

**2008 No. 2698 (L. 15)**

**TRIBUNALS AND INQUIRIES**

**The Tribunal Procedure (Upper Tribunal) Rules 2008**

*Version in force from 15<sup>th</sup> February 2010, showing amendments made by S.I. 2009/274, S.I. 2009/1975, S.I. 2010/43 and S.I. 2010/44. This document has been produced in order to assist users but its accuracy is not guaranteed and should not be relied upon. For a definitive version of the Rules, users should refer to the original statutory instruments.*

<i>Made</i>	- - - -	<i>9th October 2008</i>
<i>Laid before Parliament</i>		<i>15th October 2008</i>
<i>Coming into force</i>	- -	<i>3rd November 2008</i>

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## SCHEDULE 1

### Procedure after the notice of appeal in appeals against decisions of traffic commissioners

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 the following Rules in exercise of the power conferred by sections 10(3), 16(9), 22 and 29(3) and (4) of, and Schedule 5 to, that Act.

The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

## PART 1

### Introduction

#### **Citation, commencement, application and interpretation(b)**

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

(2) These Rules apply to proceedings before the Upper Tribunal [except proceedings in the Lands Chamber].

(3) In these Rules—

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

[“appellant” means—

- (a) a person who makes an appeal, or applies for permission to appeal, to the Upper Tribunal;
- (b) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who started the proceedings in the First-tier Tribunal; or
- (c) a person substituted as an appellant under rule 9(1) (substitution and addition of parties);]

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(a) 2007 c.15.

(b) In rule 1(2) the words in square brackets were inserted by S.I. 2009/1975. In rule 1(3), S.I. 2009/274 substituted the definition of “appellant”, omitted the definitions of “disability discrimination in schools case”, “legal representative” and “special educational needs case” and paragraph (a)(ii) in the definition of “respondent”, and inserted paragraph (ca) in the definition of “respondent”. S.I. 2009/1975 inserted the definitions of “appropriate national authority”, “authorised person” and “tribunal”, and the words in square brackets in paragraph (b) in the definition of “respondent”.

“applicant” means a person who applies for permission to bring, or does bring, judicial review proceedings before the Upper Tribunal and, in judicial review proceedings transferred to the Upper Tribunal from a court, includes a person who was a claimant or petitioner in the proceedings immediately before they were transferred;

...

[“appropriate national authority” means, in relation to an appeal, the Secretary of State, the Scottish Ministers or the Welsh Ministers, as the case may be;]

[“asylum case” means proceedings before the Upper Tribunal on appeal against a decision in proceedings under section 82, 83 or 83A of the Nationality, Immigration and Asylum Act 2002(a) in which a person claims that removal from, or a requirement to leave, the United Kingdom would breach the United Kingdom’s obligations under the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;]

[“authorised person” means an examiner appointed by the Secretary of State under section 66A of the Road Traffic Act 1988(b), or a person acting under the direction of such an examiner, who has detained the vehicle to which an appeal relates;]

“dispose of proceedings” includes, unless indicated otherwise, disposing of a part of the proceedings;

“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;

[“fast-track case” means an asylum case or an immigration case where the person who appealed to the First-tier Tribunal—

- (a) was detained under the Immigration Acts at a place specified in Schedule 2 to the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005(c) when the notice of decision that was the subject of the appeal to the First-tier Tribunal was served on the appellant;
- (b) remains so detained; and
- (c) the First-tier Tribunal or the Upper Tribunal has not directed that the case cease to be treated as a fast-track case;]

“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;

[“immigration case” means proceedings before the Upper Tribunal on appeal against a decision in proceedings under section 40A of the British Nationality Act 1981(d), section 82 of the Nationality, Immigration and Asylum Act 2002, or regulation 26 of the Immigration (European Economic Area) Regulations 2006(e) that are not an asylum case;]

“interested party” means—

- (a) a person who is directly affected by the outcome sought in judicial review proceedings, and has been named as an interested party under rule 28 or 29 (judicial review), or has been substituted or added as an interested party under rule 9 (substitution and addition of parties); and

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(a) 2002 c. 41. Section 82 was amended by sections 26(2) and 31 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19); sections 2, 11(6), 47(6), 57(2) and 61 of the Immigration, Asylum and Nationality Act 2006 (c. 13), and section 35(1) and (3) of the UK Borders Act 2007 (c. 30). Section 83A was inserted by section 1 of the Immigration, Asylum and Nationality Act 2006.

(b) 1988 c. 52. Section 66A was inserted by section 9(1) of the Road Traffic Act 1991 (c. 40) and amended by paragraph 11 of Schedule 7 to the Goods Vehicles (Licensing of Operators) Act 1995 (c. 23).

(c) S.I. 2005/560.

(d) 1981 c. 61.

(e) S.I. 2006/1003.

- (b) in judicial review proceedings transferred to the Upper Tribunal under section 25A(2) or (3) of the Judicature (Northern Ireland) Act 1978(a) or section 31A(2) or (3) of the Supreme Court Act 1981(b), a person who was an interested party in the proceedings immediately before they were transferred to the Upper Tribunal;

“judicial review proceedings” means proceedings within the jurisdiction of the Upper Tribunal pursuant to section 15 or 21 of the 2007 Act, whether such proceedings are started in the Upper Tribunal or transferred to the Upper Tribunal;

...

“mental health case” means proceedings before the Upper Tribunal on appeal against a decision in proceedings under the Mental Health Act 1983(c) or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984(d);

[“national security certificate appeal” means an appeal under section 28 of the Data Protection Act 1998 or section 60 of the Freedom of Information Act 2000(e) (including that section as applied and modified by regulation 18 of the Environmental Information Regulations 2004(f)); and]

“party” means a person who is an appellant, an applicant, a respondent or an interested party in proceedings before the Upper Tribunal, a person who has referred a question to the Upper Tribunal or, if the proceedings have been concluded, a person who was an appellant, an applicant, a respondent or an interested party when the Tribunal finally disposed of all issues in the proceedings;

“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;

[“relevant minister” means the Minister or designated person responsible for the signing of the certificate to which a national security certificate appeal relates;]

“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 a party before that other tribunal;
  - (ii) ...; or
  - (iii) 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 [except a decision of a traffic commissioner], the person who made the decision;
- (c) in judicial review proceedings—
- (i) in proceedings started in the Upper Tribunal, the person named by the applicant as the respondent;
  - (ii) in proceedings transferred to the Upper Tribunal under section 25A(2) or (3) of the Judicature (Northern Ireland) Act 1978 or section 31A(2) or (3) of the Supreme Court Act 1981, a person who was a defendant in the proceedings immediately before they were transferred;
  - (iii) in proceedings transferred to the Upper Tribunal under section 20(1) of the 2007 Act, a person to whom intimation of the petition was made before the proceedings were transferred, or to whom the Upper Tribunal has required intimation to be made.

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(a) 1978 c.23. Section 25A was inserted by section 19(2) of the 2007 Act.

(b) 1981 c.54. Section 31A was inserted by section 19(1) of the 2007 Act.

(c) 1983 c.20.

(d) 1984 c.47.

(e) 2000 c.36.

(f) S.I. 2004/3391.

- [(ca)in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who was a respondent in the proceedings in the First-tier Tribunal;]
- (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);

...

["tribunal" does not include a traffic commissioner;]

"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.

### **Alternative dispute resolution and arbitration**

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

- (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(c) does not apply to proceedings before the Upper Tribunal.

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(a) 1982 c.34.  
(b) 1971 c.80.  
(c) 1996 c.23.

## 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 on which the Upper Tribunal sends notice of a decision made by a member of staff 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(a)

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), the Upper Tribunal may—

- (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 issue;
- (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 court or tribunal has jurisdiction in relation to the proceedings and—
  - (i) because of a change of circumstances since the proceedings were started, the Upper Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (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, or an application for permission to appeal, against the decision of another tribunal, suspend the effect of that decision pending the determination of the application for permission to appeal, and any appeal;
- (n) [require any person, body or other tribunal whose decision is the subject of proceedings before the Upper Tribunal to provide reasons for the decision, or other information or

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(a) Rule 5(3)(n) was substituted by S.I. 2009/1975.

documents in relation to the decision or any proceedings before that person, body or tribunal.]

[(4) The Upper Tribunal may direct that a fast-track case cease to be treated as a fast-track case if—

- (a) all the parties consent;
- (b) the Upper Tribunal is satisfied that there are exceptional circumstances which suggest that the appeal or application could not be justly determined if it were treated as a fast-track case; or
- (c) the Secretary of State for the Home Department has failed to comply with a provision of these Rules or a direction of the First-tier Tribunal or the Upper Tribunal, and the Upper Tribunal is satisfied that the other party would be prejudiced if the appeal or application were treated as a fast-track case.]

### **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 reason 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 and to any other person affected by the direction.

(5) If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Upper Tribunal has given, they may do so by applying for another 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); or
- (d) except in [a mental health case, an asylum case or an immigration case], restricting a party's participation in the proceedings.

(3) Paragraph (4) applies where the First-tier Tribunal has referred to the Upper Tribunal a failure by a person 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 (supplementary powers of the Upper Tribunal) in relation to such non-compliance as if the requirement had been imposed by the Upper Tribunal.

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

**8.**—[(1A) Except for paragraph (2), this rule does not apply to an asylum case or an immigration case.]

(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—

- (a) does not have jurisdiction in relation to the proceedings or that part of them; and
- (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) 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's or the 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 paragraph (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 1 month after the date on which the Upper Tribunal sent notification of the striking out to the appellant or applicant.

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

- (a) a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent [or interested party] from taking further part in the proceedings; and
- (b) a reference to an application for the reinstatement of proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent [or interested party] taking further part in the proceedings.

(8) If a respondent [or an interested party] 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 submission made by that respondent [or interested party], and may summarily determine any or all issues against that respondent or interested party].

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(a) The words in square brackets in rule 8(7) and (8) were inserted by S.I. 2009/274.

**[Addition, substitution and removal of parties(a)]**

**9.**—(1) The Upper Tribunal may give a direction adding, substituting or removing a party as an appellant, a respondent or an interested party.

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

(3) A person who is not a party may apply to the Upper Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to proceedings by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Upper Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.]

[(5) In an asylum case, the United Kingdom Representative of the United Nations High Commissioner for Refugees (“the United Kingdom Representative”) may give notice to the Upper Tribunal that the United Kingdom Representative wishes to participate in the proceedings.

(6) If the United Kingdom Representative gives notice under paragraph (5)—

(i) the United Kingdom Representative is entitled to participate in any hearing; and

(ii) all documents which are required to be sent or delivered to parties must be sent or delivered to the United Kingdom Representative.]

**[Orders for costs(b)]**

**10.**—(1) The Upper Tribunal may not make an order in respect of costs (or, in Scotland, expenses) in proceedings [transferred or referred by, or on appeal from,] another tribunal except—

[(aa) in a national security certificate appeal, to the extent permitted by paragraph (1A);]

(a) in proceedings [transferred by, or on appeal from,] the Tax Chamber of the First-tier Tribunal; or

(b) to the extent and in the circumstances that the other tribunal had the power to make an order in respect of costs (or, in Scotland, expenses).

[(1A) In a national security certificate appeal—

(a) the Upper Tribunal may make an order in respect of costs or expenses in the circumstances described at paragraph (3)(c) and (d);

(b) if the appeal is against a certificate, the Upper Tribunal may make an order in respect of costs or expenses against the relevant Minister and in favour of the appellant if the Upper Tribunal allows the appeal and quashes the certificate to any extent or the Minister withdraws the certificate;

(c) if the appeal is against the application of a certificate, the Upper Tribunal may make an order in respect of costs or expenses—

(i) against the appellant and in favour of any other party if the Upper Tribunal dismisses the appeal to any extent; or

(ii) in favour of the appellant and against any other party if the Upper Tribunal allows the appeal to any extent.]

(2) The Upper Tribunal may not make an order in respect of costs or expenses under section 4 of the Forfeiture Act 1982(c).

(3) In other proceedings, the Upper Tribunal may not make an order in respect of costs or expenses except—

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(a) Rule 9 was substituted by S.I. 2009/1975.

(b) Rule 10 was substituted by S.I. 2009/274. The words in square brackets in rule 10(1) were substituted by S.I. 2009/1975, and paragraph (2)(b) was omitted by S.I. 2009/1975.

(c) 1982 c.34.

- (a) in judicial review proceedings;
  - (b) ...
  - (c) under section 29(4) of the 2007 Act (wasted costs); or
  - (d) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings.
- (4) The Upper Tribunal may make an order for costs (or, in Scotland, expenses) on an application or on its own initiative.
- (5) A person making an application for an order for costs or expenses must—
- (a) send or deliver a written application to the Upper Tribunal and to the person against whom it is proposed that the order be made; and
  - (b) send or deliver with the application a schedule of the costs or expenses claimed sufficient to allow summary assessment of such costs or expenses by the Upper Tribunal.
- (6) An application for an order for costs or expenses may be made at any time during the proceedings but may not be made later than 1 month after the date on which the Upper Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
  - (b) notice of a withdrawal under rule 17 which ends the proceedings.
- (7) The Upper Tribunal may not make an order for costs or expenses 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 and the order is to be made under paragraph (3)(a), (b) or (d), considering that person’s financial means.
- (8) The amount of costs or expenses to be paid under an order under this rule may be ascertained by—
- (a) summary assessment by the Upper Tribunal;
  - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses (“the receiving person”); or
  - (c) assessment of the whole or a specified part of the costs or expenses incurred by the receiving person, if not agreed.
- (9) Following an order for assessment under paragraph (8)(c), the paying person or the receiving person may apply—
- (a) in England and Wales, to the High Court or the Costs Office of the Supreme Court (as specified in the order) for a detailed assessment of the costs on the standard basis or, if specified in the order, on the indemnity basis; and the Civil Procedure Rules 1998(a) shall apply, with necessary modifications, to that application and assessment as if the proceedings in the tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply;
  - (b) in Scotland, to the Auditor of the Court of Session for the taxation of the expenses according to the fees payable in that court; or
  - (c) in Northern Ireland, to the Taxing Office of the High Court of Northern Ireland for taxation on the standard basis or, if specified in the order, on the indemnity basis.]

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(a) S.I. 1998/3132.

## **Representatives(a)**

**11.—(1)** A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings [save that a party in an asylum or immigration case may not be represented by any person prohibited from representing by section 84 of the Immigration and Asylum Act 1999**(b)**].

(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 written notice of the representative's name and address.

[(2A) If the Upper Tribunal receives notice that a party has appointed a representative under paragraph (2), it must send a copy of that notice to each other party.]

(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.

(5) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, subject to paragraph (8) and with the permission of the Upper Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a party under paragraph (5).

(7) 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.

(8) 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, or who is a community patient, under the Mental Health Act 1983; or
- (b) a person receiving treatment for mental disorder at the same hospital [or] home as the patient.

[(9) In this rule "legal representative" means [a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation within the meaning of that Act], [a qualified person as defined in section 84(2) of the Immigration and Asylum Act 1999,] an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland.]

[(10) In an asylum case or an immigration case, an appellant's representative before the First-tier Tribunal will be treated as that party's representative before the Upper Tribunal, unless the Upper Tribunal receives notice—

- (a) of a new representative under paragraph (2) of this rule; or
- (b) from the appellant stating that they are no longer represented.]

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(a) In rule 11, paragraph (2) was amended and paragraphs (2A) and (9) were inserted by S.I. 2009/274. Paragraph (8)(b) was amended by S.I. 2009/1975.  
(b) 1999 c. 33.

### **Calculating time(a)**

**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 by 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, 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.

[(3A) In an asylum case or an immigration case, when calculating the time by which an act must be done, in addition to the days specified in the definition of “working days” in rule 1 (interpretation), the following days must also not be counted as working days—

- (a) 27th to 31st December inclusive; and
- (b) in a fast-track case, 24th December, Maundy Thursday, or the Tuesday after the last Monday in May.]

(4) Paragraph (3) [or (3A)] does not apply where the Upper Tribunal directs that an act must be done by or on a specified date.

[(5) In this rule—

“disability discrimination in schools case” means proceedings concerning disability discrimination in the education of a child or related matters; and

“special educational needs case” means proceedings concerning the education of a child who has or may have special educational needs.]

### **Sending and delivery of documents(b)**

**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 by document exchange, 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 provides a fax number, email address or other details for the electronic transmission of documents to them, that party 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.

[(6) Subject to paragraph (7), if a document submitted to the Upper Tribunal is not written in English, it must be accompanied by an English translation.

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(a) Rule 12(5) was inserted by S.I. 2009/274.

(b) Rule 13(1)(a) was amended by S.I. 2009/274.

(7) In proceedings that are in Wales or have a connection with Wales, a document or translation may be submitted to the Tribunal in Welsh.]

#### **Use of documents and information(a)**

**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 reason for its exclusion, so that the Upper Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) ...

(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 will act 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.

[(8) The Upper Tribunal may, on its own initiative or on the application of a party, give a direction that certain documents or information must or may be disclosed to the Upper Tribunal on the basis that the Upper Tribunal will not disclose such documents or information to other persons, or specified other persons.

(9) A party making an application for a direction under paragraph (8) may withhold the relevant documents or information from other parties until the Upper Tribunal has granted or refused the application.

(10) In a case involving matters relating to national security, the Upper Tribunal must ensure that information is not disclosed contrary to the interests of national security.

(11) The Upper Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of an order made under paragraph (1), a direction given under paragraph (2) or (8) or the duty imposed by paragraph (10).]

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(a) In rule 14, paragraph (4) was omitted and paragraphs (8) to (11) were inserted by S.I. 2009/1975.

## **Evidence and submissions**

**15.**—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), 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; or
- (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.

[(2A) In an asylum case or an immigration case—

- (a) if a party wishes the Upper Tribunal to consider evidence that was not before the First-tier Tribunal, that party must send or deliver a notice to the Upper Tribunal and any other party—
  - (i) indicating the nature of the evidence; and
  - (ii) explaining why it was not submitted to the First-tier Tribunal; and
- (b) when considering whether to admit evidence that was not before the First-tier Tribunal, the Upper Tribunal must have regard to whether there has been unreasonable delay in producing that 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(a)**

**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; or
- (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) A summons or citation under paragraph (1)(a) must—

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(a) Rule 16(4) to (6) were substituted by S.I. 2009/274.

- (a) give the person required to attend 14 days' notice of the hearing or such shorter period as the Upper Tribunal may direct; and
- (b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.

(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 person who receives a summons, citation or order may apply to the Upper Tribunal for it to be varied or set aside if they did not have an opportunity to object to it before it was made or issued.

(5) A person making an application under paragraph (4) must do so as soon as reasonably practicable after receiving notice of the summons, citation or order.

(6) 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 did not have an opportunity to object to it before it was made or issued; 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 give notice of the withdrawal of its 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) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.

(3) A party which has withdrawn its 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 1 month after—

- (a) the date on which 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).

(5) The Upper Tribunal must notify each party in writing of a withdrawal under this rule.

### **[Appeal treated as abandoned or finally determined in an asylum case or an immigration case**

**17A.**—(1) A party to an asylum case or an immigration case before the Upper Tribunal must notify the Tribunal if they are aware that—

- (a) the appellant has left the United Kingdom;
- (b) the appellant has been granted leave to enter or remain in the United Kingdom;
- (c) a deportation order has been made against the appellant; or
- (d) a document listed in paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2006(a) has been issued to the appellant.

(2) Where an appeal is treated as abandoned pursuant to section 104(4) or (4A) of the Nationality, Immigration and Asylum Act 2002(a) or paragraph 4(2) of Schedule 2 to the

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(a) S.I. 2006/1003.

Immigration (European Economic Area) Regulations 2006, or as finally determined pursuant to section 104(5) of the Nationality, Immigration and Asylum Act 2002, the Upper Tribunal must send the parties a notice informing them that the appeal is being treated as abandoned or finally determined.

(3) Where an appeal would otherwise fall to be treated as abandoned pursuant to section 104(4A) of the Nationality, Immigration and Asylum Act 2002, but the appellant wishes to pursue their appeal, the appellant must send or deliver a notice, which must comply with any relevant practice directions, to the Upper Tribunal and the respondent so that it is received within thirty days of the date on which the notice of the grant of leave to enter or remain in the United Kingdom was sent to the appellant.

(4) Where a notice of grant of leave to enter or remain is sent electronically or delivered personally, the time limit in paragraph (3) is twenty eight days.

(5) Notwithstanding rule 5(3)(a) (case management powers) and rule 7(2) (failure to comply with rules etc.), the Upper Tribunal must not extend the time limits in paragraph (3) and (4).]

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

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

- (a) (i) if 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
- (i) 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.

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

**19.**—(1) Paragraph (3) applies to an appeal against a decision of the First-tier Tribunal in proceedings under the Child Support Act 1991**(b)** in the circumstances described in paragraph (2), other than an appeal against a reduced benefit decision (as defined in section 46(10)(b) of the Child Support Act 1991, as that section had effect prior to the commencement of section 15(b) of the Child Maintenance and Other Payments Act 2008**(c)**).

(2) The circumstances referred to in paragraph (1) are that—

- (a) in the proceedings in the First-tier Tribunal in respect of which the appeal has been brought, there was an obligation to keep a person's address confidential; or
- (b) a person whose circumstances are relevant to the proceedings would like their address (or, in the case of the person with care of the child, the child's address) to be kept confidential and has given notice to that effect—
  - (i) to the Upper Tribunal in an application for permission to appeal or notice of appeal;
  - (ii) to the Upper Tribunal within 1 month after an enquiry by the Upper Tribunal; or
  - (iii) to the Secretary of State, the Child Maintenance and Enforcement Commission or the Upper Tribunal when notifying a change of address after proceedings have been started.

(3) Where this paragraph applies, the Secretary of State, the Child Maintenance and Enforcement Commission and the Upper Tribunal must take appropriate steps to secure the confidentiality of the address, and of any information which could reasonably be expected to enable a person to identify the address, to the extent that the address or that information is not already known to each other party.

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(a) 2002 c.41. Section 104(4) was substituted by, and section 104(4A) to (4C) was inserted by, section 9 of the Immigration, Asylum and Nationality Act 2006.

(b) 1991 c.48.

(c) 2008 c.6.

(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) in the proceedings in the First-tier Tribunal in respect of which the appeal has been brought, there was an obligation to keep a person's address confidential; or

(b) a person whose circumstances are relevant to the proceedings would like their address (or, in the case of the person with care of the eligible child, the child's address) to be kept confidential and has given notice to that effect—

(i) to the Upper Tribunal in an application for permission to appeal or notice of appeal;

(ii) to the Upper Tribunal within 1 month after an enquiry by the Upper Tribunal; or

(iii) to HMRC or the Upper Tribunal when notifying a change of address after proceedings have been started.

(6) Where this paragraph applies, HMRC and the Upper Tribunal must take appropriate steps to secure the confidentiality of the address, and of any information which could reasonably be expected to enable a person to identify the address, to the extent that the address or that information is not already known to each other party.

(7) In this rule—

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

“HMRC” means Her Majesty's Revenue and Customs.

#### **Power to pay expenses and allowances<sup>(b)</sup>**

**20.**—(1) In proceedings brought under section 4 of the Safeguarding Vulnerable Groups Act 2006<sup>(c)</sup>, 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 proceedings under the Child Support Act 1991, section 12 of the Social Security Act 1998<sup>(d)</sup> or paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000<sup>(e)</sup>;

(b) the First-tier Tribunal in a war pensions and armed forces case (as defined in the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008<sup>(f)</sup>); or

(c) 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.

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(a) 2004 c.6.

(b) Rule 20(1) was amended by S.I. 2009/274.

(c) 2006 c.47.

(d) 1998 c.14.

(e) 2000 c.19.

(f) S.I. 2008/2686 (L. 14).

**[Procedure for applying for a stay of a decision pending an appeal(a)]**

**20A.**—(1) This rule applies where another enactment provides in any terms for the Upper Tribunal to stay or suspend, or to lift a stay or suspension of, a decision which is or may be the subject of an appeal to the Upper Tribunal (“the substantive decision”) pending such appeal.

(2) A person who wishes the Upper Tribunal to decide whether the substantive decision should be stayed or suspended must make a written application to the Upper Tribunal which must include—

- (a) the name and address of the person making the application;
- (b) the name and address of any representative of that person;
- (c) the address to which documents for that person should be sent or delivered;
- (d) the name and address of any person who will be a respondent to the appeal;
- (e) details of the substantive decision and any decision as to when that decision is to take effect, and copies of any written record of, or reasons for, those decisions; and
- (f) the grounds on which the person making the application relies.

(3) In the case of an application under paragraph (2) for a stay of a decision of a traffic commissioner—

- (a) the person making the application must notify the traffic commissioner when making the application;
- (b) within 7 days of receiving notification of the application the traffic commissioner must send or deliver written reasons for refusing or withdrawing the stay—
  - (i) to the Upper Tribunal; and
  - (ii) to the person making the application, if the traffic commissioner has not already done so.

(4) If the Upper Tribunal grants a stay or suspension following an application under this rule—

- (a) the Upper Tribunal may give directions as to the conduct of the appeal of the substantive decision; and
- (b) the Upper Tribunal may, where appropriate, grant the stay or suspension subject to conditions.

(5) Unless the Upper Tribunal considers that there is good reason not to do so, the Upper Tribunal must send written notice of any decision made under this rule to each party.]

## PART 3

**[Procedure for cases in] the Upper Tribunal(b)**

**Application to the Upper Tribunal for permission to appeal(c)**

**21.**—(1)...

(2) A person may apply to the Upper Tribunal for permission to appeal to the Upper Tribunal against a decision of another tribunal only if—

- (a) they have 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.

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

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(a) Rule 20A was inserted by S.I. 2009/1975.

(b) The heading of Part 3 was amended by S.I. 2009/274.

(c) Rule 21(1) was omitted by S.I. 2009/1975.

(a) in the case of an application under section 4 of the Safeguarding Vulnerable Groups Act 2006, 3 months after the date on which written notice of the decision being challenged was sent to the appellant;

[(aa)subject to paragraph (3A), in an asylum case or an immigration case where the appellant is in the United Kingdom at the time that the application is made—

(i) seven working days after the date on which notice of the First-tier Tribunal's refusal of permission was sent to the appellant; or

(ii) if the case is a fast-track case, four working days after the date on which notice of the First-tier Tribunal's refusal of permission was sent to the appellant;

(ab) subject to paragraph (3A), in an asylum case or an immigration case where the appellant is outside the United Kingdom at the time that the application is made, fifty six days after the date on which notice of the First-tier Tribunal's refusal of permission was sent to the appellant; or]

(b) otherwise, a month after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal, or refusal to admit the application for permission to appeal, to the appellant.

[(3A) Where a notice of decision is sent electronically or delivered personally, the time limits in paragraph (3)(aa) and (ab) are—

(a) in sub-paragraph (aa)(i), five working days;

(b) in sub-paragraph (aa)(ii), two working days; and

(c) in sub-paragraph (ab), twenty eight days.]

(4) 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 relies; and

(f) whether the appellant wants the application to be dealt with at a hearing.

(5) The appellant must provide with the application a copy 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.

(6) If the appellant provides the application to the Upper Tribunal later than the time required by paragraph (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) 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 for permission or for a written statement of reasons 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 for permission to appeal or for a written statement of reasons, as the case may be, 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(a)**

**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 without obtaining any further response.

(3) [Paragraph (4) applies where the Upper Tribunal, without a hearing, determines an application for permission to appeal—

(a) against a decision of—

- (i) the Tax Chamber of the First-tier Tribunal;
- (ii) the Health, Education and Social Care Chamber of the First-tier Tribunal;
- [(iia) the General Regulatory Chamber of the First-tier Tribunal;]
- (iii) the Mental Health Review Tribunal for Wales; or
- (iv) the Special Educational Needs Tribunal for Wales; or

(b) 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 on which the Upper Tribunal sent written notice of its decision regarding the application to the appellant.

#### **Notice of appeal(b)**

**23.**—[(1) This rule applies—

- (a) to proceedings on appeal to the Upper Tribunal for which permission to appeal is not required, except proceedings to which rule 26A applies;
- (b) if another tribunal has given permission for a party to appeal to the Upper Tribunal; or
- (c) 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.

[(1A) In an asylum case or an immigration case in which the First-tier Tribunal has given permission to appeal, subject to any direction of the First-tier Tribunal or the Upper Tribunal, the application for permission to appeal sent or delivered to the First-tier Tribunal stands as the notice of appeal and accordingly paragraphs (2) to (6) of this rule do not apply.]

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(a) Rule 22(3) was substituted by S.I. 2009/274, and sub-paragraph (a)(iia) was inserted by S.I. 2009/1975.  
(b) Rule 23(1), (2) and (6) were substituted by S.I. 2009/1975.

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

- (a) the date that the tribunal that gave permission to appeal sent notice of such permission to the appellant; or
- (b) if permission to appeal is not required, the date on which notice of decision to which the appeal relates was sent to the appellant.]

(3) The notice of appeal must include the information listed in rule 21(4)(a) to (e) (content of the application for permission 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 a copy 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 permission to appeal.

(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—

- (a) to each respondent; or
- (b) in an appeal against the decision of a traffic commissioner, to—
  - (i) the traffic commissioner;
  - (ii) the appropriate national authority; and
  - (iii) in a case relating to the detention of a vehicle, the authorised person.]

#### **Response to the notice of appeal(a)**

**24.**—[(1) This rule and rule 25 do not apply to an appeal against a decision of a traffic commissioner, in respect of which Schedule 1 makes alternative provision.

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

(2) Any response provided under paragraph ([1A]) must be in writing and must be sent or delivered to the Upper Tribunal so that it is received—

- (a) [if an application for permission to appeal stands as the notice of appeal, no later than one month after the date on which the respondent was sent notice that permission to appeal had been granted];

[(aa) in a fast-track case, one day before the hearing of the appeal; or]

- (b) in any other case, no later than 1 month after 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;

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(a) In rule 24, paragraphs (1) and (1A) were substituted, and paragraphs (2)(a) and (3)(e) were amended, by S.I. 2009/1975. Paragraph (4) was amended by S.I. 2009/1975.

- (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 relies, including [(in the case of an appeal against the decision of another tribunal)] any grounds on which the respondent was unsuccessful in the proceedings which are the subject of the appeal, but intends to rely in the appeal; and
  - (f) whether the respondent wants the case to be dealt with at a hearing.
- (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 [response] 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) [Subject to paragraph (2A), 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.
- [(2A) In an asylum case or an immigration case, the time limit in paragraph (2) is—
- (a) one month after the date on which the Upper Tribunal sent a copy of the response to the appellant, or five days before the hearing of the appeal, whichever is the earlier; and
  - (b) in a fast-track case, the day of the hearing.]
- (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 in writing 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) an address 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 each respondent.
- (4) Rules 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.

### **[Cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent(a)]**

- 26A.**—[(1) Paragraphs (2) and (3) apply to—
- (a) a case transferred or referred to the Upper Tribunal from the First-tier Tribunal; or

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(a) Rule 26A was inserted by S.I. 2009/2741; paragraph (1) was substituted by S.I. 2009/1975.

- (b) a case, other than an appeal or a case to which rule 26 (references under the Forfeiture Act 1982) applies, which is started by an application made directly to the Upper Tribunal.]
- (2) In a case to which this paragraph applies—
  - (a) the Upper Tribunal must give directions as to the procedure to be followed in the consideration and disposal of the proceedings; and
  - (b) the preceding rules in this Part will only apply to the proceedings to the extent provided for by such directions.
- (3) If a case or matter to which this paragraph applies is to be determined without notice to or the involvement of a respondent—
  - (a) any provision in these Rules requiring a document to be provided by or to a respondent; and
  - (b) any other provision in these Rules permitting a respondent to participate in the proceedings does not apply to that case or matter.]
- [(4) Schedule 2 makes further provision for national security certificate appeals transferred to the Upper Tribunal.]

## PART 4

### Judicial review proceedings in the Upper Tribunal

#### **Application of this Part to judicial review proceedings transferred to the Upper Tribunal**

**27.**—(1) When a court transfers judicial review proceedings to the Upper Tribunal, the Upper Tribunal—

- (a) must notify each party in writing that the proceedings have been transferred to the Upper Tribunal; and
- (b) must give directions as to the future conduct of the proceedings.

(2) The directions given under paragraph (1)(b) may modify or disapply for the purposes of the proceedings any of the provisions of the following rules in this Part.

(3) In proceedings transferred from the Court of Session under section 20(1) of the 2007 Act, the directions given under paragraph (1)(b) must—

- (a) if the Court of Session did not make a first order specifying the required intimation, service and advertisement of the petition, state the Upper Tribunal’s requirements in relation to those matters;
- (b) state whether the Upper Tribunal will consider summary dismissal of the proceedings; and
- (c) where necessary, modify or disapply provisions relating to permission in the following rules in this Part.

#### **Applications for permission to bring judicial review proceedings(a)**

**28.**—(1) A person seeking permission to bring judicial review proceedings before the Upper Tribunal under section 16 of the 2007 Act 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[, action or omission] to which the application relates.

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(a) The words in square brackets in rule 23(2) were inserted by S.I. 2009/274.

(3) An application for permission to bring 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 on which 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;
- (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 the date, the full reference and the identity of the decision maker);
- (e) that the application is for permission to bring judicial review proceedings;
- (f) the outcome that the applicant is seeking; and
- (g) the facts and grounds on which the applicant relies.

(5) If the application relates to proceedings in a court or tribunal, the application must name as an interested party each party to those proceedings who is not the applicant or a respondent.

(6) 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.

(7) 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.

(8) 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(a)**

**29.—**(1) A person who is sent a copy of an application for permission under rule 28(8) (application for permission to bring judicial review proceedings) and wishes to take part in the proceedings must send or deliver to the Upper Tribunal an acknowledgment of service so that it is received no later than 21 days after the date on which the Upper Tribunal sent a copy of the application to that person.

(2) An acknowledgment of service under paragraph (1) must be in writing and state—

- (a) whether the person intends to [support or] oppose the application for permission;
- (b) their grounds for any [support or] 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 other person not named in the application as a respondent or interested party whom the person providing the acknowledgment considers to be an interested party.

---

(a) The words in square brackets in rule 29(2)(a) and (b) were inserted by S.I. 2009/274.

(3) A person who is sent a copy of an application for permission under rule 28(8) but does not provide an acknowledgment of service may not take part in the application for permission, but may take part in the subsequent proceedings if the application is successful.

### **Decision on permission or summary dismissal, and reconsideration of permission or summary dismissal at a hearing**

**30.**—(1) The Upper Tribunal must send to the applicant, each respondent and any other person who provided an acknowledgment of service to the Upper Tribunal, 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) In proceedings transferred from the Court of Session under section 20(1) of the 2007 Act, where the Upper Tribunal has considered whether summarily to dismiss of the proceedings, the Upper Tribunal must send to the applicant and each respondent, 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 summary dismissal of proceedings; and
- (b) the reasons for any decision summarily to dismiss part or all of the proceedings, or any limitations or conditions on the continuation of such proceedings.

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

- (a) determines an application for permission to bring judicial review proceedings and either refuses permission, or gives permission on limited grounds or subject to conditions; or
- (b) in proceedings transferred from the Court of Session, summarily dismisses part or all of the proceedings, or imposes any limitations or conditions on the continuation of such proceedings.

(4) In the circumstances specified in paragraph (3) the applicant may apply for the decision to be reconsidered at a hearing.

(5) An application under paragraph (4) 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 on which the Upper Tribunal sent written notice of its decision regarding the application to the applicant.

### **Responses**

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

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

**32.** The applicant may not rely on any grounds, other than those grounds on which the applicant obtained permission for the judicial review proceedings, without the consent of the Upper Tribunal.

### **Right to make representations**

**33.** Each party and, with the permission of the Upper Tribunal, any other person, may—

- (a) submit 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**

- 34.**—(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 deciding whether to hold a hearing to consider any matter, and the form of any such hearing.

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

- 35.**[—(1)] Subject to rule 37(4) (exclusion of a person from a hearing), each party is entitled to attend a hearing.  
[(2) In a national security certificate appeal the relevant Minister is entitled to attend any hearing.]

#### **Notice of hearings**

- 36.**—(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 change 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 permission to bring judicial review proceedings, the period of notice must be at least 2 working days;  
[(aa) in a fast-track case the period of notice must be at least one working day; and]  
(b) [in any case other than a fast-track case] the Upper Tribunal may give shorter notice—  
(i) with the parties' consent; or  
(ii) in urgent or exceptional cases.

#### **[Special time limits for hearing an appeal in a fast-track case**

- 36A.**—(1) Subject to rule 36(2)(aa) (notice of hearings) and paragraph (2) of this rule, where permission to appeal to the Upper Tribunal has been given in a fast-track case, the Upper Tribunal must start the hearing of the appeal not later than—  
(a) four working days after the date on which the First-tier Tribunal or the Upper Tribunal sent notice of its grant of permission to appeal to the appellant; or  
(b) where the notice of its grant of permission to appeal is sent electronically or delivered personally, two working days after the date on which the First-tier Tribunal or the Upper Tribunal sent notice of its grant of permission to appeal to the appellant.  
(2) If the Upper Tribunal is unable to arrange for the hearing to start within the time specified in paragraph (1), it must set a date for the hearing as soon as is reasonably practicable.]

#### **Public and private hearings(a)**

- 37.**—(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.

---

(a) In rule 37(4), paragraph (c) was amended by S.I. 2009/1975 and paragraph (e) was amended by S.I. 2009/274.

[(2A) In a national security certificate appeal, the Upper Tribunal must have regard to its duty under rule 14(10) (no disclosure of information contrary to the interests of national security) when considering whether to 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;
- (c) any person who the Upper Tribunal considers should be excluded in order to give effect to [the requirement at rule 14(11) (prevention of disclosure or publication of documents and information)];
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person[; or
- (e) a person under the age of eighteen years.]

(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**

**38.** 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(a)**

**39.**—(1) The Upper Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of 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).

#### **Decisions(b)**

**40.**—(1) The Upper Tribunal may give a decision orally at a hearing.

(2) [Except where rule 40A (special procedure for providing notice of a decision relating to an asylum case) applies]The Upper Tribunal must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings (except a decision under Part 7)—

- (a) a decision notice stating the Tribunal's decision; and

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(a) Rule 39(2) was amended by S.I. 2009/274.

(b) In rule 40, paragraphs (2) and (3) were amended by S.I. 2009/274 and paragraphs (3) and (4) were amended by S.I. 2009/1975.

- (b) 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.
- (3) [Subject to rule [14(11) (prevention of disclosure or publication of documents and information)],] the Upper Tribunal must provide written reasons for its decision with a decision notice provided under paragraph (2)(a) unless—
  - (a) the decision was made with the consent of the parties; or
  - (b) the parties have consented to the Upper Tribunal not giving written reasons.
- (4) The [Upper] Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

[(5) In a national security certificate appeal, when the Upper Tribunal provides a notice or reasons to the parties under this rule, it must also provide the notice or reasons to the relevant Minister and the Information Commissioner, if they are not parties.]

**[Special procedure for providing notice of a decision relating to an asylum case**

**40A.**—(1) This rule applies to an appeal before the Upper Tribunal under section 11 of the 2007 Act in an asylum case where—

- (a) the person who appealed to the First-tier Tribunal is in the United Kingdom; and
- (b) the case is not a fast-track case.

(2) The Upper Tribunal must provide to the Secretary of State for the Home Department as soon as reasonably practicable—

- (a) a decision notice stating the Upper Tribunal’s decision; and
- (b) a statement of any right of appeal against the decision and the time and manner in which such a right of appeal may be exercised.

(3) The Secretary of State must, subject to paragraph (5)—

- (a) send the documents listed in paragraph (2) to the other party not later than 30 days after the Upper Tribunal sent them to the Secretary of State for the Home Department; and
- (b) as soon as practicable after sending the documents listed in paragraph (2), notify the Upper Tribunal on what date and by what means they were sent.

(4) If the Secretary of State does not notify the Upper Tribunal under paragraph (3)(b) within 31 days after the documents listed in paragraph (2) were sent, the Upper Tribunal must send the notice of decision to the other party as soon as reasonably practicable.

(5) If the Secretary of State applies for permission to appeal under section 13 of the 2007 Act, the Secretary of State must send the documents listed in paragraph (2) to the other party no later than the date on which the application for permission is sent to the Upper Tribunal.]

## PART 7

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

**Interpretation(a)**

**41.** In this Part—

“appeal”[, except in rule 44(2) (application for permission to 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.

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(a) The words in square brackets in rule 41 were inserted by S.I. 2009/274.

### **Clerical mistakes and accidental slips or omissions**

**42.** 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**

**43.—(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) [Except where paragraph (4) applies,] 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.

(4) In an asylum case or an immigration case, the written application referred to in paragraph (3) must be sent or delivered so that it is received by the Upper Tribunal—

- (a) where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application is made, no later than twelve days after the date on which the Upper Tribunal or, as the case may be in an asylum case, the Secretary of State for the Home Department, sent notice of the decision to the party making the application; or
- (b) where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application is made, no later than thirty eight days after the date on which the Upper Tribunal sent notice of the decision to the party making the application.

(5) Where a notice of decision is sent electronically or delivered personally, the time limits in paragraph (4) are ten working days.]

### **Application for permission to appeal(a)**

**44.—(1)** A person seeking permission to appeal must make a written application to the Upper Tribunal for permission to appeal.

(2) Paragraph (3) applies to an application under paragraph (1) in respect of a decision—

- (a) on an appeal against a decision in a social security and child support case (as defined in the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008**(b)**);
- (b) on an appeal against a decision in proceedings in the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal**(a)**;

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(a) Rule 44(2)(ba) was inserted by S.I. 2009/274.

(b) S.I. 2008/2685 (L. 13).

[(ba) on an appeal against a decision of a Pensions Appeal Tribunal for Scotland or Northern Ireland; or]

(c) in proceedings under the Forfeiture Act 1982.

(3) Where this paragraph applies, the application must be sent or delivered to the Upper Tribunal so that it is received within 3 months after the date on which the Upper Tribunal sent to the person making the application—

- (a) written notice of 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.

[(3A) An application under paragraph (1) in respect of a decision in an asylum case or an immigration case must be sent or delivered to the Upper Tribunal so that it is received within the appropriate period after the Upper Tribunal or, as the case may be in an asylum case, the Secretary of State for the Home Department, sent any of the documents in paragraph (3) to the party making the application.

(3B) The appropriate period referred to in paragraph (3A) is as follows—

- (a) where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application is made—
  - (i) twelve days; or
  - (ii) if the party making the application is in detention under the Immigration Acts, seven working days; and
- (b) where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application is made, thirty eight days.

(3C) Where a notice of decision is sent electronically or delivered personally, the time limits in paragraph (3B) are—

- (a) in sub-paragraph (a)(i), ten working days;
- (b) in sub-paragraph (a)(ii), five working days; and
- (c) in sub-paragraph (b), ten working days.]

(4) Where paragraph (3) [or (3A)] does not apply, an application under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received within 1 month after the latest of the dates on which the Upper Tribunal sent to the person making the application—

- (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.

(5) The date in paragraph (3)(c) or (4)(c) applies only if the application for the decision to be set aside was made within the time stipulated in rule 43 (setting aside a decision which disposes of proceedings) or any extension of that time granted by the Upper Tribunal.

(6) If the person seeking permission to appeal provides the application to the Upper Tribunal later than the time required by paragraph (3), [(3A)] or (4), 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 refuse the application.

(7) An application under paragraph (1) must—

- (c) identify the decision of the Tribunal to which it relates;
- (d) identify the alleged error or errors of law in the decision; and

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(a) The War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal is established by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 (S.I. 2008/2684).

- (e) state the result the party making the application is seeking.

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

**45.**—(1) On receiving an application for permission to appeal the Upper Tribunal may review the decision in accordance with rule 46 (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 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**

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

- (a) pursuant to rule 45(1) (review on an application for permission to appeal); or
- (b) pursuant to rule 47 (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 and of any rights of review or appeal in relation to the outcome.

(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 (2) 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 to be reviewed again.

### **Review of a decision in proceedings under the Forfeiture Act 1982**

**47.**—(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 they—

- (a) consider that the decision should be reviewed; or
- (b) have 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, they 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) If the Upper Tribunal decides to take any action in relation to a decision following a review under this rule without first giving the person who made the reference and the person to whom the question relates an opportunity to make representations, the notice under paragraph (4) must state that either of those persons who did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

*Patrick Elias*  
*Phillip Brook Smith Q.C.*  
*Lesley Clare*  
*Douglas J. May Q.C.*  
*Newton of Braintree*  
*M.J. Reed*  
*Mark Rowland*  
*Nicholas Warren*

I allow these Rules  
Signed by authority of the Lord Chancellor

9th October 2008

*Bridget Prentice*  
Parliamentary Under Secretary of State  
Ministry of Justice

## Procedure after the notice of appeal in appeals against decisions of traffic commissioners

1. This Schedule applies to an appeal against the decision of a traffic commissioner.
2. The only parties to the appeal are the appellant and any person added as a party under rule 9 (substitution and addition of parties).
3. On receipt of a copy of a notice of appeal under rule 23(6)(b), the traffic commissioner must send to the Upper Tribunal a copy (and, on request, further copies) of—
  - (a) a written record of the decision appealed against and reasons for the decision;
  - (b) all documents produced to the traffic commissioner in connection with the decision;
  - (c) if a public inquiry was held, the transcript of the inquiry or, if no such transcript was produced, the traffic commissioner's note of the inquiry; and
  - (d) in an appeal under section 50 of the Public Passenger Vehicles Act 1981(b) or section 37 of the Goods Vehicles (Licensing of Operators) Act 1995(c), a list of the names and addresses of objectors and representors.
4. On receipt of a list under paragraph 3(d) the Upper Tribunal must send a copy of the notice of appeal—
  - (a) where the appellant had applied for, or for the variation of, an operator's licence, to each person who made an objection to the application;
  - (b) where the appellant had made an objection to an application for, or (in the case of a goods vehicle operator's licence) for the variation of, an operator's licence, to the person who made the application and to every other person who made an objection to the application; and
  - (c) in an appeal under section 37(5) of the Goods Vehicles (Licensing of Operators) Act 1995, each person who made representations under section 12(4) or 19(2) of that Act against the application for, or for the variation of, the operator's licence in question.
5. The appropriate national authority and any person to whom the Upper Tribunal has sent a copy of the notice of appeal under paragraph 4 may apply for a direction under rule 9(2) adding them as a respondent.
6. An application under paragraph 5 must be sent or delivered to the Upper Tribunal so that it is received within 14 days of the date that the Upper Tribunal sent a copy of the notice of appeal to the person making the application.
7. If a person specified in paragraph 8 makes an application in accordance with paragraphs 5 and 6, the Upper Tribunal must give a direction under rule 9(2) adding that person as a respondent.
8. The persons specified for the purposes of paragraph 7 are—
  - (a) the appropriate national authority;
  - (b) an objector who was sent a copy of the notice of appeal under paragraph 4(a) or (b); and
  - (c) a person who made an application and was sent a copy of the notice of appeal under paragraph 4(b).

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(a) Schedule 1 was inserted by S.I. 2009/1975.

(b) 1981 c. 14. Section 50 was substituted by section 31 of the Transport Act 2985 (c. 67) and amended by section 65(2) of, and paragraph 7 of Schedule 14 to, the Deregulation and Contracting Out Act 1994 (c. 40).

(c) 1995 c. 23.

**9.** The Upper Tribunal must notify each other party of any application under paragraph 3 and the Upper Tribunal's decision in respect of each such application.

**10.** Any party may make a request to the Upper Tribunal for copies of specified documents provided by the traffic commissioner under paragraph 3.

**11.** On receiving a request under paragraph 9 the Upper Tribunal—

- (a) must provide the requested copies unless it considers the request unreasonable; and
- (b) if it considers the request unreasonable, give details of why it considers the request unreasonable.]

## [SCHEDULE 2

Rule 26A(4)

### Additional procedure in national security certificate cases

**1.** This Schedule applies only to national security certificate appeals.

**2.** Following the transfer of the appeal from the First-tier Tribunal, the Upper Tribunal must provide a copy of the notice of appeal to the respondent, the relevant Minister and the Information Commissioner.

**3.** The relevant Minister must send or deliver to the Upper Tribunal a copy of the certificate to which the appeal relates, and a response to the notice of appeal, not later than 42 days after the date on which the relevant Minister received a copy of the notice of appeal.

**4.** In an appeal under section 28(4) of the Data Protection Act 1998 or section 60(1) of the Freedom of Information Act 2000 (including that subsection as applied and modified by regulation 18 of the Environmental Information Regulations 2004), the relevant Minister's response must state whether the relevant Minister intends to oppose the appeal and, if so set out—

- (a) a summary of the circumstances relating to the issue of the certificate;
- (b) the reason for the issue of the certificate;
- (c) the grounds on which the relevant Minister relies in opposing the appeal; and
- (d) a statement of the evidence on which the relevant Minister relies in support of those grounds.

**5.** In an appeal under section 28(6) of the Data Protection Act 1998 or section 60(4) of the Freedom of Information Act 2000 (including that subsection as applied and modified by regulation 18 of the Environmental Information Regulations 2004), the relevant Minister's response must state whether the relevant Minister intends to make representations in relation to the appeal and, if so set out—

- (a) the extent to which the relevant Minister intends to support or oppose the appeal;
- (b) the grounds on which the relevant Minister relies in supporting or opposing the appeal; and
- (c) a statement of the evidence on which the relevant Minister relies in support of those grounds.

**6.** The Upper Tribunal must—

- (a) subject to paragraph 11, provide the relevant Minister's response and any other response to the appellant, the Information Commissioner and any respondent; and
- (b) send a copy of any other response to the relevant Minister.

**7.** On grounds of the need to ensure that information is not disclosed contrary to the interests of national security, the relevant Minister may—

- (a) object to the disclosure of the relevant Minister's response to the appellant, the Information Commissioner or any respondent, by sending a notice to the Upper Tribunal with the response; or
- (b) object to the disclosure of any other response to the Information Commissioner or any respondent, by sending a notice to the Upper Tribunal within 42 days of the date on which the relevant Minister received a copy of the response.

**8.** A notice under paragraph 7 must—

- (a) state the reason for the objection; and
- (b) in the case of a notice under paragraph 7(a) and to the extent that it is possible to do so, be accompanied by a version of the relevant Minister's response in a form that can be shown to the appellant, the Commissioner or, as the case may be, a respondent.

**9.** Before the Upper Tribunal gives a direction, issues a summons or citation, or produces or publishes a written record of, or reasons for, a decision—

- (a) the Upper Tribunal must notify the relevant Minister of the proposed action; and
- (b) if the relevant Minister considers that the proposal would cause information that is or would be exempt by virtue of a provision in Part 2 of the Freedom of Information Act 2000 to be disclosed, the relevant Minister may object to the proposal by sending a notice to the Upper Tribunal.

**10.** When deciding whether to uphold an objection made by the relevant Minister—

- (a) any hearing must take place in the absence of the parties;
- (b) if the Upper Tribunal is minded to overrule the relevant Minister's objection, or to require the relevant Minister to provide a version of the relevant Minister's response in a form other than one provided under paragraph 8(b) above, the Upper Tribunal must invite the relevant Minister to make representations; and
- (c) if the Upper Tribunal overrules an objection in relation to the disclosure of a response, the Tribunal must not disclose, or require the relevant Minister to disclose, any material the subject of the objection unless the relevant Minister relies upon that material in opposing the appeal.

**11.** Where the relevant Minister may object to the disclosure of a response or proposed action by the Upper Tribunal, the Upper Tribunal may not proceed with that disclosure or that proposed action unless—

- (a) the time for the relevant Minister to object has expired; and
- (b) the relevant Minister has not objected, or the Tribunal has overruled the relevant Minister's objection and, in the case of the disclosure of a response, may proceed with the disclosure under paragraph 10(c). ]

## **EXPLANATORY NOTE**

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

Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c.15) establishes a new tribunal structure comprising a First-tier Tribunal and an Upper Tribunal. Appeal functions of existing tribunals are being transferred to this structure and assigned to chambers within the new tribunals. These Rules govern the practice and procedure to be followed in the Upper Tribunal.

Part 1 contains provisions for interpreting and applying the Rules and sets out the overriding objective of the Rules.

Part 2 contains general powers and provisions including the Upper Tribunal's general case management powers, the giving of directions, the power to strike out a party's case, the service of documents and rules about evidence, submissions and witnesses.

Part 3 contains provisions on permission for and notice of appeals and on responses and replies.

Part 4 contains provisions in relation to the Upper Tribunal's "judicial review" jurisdiction under sections 15 and 21 of the 2007 Act.

Parts 5 and 6 make provision for hearings and for decisions made by the Upper Tribunal.

Part 7 deals with correcting, setting aside, reviewing and appealing against decisions of the Upper Tribunal.