the definition of “determination” insert—

““the Fees Order” means the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011;”(c).

4. In rule 6 (giving notice of appeal)—

(a) in paragraph (2) for “paragraphs (3) and (4)” substitute “paragraph (3)”;

(b) in paragraph (3) after “appeal” insert “to the Tribunal”; and

(c) omit paragraphs (4) and (6).

5. In rule 8 (form and contents of notice of appeal)—

(a) in paragraph (1) —

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(a) 2007 c. 15

(b) S.I. 2005/230, as amended by S.I. 2006/2788, 2007/835, 2008/1088 and 2010/21.

(c) S.I. 2011/2841

- (i) after “President” insert “of Tribunals”;
  - (ii) omit “and” after sub-paragraph (d);
  - (iii) after sub-paragraph (e) insert—
    - “; and
    - (f) state whether the appellant consents to the appeal being determined without a hearing”; and
  - (b) for paragraph (2)(a) and (b) substitute—
    - “(a) the notice of decision against which the appellant is appealing or, if it is not practicable to include the notice of decision, the reasons why it is not practicable; and
    - (b) an application for the Lord Chancellor to issue a certificate of fee satisfaction.”.
- 6.** In rule 9 (where the Tribunal may not accept a notice of appeal)—
- (a) omit “or” after paragraph (1A)(a);
  - (b) after paragraph (1A)(b) insert—
    - “; or
    - (c) the Lord Chancellor has refused to issue a certificate of fee satisfaction.”; and
    - (c) in paragraph (2)(b) after “action” insert “on that notice of appeal.”.
- 7.** In rule 12 (service of notice of appeal on respondent) —
- (a) in paragraph (1), omit “Subject to paragraph (2),”; and
  - (b) omit paragraph (2).
- 8.** In rule 13(1) (filing of documents by respondent) omit “(unless it has already done so)”.
- 9.** In rule 15(2) (method of determining appeal)—
- (a) after sub-paragraph (a) insert—
    - “(aa) the appellant has not consented to the appeal being determined without a hearing but the Lord Chancellor has refused to issue a certificate of fee satisfaction for the fee payable for a hearing;”;
  - (b) for sub-paragraphs (b) and (ba) substitute—
    - “(b) the appellant is outside the United Kingdom and does not have a representative who has an address for service in the United Kingdom.”;
  - (c) omit “or” after sub-paragraph (c); and
  - (d) after sub-paragraph (d) insert—
    - “; or
    - (e) it is impracticable to give the appellant notice of the hearing.”.
- 10.** After rule 17 (withdrawal of appeal) insert—

**“Striking out an appeal for non-payment of fee**

**17A.** Where the Tribunal is notified by the Lord Chancellor that a certificate of fee satisfaction has been revoked the appeal will automatically be struck out without order of the Tribunal and the Tribunal must notify each party that the appeal has been struck out.

**Reinstatement of an appeal struck out for non-payment of fee**

**17B.** Where an appeal has been struck out in accordance with rule 17A, the appeal may be reinstated if –

- (a) the appellant applies to have the appeal reinstated; and

(b) the Lord Chancellor has issued a new certificate of fee satisfaction.”.

**11. In rule 23A(no power to award costs)—**

- (a) in the heading omit “No power to award”;
- (b) at the beginning of paragraph (1) insert “Except as provided for in paragraph (2),”; and
- (c) after paragraph (1) insert —
  - “(2) If the Tribunal allows an appeal, it may order the respondent to pay to the appellant an amount no greater than—
  - (a) any fee paid under the Fees Order that has not been refunded; and
  - (b) any fee which the appellant is or may be liable to pay under that Order.”.

**12. In rule 38(1) (applications for bail) after “President” insert “of Tribunals”.**

**13. After rule 43(2) (conduct of appeals and applications) insert—**

“(3) Staff appointed under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (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.

(4) The approval referred to at paragraph (3) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

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

**14. In rule 55(1) (filing and service of documents)—**

- (a) omit “or” after sub-paragraph (c); and
- (b) after sub-paragraph (d) insert—
  - “; or
  - (e) sent or delivered by any other method;”.

We make these Rules

*Paul Walker*  
*Mark Rowland*  
*Michael Reed*  
*Philip Brook Smith, QC*  
*Simon Ennals*  
*Lesley Clare*

I allow these Rules  
Signed by authority of the Lord Chancellor

*J Djanogly*  
Parliamentary Under Secretary of State  
Ministry of Justice

23rd November 2011

**EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules amend the Asylum and Immigration Tribunal (Procedure) Rules 2005 (S.I. 2005/230), which prescribe the procedures to be followed for appeals and applications to the Immigration and Asylum Chamber of the First-tier Tribunal. The main changes are related to the introduction of fees for certain appeals heard in that Chamber.

Rule 4 removes the former option of filing an appeal with the entry clearance officer abroad. To facilitate the operation of fee charging, notice of appeal must be given to the Tribunal.

Rule 5 provides that the notice of appeal must state whether or not the appellant consents to the case being dealt with without a hearing. The notice must be accompanied by an application to the Lord Chancellor to issue a certificate of fee satisfaction (“a certificate”) under the Fees Order.

The amendments made by rule 6 provide that the Tribunal may not accept an appeal where the Lord Chancellor has refused to issue a certificate of fee satisfaction. It also provides that where the Tribunal does not accept a notice of appeal it must take no action only in relation to that particular notice of appeal.

The amendments made by rule 9 give the Tribunal discretion not to hold a hearing in cases where the appellant did not consent to dispensing with a hearing, but has not paid the fee required under the Fees Order for such a hearing.

The amendments made by rule 10 provide that the Tribunal will automatically strike out an appeal when notified by the Lord Chancellor that a certificate has been revoked – for instance where a certificate was issued because payment of a fee was promised, but no fee was then paid. Where the Lord Chancellor revokes the certificate but then issues a new certificate, this rule gives the Tribunal power to reinstate the appeal.

Rule 11 provides the Tribunal with the power to order the respondent to pay the appellant’s costs up to the amount of a fee paid and any fee which the appellant is or may be liable to pay under the Fees Order.

Rule 13 enables the Tribunal to delegate judicial decisions to staff where appropriate.

Rule 14 allows the Tribunal to stipulate other methods of filing and service.

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

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