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STATUTORY INSTRUMENTS

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**2008 No. 0000**

**TRIBUNALS AND INQUIRIES**

**The Upper Tribunal Rules 2008**

*Made* - - - - 2008  
*Laid before Parliament* 2008  
*Coming into force* - - 3rd November 2008

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After consulting in accordance with paragraph 28(1) of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007<sup>(a)</sup> the Tribunal Procedure Committee has made and the Lord Chancellor has allowed the following Rules in exercise of the power conferred by sections 10, 16(9), 22 and 29 of, and Schedule 5 to, that Act.

## 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 Upper Tribunal.

(3) In these Rules any reference to a Part or rule alone is a reference to a Part or rule in these Rules.

(4) In these Rules—

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

“appellant” means a person who makes an appeal to, or applies for permission to appeal to, the Upper Tribunal, or a person substituted as an appellant under rule [9] (substitution and addition of parties);

“applicant” means a person who applies for permission to bring, or does bring, judicial review proceedings before the Upper Tribunal;

“disability discrimination in schools case” means proceedings before the Upper Tribunal on appeal from the decision of another tribunal in proceedings concerning disability discrimination in the education of a child;

“document” means anything in which information is recorded in any form, and an obligation under these Rules or any practice direction or direction to provide or allow access to a document or a copy of a document for any purpose means, unless the Upper 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 be readily made into a legible form;

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

“interested party” means a person who is directly affected by the outcome sought in judicial review proceedings, and has been named as an interested party under rule [27 or 28] (judicial review), or has been substituted or added as an interested party under rule [9] (substitution and addition of parties);

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

“legal representative” means an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990<sup>(b)</sup>, an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland;

“mental health case” means proceedings before the Upper Tribunal on appeal from the decision of another tribunal in proceedings under the Mental Health Act 1983<sup>(c)</sup> or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984<sup>(d)</sup>;

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(a) 2007 c.15.  
(b) 1990 c.41.  
(c) 1983 c.20.  
(d) 1984 c.47.

“party” means a person who is (or was at the time that the Upper Tribunal disposed of the proceedings) an appellant, an applicant, a respondent or an interested party in proceedings before the Upper 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) in an appeal, or application for permission to appeal, against a decision of another tribunal, any person other than the appellant who—
  - (i) was, or should have been, a party to the proceedings before that other tribunal; or
  - (ii) otherwise has a right of appeal against the decision of the other tribunal and has given notice to the Upper Tribunal that they wish to be a party to the appeal;
- (b) in an appeal against any other decision, the person who made the decision;
- (c) in judicial review proceedings, the person named by the applicant as the respondent;
- (d) in a reference under the Forfeiture Act 1982(a), the person whose eligibility for a benefit or advantage is in issue; or
- (e) a person substituted or added as a respondent under rule [9] (substitution and addition of parties);

“special educational needs case” means proceedings before the Upper Tribunal on appeal from the decision of another tribunal in proceedings concerning the education of a child with special educational needs;

“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).

### **Overriding objective and parties’ obligation to co-operate with the Upper Tribunal**

**2.**—(1) The overriding objective of these Rules is to enable the Upper Tribunal 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 Upper Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Upper Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Upper Tribunal to further the overriding objective; and
- (b) co-operate with the Upper Tribunal generally.

### **Arbitration and alternative dispute resolution**

**3.**—(1) The Upper Tribunal should seek, where appropriate—

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(a) 1982 c.34.  
(b) 1971 c.80.

- (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and
- (b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of the procedure.

(2) Part 1 of the Arbitration Act 1996<sup>(a)</sup> does not apply to proceedings before the Upper Tribunal.

## PART 2

### General powers and provisions

#### Delegation to staff

4.—(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Upper Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date that the Upper Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may apply in writing to the Upper Tribunal for that decision to be considered afresh by a judge.

#### Case management powers

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2) but subject to any specific provisions in these Rules, the Upper Tribunal may by direction—

- (a) extend or shorten the time for complying with any rule, practice direction or direction;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case;
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management hearing;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;
- (j) stay (or, in Scotland, sist) proceedings;
- (k) transfer proceedings to another court or tribunal if that other tribunal has jurisdiction in relation to the proceedings and, because of a change of circumstances since the proceedings were started—
  - (i) the Upper Tribunal no longer has jurisdiction in relation to the proceedings; or

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<sup>(a)</sup> 1996 c.23.

- (ii) the Upper Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (l) suspend the effect of its own decision pending an appeal or review of that decision;
- (m) in an appeal against the decision of a lower tribunal, stay execution of that decision;
- (n) require any lower tribunal whose decision is the subject of proceedings before the Upper Tribunal to provide reasons for the decision, or other information in relation to the decision or the proceedings in the lower tribunal.

#### **Procedure for applying for and giving directions**

**6.**—(1) The Upper Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made—

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

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

(4) Unless the Upper Tribunal considers that there is good reason not to do so, the Upper Tribunal must send written notice of any direction to every party to the proceedings and to any other person affected by the direction.

(5) If a party wishes to challenge a direction which the Upper Tribunal has given, the party may do so by applying for a second direction which amends, suspends or sets aside the first direction.

#### **Failure to comply with rules etc.**

**7.**—(1) An irregularity resulting from a failure to comply with any requirement in 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 Upper 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);
- (d) except in mental health cases, restricting a party's participation in the proceedings; or
- (e) exercising its power under section 25 of the 2007 Act (supplementary powers of the Upper Tribunal).

(3) Paragraph (4) applies where a person 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).

(4) The Upper Tribunal may exercise its power under section 25 of the 2007 Act in relation to such non-compliance as if the requirement had been imposed by the Upper Tribunal.

#### **Striking out a party's case**

**8.**—(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant or applicant has failed to comply with a direction that stated that failure by the appellant

or applicant to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The Upper Tribunal must strike out the whole or a part of the proceedings if the Upper Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

(3) The Upper Tribunal may strike out the whole or a part of the proceedings if—

- (a) the appellant or applicant has failed to comply with a direction which stated that failure by the appellant or applicant to comply with the direction could lead to the striking out of the proceedings or part of them;
- (b) the appellant or applicant has failed to co-operate with the Upper Tribunal to such an extent that the Upper Tribunal cannot deal with the proceedings fairly and justly; or
- (c) in proceedings which are not an appeal from the decision of another tribunal or judicial review proceedings, the Upper Tribunal considers there is no reasonable prospect of the appellant or applicant's case, or part of it, succeeding.

(4) The Upper Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant or applicant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings have been struck out under paragraph (1) or (3)(a), the appellant or applicant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Upper Tribunal within 28 days after the date that the Upper Tribunal sent notification of the striking out to the appellant or applicant.

(7) This rule applies to a respondent as it applies to an appellant or applicant except that—

- (a) references to the striking out of the proceedings must be read as references to the barring of the respondent from taking further part in the proceedings; and
- (b) references to applications for the reinstatement of proceedings which have been struck out must be read as references to applications for the lifting of the bar on the respondent from taking further part in the proceedings.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Upper Tribunal need not consider any response or other submissions made by that respondent.

### **Substitution and addition of parties**

**9.**—(1) The Upper 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 Upper Tribunal may give a direction adding a person to the proceedings as a respondent or, in judicial review proceedings, as an interested party.

(3) If the Upper Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

### **Orders for costs**

**10.**—(1) The Upper Tribunal may, on an application or on its own initiative, make an order awarding costs (or, in Scotland, expenses) but only—

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

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

- (a) may not make any order under paragraph (1)(b) 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 Upper Tribunal may not make an order under paragraph (1) or (2) against a person (the “paying person”) without first—
- (a) giving that person an opportunity to make representations; and
  - (b) if the paying person is an individual, considering that person’s financial means.
- (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) summary assessment by the Upper Tribunal;
  - (b) agreement of a specified sum by the paying person and the receiving person; or
  - (c) assessment 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) the paying person or the receiving person may apply—
- (a) in England and Wales, to the High Court for a detailed assessment of costs in accordance with the Civil Procedure Rules 1998 on the standard basis or, if specified in the order, on the indemnity basis;
  - (b) in Scotland, to the Auditor of the Court of Session for the taxation of the expenses according to the fees payable in the Court of Session; or
  - (c) in Northern Ireland, to the High Court for the costs to be taxed.
- (7) A person making an application for an order under this rule must—
- (a) send or deliver a written application to the Upper Tribunal and to the proposed paying person, so that it is received no later than 14 days after the date that the Upper Tribunal sends the decision notice recording the decision which disposes of the proceedings; and
  - (b) send or deliver a schedule of the costs or expenses claimed with the application.
- (8) The Upper Tribunal may not make an order under paragraph (1)(b) in proceedings arising out of a reference under section 4 of the Forfeiture Act 1982<sup>(a)</sup>.

## **Representatives**

**11.—**(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Upper 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 may be done by the representative of that party, except signing a witness statement.

(4) A person who receives due notice of the appointment of a representative—

- (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and
- (b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

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(a) 1982 c.34.

(5) In a mental health case if the patient has not appointed a representative the Upper Tribunal may appoint a legal representative for the patient where—

- (a) the patient has stated that they do not wish to conduct their own case or that they wish to be represented; or
- (b) the patient lacks the capacity to appoint a representative but the Upper Tribunal believes that it is in the patient's best interests for the patient to be represented.

(6) In a mental health case a party may not appoint as a representative, or be represented or assisted at a hearing by—

- (a) a person liable to be detained or subject to guardianship or after-care under supervision under the Mental Health Act 1983; or
- (b) a person receiving treatment for mental disorder at the same hospital or mental nursing home as the patient.

(7) At a hearing a party may be accompanied by another person who, with the permission of the Upper Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(8) Paragraphs (2) to (4) do not apply to a person (other than an appointed representative) who accompanies a party in accordance with paragraph (7).

### **Calculating time**

**12.**—(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.

(3) In a special educational needs case or a disability discrimination in schools case, subject to a direction to the contrary, the following days must not be counted when calculating the time by which an act must be done—

- (a) 25th December to 1st January inclusive; and
- (b) any day in August.

### **Sending and delivery of documents**

**13.**—(1) Any document to be provided to the Upper Tribunal under these Rules, a practice direction or a direction must be—

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

(2) Subject to paragraph (3), if a party or representative provides a fax number, email address or other details for the electronic transmission of documents to them, that party or representative must accept delivery of documents by that method.

(3) If a party informs the Upper Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the Upper Tribunal or a party sends a document to a party or the Upper Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Upper Tribunal and each 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**

**14.**—(1) The Upper 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 Upper Tribunal considers should not be identified.

(2) The Upper Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Upper Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Upper Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Upper Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second 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 Upper Tribunal the excluded document or information, and the reasons for its exclusion, so that the Upper Tribunal may decide whether the information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) The Upper Tribunal must conduct proceedings as appropriate in order to give effect to a direction given under paragraph (2).

(5) If the Upper Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Upper Tribunal may give a direction that the documents or information be disclosed to that representative if the Upper Tribunal 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 otherwise than in accordance with paragraph (6).

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

(7) Unless the Upper Tribunal gives a direction to the contrary, information about mental health cases and the names of any persons concerned in such cases must not be made public.

### **Evidence and submissions**

**15.**—(1) The Upper Tribunal may give directions as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
  - (i) orally at a hearing; or
  - (ii) by written submissions or witness statement; and
- (f) the time at which any evidence or submissions are to be provided.

(2) The Upper Tribunal may—

- (a) admit evidence whether or not—
  - (i) the evidence would be admissible in a civil trial in the United Kingdom; or
  - (ii) the evidence was available to a previous decision maker;
- (b) exclude evidence that would otherwise be admissible where—
  - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
  - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
  - (iii) it would otherwise be unfair to admit the evidence.

(3) The Upper Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

### **Summoning or citation of witnesses and orders to answer questions or produce documents**

**16.**—(1) On the application of a party or on its own initiative, the Upper Tribunal may—

- (a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation; and
- (b) order any person 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 Upper Tribunal may only make the requirement at paragraph (1)(a) if—

- (a) the person required to attend has been given reasonable notice of the hearing; and
- (b) the summons or citation makes provision for the person's necessary expenses of attendance to be paid, and states who is to pay them, 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, citation or order under this rule must—

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

### **Withdrawal**

**17.**—(1) Subject to paragraph (2), a party may withdraw their case, or any part of it—

- (a) at any time before a hearing to consider the disposal of the proceedings (or, if the Upper Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Upper Tribunal a written notice of withdrawal; or
- (b) orally at a hearing.

(2) A party must obtain the consent of the Upper Tribunal before making a withdrawal under paragraph (1) except a withdrawal of an application for permission (or, in Northern Ireland, leave) to appeal.

(3) A party who has withdrawn their case may apply to the Upper Tribunal for the case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Upper Tribunal within 28 days after—

- (a) the date that the Upper Tribunal received the notice under paragraph (1)(a); or
- (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

### **Confidentiality in child support or child trust fund cases**

**18.**—(1) Paragraph (3) applies to an appeal against a decision of the First-tier Tribunal in proceedings under the Child Support Act 1991 (except an appeal against a reduced benefit decision) in the circumstances described in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the non-resident parent or parent with care has, within 14 days after an enquiry by the Secretary of State, notified the Secretary of State that they would like the information specified in paragraph (3) to be kept confidential to the extent that it is not already known to each other party.

(3) Where this paragraph applies, the Secretary of State and the Upper Tribunal must take appropriate steps to secure the confidentiality of the address of the child, a parent of the child or any other person with care of the child, as the case may be, and of any information which could reasonably be expected to lead to that address.

(4) Paragraph (6) applies to an appeal against a decision of the First-tier Tribunal in proceedings under the Child Trust Funds Act 2004<sup>(a)</sup> in the circumstances described in paragraph (5).

(5) The circumstances referred to in paragraph (4) are that a relevant person, or a local authority with parental responsibility in relation to the eligible child, has, when notice of appeal is given to HMRC or within 14 days after an enquiry from HMRC, notified HMRC that they would like the information specified in paragraph (6) to be kept confidential to the extent that it is not already known to each other party.

(6) Where this paragraph applies, HMRC and the Upper Tribunal must take appropriate steps to secure the confidentiality of the address of the eligible child or of any relevant person, and of any information which could reasonably be expected to lead to that address.

(7) In this rule—

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

“HMRC” means Her Majesty’s Revenue and Customs;

“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.

### **Notice of funding of legal services**

**19.** If a party is granted funding of legal services at any time, that party must as soon as practicable—

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

### **Power to pay expenses and allowances**

**20.**—(1) In proceedings brought under section 4 of the Safeguarding Vulnerable Groups Act 2006<sup>(b)</sup> which are not an appeal from the decision of another tribunal or judicial review

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(a) 2004 c.6.  
(b) 2006 c.47.

proceedings, the Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at hearings as the Secretary of State may, with the consent of the Treasury, determine.

(2) Paragraph (3) applies to proceedings on appeal from a decision of—

- (a) the First-tier Tribunal in a social security and child support case or a war pensions and armed forces case (as defined in the First-tier Tribunal (Social Entitlement Chamber) Rules 2008(a)); or
- (b) a Pensions Appeal Tribunal for Scotland or Northern Ireland.

(3) The Lord Chancellor (or, in Scotland, the Secretary of State) may pay to any person who attends any hearing such travelling and other allowances, including compensation for loss of remunerative time, as the Lord Chancellor (or, in Scotland, the Secretary of State) may determine.

## PART 3

### Appeals and references to the Upper Tribunal

#### **Application to the Upper Tribunal for permission to appeal**

**21.**—(1) A person may apply to the Upper Tribunal for permission to appeal to the Upper Tribunal against a decision by another tribunal only if—

- (a) that person has made an application for permission to appeal to the tribunal which made the decision challenged; and
- (b) that application has been refused or has not been admitted.

(2) An application for permission to appeal must be made in writing and received by the Upper Tribunal no later than—

- (a) for an application under section 4 of the Safeguarding Vulnerable Groups Act 2006, 3 months after the date that written notice of the decision being challenged was sent to the appellant; or
- (b) otherwise, a month after the date on which the relevant lower tribunal sent notice of its refusal of permission to appeal, or refusal to admit the application for permission to appeal, to the appellant.

(3) The application 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 may be sent or delivered;
- (d) details (including the full reference) of the decision challenged;
- (e) the grounds on which the appellant intends to rely; and
- (f) whether the appellant wants the application to be dealt with at a hearing if the Upper Tribunal considers it appropriate.

(4) The appellant must provide with the application copies of—

- (a) any written record of the decision being challenged;
- (b) any separate written statement of reasons for that decision; and
- (c) if the application is for permission to appeal against a decision of another tribunal, the notice of refusal of permission to appeal, or notice of refusal to admit the application for permission to appeal, from that other tribunal.

(5) If the appellant provides the application to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule [5(3)(a)] (power to extend time)—

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(a) S.I. 2008/XXXX.

- (a) the application must include a request for an extension of time and the reason why the application was not provided in time; and
- (b) unless the Upper Tribunal extends time for the application under rule [5(3)(a)] (power to extend time) the Upper Tribunal must not admit the application.

(6) If the appellant makes an application to the Upper Tribunal for permission to appeal against the decision of another tribunal, and that other tribunal refused to admit the appellant's application for permission to appeal because the application was not made in time—

- (a) the application to the Upper Tribunal for permission to appeal must include the reason why the application to the other tribunal was not made in time; and
- (b) the Upper Tribunal must only admit the application if the Upper Tribunal considers that it is in the interests of justice for it to do so.

### **Decision in relation to permission to appeal**

**22.**—(1) If the Upper Tribunal refuses permission to appeal, it must send written notice of the refusal and of the reasons for the refusal to the appellant.

(2) If the Upper Tribunal gives permission to appeal—

- (a) the Upper Tribunal must send written notice of the permission, and of the reasons for any limitations or conditions on such permission, to each party;
- (b) subject to any direction by the Upper Tribunal, the application for permission to appeal stands as the notice of appeal and the Upper Tribunal must send to each respondent a copy of the application for permission to appeal and any documents provided with it by the appellant; and
- (c) the Upper Tribunal may, with the consent of the appellant and each respondent, determine the appeal on the basis of the application for permission alone.

(3) Paragraph (4) applies where the Upper Tribunal, without a hearing, determines—

- (a) an application for leave to appeal against a decision of 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; or
- (b) an application for leave to appeal under section 4 of the Safeguarding Vulnerable Groups Act 2006.

(4) In the circumstances set out at paragraph (3) the appellant may apply for the decision to be reconsidered at a hearing if the Upper Tribunal—

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

(5) An application under paragraph (4) must be made in writing and received by the Upper Tribunal within 14 days after the date that the Upper Tribunal sent written notice of its decision regarding the application to the appellant.

### **Notice of appeal**

**23.**—(1) This rule applies—

- (a) if a lower tribunal has given permission for a party to appeal to the Upper Tribunal; or
- (b) subject to any other direction by the Upper Tribunal, if the Upper Tribunal has given permission to appeal and has given a direction that the application for permission to appeal does not stand as the notice of appeal.

(2) The appellant must provide a notice of appeal to the Upper Tribunal so that it is received within 1 month after the relevant tribunal sent notice of permission to appeal to the appellant.

(3) The notice of appeal must include the information listed in rule [21(3)(a) to (e)] (content of the application for leave to appeal) and, where the Upper Tribunal has given permission to appeal, the Upper Tribunal's case reference.

(4) If another tribunal has granted permission to appeal, 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 granting permission to appeal from the that other tribunal.

(5) If the appellant provides the notice of appeal to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule [5(3)(a)] (power to extend time)—

- (a) the notice of appeal must include a request for an extension of time and the reason why the notice was not provided in time; and
- (b) unless the Upper Tribunal extends time for the notice of appeal under rule [5(3)(a)] (power to extend time) the Upper Tribunal must not admit the notice of appeal.

(6) When the Upper Tribunal receives the notice of appeal it must send a copy of the notice and any accompanying documents to each respondent.

### **Response to the notice of appeal**

**24.**—(1) Subject to any direction given by the Upper Tribunal, a respondent may provide a response to the notice of appeal.

(2) Any response provided under paragraph (1) must be in writing and must be sent or delivered to the Upper Tribunal so that it is received no later than a month after—

- (a) if the application for permission stands as the notice of appeal, the date on which the Upper Tribunal sent notice that it had granted leave to appeal to the respondent; or
- (b) in any other case, the date on which the Upper Tribunal sent a copy of the notice of appeal to the respondent.

(3) 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, including (in an appeal from the decision of another tribunal) any grounds on which the respondent was unsuccessful in the proceedings before the other tribunal but intends to rely in the appeal; and
- (f) whether the respondent wants the case to be dealt with at a hearing if the Upper Tribunal considers it appropriate.

(4) If the respondent provides the response to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule [5(3)(a)] (power to extend time), the response must include a request for an extension of time and the reason why the notice was not provided in time.

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

### **Appellant's reply**

**25.**—(1) Subject to any direction given by the Upper Tribunal, the appellant may provide a reply to any response provided under rule [24] (response to the notice of appeal).

(2) Any reply provided under paragraph (1) must be in writing and must be sent or delivered to the Upper Tribunal so that it is received within one month after the date on which the Upper Tribunal sent a copy of the response to the appellant.

(3) When the Upper Tribunal receives the reply it must send a copy of the reply and any accompanying documents to each respondent.

### **References under the Forfeiture Act 1982**

**26.**—(1) If a question arises which is required to be determined by the Upper Tribunal under section 4 of the Forfeiture Act 1982, the person to whom the application for the relevant benefit or advantage has been made must refer the question to the Upper Tribunal.

(2) The reference must be written and must include—

- (a) a statement of the question for determination;
- (b) a statement of the relevant facts;
- (c) the grounds upon which the reference is made; and
- (d) addresses for sending documents to the person making the reference and each respondent.

(3) When the Upper Tribunal receives the reference it must send a copy of the reference and any accompanying documents to the respondent.

(4) Rule [24] (response to the notice of appeal) and [25] (appellant's reply) apply to a reference made under this rule as if it were a notice of appeal.

## **PART 4**

### **Judicial review proceedings in the Upper Tribunal**

#### **Applications for permission to bring judicial review proceedings**

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

(2) Subject to paragraph (3), an application under paragraph (1) must be made promptly and, unless any other enactment specifies a shorter time limit, must be sent or delivered to the Upper Tribunal so that it is received no later than 3 months after the date of the decision to which the application relates.

(3) An application for permission to proceed with judicial review proceedings challenging a decision of the First-tier Tribunal may be made later than the time required by paragraph (2) if it is made within 1 month after the date that the First-tier Tribunal sent—

- (a) written reasons for the decision; or
- (b) notification that an application for the decision to be set aside has been unsuccessful, provided that that application was made in time.

(4) The application must 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) that the application is for permission to bring judicial review proceedings, and the outcome that the applicant is seeking; and
- (f) the facts and grounds on which the applicant intends to rely.

(5) 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 on which the applicant intends to rely.

(6) If the applicant provides the application to the Upper Tribunal later than the time required by paragraph (2) or (3) or by an extension of time allowed under rule [5(3)(a)] (power to extend time)—

- (a) the application must include a request for an extension of time and the reason why the application was not provided in time; and
- (b) unless the Upper Tribunal extends time for the application under rule [5(3)(a)] (power to extend time) the Upper Tribunal must not admit the application.

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

### **Acknowledgment of Service**

**28.**—(1) Any person who receives a copy of an application for permission under rule [27(7)] (application for permission to bring judicial review proceedings) and wishes to take part in the proceedings must send to the Upper Tribunal a written acknowledgment of service so that it is received no later than 21 days after the date that the Upper Tribunal sent a copy of the application to that person.

(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 Upper 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 who receives a copy of an application for permission under rule [27(7)] (application for permission to bring judicial review proceedings) but 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 permission**

**29.**—(1) The Upper Tribunal must send to each party, and may send to any other person who may have an interest in the proceedings, written notice of—

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

(2) Paragraph (3) applies where the Upper Tribunal determines an application for leave to proceed with judicial review proceedings without a hearing, and—

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

(3) In the circumstances set out at paragraph (2) the applicant may apply for the decision to be reconsidered at a hearing.

(4) An application under paragraph (3) must be made in writing and must be sent or delivered to the Upper Tribunal so that it is received within 14 days after the date that the Upper Tribunal sent written notice of its decision regarding the application to the applicant.

## **Responses**

**30.**—(1) Any person to whom the Upper Tribunal has sent notice of the grant of permission under rule [29(1)] (notification of permission), and who wishes to contest the claim or support it on additional grounds, must provide detailed grounds for contesting or supporting the claim to the Upper Tribunal.

(2) Any detailed grounds must be provided in writing and must be sent or delivered to the Upper Tribunal so that they are received not more than 35 days after the Upper Tribunal sent notice of the grant of permission under rule [29(1)] (notification of permission).

## **Applicant seeking to rely on additional grounds**

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

## **Power to hear any person**

**32.**—(1) Each party and, with the permission of the Upper Tribunal, any other person, may—

- (a) file evidence, except at the hearing of an application for permission;
- (b) make representations at any hearing which they are entitled to attend; and
- (c) make written representations in relation to a decision to be made without a hearing.

# **PART 5**

## **Hearings**

### **Decision with or without a hearing**

**33.**—(1) Subject to paragraph (2), the Upper Tribunal may make any decision without a hearing.

(2) The Upper 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 such hearing.

### **Entitlement to attend a hearing**

**34.**—(1) Subject to paragraph (2) and rule [36(3) to (5)] (public and private hearings), each party to proceedings is entitled to attend a hearing.

(2) The Upper Tribunal may direct that—

- (a) a respondent is not entitled to attend a hearing to consider an application for permission to appeal or to proceed with judicial review proceedings; or
- (b) a person is not entitled to attend a hearing to consider a direction under rule [14(2)] (withholding information or documents likely to cause harm) or any other hearing where the purpose of the hearing would be defeated by the attendance of that person.

### **Notice of hearings**

**35.**—(1) The Upper Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing.

(2) The period of notice under paragraph (1) must be at least 14 days except that—

- (a) in applications for leave to proceed with judicial review proceedings, the period of notice under paragraph (1) must be at least 2 working days; and
- (b) the Upper Tribunal may give short notice—
  - (i) with the parties' consent; or

- (ii) in urgent or exceptional cases.

### **Public and private hearings**

- 36.**—(1) Subject to the following paragraphs, all hearings must be held in public.
- (2) The Upper 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 Upper Tribunal may determine who is entitled to attend the hearing or part of it.
  - (4) The Upper Tribunal may give a direction excluding from any hearing, or part of it—
    - (a) any person whose conduct the Upper Tribunal considers is disrupting or is likely to disrupt the hearing;
    - (b) any person whose presence the Upper Tribunal considers is likely to prevent another person from giving evidence or making submissions freely; or
    - (c) any person who the Upper Tribunal considers should be excluded in order to give effect to a direction under rule [14(2)] (withholding information likely to cause harm).
  - (5) The Upper Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

### **Hearings in a party's absence**

- 37.** If a party fails to attend a hearing the Upper Tribunal may proceed with the hearing if the Upper Tribunal—
- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
  - (b) considers that it is in the interests of justice to proceed with the hearing.

## **PART 6**

### **Decisions**

#### **Consent orders**

- 38.**—(1) The Upper 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 provision as the parties have agreed.
- (2) Notwithstanding any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

#### **Decisions**

- 39.**—(1) The Upper Tribunal may give a decision orally at a hearing.
- (2) Subject to rule [14(2)] (withholding harmful information), the Upper Tribunal must provide to each party as soon as reasonably practicable after making a decision which disposes of proceedings (except a decision under Part 7)—
    - (a) a decision notice stating the Tribunal's decision;
    - (b) unless the decision was made with the consent of the parties, written reasons for the decision; and
    - (c) notification of any rights of review or appeal against the decision and the time and manner in which such rights of review or appeal may be exercised.

## PART 7

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

#### Interpretation

40. In this Part—

“appeal” means the exercise of a right of appeal under section 13 of the 2007 Act; and

“review” means the review of a decision by the Upper Tribunal under section 10 of the 2007 Act.

#### Clerical mistakes and accidental slips or omissions

41. The Upper 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 decision which disposes of proceedings

42.—(1) The Upper Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if—

- (a) the Upper Tribunal considers that it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

- (a) 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;
- (b) a document relating to the proceedings was not sent to the Upper Tribunal at an appropriate time;
- (c) a party, or a party’s representative, was not present at a hearing related to the proceedings; or
- (d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Upper Tribunal so that it is received no later than 1 month after the date on which the Tribunal sent notice of the decision to the party.

#### Application for permission to appeal

43.—(1) A party seeking permission to appeal—

- (a) must make a written application to the Upper Tribunal for permission to appeal; and
- (b) may not take any steps in the relevant appellate court unless the Upper Tribunal has given or refused permission to appeal, or refused to admit the application for permission to appeal.

(2) An application under paragraph (21)(a) must be sent or delivered to the Upper Tribunal so that it is received no later than 1 month after the latest of the dates that the Upper Tribunal sends—

- (a) written reasons for the decision;
- (b) notification of amended reasons for, or correction of, the decision following a review; or
- (c) notification that an application for the decision to be set aside has been unsuccessful.

(3) The date in paragraph (2)(c) applies only if the application for the decision to be set aside was made within the time stipulated in rule [42] (setting aside a decision which disposes of proceedings).

(4) If the party provides the application to the Upper Tribunal later than the time required by paragraph (2) or by any extension of time under rule [5(3)(a)] (power to extend time)—

- (a) the application must include a request for an extension of time and the reason why the application notice was not provided in time; and
- (b) unless the Upper Tribunal extends time for the application under rule [5(3)(a)] (power to extend time) the Upper Tribunal must not admit the application.

(5) An application under paragraph (1)(a) 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 is seeking.

### **Upper Tribunal's consideration of application for permission to appeal**

**44.**—(1) On receiving an application for permission to appeal the Upper Tribunal may review the decision under rule [44] (review of a decision), but may only do so if—

- (a) when making the decision the Upper Tribunal overlooked a legislative provision or binding authority which could have had a material effect on the decision; or
- (b) since the Upper Tribunal's decision, a higher court has made a decision which is binding on the Upper Tribunal and which, had it been made before the Upper Tribunal's decision, could have had a material effect on the decision.

(2) If the Upper Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision or part of it, the Upper Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Upper Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Upper Tribunal refuses permission to appeal it must send with the record of its decision—

- (a) a statement of its reasons for such refusal; and
- (b) 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 Upper Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission.

### **Review of a decision**

**45.**—(1) The Upper Tribunal may only undertake a review of a decision—

- (a) pursuant to rule [44(1)] (review on an application for permission to appeal); or
- (b) pursuant to rule [46] (reviews of decisions in proceedings under the Forfeiture Act 1982).

(2) The Upper Tribunal must notify the parties in writing of the outcome of any review, unless the Upper Tribunal decides to take no action following the review.

(3) If the Upper Tribunal decides to take any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (3) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision reviewed again.

(4) If the Upper Tribunal takes any action in relation to a decision following a review, the Upper Tribunal must also make any necessary amendment to any document published by it in relation to the decision.

**Reviews of decisions in proceedings under the Forfeiture Act 1982**

**46.**—(1) A person who referred a question to the Upper Tribunal under rule [26] (references under the Forfeiture Act 1982) must refer the Upper Tribunal's previous decision in relation to the question to the Upper Tribunal if that person—

- (a) considers that the decision should be reviewed; or
- (b) has received a written application for the decision to be reviewed from the person to whom the decision related.

(2) The Upper Tribunal may review the decision if—

- (a) the decision was erroneous in point of law;
- (b) the decision was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) there has been a relevant change in circumstances since the decision was made.

(3) When a person makes the reference to the Upper Tribunal, that person must also notify the person to whom the question relates that the reference has been made.

(4) The Upper Tribunal must notify the person who made the reference and the person who to whom the question relates of the outcome of the reference.

(5) Rule [45(3) and (4)] applies to a reference under this rule as if the person who made the reference and the person who to whom the question relates were parties.