

Litigating in the First-tier Tribunal (General Regulatory Chamber) Environment Chamber – jurisdiction, practice and procedure (including costs)

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Tribunals, Courts and Enforcement Act 2007



Section 3(1): “There is to be a tribunal, known as the First-tier Tribunal, for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act.”

Section 7(1): “The Lord Chancellor may, with the concurrence of the Senior President of Tribunals, by order make provision for the organisation of each of the First-tier Tribunal and the Upper Tribunal into a number of chambers.”

First-tier Tribunal and Upper Tribunal (Chambers) Order 2010



Article 2 establishes seven chambers, including the General Regulatory Chamber.

Article 3(1):

“To the General Regulatory Chamber are allocated all functions related to—
(a) proceedings in respect of the decisions and actions of regulatory bodies which are not allocated to the Health, Education and Social Care Chamber by article 4 or to the Tax Chamber by article 7;
...”

General Regulatory Chamber (Environment)



- Appeals under Article 10 of the Environmental Civil Sanctions (England) Order 2010 and the Environmental Civil Sanctions (Wales) Order 2010 against:
 - Monetary penalties;
 - Compliance notices;
 - Restoration notices;
 - Stop notices.

General Regulatory Chamber (Environment)

- Ecodesign for Energy-Related Products Regulations 2010
- Single Use Carrier Bags Charge (Wales) Regulations 2010 (and NI Regs 2013)
- Marine and Coastal Access Act 2009 (and associated regulations and orders concerning marine licensing)
- Flood and Water Management Act 2010 (and associated regulations)
- Waste (England and Wales) Regulations 2011
- The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012
- The Climate Change Agreements (Administration) Regulations 2012
- The CRC Energy Efficiency Scheme Order 2013
- The Reservoirs Act 1975 (and 2013 Regulations on appeals)
- The Energy Savings Opportunity Scheme Regulations 2014

Appeals – suspensive effect

3 categories:

- FTT can suspend effect if asked:
 - Stop Notices under the Environmental Civil Sanctions Orders
 - Remediation, Emergency Safety and Stop Notices under Marine and Coastal Access Act 2009
 - Sanctions under the Green Deal Framework
 - Notice under the Waste (England and Wales) Regulations
- FTT cannot suspend effect:
 - Ecodesign Stop Notices
 - Energy Information Regulations Stop Notices
 - Designations under the Flood and Water Management Act 2010
- Automatic suspensive effect: everything else

Procedure rules



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

Rule 2: Overriding objective and parties' obligation to co-operate with the tribunal

Rule 3: Alternative Dispute Resolution

Rules 4-8: Case management powers and sanctions for non-compliance

Costs



General rule is that costs do not follow the event and are payable by the party that incurred them.

In the Environment Chamber, two circumstances can justify an order for costs: rule 10.

1. Wasted costs – section 29(4) of the 2007 Act (rule 10(1)(a))
2. “If the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings” (rule 10(1)(b)).

Rule 10 also makes provision for costs applications, procedure for representations, summary assessment and detailed assessment.

Other case management rules

- Representatives need not be legally qualified: rule 11(1).
- Calculating time: rule 12
- Sending documents: rule 13
- Prevention of disclosure or publication: rule 14
- Disclosure, evidence and submissions: rule 15
- Witness summons and orders to produce documents: rule 16

Before the hearing

Appellant's notice of appeal (rule 22):

- Must be **received** by the FTT “*within 28 days of the date on which notice of the act or decision to which the proceedings relate was **sent** to the appellant*” (there are some exceptions, but none that apply in the Environment Chamber)
- Form T98: <https://www.gov.uk/government/publications/form-t98-notice-of-appeal-general-regulatory-chamber-grc>
- Provision for a seeking an extension of time: rule 22(4).
- FTT will send a copy to each respondent.

Before the hearing

The response: rule 23

- Each respondent **must** send a response so that it is **received** within 28 days after the date on which the respondent **received** the notice of appeal (with scope for extension of time).
- Respondent is responsible for serving on other parties at same time as on FTT: 23(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.”*

Before the hearing

The reply: rule 24

- The appellant **may** make a written submission and provide further documents in reply to a response.
- Any reply must be **sent or delivered** to the Tribunal within 14 days after the date on which the respondent or the Tribunal **sent** the response to the appellant.
- Scope for extending time, with reasons.

Deciding whether to have a hearing



Rule 32

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

or

- One party's case has been struck out
- The decision is a decision to review/correct/set aside a decision
- There has been a hearing on a preliminary issue and there is no further issue.

Rules on hearings

- Parties may attend and FTT may permit or request others to attend: rule 33
- FTT must give at least 14 days notice for hearings save where parties consent or there are urgent/exceptional circumstances: rule 34
- General rule is that hearings are public unless FTT directs otherwise, and FTT has powers to exclude people and regulate attendance: rule 35
- Hearings can proceed in absence of a party if reasonable steps to notify have been taken, and it would be in the interests of justice to proceed: rule 36

Decisions



- FTT may dispose of proceedings by way of consent order or such other appropriate provision as agreed by the parties: rule 37
- FTT may give a decision orally at a hearing but must also “as soon as reasonably practicable” send to the parties a decision notice, written reasons, and information about the right to appeal: rule 38
- The FTT may at any time correct any clerical mistake or other accidental slip or omission: rule 40
- The FTT may also set-aside or re-make a decision, if in the interests of justice, in specified cases of procedural irregularity: rule 41

Applications for permission to appeal

- Rule 42: a written application to the FTT must be sent or delivered to the FTT so that it is **received** no later than 28 days after the FTT **sends** the decision to the person making the application (with scope for extending time with reasons)
- Application must identify the alleged error or errors of law in the decision and state the result the party making the application is seeking.
- Rule 43: before considering application for permission to appeal, FTT must consider whether to review decision (which it will do if satisfied there is an error of law: 44).
- FTT must send a record of their decision as soon as practicable, giving reasons for refusal of permission on any ground, and notifying the applicant of appeal rights.



Fast track appeals against Stop Notices

There is a special Practice Direction (9 April 2010) setting out a fast-track process for appeals against a Stop Notice, i.e. a written notice issued under Schedule 3 to the Environmental Civil Sanctions (England) Order 2010, that prohibits a person from carrying out an activity which is causing or is likely to cause serious harm until the person has taken the steps specified in the notice to remove the risk of serious harm or fully return to compliance with the law.

https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Practice+Directions/Tribunals/grc_resActandStopNoticePracticeDirect.pdf