
STATUTORY INSTRUMENTS

2008 No. 0000

TRIBUNALS AND INQUIRIES

The Upper Tribunal Rules 2008

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SCHEDULE — Procedure applicable to first instance cases in the Upper
Tribunal

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The Tribunal Procedure Committee has made and the Lord Chancellor has allowed the following Rules in exercise of the power conferred by sections 10, 22 and 29 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(a), and in accordance with paragraph 28(1) of that Schedule.

PART 1

Introduction

Citation, commencement, application and interpretation

1.—(1) These Rules may be cited as the Upper Tribunal Rules 2008 and come into force on 3rd November 2008.

(2) These Rules apply to proceedings before the Tribunal.

(3) In these Rules—

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

“appellant” means a person who commences proceedings (whether an appeal, a reference or otherwise) before the Tribunal, or a person substituted as an appellant under rule [8] (substitution and addition of parties);

“armed forces case” means an appeal under the Pensions Appeal Tribunals Act 1943 or the War Pensions (Administrative Provisions) Act 1919;

“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 document or copy in a legible form or in a form which can (taking into account the resources of the recipient) be readily made into a legible form;

“final determination” means a decision of the Tribunal which disposes of proceedings, but a refusal of an application for permission to appeal is not a final determination;

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

“party” means a person who is (or was at the time of a final determination) an appellant or respondent in proceedings before the Tribunal;

“permission” includes leave in cases arising under the law of Northern Ireland;

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

“respondent” means—

- (a) a person against whom an appellant brings proceedings;
- (b) in proceedings challenging the decision of another tribunal, a person other than the appellant who was a party to the proceedings in that other tribunal when the decision being challenged was made; or
- (c) a person substituted or added as a respondent under rule [8] (substitution and addition of parties);

“Tribunal” means the Upper Tribunal;

“working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(b).

(a) 2007 c.15.

(b) 1971 c.80.

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

- 2.—(1) The overriding objective is to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes—
- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay.
- (3) The Tribunal must seek to give effect to the overriding objective when it—
- (a) exercises any power under these Rules; or
 - (b) interprets any rule.
- (4) Parties to Tribunal proceedings must—
- (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.

Arbitration and alternative dispute resolution

- 3.—(1) The Tribunal must bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute and explain the procedure to them and, if the parties wish, must facilitate the use of the procedure if it would not cause undue delay.
- (2) Part 1 of the Arbitration Act 1996 does not apply to proceedings before the Tribunal.

PART 2

General powers and provisions

Power to delegate

- 4.—(1) The Tribunal may delegate to staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) a function permitted or required by these Rules to be done by the Tribunal if—
- (a) the act is of a purely administrative nature; or
 - (b) the Senior President of Tribunals has approved the delegation.
- (2) The approval referred to at paragraph (1)(b) may apply generally to the delegation of specified functions to members of staff of a specified description in specified circumstances.
- (3) Within 14 days of the date that notification of a decision made by a member of staff under paragraph (1)(b) is sent to a party, that party may apply in writing to the Tribunal for that decision to be reconsidered by a judge.

Case management powers

- 5.—(1) The Tribunal may give directions at any time in relation to the conduct or disposal of proceedings.
- (2) In particular, and without restriction on the general power to give directions under paragraph (1), the Tribunal may by directions—
- (a) extend the time for complying with any rule, practice direction or direction (unless such extension would conflict with a provision of another enactment) if—

- (i) the party requiring the extension has shown special reasons why time limit cannot be complied with; and
 - (ii) the Tribunal considers the extension to be in the interests of justice;
 - (b) shorten the time for complying with any rule, practice direction or direction (except where such shortening would conflict with a provision of another enactment);
 - (c) consolidate or hear together two or more sets of proceedings or an issue raised in two or more sets of proceedings, or treat a case as a lead case;
 - (d) permit or require a party to amend a document;
 - (e) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
 - (f) permit a party to withhold disclosure of a document that the party would otherwise be required to disclose;
 - (g) deal with an issue in the proceedings as a preliminary issue;
 - (h) hold a hearing to consider any matter, including a case management hearing or conference;
 - (i) decide the form of any hearing;
 - (j) adjourn or postpone a hearing;
 - (k) require a party to produce the bundle for a hearing;
 - (l) stay (or, in Scotland, sist) proceedings;
 - (m) in an appeal against the decision of a lower tribunal, stay execution of that decision;
 - (n) stay execution of its own decision pending an appeal or review of that decision;
 - (o) in proceedings to which rule [20(2)] (procedure in first instance proceedings) applies, dismiss a case if there is no reasonable prospect of it succeeding.
- (3) Rule [6] (directions) sets out the procedures for applying for and giving directions.

Directions

6.—(1) The Tribunal may give a direction at any time, including a direction amending, suspending or setting aside an earlier direction.

(2) The Tribunal may give a direction—

- (a) on the application of one or more of the parties; or
- (b) on its own initiative.

(3) An application for directions must include the reasons for making that application.

(4) An application for directions may be made either—

- (a) by sending or delivering a written application to the Tribunal; or
- (b) orally during the course of a hearing.

(5) The Tribunal may give a direction which states that failure by a party to comply with the direction could lead to the striking out of that party's case, or part of it.

(6) Unless the Tribunal considers that there is a good reason not to do so, the Tribunal must send written notice of any direction to every party to the proceedings and any other person required to take any action pursuant to the direction.

Failure to comply with rules, practice directions or tribunal directions

7.—(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as it considers just, which may include—

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

Striking out a party's case

8.—(1) The Tribunal must strike out the whole or a part of a party's case if the Tribunal does not have jurisdiction in relation to the case or that part of the case.

(2) The Tribunal may strike out the whole or a part of a party's case if—

- (a) that party has failed to comply with a direction which stated that failure to comply with the direction could lead to the striking out of the party's case or part of it; or
- (b) that party has failed to co-operate with the Tribunal to such an extent that it is impossible for the Tribunal to conduct the proceedings fairly and justly.

(3) The Tribunal may not strike out the whole or a part of a party's case without first giving that party an opportunity to make representations in relation to the proposed striking out.

(4) A party whose case, or part of it, has been struck out may apply for the case, or part of it, to be reinstated by sending a written application to the Tribunal so that it is received within 28 days of the date that the Tribunal sent notification of the striking out to that party.

Substitution and addition of parties

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

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

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

Orders for costs

10.—(1) Subject to the following provisions of this rule, the Tribunal may, on the application of a party or on its own initiative, make an order awarding costs (or, in Scotland, expenses)—

- (a) under section 29(4) of the 2007 Act (wasted costs), if the Tribunal considers that the circumstances justify it; or
- (b) if the Tribunal considers that a party or a party's legal representative has acted improperly or unreasonably in bringing or conducting the proceedings.

(2) In proceedings on appeal from another tribunal, the Tribunal—

- (a) may not make any order under paragraph 1(b) or (c) unless that other tribunal had jurisdiction to make such an order; and
- (b) may make any other order awarding costs (or, in Scotland, expenses) that that other tribunal had jurisdiction to make.

(3) The Tribunal may not make an order under paragraphs (1) or (2) against a person (the "paying person") without first—

- (a) considering that person's financial means; and
- (b) giving that person an opportunity to make representations.

(4) An order under paragraph (1) must not relate to any costs (or, in Scotland, expenses) other than those incurred in connection with the proceedings by the person in whose favour the order is made (the "receiving person").

(5) The amount of costs to be paid under an order under paragraph (1) may be ascertained by—

- (a) summarily assessment by the Tribunal, provided that the amount does not exceed £10,000;
 - (b) agreement of a specified sum by the paying party and the receiving party; or
 - (c) assessment (on either the standard or the indemnity basis) of the whole or a specified part of the costs (or, in Scotland, expenses) incurred by the receiving person, if not agreed.
- (6) Following an order under paragraph (5)(c) a party may apply—
- (a) in England and Wales, to the county court for the costs to undergo detailed assessment;
 - (b) in Scotland, to an Auditor of Court for the taxation of accounts of expenses; or
 - (c) in Northern Ireland, to the county court for the costs to be taxed.
- (7) A person making an application for an order under this rule must—
- (a) send the application to the Tribunal and to the proposed paying person, so that it is received within 14 days of the Tribunal sending the decision notice recording its final determination; and
 - (b) send a schedule of the costs or expenses claimed with the application.
- (8) The Tribunal may not make an order under paragraph (1)(b) or (c) in proceedings arising out of a reference under section 4 of the Forfeiture Act 1982(a).

Power to award expenses

11. The Tribunal may pay reasonably incurred expenses or allowances to a person who in Tribunal proceedings—

- (a) gives evidence;
- (b) produces documents; or
- (c) attends a hearing.

Representatives

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

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

(3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction, other than signing a witness statement or a notice under paragraph (2), may be done by or provided to the representative of that party.

(4) If the Tribunal or a party receives notice of the appointment of a representative from the represented party, the Tribunal or party—

- (a) may assume that the representative is and remains authorised until it receives written notification to the contrary from the representative or the represented party; and
- (b) must provide to the representative any document which is required to be sent to the represented party, and need not provide that document to the represented party.

(5) At a hearing a party may be accompanied by another person, who may assist in presenting the party's case.

(6) Paragraphs (2) to (4) do not apply to a person accompanying a party in accordance with paragraph (5).

Funding of legal services

13. If a party is granted funding of legal services at any time, that party must—

(a) 1982 c.34.

- (a) (i) if the funding is granted by the Legal Services Commission, send a copy of the funding notice to the Tribunal; or
- (ii) if funding is granted by the Scottish Legal Aid Board, send a copy of the legal aid certificate to the Tribunal; and
- (b) notify every other party that funding has been granted.

Calculating time

14.—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

Sending and delivery of documents

15.—(1) Any document to be sent or delivered to the Tribunal under these Rules must be—

- (a) sent by prepaid post or delivered by hand to the address specified for the proceedings;
- (b) sent by fax to the number specified for the proceedings (if any); or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) A party may provide to the Tribunal and to all other parties, and if it does so must accept delivery of documents through, a fax number, email address or any other electronic means of communication.

(3) A party may inform the Tribunal and all other parties that a particular form of communication (other than pre-paid post or personal delivery) should not be used to send documents to that party.

(4) The Tribunal and each other party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

Use of documents and information

16.—(1) No document or information disclosed for the purposes of Tribunal proceedings may be used otherwise than in connection with those proceedings.

(2) The Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(3) The Tribunal must give a direction prohibiting the disclosure of a document or information to a person if it is satisfied that such disclosure would be likely to cause that person or some other person serious harm.

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

- (a) exclude the relevant document or information from any documents that will be provided to the second party; and
- (b) provide to the Tribunal the excluded document or information, and the reasons for its exclusion, so that the Tribunal may decide whether the information should be disclosed to the second party or should be the subject of a direction under paragraph (3).

(5) The Tribunal may conduct proceedings as appropriate in order to give effect to a direction given under paragraph (3), including, where necessary, exclude a person from part of a hearing.

(6) If the Tribunal gives a direction under paragraph (3) which prevents disclosure to a party who has a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if it is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative would not be likely to act contrary to paragraphs (1) or (6).

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

Summoning of witnesses, production of documents and administering oaths

17.—(1) On the application of a party or on its own initiative, the Tribunal may by summons (or, in Scotland, citation) require any person—

- (a) to attend as a witness at a hearing at the time and place specified in the summons or citation; and
- (b) to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) The Tribunal may only require a person to attend under paragraph (1)(a) if—

- (a) the person required to attend has been given at least 14 days' notice of the hearing, or has consented to shorter notice; and
- (b) the summons or citation makes provision for the person's necessary expenses of attendance to be paid, and states the payer, unless the person is a party to the proceedings.

(3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.

(4) A summons or citation under this rule must—

- (a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons, if they have not had an opportunity to object to it; and
- (b) state the consequences of failure to comply with the summons.

(5) When a summons or citation is issued, the Tribunal must send a copy of the summons to each party to the proceedings.

(6) The Tribunal may require any witness to give evidence on oath or affirmation, and may administer an oath or affirmation in due form for that purpose.

Confidentiality in child support or child trust fund cases

18.—(1) Paragraph (2) applies—

- (a) in proceedings arising out of a case brought under the Child Support Act 1991, except an appeal against a reduced benefit decision—

- (i) if a non-resident parent or parent with care has, within 14 days of an enquiry from the Secretary of State, notified the Secretary of State that they would like the information specified in paragraph (2)(a)(i) and (b) which relates to them to remain confidential; and
- (ii) to the extent that such information is not already known to each other party; and

- (b) in proceedings arising out of a case brought under the Child Trust Funds Act 2004—

- (i) if a relevant person, or a local authority with parental responsibility in relation to the eligible child, has, when notice of appeal is given to the Board or within 14 days of an enquiry from the Board, notified the Board that they would like the information specified in paragraph (2)(a)(ii) and (b) which relates to the eligible child to remain confidential; and
- (ii) to the extent that such information is not already known to each other party.

(2) In the circumstances specified in paragraph (1) the Secretary of State and the Tribunal must take appropriate steps to secure the confidentiality of—

- (a) the address of—
 - (i) the non-resident parent, the parent with care, the child, a parent of the child or any other person with care of the child, as the case may be; or
 - (ii) the eligible child or any relevant person; and
- (b) any information which could be reasonably expected to lead to the location of any person specified in sub-paragraph (a).

(3) In this rule—

“the Board” means the Commissioners of Inland Revenue;

“eligible child” has the meaning set out in section 2 of the Child Trust Funds Act 2004;

“non-resident parent” and “parent with care” have the meanings set out in section 54 of the Child Support Act 1991;

“parental responsibility” has the meaning set out in section 3(9) of the Child Trust Funds Act 2004;

“reduced benefit decision” has the meaning set out in section 46(10)(b) of the Child Support Act 1991; and

“relevant person” has the meaning set out in section 22(3) of the Child Trust Funds Act 2004.

Enforcement of requirements imposed by the First-tier Tribunal

19.—(1) Paragraphs (2) and (3) apply where the First-tier Tribunal refers to the Tribunal a person who has failed to comply with a requirement imposed by the First-tier Tribunal—

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

(2) The Tribunal may deal with such non-compliance as though the requirement had been imposed by the Tribunal.

Withdrawal

20.—(1) A person applying to the Tribunal for leave to appeal may withdraw the application at any time before it is determined by sending or delivering written notice to the Tribunal.

(2) In any other case, a party to the proceedings may withdraw their case, or any part of it, with the Tribunal’s permission.

(3) After a party has withdrawn their case the Tribunal may, on the application of the party, reinstate the case.

(4) After a party has withdrawn their case that party may not bring new proceedings in relation to the same matter, or present the same case, without the consent of the Tribunal.

(5) The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order dismissing the proceedings and making such other appropriate provisions as the parties have agreed.

PART 3

First instance proceedings in the Upper Tribunal

Procedure for corresponding Chamber of the First-tier Tribunal to be followed

21.—(1) Paragraph (2) applies to proceedings before the Tribunal which are not—

- (a) appeals against a decision made by another tribunal before the Tribunal under section 11 of the 2007 Act or pursuant to section 32, 33 or 34 of the 2007 Act; or
- (b) “judicial review” proceedings before the Tribunal pursuant to section 15 of the 2007 Act.

(2) Subject to any other provision in these Rules, in the proceedings of the types listed in the first column of the table in the Schedule, the Tribunal must follow the procedure in the corresponding part of the second column of that table, with such amendments as may be set out in the corresponding part of the third column of that table.

PART 4

Appeals to the Upper Tribunal from other tribunals

Upper Tribunal’s powers, authority and jurisdiction

22. Subject to any provision of an Act or any other provision in these Rules, in cases on appeal from another tribunal the Tribunal has the same powers as the tribunal which made the decision being challenged.

Application to the Upper Tribunal for permission to appeal

23.—(1) This rule applies to a person who wishes to exercise a right of appeal—

- (a) under section 11 of the 2007 Act (right to appeal to the Upper Tribunal); or
- (b) under an order made under section 32 (appeals to Upper Tribunal from tribunals in Wales), section 33 (appeals to Upper Tribunal from tribunals in Scotland) or section 34 (appeals to Upper Tribunal from tribunals in Northern Ireland) of the 2007 Act.

(2) The person may apply to the Tribunal for permission to appeal only if—

- (a) that person has made an application for permission to appeal to the lower tribunal which gave the decision challenged; and
- (b) that application has been refused.

(3) In order to make an application under paragraph (2) the applicant must send a notice of application to the Tribunal so that it is received no later than a month after the date on which the relevant lower tribunal sent notice to the applicant of refusal of permission to appeal.

(4) The notice of application must state—

- (a) the name and address of the applicant;
- (b) the name and address of the representative (if any) of the applicant;
- (c) an address where documents for the applicant may be sent or delivered;
- (d) the name and address of any respondent or respondents;
- (e) details (including full reference) of the decision challenged;
- (f) the grounds on which the applicant intends to rely; and
- (g) whether the applicant would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(5) The applicant must provide with the notice of application copies of—

- (a) any written record of the decision being challenged;

- (b) any separate written statement of reasons for that decision; and
 - (c) the notice of refusal of permission to appeal from the lower tribunal.
- (6) If the applicant does not provide all of the information or documents listed in paragraphs (4) and (5)—
- (a) the applicant must give a reason why it is not possible to provide the information or documents not provided; and
 - (b) if the applicant does not give any such reason, the Tribunal must refuse the application.
- (7) If the applicant provides the notice of application to the Tribunal later than required by paragraph (1) or an extension of time allowed under rule [5(2)(a)], the notice must include a request for an extension of time under that rule and reasons why the notice was not provided in time.
- (8) When the Tribunal receives the notice of application it must send a copy of the notice and any accompanying documents to each respondent.

Decision in relation to permission to appeal

24.—(1) The Tribunal must send to each party to the proceedings to which the proposed appeal relates a written record of—

- (a) its decision in relation to the application for permission to appeal; and
- (b) the reasons for any refusal of the application, or any limitations or conditions on permission.

(2) If the Tribunal grants leave to appeal—

- (a) subject to any direction by the Tribunal, the notice of application stands as the applicant's notice of appeal; and
- (b) the Tribunal may, with the consent of the appellant and each respondent, treat and determine the application as an appeal.

(3) Paragraph (4) applies where the Tribunal determines an application for leave to appeal from the Health, Education and Social Care Chamber of the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the Special Educational Needs Tribunal for Wales without a hearing, and—

- (a) refuses permission to appeal; or
- (b) gives permission to appeal on limited grounds or subject to conditions.

(4) In the circumstances set out at paragraph (3) the applicant may request that the decision be reconsidered at a hearing.

Appellant's notice of appeal where a lower tribunal gives permission to appeal

25.—(1) If a lower tribunal gives permission for a party to appeal to the Tribunal, the appellant must send a notice of appeal to the Tribunal so that it is received no later than a month after the date on which the appellant received notification of the grant of leave to appeal from the lower tribunal.

(2) The notice of appeal must state—

- (a) the name and address of the appellant;
- (b) the name and address of the representative (if any) of the appellant;
- (c) an address where documents for the appellant are to be sent or delivered;
- (d) the name and address of any respondent or respondents;
- (e) details (including full reference) of the decision challenged;
- (f) the grounds on which the applicant intends to rely; and
- (g) whether the appellant would prefer the case to be dealt with at a hearing if the Tribunal considers it appropriate.

(3) The appellant must provide with the notice of appeal copies of—

- (a) any written record of the decision being challenged;
- (b) any separate written statement of reasons for that decision; and
- (c) the notice of grant of permission to appeal from the lower tribunal.

(4) If the appellant provides the notice of appeal to the Tribunal later than required by paragraph (1) or an extension of time allowed under rule [5(2)(a)], the notice must include a request for an extension of time and reasons why the notice was not provided in time.

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

Response to the notice of appeal

26.—(1) A respondent may send to the Tribunal a response to the notice of appeal so that it is received no later than a month after the later of the dates on which the Tribunal sent to the respondent—

- (a) a copy of the notice of appeal; or
- (b) written notice that the Tribunal has granted leave to appeal.

(2) The response must state—

- (a) the name and address of the respondent;
- (b) the name and address of the representative (if any) of the respondent;
- (c) an address where documents for the respondent may be sent or delivered;
- (d) whether the respondent opposes the appeal;
- (e) the grounds on which the respondent intends to rely; and
- (f) whether the respondent would prefer the case to be dealt with at a hearing if the Tribunal considers it appropriate.

(3) If a respondent wishes to exercise a right of appeal falling within rule [23(1)] (application for permission to appeal) in relation to the same decision as the appellant’s appeal, the respondent must provide a response in accordance with paragraph (1) and must include in the response an application for permission to appeal which complies with the requirements of rule [23(4) to (7)].

(4) An application for permission to appeal by the respondent under paragraph (3) must be treated by the Tribunal and the other parties as if it were an application under rule [23].

(5) If the respondent provides the response to the Tribunal later than required by paragraph (1) or an extension of time allowed under rule [5(2)(a)], the notice must include a request for an extension of time and reasons why the notice was not provided in time.

(6) When the Tribunal receives the response it must send a copy of the response and any accompanying documents to the appellant and each other party.

Directions as to further written submissions

27. The Tribunal may, on the application of a party or of its own initiative, make directions as to further written submissions in reply to the notice of appeal or any response.

PART 5

“Judicial Review” Proceedings in the Upper Tribunal

Interpretation

28. In this Part—

“interested party” means any person (other than an applicant or a respondent) who is directly affected by the outcome sought in proceedings; and

“judicial review proceedings” means proceedings within the jurisdiction of the Tribunal pursuant to section 15 of the 2007 Act.

Applications for permission to bring “judicial review” proceedings

29.—(1) If a court has not already given the applicant permission to proceed with judicial review proceedings, the applicant must make an application to the Tribunal for such permission.

(2) The applicant must send any application under paragraph (1) to the Tribunal —

- (a) promptly; and
- (b) unless any other enactment specifies a shorter time limit, so that it is received by the Tribunal no later than 3 months after the date of the decision to which the application relates.

(3) The application must be made in writing and state—

- (a) the name and address of the applicant, the respondent and any other person whom the applicant considers to be an interested party (which, if the application relates to proceedings in a court or tribunal, must include all parties to those proceedings);
- (b) the name and address of the applicant’s representative (if any);
- (c) an address where documents for the applicant may be sent or delivered;
- (d) details of the decision challenged (including date, reference and decision maker);
- (e) a statement that the application is for permission to bring judicial review proceedings and the outcome that the applicant seeks; and
- (f) the facts and grounds on which the applicant intends to rely.

(4) The applicant must send with the application—

- (a) a copy of any written record of the decision in the applicant’s possession or control; and
- (b) copies of any other documents in the applicant’s possession or control which the Tribunal or any other party will require in order properly to understand the application.

(5) If the applicant provides the application to the Tribunal later than required by paragraph (2) or an extension of time allowed under rule [5(2)(a)], the notice must include a request for an extension of time and reasons why the notice was not provided in time.

(6) When the Tribunal receives the notice of application it must send a copy of the notice and any accompanying documents to each person named in the application as a respondent or interested party.

Acknowledgment of Service

30.—(1) Any person who receives a copy of an application for permission made under rule [29] (application for permission to bring “judicial review” proceedings) and wishes to take part in the proceedings must send to the Tribunal a written acknowledgment of service so that it is received no later than 23 days after the date that the Tribunal sent a copy of the application to them.

(2) An acknowledgment of service under paragraph (1) must state—

- (a) whether that person intends to oppose the application for permission;
- (b) that person’s grounds for any opposition under sub-paragraph (a), or any other submission or information which it considers may assist the Tribunal; and
- (c) the name and address of any person not named in the application as a respondent or interested party whom the person filing the acknowledgment considers to be an interested party.

(3) A person served with the application who does not file an acknowledgment of service may not take part in the application for permission but may take part in the subsequent proceedings if permission is given.

Consideration and notification of application for permission

31.—(1) The Tribunal must make an order recording its decision in relation to permission and the reasons for any refusal of permission or conditions imposed, and must send a copy of the order to the applicant and any person identified as a respondent or an interested party.

(2) The Tribunal—

- (a) must consider an application for permission without a hearing unless it makes an order under sub-paragraph (b);
- (b) may, if it considers it appropriate, direct that a hearing shall take place to consider an application for permission.

(3) If the Tribunal, without a hearing, refuses an application for permission or allows an application for permission subject to conditions, the applicant may not appeal but may make a written application that the decision be reconsidered at a hearing.

(4) An application under paragraph (3) must be sent to the Tribunal so that it is received no later than 9 days after the date that the Tribunal sent the reasons for the decision to the applicant.

(5) The Tribunal must send written notice of the hearing to the applicant and to any person who has filed an acknowledgment of service, at least 4 working days before the hearing.

Responses

32.—(1) Any person who receives an order giving permission and wishes to contest the claim or support it on additional grounds must file detailed grounds for contesting or supporting the claim not more than 37 days after the Tribunal sent a copy of the order to them.

Applicant seeking to rely on additional grounds

33. The applicant may not rely on any grounds other than those set out in the application for permission without the permission of the Tribunal.

Power to hear any person

34.—(1) The applicant and any respondent may—

- (a) file evidence; and
- (b) make representations at a hearing.

(2) Any other person may apply to the Tribunal for permission to—

- (a) file evidence; or
- (b) make representations at a hearing.

PART 6

Hearings

Determination with or without a hearing

35.—(1) Subject to paragraph (2) and rule [24(3) and (4)] (permission to appeal in certain cases), the Tribunal may make any determination without a hearing.

(2) The Tribunal must have regard to any view expressed by a party when considering whether to hold a hearing to consider any matter, and the form of any hearing.

Time and place of hearings

36.—(1) The Tribunal must give the parties reasonable notice of the time and place of any hearing (including any adjourned or postponed hearing) and any changes to the time and place of any hearing.

(2) The period of notice under paragraph (1) must be at least 14 days unless all parties agree to a hearing at shorter notice.

Public and private hearings

37.—(1) Except as otherwise provided in this rule all hearings must be held in public.

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

(3) Where a hearing, or part of it, is to be held in private, the Tribunal may, if there is good reason to do so—

(a) exclude particular individuals from the hearing or part of it; or

(b) permit particular additional individuals to attend the hearing or part of it.

(4) The Tribunal may give a direction excluding from any hearing, or part of it, any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing.

Hearings in a party's absence

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

(a) (i) is satisfied that the party was duly notified of the hearing; and

(ii) is not aware of any good reason for the failure to attend; or

(b) otherwise considers that it is in the interests of justice to proceed with the hearing.

PART 7

Decisions

Notice of and reasons for final determination

39. The Tribunal must send to each party—

(a) a decision notice recording its final determination; and

(b) unless the determination is made with the consent of the parties, a written record its reasons for any final determination.

Publication and notification of decisions

40. The Tribunal may, where appropriate—

(a) publish a decision or the reasons for a decision; or

(b) send notice of a decision or the reasons for it to any person.

PART 8

Correcting, setting aside, reviewing and appealing decisions of the Upper Tribunal

Clerical mistakes and accidental slips or omissions

41. The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision or record of a decision by—

- (a) sending notification of the amended decision, or a copy of the amended record, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision or record.

Setting aside a final determination

42.—(1) The Tribunal may set aside a final determination, and require the matter to be decided afresh, if—

- (a)
 - (i) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party’s representative;
 - (ii) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
 - (iii) a party, or a party’s representative, was not present at a hearing related to the proceedings; or
 - (iv) there has been any other procedural irregularity in the proceedings; and
- (b) the Tribunal considers that it is in the interests of justice to do so.

(2) A party applying for a final determination to be set aside under paragraph (1) must send a written application to the Tribunal so that it is received no later than a month after the date on which the Tribunal sent notice of the final determination to the party.

Reviews of decisions

43.—(1) In this rule “review” means the review of a decision by the Tribunal under section 10 of the 2007 Act (review of decision of Upper Tribunal).

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

- (a) on an application in accordance this rule; or
- (b) on its own initiative at any time.

(3) A party may apply to the Tribunal for a review of a final determination if—

- (a) the Tribunal has made an error of law in the decision, and a legal argument which could have had a material effect on the outcome of the case was not raised in submissions to the Tribunal or by the Tribunal itself; or
- (b)
 - (i) the final determination was in an armed forces case, proceedings arising out of a reference under section 4 of the Forfeiture Act 1982, or proceedings to which rule 21(2) (procedure in first instance proceedings) applies; and
 - (ii) new evidence which could have had a material effect on the outcome of the case has become available since the decision was made.

(4) A party applying for a decision to be reviewed under paragraph (3) must send a written application to the Tribunal so that it is received no later than a month after the date on which the Tribunal sent notice of the decision to that party.

(5) An application under paragraph (4) must—

- (a) identify the decision of the Tribunal to which it relates;
- (b) identify the basis on which the application may be made under paragraph (3); and

(c) state the result the party making the application seeks.

(6) The Tribunal must notify the parties in writing of the outcome of any application for review, and of any review, unless the Tribunal undertakes the review on its own initiative and decides to take no action following the review.

(7) If the Tribunal sets aside or amends a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (6) must state that any party that did not have an opportunity to make representations may apply for the setting aside or amendment to be reversed.

(8) If the Tribunal sets aside or amends a decision following a review, the Tribunal must also make any necessary amendment to any document published by it in relation to the decision.

Application for permission to appeal

44.—(1) In this rule “appeal” means the exercise of a right of appeal under section 13 of the 2007 Act (right to appeal to Court of Appeal etc.).

(2) A party seeking permission to appeal against a decision of the Tribunal must send or deliver to the Tribunal a written application permission to appeal so that it is received no later than a month after the later of the dates that the Tribunal sent to the party—

- (a) written reasons for the decision of the Tribunal;
- (b) notification of a new or amended decision following a review; or
- (c) notification that an application for the decision to be set aside has been unsuccessful, provided that that application was made within the time stipulated in rule [42] (setting aside a final determination).

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

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

(4) The Tribunal must send to the parties as soon as practicable—

- (a) a record of its decision; and
- (b) if the Tribunal has refused to grant permission—
 - (i) reasons for such refusal; and
 - (ii) notification of the right to make an application to the relevant appellate court for permission to appeal and the time within which, and the method by which, such application must be made.

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

Power to consider applications as different types of applications

45.—(1) If a party applies for the correction, setting aside or review of a decision, or for permission to appeal, the Tribunal may treat the application as an application for any other one of those things.

(2) Paragraph (1) applies subject to the decision being excluded from review or appeal as an “excluded decision” under section 13 of the 2007 Act.

SCHEDULE

Rule [21(2)]

Procedure applicable to first instance cases in the Upper Tribunal

<i>Proceedings</i>	<i>Applicable procedure</i>	<i>Amendments</i>
Appeal under section 4 of the Safeguarding Vulnerable Groups Act 2006 (c.47)	Rules [16] and [17] of the First-tier Tribunal Rules (Health, Education and Social Care Chamber) 2008	