

**2007 NO. [ ]**

**TRIBUNALS AND INQUIRIES**

**The Charity Tribunal Rules 2007**

<i>Made</i> - - - -	2007
<i>Laid before Parliament</i>	2007
<i>Coming into force</i> - -	2007

The Lord Chancellor makes the following Rules in exercise of the powers conferred on him by section 2B of the Charities Act 1993(a), and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(b).

**PART 1**

**Introduction**

**Citation and commencement**

**1.** These Rules may be cited as the Charity Tribunal Rules 2007 and shall come into force on [ ] January 2008.

**Interpretation**

**2.—(1)** A reference in these Rules to a rule by number alone means the rule so numbered in these Rules.

(2) In these Rules, unless the context requires otherwise—

“the 1993 Act” means sections 1A, 2A, 2B, 2C, 2D and Schedules 1B, 1C and 1D to the Charities Act 1993 as inserted by the Charities Act 2006(c);

“the 2006 Act” means the Charities Act 2006;

“appeal” means an appeal to the Tribunal in accordance with paragraphs 1 and 2 of Schedule 1C of the 1993 Act or section 57 of the 2006 Act or, where appropriate, an appeal to the High Court from the Tribunal’s decision;

“appeal notice” means an appeal or application filed under rule 3(1);

“appellant” means a person who makes an appeal or an application to the Tribunal;

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(a) 1993 c.10. as inserted by section 8 of the Charities Act 2006.  
(b) 1992 c.53.  
(c) 2006. c.50.

“appellant’s reply” means a reply filed by the appellant under rule 5(1);

“applicant” means a party who seeks permission to bring an appeal to the High Court against a decision of the Tribunal;

“application” means an application to the Tribunal for the review of a reviewable matter in accordance with paragraphs 3 and 4 of Schedule 1C to the 1993 Act;

“Commission” means the Charity Commission under section 1A of the 1993 Act;

“Commission’s decision” means the Commission’s final decision that is the subject matter of the appeal or application;

“Commission’s final decision” means the definitive decision of the Commission;

“direction” includes any direction or order given or made by the Tribunal;

“document” means anything in which information is recorded in any form, and an obligation under these Rules 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 documents or copy in a legible form or in a form which can be readily made into a legible form;

“file” means send to the Tribunal;

“legal representative” means an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990(a);

“party” means the appellant (including the Attorney General if appropriate) or the Commission and “other party” shall be construed accordingly;

“question being referred” means the question to be determined by the Tribunal when a reference has been made to the Tribunal in accordance with paragraphs 1 and 2 of Schedule 1D to the 1993 Act by a referrer;

“reference” means the referral by the Commission or the Attorney General of a question for the determination of the Tribunal in accordance with Schedule 1D to the 1993 Act;

“reference notice” means a reference filed under rule 37(2);

“referrer” means the person making a reference to the Tribunal, being either the Commission or the Attorney General;

“referrer’s reply” means a reply filed by the referrer under rule 39(1);

“register” means the register maintained in accordance with rule 30;

“reply” means a reply filed by the appellant under rule 5(1);

“representations” means written representations or with the consent of the Tribunal, or at its request oral representations;

“respondent” means a person who is a party to a reference (including the Attorney General or the Commission if appropriate) not being the referrer;

“respondent’s notice” means a notice filed in accordance with rule 38(2);

“response document” means—

- (i) in relation to the Commission, its statement of case; and
- (ii) in relation to the appellant the reply;

“statement of case” means a statement filed by the Commission under rule 4(1);

“supplementary statement” means a statement that is supplementary to a response document and filed in accordance with a direction given by the Tribunal;

“Tribunal” means the Tribunal known as the “Charity Tribunal” established under section 2A(1) of the 1993 Act;

“working day” means any day except for a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(a).

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(a) 1990 c.41.

(3) Unless the context requires otherwise, and without prejudice to any provision of these Rules relating to who is authorised to act as a party's representative, anything permitted or required by these Rules to be done by a party may be done by the representative of that party.

## PART 2

### Preliminary matters in appeals and applications

#### **Appellant's written notice**

**3.**—(1) An appeal or application must be made by way of an appeal notice signed, dated and filed by the appellant.

(2) An appeal notice under paragraph (1) must be filed not later than 28 days after the date on which the appellant was notified of the Commission's final decision.

(3) For the purposes of paragraph (2) an appellant is notified either on—

(a) the date on which the appellant receives written notification of the Commission's decision; or

(b) the date stated on the Commission's web site as being the date the decision was published,

whichever is the earlier date.

(4) The appeal notice must state—

(a) the name and address of the appellant;

(b) the name and address of the appellant's representative (if any);

(c) an address for service and an individual contact at that address;

(d) that the appeal notice concerns either—

(i) the bringing of an appeal; or

(ii) the bringing of an application; and

(e) the grounds on which the appellant relies in the appeal or the application.

(5) In paragraph (4)(a), "address" in respect of a corporation means the address of the registered or principal office.

(6) Where a representative, other than a legal representative, is named in paragraph (4)(b) and the appeal notice is signed by that representative on behalf of the appellant, a statement that the representative is authorised to act on the appellant's behalf, must be—

(a) filed with the appeal notice; and

(b) signed by the appellant; or

(c) signed, where the appellant is not an individual, by an individual authorised by the appellant.

(7) Except when there is a good reason why it is not possible, a copy of the Commission's decision relating to the appeal or application must be filed with the appeal notice in paragraph (2).

(8) The appellant may make a request for directions when filing the appeal notice.

(9) Where the time limit for making an appeal or application under paragraph (2) has expired, the appellant must include with the appeal notice a request for a direction to extend the time limit for making an appeal or application.

(10) A request for a direction to extend time under paragraph (9) must include a statement of the reasons for the delay in making the appeal or application.

(11) At the same time as filing the appeal notice, the appellant must send a copy of that notice (and of any application in accordance with paragraphs (8) and (9)) to the Commission.

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(a) 1971 c.80.

(12) Where a request is made under paragraphs (8) or (9) the Tribunal must take no further action in relation to the appeal notice until such a request has been determined.

(13) Except where a request has been referred in accordance with paragraph (12), or where the written notice has been struck out in accordance with rule 32, the Tribunal must—

- (a) enter particulars of the appeal or the application in the register;
- (b) inform the parties in writing of the date when the Tribunal received the appeal notice;
- (c) specify the date on which the information under paragraph (13)(b) is sent.

(14) When a request has been determined in accordance with paragraph (12), except where the Tribunal strikes out the appeal in accordance with rule 32, the Tribunal must—

- (a) take the steps in paragraphs (13)(a) to (c) in relation to the appeal or the application; and
- (b) inform the parties of the Tribunal's decision relating to the directions request.

#### **Commission's statement of case**

**4.**—(1) The Commission must file a statement of case in support of the Commission's decision.

(2) A statement of case under paragraph (1) must be received by the Tribunal no later than 28 days after the date on which the Commission received the information sent by the Tribunal in accordance with rules 3(13) and (14).

(3) The statement of case must—

- (a) specify the statutory provisions upon which the Commission's decision is based;
- (b) specify the reasons for the Commission's decision;
- (c) specify the name and business address of the Commission's representative (if any);
- (d) identify an address for service and an individual contact at that address;
- (e) contain the signature of a person authorised by the Commission; and
- (f) specify the date on which the statement of case is filed.

(4) The statement of case must be accompanied by—

- (a) a list of—
  - (i) the documents relied on in support of the Commission's decision; and
  - (ii) any additional documents which in the opinion of the Commission might undermine its decision or adversely affect its case or support the appellant's case;
- (b) a copy of the Commission's decision if not filed by the appellant under rule 3(7); and
- (c) the names of any witnesses that the Commission intends to call.

(5) At the same time as the Commission files the statement of case, the Commission must send to the appellant—

- (a) a copy of the statement of case;
- (b) a copy of the information referred to in paragraph (4)(a) and (c); and
- (c) a copy of any request made under paragraphs (6) and (7).

(6) The Commission may include a request for directions with the statement of case.

(7) When the time limit for filing statement of case under paragraph (2) has expired, the Commission must include with the statement of case a request for a direction to extend the time limit for filing a statement of case under paragraph (2).

(8) A request to extend the time limit under paragraph (7) must include a statement of the reasons for the delay in filing the statement of case.

(9) Where a request under paragraphs (6) or (7) has been determined, the Tribunal must send the parties the decision (including the particulars of the direction) and specify the date on which the decision is being sent.

## **Appellant's reply**

**5.**—(1) The appellant must file a written reply so that it is received by the Tribunal no later than 28 days after the date on which the appellant received the information under rule 4(5).

(2) The reply must—

- (a) state the grounds on which the appellant relies in the appeal or application;
- (b) identify all matters contained in the statement of case which are disputed by the appellant;
- (c) state the appellant's reasons for disputing them; and
- (d) specify the date on which it is filed.

(3) The reply must be accompanied by—

- (a) a list of all the documents on which the appellant relies in support of the appeal or application;
- (b) the names of any witnesses the appellant intends to call; and
- (c) a copy of any request made under paragraphs (5) and (6).

(4) At the same time as filing the reply, the appellant must send to the Commission a copy of the reply and of the information referred to in paragraph (3).

(5) The appellant may include a request for directions in accordance with rule 9 with the reply.

(6) When the time limit for filing a reply under paragraph (1) has expired, the appellant must include with the reply a request for a direction to extend the time limit for filing a reply under paragraph (1).

(7) A request to extend the time limit under paragraph (6) must include a statement of the reasons for the delay in filing the reply.

(8) When a request under paragraphs (5) or (6) has been determined by the Tribunal, the Tribunal must send the parties the Tribunal's decision (including the particulars of the direction) and specify the date on which the decision is being sent.

(9) The Tribunal when sending the information in paragraph (9) must specify the date on which it is being sent.

## **Secondary disclosure by the Commission**

**6.**—(1) Following the receipt of the appellant's reply, if there is any further material—

- (a) which might reasonably be expected to assist the appellant's case as disclosed by the appellant's reply; and
- (b) which is not mentioned in the list provided in accordance with rule 4(4)(a),

the Commission must file a list of such further material.

(2) Any list required to be filed by paragraph (1) must be filed so that it is received by the Tribunal no later than 14 days after the day on which the Commission received the appellant's reply under rule 5(4).

(3) At the same time as filing any list required by paragraph (1), the Commission must send a copy of that list to the appellant.

## **Exceptions to disclosure**

**7.**—(1) A list provided in accordance with rule 4(4)(a), 5(3) or 6(1) need not include any document in respect of which a request has been or is being made under paragraph (2).

(2) A party who can establish a ground in paragraph (3) may make a request to the Tribunal (without giving notice to the other party) for a direction under rule 9 authorising that party not to include a document in the list required by rule 4(4)(a), 5(3) or 6(1).

(3) A party making a request under paragraph (2) must state in that request that a document should not be disclosed on the ground that—

- (a) disclosure would not be in the public interest;
  - (b) the document contains commercially sensitive information;
  - (c) disclosure could not be compelled in a civil trial in England or Wales; or
  - (d) disclosure would not be fair having regard to the potential prejudice which may be caused to the legitimate interests of the appellant or a person other than the appellant.
- (4) For the purpose of deciding a request by a party under paragraph (2), the Tribunal may—
- (a) require that the document be produced to the Tribunal (for the Tribunal’s exclusive use) together with a statement of the reasons why it should not be included in the list; and
  - (b) invite the other party to make representations.
- (5) The Tribunal must not grant the request under paragraph (2) unless it is satisfied that in all the circumstances it would be in the interests of justice to do so.
- (6) If the Tribunal refuses a request under paragraph (2) for a direction authorising a party not to include a document in a list, it must direct that party to—
- (a) revise the list so as to include the document;
  - (b) file a copy of that list as revised; and
  - (c) send a copy of the revised list to the other party.

**Provision of copy documents**

- 8.** A party who has filed a list under rule 4(4)(a), 5(3), 6(1) or 7(6)(b) must, no later than [7 days] from the date of the request of the other party—
- (a) provide that other party with a copy of any document specified in the list; or
  - (b) make any such document available to that party for inspection or copying.

**Directions**

- 9.**—(1) The Tribunal may at any time give directions to—
- (a) enable the parties to prepare for the hearing of the appeal or the application;
  - (b) assist the Tribunal to determine the issues;
  - (c) ensure the just, expeditious and economical determination of the appeal or the application.
- (2) The Tribunal may give directions—
- (a) at the request of any party or of all the parties; or
  - (b) of its own initiative,
- and, where it gives a direction of its own initiative, it may (but need not) give prior notice to the parties of its intention to do so.
- (3) Any request for directions must include the reasons for making that request.
- (4) A request for directions must be filed except where it is made during the course of a hearing.
- (5) The party making the request must at the same time send a copy of that request to the other party except where—
- (a) a request under paragraph (4) is accompanied by the written consent of all the parties;
  - (b) a request is made during a hearing; or
  - (c) a request is made under rule 7(2).
- (6) Where a request for directions has been made under this rule by a party, the Tribunal must give the other party an opportunity to oppose the direction that has been applied for.
- (7) The Tribunal must send a copy of the objection together with the reasons for the objection in paragraph (6) to the party who requested the directions and invite that party’s comments before the Tribunal notifies the parties of the decision.

(8) Where the Tribunal instructs that an oral hearing is to be held to consider a request under this rule, the Tribunal must give the parties not less than 14 days notice of the hearing unless the parties consent to shorter notice.

(9) Directions may be given in writing or orally at a hearing.

(10) When a direction is given under these Rules containing a requirement—

- (a) it must include a statement of the possible consequences, as set out in rule 32, of a party's failure to comply with the requirement; and
- (b) it may specify a time limit for complying with the requirement.

(11) When a direction is given under these Rules, which affects a party or a witness, that party or witness may apply to the Tribunal showing good cause why the direction should be varied or set aside.

(12) The Tribunal may, of the Tribunal's own initiative, vary or set aside any direction given under these Rules.

(13) The Tribunal must not vary or set aside a direction without first giving the party who requested the direction an opportunity to oppose that action.

### **Consolidation of appeals or applications**

**10.** Where two or more appeal notices have been filed—

- (i) in respect of the same matter;
- (ii) in respect of separate issues in the same matter; or
- (iii) which involve the same issues,

the Tribunal may direct that the appeals or the applications or any particular issue raised in the appeals or applications be consolidated or heard together.

### **Pre-hearing review**

**11.—**(1) The following paragraphs of this rule will apply if the Tribunal directs that it is appropriate to hold a pre-hearing review of the appeal or the application.

(2) Unless both parties consent to shorter notice, the Tribunal must give the parties not less than 14 days' notice of the time and place of the pre-hearing review.

(3) At the pre-hearing review, which must be held before the Tribunal—

- (a) the Tribunal must give all directions appearing necessary or desirable to securing the just, expeditious and economical conduct of the appeal or the application; and
- (b) the Tribunal must endeavour to secure that the parties make all such admissions and agreements as they ought reasonably to have made in relation to the proceedings.

### **Application for permission to make a late appeal**

**12.—**(1) Where the appellant has made an application under rule 3(9) to the Tribunal for a direction to allow an appeal or application to be made after the time limit for doing so has expired, the Tribunal, subject to paragraph (2), must consider—

- (a) what steps (if any) the Commission has taken to notify or publicise the Commission's decision;
- (b) when the appellant became aware of the Commission's decision; and
- (c) when the appellant became aware of the right to make the appeal or application and of the time limit for making them.

(2) The Tribunal must not allow the appeal or the application to proceed under this rule unless it considers that it is in the interests of justice to do so.

### **Fixing the time and place of the hearing of the appeal or application**

**13.**—(1) Unless the parties otherwise agree or the Tribunal otherwise directs, the Tribunal must give the parties not less than 28 days notice of the time and place of the hearing of the appeal or application.

(2) Before fixing the time and place of a hearing under paragraph (1), the Tribunal must consider—

- (a) whether the appeal or the application should be dealt with as a matter of urgency; and
- (b) the convenience and the ability of the appellant attending a hearing which is to be heard as a matter of urgency at shorter notice.

### **Intervention by Attorney General in appeals and applications**

**14.**—(1) At any stage of the appeal or application proceedings, the Tribunal may make a direction—

- (a) on its own initiative;
- (b) following the request by a party; or
- (c) where the Attorney General is not a party, following the request by the Attorney General,

that all papers in the proceedings that are necessary to enable the Attorney General to decide whether to intervene in the appeal or application are sent by the Tribunal to the Attorney General.

(2) The Attorney General must notify the Tribunal within 14 days of receiving the papers sent by the Tribunal under paragraph (1) of—

- (a) whether the Attorney General intends to intervene in the proceedings; and
- (b) the form, should the Attorney General wish to intervene, that the Attorney General's intervention will take.

(3) If the Attorney General notifies the Tribunal that he intends to intervene, the Tribunal may direct that a hearing is held to enable the Tribunal to make such directions as is necessary to—

- (a) clarify how the appeal or application is to proceed; and
- (b) ensure that the necessary documents are filed with the Tribunal and sent to the Attorney General and the parties.

(4) The Attorney General and the parties will be given not less than 14 days notice of the hearing under paragraph (4) unless the Attorney General and parties agree to shorter notice.

### **Preliminary hearing**

**15.**—(1) The Tribunal may direct that any preliminary question of fact or law which appears to be in issue in relation to the appeal or the application, be determined at a preliminary hearing.

(2) If, in the opinion of the Tribunal, the determination of that preliminary question substantially disposes of the appeal or the application, the Tribunal may—

- (a) treat the preliminary hearing as the hearing of the appeal or the application; and
- (b) make such order by way of disposing of the appeal or the application, as the Tribunal thinks fit.

(3) If the parties agree in writing, the Tribunal may determine the preliminary question without an oral hearing.

(4) Where the Tribunal determines the preliminary question without an oral hearing under paragraph (3), the Tribunal must not at the same time dispose of the appeal or the application unless the parties have agreed to that in writing.

### **Withdrawal of appeal or application and unopposed appeals or applications**

**16.**—(1) The appellant may withdraw the appeal or the application—

(a) at any time before the hearing of the appeal or the application, without permission, by filing a notice in writing to that effect; or

(b) at the hearing of the appeal or the application, with the Tribunal's permission,

and in accordance with paragraphs (a) or (b) the Tribunal must dismiss any appeal or application that is withdrawn.

(2) The Commission may state that it does not oppose the appeal or the application or that it is withdrawing its opposition to it—

(a) at any time before the hearing of the appeal or the application, without permission, by filing a notice to that effect; or

(b) at the hearing of the appeal or the application, with the Tribunal's permission,

and in accordance with paragraphs (a) or (b) the Tribunal must allow the appeal or the application to be withdrawn.

(3) When the Tribunal dismisses or allows an appeal or application under this rule it may award costs in accordance with rule 25.

## PART 3

### Hearings of appeals and applications

#### **Determination without oral hearing**

**17.** — The Tribunal may determine an appeal, an application, or any particular issue, without an oral hearing if—

- (a) the parties agree to that in writing; or
- (b) the issue concerns a request for directions.

#### **Public hearings and directions for private hearings**

**18.**—(1) In this rule, “hearing” means any oral hearing under these Rules except for a directions hearing that takes place without notice to the other party under rule 7.

(2) Subject to the following paragraphs of this rule, all hearings must be in public.

(3) The Tribunal may direct that all or part of a hearing is to be in private—

- (a) upon the request of all the parties; or
- (b) upon the request of any party,

if the Tribunal is satisfied that a hearing in private is necessary in the circumstances and would not prejudice the interests of justice.

(4) Before determining a request under paragraph (3)(b), the Tribunal must give the other party an opportunity to make representations.

(5) Before giving a direction under paragraph (3) that all of a hearing should be in private, the Tribunal must consider whether it is only necessary that part of the hearing should be in private.

(6) The Tribunal may direct that any proceedings are to be held in private and may direct that any particular individual be excluded from those proceedings.

(7) The Tribunal may permit any individual to attend a hearing, which is to be held in private.

(8) The Tribunal may exclude from the whole or part of any hearing any person whose conduct, in the opinion of the Tribunal, has disrupted or is likely to disrupt, the hearing.

(9) Subject to any direction under paragraph (10), the Tribunal must provide for the public inspection at the Tribunal's offices of—

- (a) a daily list of all hearings; and

(b) information about the time and place fixed for the hearings.

(10) Where all or part of a hearing is held or is to be held in private, the Tribunal may direct that information about the whole or the relevant part of the proceedings before the Tribunal (including information that might help to identify any person) must not be made public.

(11) Where a direction is given under paragraph (10), the Tribunal must state what information (if any), is to be entered in the register or removed from it.

### **Representation at hearings**

**19.**—(1) Subject to paragraph (2), the parties may appear at a hearing and may be assisted or represented by any person, whether or not that person is a legal representative.

(2) If in any particular appeal or application the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to assist or represent a party at the hearing.

### **Adjournment of hearing**

**20.**—(1) Where a party requests an adjournment of an appeal or an application hearing that party must—

- (a) notify all other parties of the request for an adjournment except where notification is not practicable;
- (b) show good reason why an adjournment is necessary; and
- (c) produce evidence of any fact or matter relied upon in support of the request for adjournment.

(2) The Tribunal must not adjourn a hearing of an appeal or application at the request of any party unless satisfied that the appeal or application cannot otherwise be justly determined.

(3) Where the hearing of an appeal or an application is adjourned, the Tribunal must fix a new hearing date which—

- (a) must not be more than 28 days after the original hearing date, unless there are exceptional circumstances that mean the appeal or the application cannot be justly heard within that time; and
- (b) must not be later than is strictly required by the circumstances necessitating the adjournment.

### **Procedure at hearings**

**21.**—(1) Subject to the 1993 Act, the 2006 Act and these Rules, the Tribunal must conduct all hearings under these Rules in such manner as the Tribunal considers most suitable to the clarification of the issues before it, and generally to the just, expeditious and economical determination of the proceedings.

(2) Subject to any directions by the Tribunal, the parties may—

- (a) give evidence (and, with the consent of the Tribunal, bring expert evidence);
- (b) call witnesses;
- (c) question any witnesses; and
- (d) address the Tribunal on the evidence, and generally on the subject matter of the appeal or application.

(3) Evidence may be admitted by the Tribunal—

- (a) whether or not it would be admissible in a civil trial in England and Wales; and
- (b) whether or not it was available to the Commission when the Commission's decision was made.

### **Failure to attend a hearing**

**22.** If a party fails to attend or be represented at any hearing of which that party has been duly notified, the Tribunal may, if it is satisfied that there is no sufficient reason for the absence—

- (a) hear and determine the appeal or application in the party's absence; or
- (b) adjourn the hearing,

and may give any directions it thinks fit.

### **Publication of decisions of the Tribunal**

**23.—**(1) The Tribunal must make arrangements for public access to its decisions except where the Tribunal considers that there are circumstances that make it necessary to impose restrictions on publication.

(2) If the Tribunal decides that a restriction on publication is necessary the Tribunal may take any steps, including any one or more of the steps specified in paragraph (4).

(3) Any step taken under paragraph (2) must be taken with a view to ensuring the minimum restriction on publication that is consistent with the need for the restriction.

(4) The specified steps that may be taken by the Tribunal under paragraph (2) are—

- (a) anonymising the decision;
- (b) editing the text of the decision; and
- (c) declining to publish the whole or part of the decision.

(5) Before reaching a decision under paragraph (1) on whether to impose restrictions on publication the Tribunal must invite the parties to make representations.

### **Notification of the Tribunal's decision**

**24.—**(1) The Tribunal must as soon as may be practicable—

- (a) whether there has been an oral hearing or not, send a notification of a decision and the reasons for reaching it to each of the parties to the appeal or the application; and
- (b) subject to any steps taken under the Rules to restrict publication of a decision, enter the decision and the reasons for reaching it in the register.

(2) Every notification under paragraph (1)(a) must be accompanied by a notification of—

- (a) any relevant provision of the 1993 Act or the 2006 Act relating to appeals from the Tribunal; and
- (b) the time within which, and the place at which, an application for permission to appeal is to be made.

### **Costs**

**25.—**(1) The Tribunal may make a costs order against a party (including a party who has withdrawn their appeal or application) if the Tribunal considers that the party has acted vexatiously, frivolously or unreasonably at any stage of the Tribunal proceedings.

(2) If the Tribunal makes a cost order under paragraph (1) the Tribunal may order the paying party to pay to the receiving party the whole or part of the costs incurred by that receiving party in connection with the proceedings.

(3) The Tribunal may make a costs order against the Commission if it considers that the Commission's decision is irrational.

(4) If the Tribunal makes a cost order under paragraph (3) it may order the Commission to pay the whole or part of the costs incurred by a party in connection with proceedings before it.

(5) No costs order may be made under this rule without first giving the paying party an opportunity to make representations against the making of an order.

(6) Where the Tribunal makes a costs order it may make an order—

- (a) that an amount fixed by the Tribunal must be paid by the paying party to the receiving party; or
- (b) that the costs are to be assessed by the Tribunal on such basis as the Tribunal specifies.

### **Review of the Tribunal's decision**

**26.**—(1) If, at the request of a party or at the Tribunal's own initiative, the Tribunal is satisfied that—

- (a) the Tribunal's decision was wrongly made as a result of an accidental error on the part of the Tribunal or staff; or
- (b) new evidence has become available since the conclusion of the hearing to which that decision relates, the existence of which could not have been reasonably known or foreseen,

the Tribunal may review its decision.

(2) When the Tribunal reviews a decision under paragraph (1) it may set aside that decision if the Tribunal considers that it is necessary in the interests of justice.

(3) An application under paragraph (1) must be made—

- (a) orally at the hearing immediately following the announcement of the decision; or
- (b) by way of written application filed not later than 14 days after the date on which the notification of the decision was sent by the party making the application,

stating the grounds on which the application is made.

(4) Where the Tribunal proposes to review its decision on its own initiative, the Tribunal must notify the parties of that proposal not later than 14 days after the date on which the decision was sent to the parties.

(5) The parties must have an opportunity to make representations in relation to any request or proposal for review under this rule.

(6) A review under this rule is to be heard either by the same members of the Tribunal who made the decision or by a differently constituted Tribunal.

(7) The parties must be notified of the decision that the Tribunal is minded to make following a review under this rule and have an opportunity to make representations.

(8) The decision of the Tribunal whether or not to set aside the decision must be recorded in a certificate signed by the Tribunal.

(9) If the Tribunal sets the decision aside—

- (a) the Tribunal must—
  - (i) substitute such decision as it thinks fit; or
  - (ii) order a re-hearing before either the same or a differently constituted Tribunal; and
- (b) the certificate of the Tribunal recording the decision in accordance with paragraph (8) must be sent to the Tribunal who must immediately—
  - (i) make such correction as may be necessary in the register; and
  - (ii) send a copy of the entry so corrected to each party.

(10) The Tribunal must notify the parties in writing of the Tribunal's decision.

## PART 4

### Appeals from the Tribunal in appeals and applications

#### Permission to appeal to the High Court

**27.**—(1) A request to the Tribunal for permission to appeal to the High Court may be made by the applicant—

- (a) orally at the hearing immediately following the announcement of the decision by the Tribunal; or
- (b) by way of a request filed not later than 14 days after the date on which the notification of the decision is received by the party making the application; or
- (c) by way of a request filed not later than 14 days after the date on which the notification under rule 26(10), that a decision is not to be set aside, is received by the person making the application.

(2) When a request is made under paragraph (1)(b) or (c), it must be signed by the applicant and must—

- (a) state the name and address of the applicant and any representative of the applicant;
- (b) identify the decision of the Tribunal to which the request relates; and
- (c) state the grounds on which the applicant intends to rely before the High Court.

#### Decision as to permission to appeal to the High Court

**28.**—(1) The request for permission to appeal to the High Court must be decided without an oral hearing unless the Tribunal considers that special circumstances make a hearing desirable.

(2) The decision of the Tribunal following a request for permission to appeal to the High Court, together with the reasons for its decision, must be recorded in writing.

(3) Unless the decision is given immediately following an oral application, the Tribunal must notify the applicant and each of the other parties of the decision and the reasons for the decision in writing.

(4) If the Tribunal refuses the request, the notification to the applicant under paragraph (3) must include notification of the time within which a request may be made to the High Court for permission to appeal to that court.

#### Appeal remitted by the High Court for rehearing

**29.** Where the High Court remits an appeal to the Tribunal for rehearing and determination (“the rehearing”)—

- (a) these Rules, so far as relevant, may apply to the rehearing as they did to the original hearing of the appeal or application; and
- (b) the Tribunal must, within 28 days of the remittal, give directions in relation to the rehearing.

## PART 5

### General matters in appeals and applications

#### The register

**30.**—(1) The Tribunal must maintain a register of appeals and applications to, and decisions of the Tribunal.

(2) The register must be reasonably accessible to any person without charge.

### **Powers of Tribunal to strike out etc.**

**31.**—(1) Subject to the provisions of the 1993 Act, the 2006 Act and these Rules, the Tribunal may regulate its own procedure.

(2) Without limiting any other powers conferred on it by the 1993 Act or the 2006 Act or these Rules, the Tribunal may, if it thinks fit—

- (a) order any appeal notice, response document, supplementary statement or written representation to be struck out at any stage of the proceedings on the ground that it—
  - (i) discloses no reasonable grounds for bringing or defending an appeal or an application;
  - (ii) is an abuse of the Tribunal's process; or
  - (iii) is likely to obstruct the just disposal of proceedings;
- (b) order any appeal or application to be struck out for inordinate delay.

(3) Before making any order under paragraph (2), the Tribunal must provide an opportunity for the party against whom it is proposed that the order should be made, to make representations against the making of the order.

### **Failure to comply**

**32.**—(1) The Tribunal may take any one or more of the steps in paragraph (2) in respect of a party, where that party has, without reasonable excuse, failed to comply—

- (a) with a direction given under these Rules; or
- (b) with a provision of these Rules.

(2) The steps referred to in paragraph (1) are—

- (a) where that party is the appellant, dismiss the whole or part of the appeal or the application (or, if there is more than one appellant, that appellant's appeal or application);
- (b) where that party is the Commission, strike out the whole or part of the statement of case and, where appropriate, direct that the Commission be disqualified from contesting the appeal or application altogether.

(3) The Tribunal must not take any of the steps under this rule in respect of a party unless it has given that party an opportunity to make representations against the taking of any such steps.

### **Irregularities**

**33.**—(1) Any irregularity that arises before the Tribunal has reached its decision, resulting from failure to comply with any provision of these Rules or of any direction of the Tribunal, will not of itself render the proceedings void.

(2) When any such irregularity comes to the attention of the Tribunal, the Tribunal may, and must if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just to cure or waive the irregularity.

(3) Mistakes in any document recording a direction or decision, or errors arising in such a document from an accidental slip or omission, may be corrected by a certificate signed by the Tribunal.

### **Signature of documents**

**34.** Any requirement in these Rules or in a direction of the Tribunal for a document to be signed by a person is satisfied, in the case of a document which is sent electronically in accordance with these Rules or with a direction of the Tribunal, by the individual who is required to sign the document typing or producing their name by means of a computer or other mechanical means.

### **Calculation of time**

**35.**—(1) Where a period of time for doing an act is specified in days in these Rules or by a direction of the Tribunal, that period is to be calculated by reference to calendar days unless otherwise specified.

(2) Where the time prescribed for doing any act under these Rules expires on a day, which is not a working day, the act is done in time if done on the next working day.

### **Sending of notices**

**36.**—(1) A party's address for service remains the address specified by a party under these Rules until that party serves on the Tribunal and the other party, notice of a different address for service.

(2) Any documents to be sent by a party under these Rules may only be sent—

- (a) by first class post or by personal delivery to the postal address given to that party as the address for service;
- (b) subject to paragraph (3) by document exchange, fax or email;
- (c) where no address for service has been provided, by post or by personal delivery to the party's registered office, principal place of business, head or main office or last known address.

(3) Documents may only be sent to any party by document exchange, fax or email if the intended recipient has informed the Tribunal and the other party in writing—

- (a) that the intended recipient is willing to accept service by document exchange, fax or email; and
- (b) of the box number at the document exchange, the fax number or the email address to which documents should be sent.

(4) If documents are sent by email in accordance with paragraph (3), the intended recipient may specify the format in which the documents must be sent.

(5) Any documents addressed to the Tribunal must be sent—

- (a) by first class post to an address specified by the Tribunal; or
- (b) by such other method as the Tribunal may permit, including document exchange, fax or email.

(6) Where the Tribunal gives permission for documents to be sent using another method of service under paragraph (5)(b), the Tribunal may—

- (a) specify that the method may be used generally or only in relation to certain documents;
- (b) direct that the specified method is no longer available or substitute the specified method with another specified method; and
- (c) make such directions in relation to the use of a specified method as the Tribunal deems appropriate.

(7) Any document which is sent in accordance with this rule must, unless the contrary is proved, be regarded as having been received—

- (a) where it has been sent by first class post, the second working day after it was posted;
- (b) where it is left at the specified address for service, if it is left on a working day before 5pm, on that day; or in any other case the working day after the day it was left;
- (c) where it was sent by email or by fax, if it is transmitted on a working day before 5pm, on that day; or in any other case, on the working day after the day that it was transmitted;
- (d) where it was sent by document exchange, the second working day after it was left at the document exchange.

(8) The Tribunal may direct that service of any documents under these Rules may be dispensed with and, in those circumstances, may make such consequential directions as the Tribunal deems appropriate.

## PART 6

### Special provisions for references

#### Notice of reference

**37.**—(1) For the purposes of this Part, and where these Rules are stated as applying to the proceedings in a reference, “party” means the referrer or the respondent.

(2) A reference must be made by way of a reference notice and filed by the referrer.

(3) The reference notice must state—

- (a) whether the referrer is the Attorney General or the Commission;
- (b) the name and address of the referrer’s representative;
- (c) a copy of the Attorney General’s consent if the referrer is the Commission;
- (d) a statement of the question being referred;
- (e) if relevant, the circumstances out of which the reference has arisen;
- (f) the reason for the reference;
- (g) a statement of any relevant law;
- (h) a list of any relevant authorities;
- (i) any other supporting documents that the referrer considers is relevant to the reference and would assist the Tribunal;
- (j) those persons that the referrer thinks may be affected by the reference and why.

(4) A list of any documents that the referrer thinks is relevant to the question being referred.

(5) The referrer may include an application for directions with the reference notice which may be decided in accordance with rule 9.

(6) Upon receiving a reference notice the Tribunal will —

- (a) enter the particulars in the register;
- (b) publish details of the reference and information about how a person likely to be affected by the reference can request to be a party to the reference (“respondent”);
- (c) notify the Commission or the Attorney General (as appropriate) that—
  - (i) the reference has been made; and
  - (ii) they should inform the Tribunal, no later than 28 days after the date that they received the notification, of whether they intend to be a respondent.

(7) The Tribunal will consider the requests it receives by virtue of the information published in accordance with paragraph (6)(b) and will notify those persons making the request of the Tribunal’s decision.

#### Respondent’s notice

**38.**—(1) The Tribunal will send to those persons selected as being respondents (including either the Commission or the Attorney General where either decide to be a respondent under rule 37 (6)(c)(ii))—

- (a) a copy of the reference notice; and
- (b) a copy of the list of information filed by the referrer under rule 37(4).

(2) The respondent must file a respondent’s notice not later than 28 days beginning on the day after the information in paragraph (1) was received by the respondent.

(3) The respondent’s notice must state—

- (i) the name of the respondent;
- (ii) the address for service;

- (iii) the name and address of the respondent's representative (if any);
- (iv) the name of a contact person (if appropriate);
- (v) a full account of the impact that the Tribunal's determination of the question being referred may have on the respondent or other persons identified by the respondent;
- (vi) any other matters that the respondent thinks the Tribunal should take into account when determining the reference; and
- (vii) whether the respondent intends to appear at the hearing or alternatively, make any representations in writing.

(4) The respondent's notice must be accompanied by a list of authorities and any other supporting documents relied on in support of the respondent's case.

(5) The respondent may include a request for directions with the respondent's notice in accordance with rule 9.

(6) At the same time as filing the respondent's notice and the list in paragraph (4) the respondent must send to the referrer and any other respondent to the reference a copy of the notice and list.

### **Referrer's reply**

**39.**—(1) The referrer may file a notice of reply so that it is received no later than 28 days after the date on which the referrer received a copy of a respondent's notice under rule 38(6).

(2) The notice of reply must identify all matters contained in the respondent's notice that the referrer challenges and the referrer's reasons for challenging.

(3) The notice of reply must be accompanied by a list of any authorities and supporting documents on which the referrer relies in his notice of reply except for any information already provided in accordance with rule 37(3).

(4) At the same time as filing the information under this rule with the Tribunal the referrer must send copies of that information to the respondents.

### **Procedure at the reference hearing**

**40.**—(1) The Tribunal may determine a reference or any particular issue in a reference without an oral hearing if—

- (a) the parties agree in writing; or
- (b) the issue concerns a request for directions.

(2) The Tribunal must conduct all references determined by way of an oral hearing in accordance with rule 21.

(3) Rules 9, 11, 18, 21, 23, 24, 25(1), (2), (5) and (6) and 29, and Part 5 of the Rules apply to the determination of a reference by the Tribunal as they apply to the determination of appeals and applications.

### **Permission to appeal to the High Court**

**41.** Rule 27(1)(a) and (b) and (2) and rule 28 will apply to references as they apply to appeals and applications.

### **Intervention by the Attorney General in references brought by the Commission**

**42.**—(1) At any stage of reference proceedings brought by the Commission, the Tribunal may make a direction—

- (a) on its own initiative;

- (b) following the request by a party to the reference; or
- (c) where the Attorney General is not a party to the reference, following the request by the Attorney General,

that all papers in the reference proceedings that are necessary to enable the Attorney General to decide whether to intervene are sent by the Tribunal to the Attorney General.

(2) The Attorney General must notify the Tribunal within 14 days of receiving papers in paragraph (2) of—

- (a) whether the Attorney General intends to intervene in the proceedings; and
- (b) the form, should the Attorney General wish to intervene, that his intervention will take.

(3) If the Attorney General notifies the Tribunal that he intends to intervene, the Tribunal must direct that a hearing is held to enable the Tribunal to make such directions as the Tribunal thinks necessary to—

- (a) clarify how the reference is to proceed; and
- (b) ensure that the necessary documents are filed with the Tribunal and sent to the Attorney General and parties.

(4) The Attorney General and parties will be given no less than 14 days notice of the hearing under paragraph (4) unless the Attorney General parties agree to shorter notice.

Signed on behalf of the Lord Chancellor

Date

*Name*  
Parliamentary Under Secretary of State  
Ministry of Justice

**EXPLANATORY NOTE**

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