



## FLOOD RISK MANAGEMENT TRIBUNAL RULES 2020

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Statutory Document No. 2020/0230



*Tribunals Act 2006*

## **FLOOD RISK MANAGEMENT TRIBUNAL RULES 2020<sup>1</sup>**

*Approved by Tynwald:* 21 April 2020  
*Coming into operation:* 1 May 2020

The Council of Ministers, having consulted the Deemsters<sup>1</sup>, makes the following Rules under section 8(1) and 12(3) of the Tribunals Act 2006.

### **PART 1 – INTRODUCTION**

#### **1 Title**

These Rules are the Flood Risk Management Tribunal Rules 2020.

#### **2 Commencement**

If approved by Tynwald these Rules come into operation on 1 May 2020.

#### **3 Interpretation**

(1) In these Rules –

“**the Act**” means the Flood Risk Management Act 2013 and a reference to a numbered section is to the section of the Act so numbered;

“**appeal**” means an appeal to the Tribunal under section 58;

“**appellant**” means the person by whom an appeal is made;

“**the Chairperson**” means the chairperson of the Tribunal;

“**the Clerk**” means the person for the time being appointed under section 9 of the Tribunals Act 2006 to act as clerk of the Tribunal, and includes an acting clerk and a person acting with the authority of the Clerk;

“**costs**” means fees, charges, disbursements or expenses incurred by or on behalf of a party in relation to the appeal in question;

“**costs order**” means an order of the Chairperson or Tribunal that a party make a payment in respect of the costs incurred by another party;

<sup>1</sup> As required by section 8(1) of the Tribunals Act 2006

“**decision**” (except in “**the original decision**”) means a final determination by the Chairperson or the Tribunal of an appeal or of a particular issue in the proceedings on an appeal, including a decision —

- (a) on a matter falling within rule 25(1); or
- (b) under rule 7 or 9 that an appeal or reply should not be accepted;

“**electronic communication**” has the same meaning as in the Electronic Transactions Act 2000;

“**hearing**” means a preliminary hearing or a full hearing;

“**interested person**” has the meaning given in section 47(2)(m)(ii);

“**order**” means an order made by the Chairperson or the Tribunal in relation to —

- (a) interim matters (whether or not requiring a person to do or not to do something); or
- (b) a matter falling within rule 25(1);

and includes a costs order or a wasted costs order;

“**the original decision**” means the decision against which an appeal is made;

“**party**”, in relation to an appeal, means (subject to rule 10) the appellant or the respondent;

“**the register**” means the register of appeals, decisions, orders and written reasons kept in accordance with rule 27;

“**respondent**”, in relation to an appeal, means (subject to rule 10) —

- (a) the person or body by whom the original decision was taken or deemed to have been taken;
- (b) for the purposes of an appeal under section 48, an interested person;
- (c) subject to any order under rule 12, any person specified in a notice of appeal as having a direct interest in the outcome of the appeal; and
- (d) any person made a respondent to the appeal by an order under rule 12;

“**the Tribunal**” means the Flood Risk Management Tribunal;

“**wasted costs order**” is an order made under rule 30; and

“**writing**” is defined in paragraphs (2) to (5).

(2) “Writing” includes writing delivered by means of electronic communications and writing recorded electronically which comply with the requirements set out in paragraphs (3) to (5).

(3) At the time any information is given by means of an electronic communication, it must have been reasonable to expect that the

information would be readily accessible so as to be usable for subsequent reference.

- (4) At the time any document is produced by means of an electronic communication –
  - (a) the method of generating the electronic form of the document must have provided a reliable means of assuring the maintenance of the integrity of the information contained in the document; and
  - (b) it must have been reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be usable for subsequent reference.
- (5) At the time of recording any information in electronic form it must have been reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference.

#### **4 Application of rules**

- (1) These Rules apply in relation to all proceedings before the Tribunal which are commenced on or after 1 May 2020.
- (2) Subject to the provisions of these Rules, the Chairperson or Tribunal may regulate his or her or its own procedure.

#### **5 Overriding objective**

- (1) The overriding objective of these Rules is to enable the Chairperson and the Tribunal to deal with cases justly.
- (2) Dealing with a case justly includes, so far as practicable –
  - (a) ensuring that the parties are on an equal footing;
  - (b) dealing with the appeal in ways which are proportionate to its importance and the complexity of the issues;
  - (c) ensuring that it is dealt with expeditiously and fairly; and
  - (d) saving expense.
- (3) The Chairperson or the Tribunal must seek to give effect to the overriding objective whenever –
  - (a) exercising any power given to the Chairperson or the Tribunal by these Rules; or
  - (b) interpreting these Rules.
- (4) The parties must assist the Chairperson or the Tribunal to further the overriding objective.

## PART 2 – STARTING AN APPEAL

### 6 Starting an appeal

- (1) An appeal is made to the Tribunal by the appellant presenting to the Clerk a notice of appeal in writing (which may, but need not, be in a form prescribed under rule 34) within 28 days of the date on which the original decision was notified to the appellant.

This is subject to paragraph (4).

- (2) The notice must include all the following information –
  - (a) the appellant’s name and address;
  - (b) details of the original decision;
  - (c) the grounds of the appeal (including, where appropriate, a brief summary of the facts giving rise to it);
  - (d) the name and address (so far as known to the appellant) of the person or body by whom the original decision was taken or deemed to have been taken; and
  - (e) the name and address (so far as known to the appellant) of any person, including an interested person, appearing to the appellant to have a direct interest in the outcome of the appeal.

This is subject to paragraph (4).

- (3) The notice must be accompanied by a copy of the document by which the original decision was notified to the appellant.

This is subject to paragraph (4).

- (4) In the case of an appeal under section 48 or 55 in respect of a decision which the respondent is deemed to have taken –
  - (a) the period within which the notice of appeal is to be presented under paragraph (1) is 28 days of the date on which the respondent is deemed to have taken the decision as provided by section 48(4) or 55(4) as the case may be;
  - (b) the details of the original decision means the circumstances set out in section 48(4) or 55(4) as the case may be, including the date on which the relevant request
  - (c) was received; and
  - (d) paragraph (3) does not apply.

### 7 Initial action on receipt of notice of appeal

- (1) On receiving a notice of appeal (including a notice of appeal which is re-presented after being returned to the appellant under paragraph (2)), the Clerk must consider what action to take under this rule.

- (2) If the notice of appeal —
  - (a) does not comply with rule 6(2) or (3); or
  - (b) is made after the expiry of the time referred to in rule 6(1), and does not include an application to the Tribunal to extend the time for bringing the appeal (with an explanation why the appellant could not comply with the time limit),

the Clerk must, not later than 10 days after receipt, return it to the appellant, indicating what information or other matters should be included in it or accompany it, and the appeal is to be treated as if it had not been made.
- (3) If the appeal includes an application and explanation as mentioned in paragraph (2)(b), the Clerk must, not later than 10 days after receipt, refer the appeal to the Chairperson.
- (4) If it appears to the Clerk that for any reason (other than the expiry of the time-limit referred to in rule 6(1)) the Tribunal does not have power to consider the appeal, he must, not later than 10 days after receipt, either —
  - (a) notify the appellant of that opinion, stating his or her reasons for that opinion and informing the appellant that the appeal will be treated as if it had not been made unless the appellant states in writing, not later than 21 days after the date of the notification, that the appellant wishes to proceed with it; or
  - (b) refer the appeal to the Chairperson.
- (5) If, pursuant to a notification under paragraph (4)(a), the appellant states within the time allowed that the appellant wishes to proceed with the appeal, the Clerk must forthwith refer the appeal to the Chairperson; but if the appellant fails to do so, it must be treated as if it had not been made.
- (6) On a reference under paragraph (3), (4)(b) or (5) the Chairperson must either —
  - (a) decide without a hearing whether —
    - (i) the appeal should be accepted out of time; or
    - (ii) the Tribunal has power to consider the appeal, as the case may be, or
  - (b) order that such a decision is to be made at a preliminary hearing; and inform the Clerk in writing of his or her decision or order.
- (7) Paragraph (8) applies if —
  - (a) paragraphs (2) to (5) do not apply;
  - (b) the Chairperson decides under paragraph (6) that the appeal should be accepted out of time, or that the Tribunal has power to consider it; or

- (c) the Chairperson orders that such a decision must be made at a preliminary hearing.
- (8) If this paragraph applies, the Clerk must—
- (a) send a copy of the notice of appeal to each respondent (with a copy of any order under paragraph (7)(c)), and record in writing the date on which it was sent;
  - (b) inform the parties in writing of the case number of the appeal (which must from then on be referred to in all correspondence relating to the appeal) and the address to which notices and other communications to the Clerk must be sent; and
  - (c) inform the respondent in writing —
    - (i) about how to enter a reply to the appeal, the time limit for doing so, what may happen if a reply is not entered within the time limit; and
    - (ii) that the respondent has a right to receive a copy of any decision disposing of the appeal.
- (9) If the Chairperson decides under paragraph (6) that the appeal is not accepted out of time, or that the Tribunal has no power to consider it —
- (a) the Clerk must as soon as reasonably practicable inform the appellant of that decision and the reasons for it in writing, together with information on how an appeal may be brought against that decision; and
  - (b) except for the purposes of any appeal to the High Court, the appeal is to be treated as if it had not been presented.
- (10) A decision to accept an appeal does not bind the Chairperson or Tribunal where any of the issues specified in paragraph (2)(a) or (b) or (4) falls to be decided later in the proceedings.

## 8 Replying to the appeal

- (1) If the respondent wishes to reply to the appeal he or she must present his or her reply to the Clerk in writing (which may, but need not, be in a form prescribed under rule 34) —
- (a) within 21 days of the date on which the respondent was sent a copy of the notice of appeal; or
  - (b) within such further period as the Chairperson considers reasonable, where on an application by the respondent the Chairperson is satisfied —
    - (i) that it was not reasonably practicable for the reply to be presented within 21 days of that date; or
    - (ii) that for any other reason it is just and equitable to extend the time.



- (2) An application under paragraph (1)(b) may be made before or at the same time as a reply is presented, and must explain why the respondent cannot or could not comply with the time limit.
- (3) The reply must include all the following information —
  - (a) the respondent's name;
  - (b) the respondent's address;
  - (c) whether or not the respondent wishes to resist the appeal in whole or in part; and
  - (d) if the respondent wishes to do so, on what grounds.
- (4) The grounds referred to paragraph (3)(d) must include —
  - (a) the facts outlining the case leading up to the appeal;
  - (b) the issues which the respondent has identified as being relevant to the appeal;
  - (c) details of all matters relevant to the issues which have been identified;
  - (d) the applicable law; and
  - (e) an indication of how the relevant facts and applicable law have been applied in order to decide the issues.

## **9 Action on receipt of reply**

- (1) On receiving a reply (including a reply which is re-presented after being returned to the respondent under paragraph (2)), the Clerk must consider what action to take under this rule.
- (2) If the reply —
  - (a) does not include all the information required by rule 8(3) and 8(4); or
  - (b) is made after the time specified in rule 8(1)(a), or that time as extended under rule 8(1)(b), and no application is or has been duly made to extend the time for presenting the reply,the Clerk must, not later than 10 days after receipt, return it to the respondent, indicating (where appropriate) what information or other matters should be included in it or accompany it, and the reply must be treated as if it had not been presented.
- (3) If an application is made under rule 8(1)(b), the Clerk must, not later than 10 days after receipt, refer it to the Chairperson.
- (4) On a reference under paragraph (3) the Chairperson must either —
  - (a) decide whether the reply should be accepted out of time without a hearing; or
  - (b) order that such a decision must be made at a preliminary hearing;

and inform the Clerk of his or her decision or order in writing.

- (5) The Clerk must –
- (a) inform both the appellant and the respondent of a decision under paragraph (4)(a) that the reply should not be accepted out of time and the reasons for it; and
  - (b) inform the respondent of the consequences of that decision and how it may be appealed.
- (6) If –
- (a) paragraphs (2) and (3) do not apply;
  - (b) the Chairperson decides under paragraph (4)(a) that a reply should be accepted out of time; or
  - (c) the Chairperson orders that such a decision is to be made at a preliminary hearing;

the Clerk must send a copy of the reply to all other parties (with a copy of any order under paragraph (4)(b)) and record in writing the date on which it is sent.

## **10 Taking no further part in the proceedings**

A respondent who has not presented a reply to an appeal within the time specified in rule 8(1)(a), or that time as extended under rule 8(1)(b), is not entitled to take any part in the proceedings except –

- (a) to be called as a witness by another person; or
- (b) to be sent a copy of a decision, order or corrected entry in accordance with rule 24(3) or (4) or 28;

and (subject to rule 29(5)) in these Rules the word "party" or "respondent" includes a respondent only in relation to his or her entitlement to take such a part in the proceedings, and in relation to any such part which he or she takes.

## **11 Documents and other material to accompany appeal or reply**

- (1) A party must deliver with the appeal or reply two copies of the following documentation (with copies for all other parties) –
- (a) maps of any land which is referred to in the appeal or reply on a scale of 1:10,000 or larger;
  - (b) every other map (which, where possible, should be on a scale of 1:10,000 or larger), drawing, report or other document to be relied upon for the purposes of the appeal or reply.
- (2) The Chairman may excuse a party from having to comply with paragraph (1) where the documentation could be more conveniently provided by some other party or where it would be unreasonable on the grounds of expense or otherwise to require it to be delivered at that stage.

- (3) A party need not provide a document if copies have already been delivered to the Clerk by another party.

## PART 3 – CASE MANAGEMENT

### 12 General power to manage proceedings

- (1) Subject to the following rules, the Chairperson may at any time, either on the application of a party or on the Chairperson's own initiative, make an order in relation to any matter which appears to him or her to be appropriate.

Such orders may be –

- (a) any of those listed in paragraph (3);
  - (b) subject to the requirements of rule 25, any order to which that rule applies; or
  - (c) such other orders as the Chairperson thinks fit.
- (2) Subject to the following rules, orders may be made as a result of the Chairperson considering the papers before the Chairperson in the absence of the parties, or at a hearing.
- (3) Examples of orders which may be made under paragraph (1) are orders –
- (a) as to the manner in which the proceedings are to be conducted, including any time limit to be observed;
  - (b) that a person appearing to the Chairperson to have a direct interest in the outcome of the appeal be made a respondent to the appeal, and giving any necessary directions for the purpose;
  - (c) that a person specified under rule 6(2)(e) in a notice of appeal cease to be a respondent to the appeal;
  - (d) that a party provide additional information;
  - (e) requiring the attendance of any person in the Island either to give evidence or to produce documents or information;
  - (f) requiring any person in the Island to disclose documents or information to a party, and to allow a party to inspect such material as might be ordered by the High Court;
  - (g) extending any time limit, whether or not expired (subject to rules 8(1) and 13(2));
  - (h) requiring the provision of written answers to questions put by the Chairperson or Tribunal;
  - (i) adjourning the proceedings so that the parties may seek to resolve the dispute by conciliation;
  - (j) staying the whole or part of any proceedings;

- (k) that part of the proceedings be dealt with separately;
  - (l) that different appeals be considered together;
  - (m) postponing or adjourning any hearing;
  - (n) varying or revoking other orders;
  - (o) giving notice to the parties of a preliminary hearing or full hearing;
  - (p) giving notice under rule 25;
  - (q) giving leave to amend an appeal or reply;
  - (r) that a witness statement or report be prepared or exchanged;
  - (s) that a party provide copies of documents for the use of the Chairperson or Tribunal;
  - (t) as to the use of experts or interpreters in the proceedings; or
  - (u) that a party make payments in respect of the costs incurred by another party.
- (4) An order —
- (a) may specify the time at or within which and the place at which any act is required to be done;
  - (b) may impose conditions; and
  - (c) must inform the parties of the potential consequences of non-compliance set out in rule 15.
- (5) If a requirement has been imposed by an order under paragraph (1), the person subject to the requirement may make an application under rule 13 for the order to be varied or revoked and for that purpose rule 13 is to be construed as if any reference in it to a party included such a person.
- (6) An order described in paragraph (3)(e) or (f) which requires a person to produce, or to allow a party to inspect, a document contained in a computer may require that person to produce it in a visible and legible form which may be taken away.
- (7) An order described in paragraph (3)(f) which requires a person other than a party to grant disclosure or inspection of material may be made only when the disclosure sought is necessary in order to dispose fairly of the appeal or to save expense.
- (8) An order described in paragraph (3)(j) may be made only if all relevant parties have been given notice that such an order may be made and an opportunity to make oral or written representations as to why such an order should or should not be made.

### 13 Applications in proceedings

- (1) At any stage of the proceedings a party may apply for an order to be made, varied or revoked or for a preliminary hearing to be held.

- (2) An application for an order must be made not less than 10 days before the date of the hearing at which it is to be considered (if any) unless –
  - (a) it is not reasonably practicable to do so; or
  - (b) the Chairperson or Tribunal considers that shorter notice should be allowed in the interests of justice.
- (3) An application for an order must, unless the Chairperson orders otherwise,
  - (a) be made in writing to the Clerk;
  - (b) include the case number for the proceedings and the reasons for the application; and
  - (c) In the case of an application for an order to be varied or revoked, subject to rule 12(3)(g), be made before the time at which or the expiry of the period within which the order was to be complied with.
- (4) An application for a preliminary hearing to be held must identify any orders sought.
- (5) The Clerk must provide all other parties with the following information in writing –
  - (a) details of the application and the reasons why it is sought;
  - (b) notification that any objection to the application must be sent to the Clerk within 7 days of receiving the application, or before the date of the hearing (whichever date is the earlier);
  - (c) that any objection to the application must be copied to both the Clerk and all other parties.
- (6) The Chairperson may grant or refuse a party's application, and if the Chairperson does so the Clerk must inform the parties in writing of the grant or refusal unless the application is granted or refused at a hearing.

#### **14 Chairperson acting on own initiative**

- (1) Subject to paragraph (2) and to rules 12(8) and 25(2), the Chairperson may –
  - (a) make an order on his or her own initiative, with or without hearing the parties or giving them an opportunity to make written or oral representations; and
  - (b) decide to hold a preliminary hearing on his or her own initiative.
- (2) If the Chairperson makes an order without giving the parties the opportunity to make representations –
  - (a) the Clerk must, as soon as reasonably practicable, send to the parties a copy of the order and a statement explaining the right to make an application under sub-paragraph (b); and

- (b) a party affected by the order may apply to have it varied or revoked.
- (3) An application under paragraph (2)(b) must –
- (a) subject to rule 12(3)(g), be made before the time at which, or the expiry of the period within which, the order was to be complied with;
  - (b) unless the Chairperson orders otherwise, be made in writing to the Clerk and copied to the parties; and
  - (c) include the reasons for the application.
- (4) The Clerk must, as soon as reasonably practicable, inform the parties in writing of the grant or refusal of an application under paragraph (2)(b) unless it is granted or refused at a hearing.

## 15 Compliance with orders

- (1) If a party does not comply with an order made under these Rules, the Chairperson or Tribunal may –
- (a) make a costs order under rule 29; or
  - (b) (subject to paragraph (2) and rule 25) at a hearing make an order to strike out the whole or part of the appeal or, as the case may be, the reply.
- (2) An order may also provide that unless the order is complied with, the appeal or the reply, as the case may be, must be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 25 or hold a hearing.

## 16 Right to withdraw appeal

- (1) An appellant may withdraw all or part of the appeal at any time, either orally at a hearing or in writing in accordance with paragraph (2).
- (2) To withdraw an appeal or part of an appeal in writing the appellant must inform the Clerk of the appeal or the parts of it which are to be withdrawn.

If there is more than one respondent, the notification must specify against which respondent the appeal is being withdrawn.

- (3) The Clerk must, as soon as reasonably practicable, inform all other parties of the withdrawal.
- (4) The withdrawal of an appeal takes effect on the date on which the Clerk (in the case of written notifications) or the Chairperson or the Tribunal (in the case of oral notification) receives notice of it; and where the whole appeal is withdrawn proceedings are brought to an end on that date and will be treated as dismissed.

- (5) The withdrawal of an appeal and the dismissal of proceedings do not preclude the making of orders as to costs.
- (6) If an appeal is withdrawn and the proceedings are dismissed, those proceedings cannot be continued by the appellant.

## **PART 4 – HEARINGS**

### **17 Hearings – general**

- (1) This rule applies to –
  - (a) a preliminary hearing under rule 20; or
  - (b) a full hearing under rule 21.
- (2) The Chairperson or Tribunal (as the case requires) must make such enquiries of persons appearing before them and of witnesses as they consider appropriate and must otherwise conduct the hearing in such manner as appears to the Chairperson or Tribunal most appropriate for the clarification of the issues and generally for the just handling of the proceedings.
- (3) Unless the parties agree to shorter notice, the Clerk must –
  - (a) send notice of any hearing to all the parties not less than 21 days before the date fixed for the hearing; and
  - (b) inform the parties that they have the opportunity to submit written representations and to advance oral argument.
- (4) If a party wishes to submit written representations for consideration at a hearing the party must present them to the Clerk not less than 14 days before the hearing and at the same time send a copy to all other parties.
- (5) The Chairperson or the Tribunal may, if it appears in the interests of justice to do so, consider representations in writing which have been submitted otherwise than in accordance with paragraph (4).
- (6) At a full hearing the Tribunal may make any order which the Chairperson has power to make under these Rules, subject to compliance with any relevant notice or other procedural requirements.
- (7) The Tribunal must require parties and witnesses who attend a full hearing to give their evidence on oath or affirmation; and oaths and affirmations are to be administered by the Chairperson.
- (8) The Tribunal may exclude from the full hearing any person who is to appear as a witness in the proceedings until such time as that person gives evidence if it considers it in the interests of justice to do so.
- (9) The Chairperson or the Tribunal may hold a hearing even though he or she is not the same individual, or it does not comprise any of the members, who held a previous hearing in the same proceedings, but

once a hearing has begun it must not continue without the consent of the parties unless the Chairperson is the same individual, or the Tribunal comprises at least 2 of the members, who began the hearing.

- (10) For the avoidance of doubt, the Chairperson or a member of the Tribunal is not precluded from taking part in any hearing by reason only that he or she has taken part in a previous hearing in the same proceedings.
- (11) Subject to paragraph (12), the Chairperson or Tribunal may hold a hearing and receive evidence by telephone or video link or by using any other method of direct oral communication.
- (12) If a hearing —
  - (a) is required by these Rules to be held in public; and
  - (b) is conducted in accordance with paragraph (11),then, subject to rule 19, it must be held in a place to which the public has access and using equipment so that the public is able to hear all persons taking part in the hearing.
- (13) If a decision or order, whether made at a preliminary hearing or otherwise, results in the proceedings being struck out or dismissed or otherwise decided, no full hearing need be held in those proceedings.

## 18 Representation

A party may be represented at a hearing —

- (a) by an advocate;
- (b) in the case of a public authority or body corporate, by an officer of the authority or body; or
- (c) with the permission of the Chairperson or the Tribunal, by any other person.

## 19 Public and private hearings

- (1) Subject to paragraph (2), a full hearing must take place in public.
- (2) A full hearing, or part of a full hearing, may be conducted in private —
  - (a) for the purpose of hearing from any person (“A”) evidence or representations which in the opinion of the Chairperson or Tribunal is likely to consist of information —
    - (i) which A could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision; or
    - (ii) which has been communicated to A in confidence, or which A has otherwise obtained in consequence of the confidence placed in him or her by another person; or



- (b) where the Tribunal considers it appropriate in the interests of justice.
- (3) If the Tribunal decides to hold a hearing or part of one in private under paragraph (2), it must give reasons for doing so.
- (4) A preliminary hearing may take place in public or in private, as the Chairperson considers appropriate in the interests of justice, except that a preliminary hearing at which —
  - (a) a decision is given; or
  - (b) an order relating to a matter falling within rule 25(1) is made, must take place in public.

## **20 Conduct of preliminary hearings**

- (1) Preliminary hearings are interim hearings and must be conducted by the Chairperson sitting alone.
- (2) At a preliminary hearing the Chairperson may carry out a preliminary consideration of the proceedings, and may —
  - (a) decide any interim or preliminary matter relating to the proceedings;
  - (b) make any order in accordance with rules 12 and 25; and
  - (c) consider any oral or written representations or evidence.
- (3) Despite its preliminary or interim nature, at a preliminary hearing the Chairperson may make a decision on any preliminary issue of substance relating to the proceedings.

## **21 Conduct of full hearing**

- (1) A full hearing is a hearing for the purpose of determining outstanding procedural or substantive issues or disposing of the proceedings, and must be conducted by the Tribunal.
- (2) In any proceedings there may be more than one full hearing.
- (3) The Chairperson must fix the date, time and place of a full hearing and the Clerk must send to each party a notice of the full hearing together with information and guidance as to procedure at the full hearing.
- (4) Subject to rule 17(2), at a full hearing a party is entitled to give evidence, to call witnesses, to question witnesses and to address the Tribunal.
- (5) If a party fails to attend or to be represented (for the purpose of conducting the party's case at the full hearing) at the time and place fixed for the full hearing, the Tribunal may —
  - (a) dismiss or dispose of the proceedings in the absence of that party; or

- (b) adjourn the full hearing to a later date.
- (6) If the Tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (5), it must first consider any information in its possession which has been made available to it by the parties.
- (7) At a full hearing the Tribunal may exercise any powers which may be exercised by the Chairperson under these Rules.

## 22 Expert evidence

- (1) It is the duty of an expert witness to assist the Tribunal on matters within that witness's expertise and this duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.
- (2) No party may call more than two expert witnesses (each of whom must be from different disciplines) without the permission of the Chairman.
- (3) Expert evidence is to be given in a written report unless the Chairman orders otherwise.
- (4) A written report of an expert witness must include —
  - (a) a statement that the expert understands the duty in paragraph (1) and has complied with it;
  - (b) a statement signed by the expert that the expert believes that the facts stated in the report are true;
  - (c) details of the expert's qualification and experience;
  - (d) a statement of the substance of all material instructions whether written or oral on the basis of which the report was written;
  - (e) details of any literature or any other material on which the expert has relied in producing the report;
  - (f) where there is a range of opinion on the matter dealt with in the report —
    - (i) a summary of the range of opinion; and
    - (ii) the reason for the expert's own opinion; and
  - (g) a summary of the conclusion reached in the report.
- (5) No expert witness may give oral evidence unless the expert has provided a written report which has been previously delivered to all parties unless the Chairman otherwise directs.
- (6) Every expert must attend the oral hearing for cross-examination unless the Chairman otherwise directs.

**23 Evidence of witnesses**

- (1) Except where the Chairman otherwise directs, any party who wishes to rely on the evidence of any witness must deliver a statement of the evidence of that witness to the Clerk and must deliver copies to every party at least 14 days before the date of the hearing.
- (2) The witness statement must contain a statement signed by the witness that the witness believes that the facts stated in the witness statement are true.

**PART 5 – DECISIONS****24 Decisions and orders**

- (1) Any decision or order (whether made orally or in writing) must be recorded in writing and signed by the Chairperson.
- (2) At the end of a hearing the Chairperson or Tribunal, as the case may be, must either make any decision or order orally or reserve the decision or order to be given in writing at a later date.
- (3) The Clerk must send the written decision to the parties as soon as practicable, and include guidance on how it may be appealed.
- (4) The Clerk must inform all parties to the proceedings of any order as soon as reasonably practicable after it is made.
- (5) If the parties agree in writing upon the terms of any decision or order the Chairperson or Tribunal may, if he or she or it thinks fit, make the order or decision.
- (6) Any decision or order of the Tribunal may be made by a majority.

**25 Restrictions as to certain decisions and orders**

- (1) This rule applies to a decision or order –
  - (a) as to the entitlement of any party to bring or contest particular proceedings;
  - (b) striking out or amending all or part of any appeal or reply on the ground that it has no reasonable prospect of success;
  - (c) striking out an appeal which has not been actively pursued;
  - (d) striking out an appeal or reply (or part of one) for non-compliance with an order.
- (2) Subject to paragraph (3), before the Chairperson or the Tribunal makes a decision or order to which this rule applies, the Clerk must immediately send notice to –

- (a) the party against whom it is proposed that the order or decision should be made; and
- (b) if another party has made an application for the order or decision, that party,

informing the recipient of the notice of the order or decision to be considered and giving the recipient the opportunity to give reasons why the order or decision should, or should not, be made.

- (3) Paragraph (2) does not —
  - (a) apply to an order described in rule 15(2); or
  - (b) require the Clerk to send such a notice to a party, if that party has been given an opportunity to give reasons orally to the Chairperson or the Tribunal as to why the order should not, or should, be made.
- (4) If a notice required by paragraph (2) —
  - (a) is sent in relation to an order to strike out an appeal which has not been actively pursued; and
  - (b) has been sent to the address specified in the notice of appeal, or in a subsequent notice under rule 33(5), as the address to which notices are to be sent,

the notice is to be treated as received by the addressee unless the contrary is proved.

- (5) A decision or order to which this rule applies may not be made except at a hearing, if one of the parties has so requested.

If no such request has been made such a decision or order may be made in the absence of the parties.

- (6) An appeal or reply or any part of one may be struck out under these Rules only on the grounds stated in paragraph (1)(b) to (d).
- (7) Nothing in this rule prevents the Chairperson deciding under rule 7 or 9 that an appeal or reply should not be accepted.

## 26 Reasons

- (1) The Chairperson or Tribunal must give reasons (either oral or written) for —
  - (a) any decision;
  - (b) any order relating to a matter falling within rule 25(1); and
  - (c) a costs order or a wasted costs order.
- (2) Reasons may be given orally at the time of making the decision or order, but must in any case be given in writing at that time or as soon as reasonably practicable.

- (3) Written reasons must be signed by the Chairperson and sent to all parties as soon as reasonably practicable by the Clerk, who must record the date on which the reasons were sent.
- (4) Written reasons for a decision must include the following information —
  - (a) the issues which the Chairperson or Tribunal has identified as being relevant to the appeal;
  - (b) if some identified issues were not decided, what those issues were and why they were not decided;
  - (c) findings of fact relevant to the issues which have been decided;
  - (d) a concise statement of the applicable law; and
  - (e) how the relevant findings of fact and applicable law have been applied in order to decide the issues.

## **27 The register**

- (1) The Clerk must maintain a register that is to be open for inspection by any person without charge at all reasonable hours.
- (2) The register, or any part of it, may be kept by means of a computer.
- (3) Subject to paragraph (4), the Clerk must enter in the register —
  - (a) the following particulars of every appeal presented to the Tribunal —
    - (i) the case number;
    - (ii) the date the appeal was presented;
    - (iii) the name and address of the appellant;
    - (iv) the name and address of each respondent; and
    - (v) the subject-matter of the appeal.
  - (b) a copy of each of the following documents —
    - (i) any decision;
    - (ii) any order to which rule 25(1) applies; and
    - (iii) the written reasons provided in accordance with rule 26 in relation to a decision or order.
- (4) Written reasons for a decision must be omitted from the register in any case in which evidence has been heard in private and the Chairperson or Tribunal so orders; and in such a case —
  - (a) the Clerk must send the reasons to each of the parties; and
  - (b) if there are proceedings before the High Court relating to the decision or order in question, the Clerk must send the reasons to the court, together with a copy of the entry in the register of the decision or order to which the reasons relate.

**28 Correction of orders etc.**

- (1) Clerical mistakes in any order, decision or reasons, or errors arising in those documents from an accidental slip or omission, may at any time be corrected by certificate by the Chairperson.
- (2) If a document is corrected by certificate under paragraph (1), or if an order, decision or record of reasons is altered in any way by order of the High Court, the Clerk must alter any entry in the register which is so affected to conform with the certificate or order and send a copy of any entry so altered to each of the parties.
- (3) If a document omitted from the register under rule 27(4) is corrected by certificate under this rule, the Clerk must send a copy of the corrected document to the parties; and if there are proceedings before the High Court relating to the order, decision or record of reasons in question, the Clerk must also send a copy to the court together with a copy of the entry in the register of the order, decision or record of reasons, if it has been altered under this rule.

**PART 6 – COSTS****29 Costs**

- (1) In this rule –
  - (a) "**paying party**" means the party by whom a payment under a costs order is to be made;
  - (b) "**receiving party**" means the party in respect of whose costs the payment is to be made.
- (2) The Chairperson or Tribunal must not make a costs order in any proceedings unless any provision of paragraphs (3) to (6) applies.
- (3) The Chairperson or Tribunal may make a costs order if in his or her or its opinion –
  - (a) in bringing the proceedings, that party, or
  - (b) in conducting the proceedings, that party or that party's representative,has acted vexatiously, abusively, disruptively or otherwise unreasonably.
- (4) The Chairperson or Tribunal may make a costs order –
  - (a) where the Chairperson or Tribunal has postponed the day or time fixed for or adjourned a full hearing or preliminary hearing; or
  - (b) against a party who has not complied with an order.

A costs order under sub-paragraph (a) may be against or in favour of any party as respects any costs incurred as a result of the postponement or adjournment.

- (5) A costs order may be made against or in favour of a respondent who has not had a reply accepted in the proceedings, in relation to the conduct of any part which the respondent has taken in the proceedings.
- (6) The Chairperson or Tribunal may make a costs order against an appellant who has withdrawn his or her appeal in respect of the costs which the respondent has incurred on or before the date on which the respondent was informed of the withdrawal.

This is subject to paragraph (7).

- (7) If an appeal is withdrawn only in part, an order under paragraph (6) may be made only in respect of the costs relating to that part of the appeal.
- (8) An application by a party for a costs order may be made at any time during the proceedings, and may be made –
- (a) orally during or at the end of a hearing, or
  - (b) in writing to the Clerk.
- (9) An application for costs which is received by the Clerk later than 21 days from the issuing of the decision determining the appeal must not be accepted or considered by the Chairperson or Tribunal unless he or she or it considers that it is in the interests of justice to do so.

For the purpose of this paragraph the date of issuing of the decision determining the appeal is either –

- (a) the date of the full hearing, if the decision was made orally; or
  - (b) if the decision was reserved, the date on which the written decision was sent to the parties.
- (10) No costs order may be made unless –
- (a) the Clerk has sent notice to the party against whom the order may be made giving the party the opportunity to give reasons why the order should not be made, or
  - (b) that party has been given an opportunity to give reasons orally to the Chairperson or Tribunal as to why the order should not be made.
- (11) The amount of a costs order against the paying party is to be decided in any of the following ways –
- (a) the Chairperson or Tribunal may specify the sum which the paying party must pay to the receiving party;
  - (b) the parties may agree on a sum to be paid by the paying party to the receiving party, and if they do so the costs order is to be for the sum so agreed;
  - (c) the Chairperson or Tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the

receiving party with the amount to be paid being decided by way of assessment in the High Court in accordance with rules of court.

- (12) The Chairperson or Tribunal must have regard to the paying party's ability to pay when considering whether to make a costs order or how much should be paid.
- (13) Any sum due under a costs order is to be payable by the paying party and not by his or her representative.

### **30 Personal liability of representatives for costs**

- (1) The Chairperson or Tribunal may make a wasted costs order against a party's representative.
- (2) In a wasted costs order the Chairperson or Tribunal may disallow, or order the representative of a party to meet, the whole or part of any wasted costs of any party, including an order that the representative repay to his or her client any costs which have already been paid.
- (3) "Wasted costs" means any costs incurred by a party —
  - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative; or
  - (b) which, in the light of any circumstances occurring since they were incurred, the Chairperson or Tribunal considers it unreasonable to expect that party to pay.
- (4) In this rule "representative" means a party's advocate or other representative or any employee of the representative, but it does not include —
  - (a) a representative who is not acting in pursuit of profit with regard to those proceedings; or
  - (b) a representative who is an employee of a party.

For the purposes of paragraph (b), an employee of a party includes an individual employed by the Public Service Commission in respect of whom the party is the stationed employer as defined in section 3(1) of the Public Services Commission Act 2015.

- (5) A wasted costs order may be made in favour of a party whether or not that party is legally represented and such an order may also be made in favour of a representative's own client.
- (6) Before making a wasted costs order, the Chairperson or Tribunal must give the representative a reasonable opportunity to make oral or written representations as to reasons why such an order should not be made.
- (7) The Chairperson or Tribunal must have regard to the representative's ability to pay when considering whether to make a wasted costs order or how much that order should be.



- (8) Where a Chairperson or Tribunal makes a wasted costs order, he or she or it must specify in the order the amount to be disallowed or paid.
- (9) The Clerk must, as soon as reasonably practicable, inform the representative's client in writing –
  - (a) of any proceedings under this rule; or
  - (b) of any order made under this rule against the party's representative.

## **PART 7 – SUPPLEMENTAL**

### **31 Entry on land or premises**

- (1) For the purposes of enabling the Tribunal to better understand the issues involved in the proceedings, the Chairman may make an order requiring the occupier of any land or premises that are relevant to the proceedings to permit the Chairman or the Tribunal (together with any party, party's representative and expert witness as the Chairman considers necessary) to enter and inspect the land or premises.
- (2) The order must specify a date and time for the entry and inspection, which must be at least 7 days after the date when a copy of the order is sent to the occupier.
- (3) The Clerk must send a copy of the order to the parties and notify them of any change in the date or time specified.

### **32 Power to rectify error in procedure**

- (1) If there has been an error of procedure such as a failure to comply with a provision of these Rules –
  - (a) the error does not invalidate any step taken in the proceedings unless the Chairperson or Tribunal so orders; and
  - (b) the Chairperson or Tribunal may make an order to remedy the error.
- (2) The Chairperson or Tribunal may only allow an application to set aside any such step for an error of procedure –
  - (a) if it is made within a reasonable time; or
  - (b) if the applicant has not taken a step after knowledge of the error.
- (3) The application must specify the error of procedure to which the application relates.

**33 Notices etc.**

- (1) Any notice given or document sent under these Rules must (unless the Chairperson or Tribunal orders otherwise) be in writing and may be given or sent —
- (a) by post;
  - (b) by fax or other means of electronic communication if such addresses are provided as a means of communication by the party or person in question; or
  - (c) by personal delivery.
- (2) If a notice or document has been given or sent in accordance with paragraph (1), that notice or document is to be taken, unless the contrary is proved, to have been received by the party to whom it is addressed —
- (a) in the case of a notice or document given or sent by post, on the day on which the notice or document would be delivered in the ordinary course of post;
  - (b) in the case of a notice or document transmitted by fax or other means of electronic communication, on the day on which the notice or document is transmitted;
  - (c) in the case of a notice or document delivered in person, on the day on which the notice or document is delivered.
- (3) All notices and documents required or authorised by these Rules to be sent or given to any person listed below may be sent to or delivered as follows —

<b>Person</b>	<b>Address</b>
the Clerk	the office of the Tribunal
a party	<p>(a) the address specified in the appeal or reply to which notices and documents are to be sent, or in a notice under paragraph (5); or</p> <p>(b) if no such address has been specified, or if a notice sent to such an address has been returned —</p> <ol style="list-style-type: none"> <li>(i) any other known address or place of business of the party in the Island or the United Kingdom, or</li> <li>(ii) if the party is a corporate body, its registered or principal office in the Island or the United Kingdom, or</li> <li>(iii) in any case, such address or place outside the Island and the United Kingdom as the Chairperson may allow</li> </ol>
any other person	that person's address or place of business in the Island or the United Kingdom or, if it is a corporate body or public authority, its registered or principal office in the Island or the United Kingdom

- (4) A notice or document sent or given to the authorised representative of a party must be taken to have been sent or given to that party.
- (5) A party may at any time by notice to the Clerk and to the other party or parties change the address to which notices and documents are to be sent or transmitted.
- (6) The Chairperson may order that there must be substituted service in such manner as he or she may think fit in any case he or she considers appropriate.

### **34 Power to prescribe forms**

- (1) The Chairperson may prescribe forms for use —
  - (a) by appellants for the purpose of making an appeal; and
  - (b) by respondents for the purpose of replying to an appeal;and such other forms as may be expedient for use in proceedings in the Tribunal.
- (2) The Clerk must publish the forms prescribed under paragraph (1) in such manner as the Clerk considers appropriate in order to bring them to the attention of potential appellants and respondents and their advisers.

### **35 Calculation of time limits**

- (1) Any period of time for doing any act required or permitted to be done under any of these Rules, or under any order or decision of the Chairperson or the Tribunal, is to be calculated in accordance with paragraphs (2) to (6).
- (2) If any act must or may be done within a certain number of days of or from an event, the day on which that event occurs is not to be included in the calculation.
- (3) If any act must or may be done not less than a certain number of days before or after an event, the day on which that event occurs is not to be included in the calculation.
- (4) If the Chairperson or the Tribunal gives any order or decision which imposes a time limit for doing any act, the last date for compliance must, wherever practicable, be expressed as a calendar date.
- (5) In rule 17(3) the requirement to send notice of a hearing to the parties not less than 21 days before the date fixed for the hearing must not be construed as a requirement for service of the notice to have been effected not less than 21 days before the hearing date, but as a requirement for the notice to have been placed in the post not less than 21 days before that date.
- (6) If any act must or may have been done within a certain number of days of a document being sent to a person by the Clerk, the date when the

document was sent is to be regarded, unless the contrary is proved, to be the date on the letter from the Clerk which accompanied the document.

**MADE 02 APRIL 2020**

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.