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## 2008 No. 2698

# The Tribunal Procedure (Upper Tribunal) Rules 2008

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*This consolidated version has been produced in order to assist users but its accuracy is not guaranteed and should not be relied upon. For the definitive Rules, users should refer to the original statutory instruments.*

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## PART 1

### Introduction

#### **Citation, commencement, application and interpretation**

**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);

“applicant” means—

- (a) 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; or
- (b) a person who refers a financial services case or a wholesale energy case to the Upper Tribunal;

“appropriate national authority” means, in relation to an appeal, the Secretary of State, the Scottish Ministers, the Department of the Environment in Northern Ireland 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 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—

- (a) an examiner appointed by the Secretary of State under section 66A of the Road Traffic Act 1988;
- (b) an examiner appointed by the Department of the Environment in Northern Ireland under Article 74 of the Road Traffic (Northern Ireland) Order 1995; or
- (c) any person authorised in writing by the Department of the Environment in Northern Ireland for the purposes of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010;

and includes a person acting under the direction of such an examiner or other authorised person, who has detained the vehicle to which an appeal relates;

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

“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;

“financial sanctions case” means an appeal to the Upper Tribunal under section 147(6) of the Policing and Crime Act 2017;

“financial services case” means a reference to the Upper Tribunal in respect of—

- (a) a decision of the Financial Conduct Authority;
- (aa) a decision of the Prudential Regulation Authority;
- (b) a decision of the Bank of England;
- (c) a decision of the Pensions Regulator;
- (d) a decision of a person relating to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008 or the Banking Act 2009; or
- (e) any determination, calculation or dispute which may be referred to the Upper Tribunal under the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2010 (and in these Rules a decision in respect of which a reference has been made to the Upper Tribunal in a financial services case includes any such determination, calculation or, except for the purposes of rule 5(5), dispute relating to the making of payments under the Regulations).

“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, section 82 of the Nationality, Immigration and Asylum Act 2002[, regulation 26 of the Immigration (European Economic Area) Regulations 2006, regulation 36 of the Immigration (European Economic Area) Regulations 2016](a) or the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020 that are not an asylum case;

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(a) Words revoked by reg 33(2) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020/1309, revocation has effect subject to savings provisions specified in reg 33(4) of that instrument.

“immigration judicial review proceedings” means judicial review proceedings which are designated as an immigration matter—

- (a) in a direction made in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 specifying a class of case for the purposes of section 18(6) of the 2007 Act; or
- (b) in an order of the High Court in England and Wales made under section 31A(3) of the Senior Courts Act 1981, transferring to the Upper Tribunal an application of a kind described in section 31A(1) of that Act;

“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 (addition, substitution and removal of parties);
- (b) in judicial review 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 an interested party in the proceedings immediately before they were transferred to the Upper Tribunal;
- (c) in a financial services case or a wholesale energy case, any person other than the applicant who could have referred the case to the Upper Tribunal and who has been added or substituted as an interested party under rule 9 (addition, substitution and removal of parties);
- (d) in a financial sanctions case, any person other than the appellant upon whom the Treasury has imposed a monetary penalty under Part 8 of the Policing and Crime Act 2017 in connection with the same matters as led to the decision that is the subject of the appeal and who has been added or substituted as an interested party under rule 9 (addition, substitution and removal of parties); and
- (e) in a trade remedies case, any person other than the appellant who could have appealed to the Upper Tribunal and who has been added or substituted as an interested party under rule 9 (addition, substitution and removal of parties);

“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 or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984;

“national security certificate appeal” means an appeal under section 28 of the Data Protection Act 1998, sections 27, 79 or 111 of the Data Protection Act 2018 or section 60 of the Freedom of Information Act 2000 (including that section as applied and modified by regulation 18 of the Environmental Information Regulations 2004);

“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 or matter 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 Upper 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;

“QCS Board” means a Board constituted under Part 2 of the Transport Act 2000;

“quality contracts scheme” has the meaning provided for in section 124(3) (quality contracts scheme) of the Transport Act 2000;

“quality contracts scheme case” means proceedings in the Upper Tribunal under Part 2 of the Transport Act 2000;

“reference”, in a financial services case, includes an appeal;

“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; or
  - (ii) [...]
  - (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 any other application for permission to appeal, or any other appeal except a road transport case, the person who made the decision that has been challenged;
- (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 Senior Courts 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.
- (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, the person whose eligibility for a benefit or advantage is in issue;
- (da) in a financial services case—
  - (i) where the case is a multiple regulator case, both the primary and secondary regulator as defined in Schedule 3 to these rules (but subject to the operation of paragraph 4A(3) of that Schedule);
  - (ii) where the case is a single regulator case, the maker of the decision in respect of which a reference has been made; or
- (db) in a wholesale energy case, in relation to Great Britain, the Gas and Electricity Markets Authority or, in relation to Northern Ireland, the Northern Ireland Authority for Utility Regulation; or
- (e) a person substituted or added as a respondent under rule 9 (substitution and addition of parties);

“road transport case” means an appeal against a decision of—

- (a) a traffic commissioner, other than an appeal pursuant to—
  - (i) section 6F of the Transport Act 1985, or
  - (ii) section 123T of the Transport Act 2000, or
- (b) the Department of the Environment in Northern Ireland;

“special educational needs case” means proceedings concerning the education of a child or young person who has or may have special educational needs, including proceedings relating to—

- (a) an EHC needs assessment within the meaning of section 36(2) of the Children and Families Act 2014;
- (aa) a detained person’s EHC needs assessment within the meaning of section 70(5) of the Children and Families Act 2014; or
- (b) an EHC plan within the meaning of section 37(2) of that Act,

of such a child or young person.

“TRA” means the Trade Remedies Authority;

“trade remedies case” means an appeal pursuant to the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 against a decision made by the TRA or a determination of the Secretary of State;

“tribunal” does not include a traffic commissioner;

“wholesale energy case” means a reference to the Upper Tribunal in respect of a decision of—

- (a) in relation to Great Britain, the Gas and Electricity Markets Authority under the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013; or
- (b) in relation to Northern Ireland, the Northern Ireland Authority for Utility Regulation under the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013;

“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;

“young person” means, in relation to a special educational needs case or a disability discrimination in schools case, a person over compulsory school age but under 25.

### **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 does not apply to proceedings before the Upper Tribunal.

## PART 2

### General powers and provisions

#### Delegation to staff

4.—(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) or section 2(1) of the Courts Act 2003 (court officers, staff and services) may, if authorised by the Senior President of Tribunals under paragraph 3(3) of Schedule 5 to the 2007 Act, carry out functions of a judicial nature permitted or required to be done by the Upper Tribunal.

(2) [...]

(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

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

(4) [...]



(5) In a financial services case, the Upper Tribunal may direct that the effect of the decision in respect of which the reference has been made is to be suspended pending the determination of the reference, if it is satisfied that to do so would not prejudice—

- (a) the interests of any persons (whether consumers, investors or otherwise) intended to be protected by that notice;
- (b) the smooth operation or integrity of any market intended to be protected by that notice; or
- (c) the stability of the financial system of the United Kingdom.

(5A) In a financial sanctions case, the Upper Tribunal may direct that the payment of a monetary penalty that is the subject of an appeal be suspended pending the determination of the appeal or its withdrawal.

(6) Paragraph (5) does not apply in the case of a reference in respect of a decision of the Pensions Regulator.

(7) In a wholesale energy case, the Upper Tribunal may direct that the effect of the decision in respect of which the reference has been made is to be suspended pending the determination of the reference.

## **5A. [...]**

### **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**

**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—

- (a) 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 part of them; or
- (b) in immigration judicial review proceedings, when a fee has not been paid, as required, in respect of an application under rule 30(4) or upon the grant of permission.

(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.

### **Addition, substitution and removal of parties**

**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**

**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.

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

(a) in judicial review proceedings;

(b) [...]

(c) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs;

(d) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings;

(e) if, in a financial services case or a wholesale energy case, the Upper Tribunal considers that the decision in respect of which the reference was made was unreasonable; or

- (f) if, in a financial sanctions case, the Upper Tribunal considers that the decision to impose or uphold a monetary penalty in respect of which the appeal was made was unreasonable.
- (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 under rule 17(5) that a withdrawal which ends the proceedings has taken effect.
- (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, including the costs or expenses of the assessment, 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 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.
- (10) Upon making an order for the assessment of costs, the Upper Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

## **Representatives**

**11.—(1)** Subject to paragraph (5A), 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.

(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) Subject to paragraph (5B), 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.

(5A) In immigration judicial review proceedings, a party may appoint as a representative only a person authorised under the Legal Services Act 2007 to undertake the conduct of litigation in the High Court.

(5B) At a hearing of immigration judicial review proceedings, rights of audience before the Upper Tribunal are restricted to persons authorised to exercise those rights in the High Court under the Legal Services Act 2007.

(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.

### **Calculating time**

**12.**—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done 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.

(b) [...]

(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) [...]

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

**13.**—(1) Subject to paragraph (1A), 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;

(ba) uploaded to the Upper Tribunal’s secure portal; or

(c) sent or delivered by such other method as the Upper Tribunal may permit or direct.

(1A) A practice direction may specify for any document subject to paragraph (1)–

(a) the requirements that must be fulfilled for it to be uploaded to the Upper Tribunal’s secure portal; and

(b) for any specified category of party in any specified category of case, that it must be so uploaded to the Upper Tribunal’s secure portal.

(2) Subject to paragraphs (2A) and (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them (including transmission through the Upper Tribunal’s secure portal), that party must accept delivery of documents by that method.

(2A) A party is required to accept delivery of documents through the Upper Tribunal’s secure portal only if the document is sent to that party by the Upper Tribunal.

(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 (including transmission through the Upper Tribunal’s secure portal), 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.

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

(8) In judicial review proceedings, unless the contrary is proved, a document sent by first class post will be deemed to be provided or received on the second working day after it was posted.

### **Use of documents and information**

**14.**—(1) The Upper Tribunal may make an order prohibiting the disclosure or publication of—

(a) specified documents or information relating to the proceedings; or

- (b) any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified.
- (2) The Upper Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—
- (a) the Upper Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
  - (b) the Upper Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.
- (3) If a party (“the first party”) considers that the Upper Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—
- (a) exclude the relevant document or information from any documents that will be provided to the second party; and
  - (b) provide to the Upper Tribunal the excluded document or information, and the 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.
- (8A) In a trade remedies case, the Upper Tribunal may give a direction under paragraph (8) if the Upper Tribunal is satisfied that—
- (a) where such documents or information have been supplied to the TRA, the TRA is treating such documents or information as confidential in accordance with—
    - (i) regulation 45 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019;
    - (ii) regulation 16 of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019; or
    - (iii) regulation 5 of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019; or
  - (b) where such documents or information have not been supplied to the TRA, if such documents or information were to be supplied to the TRA in accordance with regulation 5 of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019, the TRA would be entitled to treat such documents or information as confidential in accordance with that regulation,
- and the Upper Tribunal is not precluded from considering such documents or information in making its decision in the case.

(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).

### **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**

**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—
- (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) 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 that a withdrawal has taken effect under this rule.
- (6) Paragraph (3) does not apply to a financial services case other than a reference against a penalty.

### **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 Upper 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;[or](a)

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(a) Word inserted in rule 17A(1)(b) by reg 33(3)(a) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020/1309, revocation has effect subject to savings provisions specified in reg 33(4) of that instrument.

- (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 has been issued to the appellant.](a)

(1A) A party to an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ("the 2020 Regulations") before the Upper Tribunal must also notify the Upper Tribunal if they are aware that the appeal is to be treated as abandoned under regulation 13 of those Regulations.

(2) Where an appeal is treated as abandoned pursuant to section 92(8), 104(4) or (4A) of the Nationality, Immigration and Asylum Act 2002 [or paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2006](b) or regulation 13(3) of the 2020 Regulations, 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 or regulation 13(3) of the 2020 Regulations, 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 civil legal services (within the meaning of section 8 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) are provided under arrangements made for the purposes of Part 1 of that Act or by the Northern Ireland Legal Services Commission, send a copy of the certificate or funding notice to the Upper Tribunal; or
- (ii) if funding is granted by the Scottish Legal Aid Board, send a copy of the legal aid certificate to the Upper Tribunal; and
- (b) notify every other party in writing that funding has been granted.

#### **Confidentiality in social security and child support cases**

**19.—**(1) Paragraph (4) applies to an appeal against a decision of the First-tier Tribunal—

- (a) in proceedings under the Child Support Act 1991 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); or
- (b) in proceedings where the parties to the appeal include former joint claimants who are no longer living together in the circumstances described in paragraph (3).

(2) The circumstances referred to in paragraph (1)(a) 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

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(a) Word revoked at rule 17A(1)(c) and revocation of rule 17A(1)(d) by reg 33(3)(b) of S.I. 2020/1309, revocation has effect subject to savings provisions specified in reg 33(4) of that instrument.

(b) Words revoked in rule 17A(2) by reg 33(3)(c) of the S.I. 2020/1309, revocation has effect subject to savings provisions specified in reg 33(4) of that instrument.

- (b) an absent parent, non-resident parent or person with care would like their address or the address of the child to be kept confidential and has given notice to that effect to the Upper Tribunal—
  - (i) in an application for permission to appeal or notice of appeal;
  - (ii) within 1 month after an enquiry by the Upper Tribunal; or
  - (iii) when notifying any subsequent change of address after proceedings have been started.
- (3) The circumstances referred to in paragraph (1)(b) 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) one of the former joint claimants would like their address to be kept confidential and has given notice to that effect to the Upper Tribunal—
    - (i) in an application for permission to appeal or notice of appeal;
    - (ii) within 1 month after an enquiry by the Upper Tribunal; or
    - (iii) when notifying any subsequent change of address after proceedings have been started.
- (4) Where this paragraph applies, the Secretary of State or other decision maker 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.

(5) In this rule—

“absent parent”, “non-resident parent” and “person with care” have the meanings set out in section 3 of the Child Support Act 1991;

“joint claimants” means the persons who made a joint claim for a jobseeker’s allowance under the Jobseekers Act 1995, a tax credit under the Tax Credits Act 2002 or in relation to whom an award of universal credit is made under Part 1 of the Welfare Reform Act 2012.

**Power to pay expenses and allowances**

**20.**—(1) In proceedings brought under section 4 of the Safeguarding Vulnerable Groups Act 2006, 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 or paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000;
- (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); 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.

**Procedure for applying for a stay of a decision pending an appeal**

**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) in a road transport case—
- (a) the person making the application must notify the decision maker when making the application;
  - (b) within 7 days of receiving notification of the application the decision maker 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 decision maker 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.

#### **Application for an authorised costs order**

**20B.**—(1) This rule applies to an application by a charity or charity trustees of a charity for an order under section 324A (power to authorise costs to be incurred in relation to proceedings) of the Charities Act 2011 (“authorised costs order”).

(2) An applicant for an authorised costs order must start proceedings before the Upper Tribunal by sending or delivering to the Upper Tribunal an application which must include—

- (a) the name and address of the applicant;
- (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) the name and address of any respondent and any other interested party in the proceedings to which the application relates;
- (e) details of the proceedings brought, or proposed to be brought, before the Upper Tribunal to which the application relates with details (including the full reference) of the decision challenged;
- (f) a copy of any authorised costs order or refusal of any authorised costs order made by the First-tier Tribunal;
- (g) the result the applicant is seeking;
- (h) the grounds on which the applicant relies;
- (i) whether the applicant wants the application to be determined at a hearing; and
- (j) any further information or documents required by a practice direction.

(3) The applicant must send or deliver a copy of the application (but need not send the further information or documents referred to in paragraph (2)(j)) to the respondent and any other interested party in the proceedings to which the application relates at the same time as it provides the application to the Upper Tribunal.

(4) In this rule, references to “charity” and “charity trustees” have the meanings given by the Charities Act 2011.

## PART 3

### Procedure for cases in the Upper Tribunal

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

##### **21.—(1) [...]**

(1A) This rule does not apply to an application for permission to appeal to the Upper Tribunal if such application is made under rule 24 (response to notice of appeal).

(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 or has been granted only on limited grounds.

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

- (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) in an asylum case or an immigration case where the appellant is in the United Kingdom at the time that the application is made, 14 days after the date on which notice of the First-tier Tribunal's refusal of permission was sent to the appellant; or
- (ab) [...]
- (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) [...]

(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.

(8) In this rule, a reference to notice of a refusal of permission to appeal is to be taken to include a reference to notice of a grant of permission to appeal on limited grounds.

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

**22.**—(1) If the Upper Tribunal refuses permission to appeal or refuses to admit a late application for permission, 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;
  - (iib) [...]
  - (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) Subject to paragraph (4A), 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 refuses to admit a late application for permission; or
- (b) gives permission to appeal on limited grounds or subject to conditions.

(4A) Where the Upper Tribunal considers the whole or part of an application to be totally without merit, it shall record that fact in its decision notice and, in those circumstances, the person seeking permission may not request the decision or part of the decision (as the case may be) to be reconsidered at a hearing.

(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.

**22A.** [...]

### **Notice of appeal**

**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, 26B or 26C 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.

(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—
  - (i) was sent to the appellant;
  - (ii) in a quality contracts scheme case, if the notice was not sent to the appellant, the date on which the notice was published in a newspaper in accordance with the requirement of section 125 (notice and consultation requirements) of the Transport Act 2000, or
  - (iii) in a trade remedies case—
    - (aa) where the appeal is against a decision made by the TRA and notice is required to be published in accordance with the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019, the date of such publication or (if later) when the notice comes into effect;
    - (bb) where the appeal is against a decision made by the TRA and no notice is required to be published in accordance with the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019, the date on which the appellant is notified of the decision, or
    - (cc) where the appeal is against a determination of the Secretary of State under the Taxation (Cross-border Trade) Act 2018, the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 or the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (as the case may be), the date on which the notice is published in accordance with the relevant provision or (if later) when the notice comes into effect;

(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;
- (b) in a road transport case, to—
  - (i) the decision maker;
  - (ii) the appropriate national authority; and
  - (iii) in a case relating to the detention of a vehicle, the authorised person; or
- (c) in an appeal against a decision of a traffic commissioner pursuant to section 6F of the Transport Act 1985 or section 123T of the Transport Act 2000, to—
  - (i) the respondent, and
  - (ii) the traffic commissioner who was the decision maker.

(6A) In a case to which paragraph (6)(c) applies, the Upper Tribunal must at the same time require such commissioner to—

- (a) send or deliver to the Upper Tribunal (within such time as the Upper Tribunal may specify)—
  - (i) a copy of any written record of the decision under challenge, and any statement of reasons for that decision, and
  - (ii) copies of all documents relevant to the case in such commissioner's possession, and
- (b) provide copies of such documents to each other party at the same time as they are provided to the Upper Tribunal.

(7) Paragraph (6)(a) does not apply in a quality contracts scheme case, in respect of which Schedule A1 makes alternative and further provision.

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

**24.—**(1) This rule and rule 25 do not apply to—

- (a) a road transport case, in respect of which Schedule 1 makes alternative provision; or
- (b) a financial sanctions case in respect of which Schedule 4 makes alternative provision.

(1A) Subject to any direction given by the Upper Tribunal, a respondent may, and if paragraph (1B) applies must, provide a response to a notice of appeal.

(1B) In the case of an appeal against the decision of another tribunal, a respondent must provide a response to a notice of appeal if the respondent—

- (a) wishes the Upper Tribunal to uphold the decision for reasons other than those given by the tribunal; or
- (b) relies on any grounds on which the respondent was unsuccessful in the proceedings which are the subject of the appeal.

(1C) If paragraph (1B) applies, to the extent that the respondent needs any permission, including permission to appeal to the Upper Tribunal, the response must include an application to the Upper Tribunal for such permission.

(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) [...]
- (ab) in a quality contracts scheme case, no later than 1 month after the date on which a copy of the notice of appeal is sent to the respondent; 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;
  - (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—
    - (i) to uphold the decision for reasons other than those given by the tribunal; or
    - (ii) on which the respondent was unsuccessful in the proceedings which are the subject of the appeal;
  - (ea) the reasons why any permission applied for under paragraph (1C) should be given; 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.

(6) Paragraph (5) does not apply in a quality contracts scheme case, in respect of which Schedule A1 makes alternative and further provision.

### **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 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.

(2B) In a quality contracts scheme case, the time limit in paragraph (2) is 1 month from the date on which the respondent sent a copy of the response to the appellant.

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

(4) Paragraph (3) does not apply in a quality contracts scheme case, in respect of which Schedule A1 makes alternative and further provision.

### **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, cases where an offence has been certified and proceedings without notice to a respondent**

**26A.**—(1) Paragraphs (2) and (3) apply to—

- (a) a case transferred or referred to the Upper Tribunal from the First-tier Tribunal;
- (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; or
- (c) a case where an offence has been certified 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;
- (aa) in a reference under section 325 or 326 of the Charities Act 2011, the Upper Tribunal may give directions providing for an application to join the proceedings as a party and the time within which it may be made; 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.

**Financial services cases and wholesale energy cases**

**26B.** Schedule 3 makes provision for financial services cases and wholesale energy cases.

**Financial sanctions cases**

**26C.** Schedule 4 makes provision for financial sanctions cases.

## 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**

**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.

(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) Except where rule 28A(2)(a) (special provisions for immigration judicial review proceedings) applies, 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.

### **Special provisions for immigration judicial review proceedings**

**28A.**—(1) The Upper Tribunal must not accept an application for permission to bring immigration judicial review proceedings unless it is either accompanied by any required fee or the Upper Tribunal accepts an undertaking that the fee will be paid.

- (2) Within 9 days of making an application referred to in paragraph (1), an applicant must provide—
- (a) a copy of the application and any accompanying documents to each person named in the application as a respondent or an interested party; and
  - (b) the Upper Tribunal with a written statement of when and how this was done.

### **Acknowledgment of service**

**29.**—(1) A person who is sent or provided with a copy of an application for permission under rule 28(8) (application for permission to bring judicial review proceedings) or rule 28A(2)(a) (special provisions for immigration judicial review proceedings) and wishes to take part in the proceedings must provide 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, or in immigration judicial review proceedings the applicant provided, 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 they consider 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.

(2A) In immigration judicial review proceedings, a person who provides an acknowledgement of service under paragraph (1) must also provide a copy to—

- (a) the applicant; and
- (b) any other person named in the application under rule 28(4)(a) or acknowledgement of service under paragraph (2)(c)

no later than the time specified in paragraph (1).

(3) A person who is provided with a copy of an application for permission under rule 28(8) or 28A(2)(a) but does not provide an acknowledgment of service to the Upper Tribunal may not take part in the application for permission unless allowed to do so by the Upper Tribunal, 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—
  - (i) refusal of the application or refusal to admit the late application; or
  - (ii) 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 by—
    - (i) refusing permission or refusing to admit the late application, or
    - (ii) giving 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) Subject to paragraph (4A), in the circumstances specified in paragraph (3) the applicant may apply for the decision to be reconsidered at a hearing.
 

(4A) Where the Upper Tribunal refuses permission to bring immigration judicial review proceedings or refuses to admit a late application for permission to bring such proceedings and considers the application to be totally without merit, it shall record that fact in its decision notice and, in those circumstances, the applicant may not request 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, or in immigration judicial review proceedings 9 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.

### **Amendments and additional grounds resulting in transfer of proceedings to the High Court in England and Wales**

- 33A.**—(1) This rule applies only to judicial review proceedings arising under the law of England and Wales.
- (2) In relation to such proceedings—
- (a) the powers of the Upper Tribunal to permit or require amendments under rule 5(3)(c) extend to amendments which would, once in place, give rise to an obligation or power to transfer the proceedings to the High Court in England and Wales under section 18(3) of the 2007 Act or paragraph (3);

- (b) except with the permission of the Upper Tribunal, additional grounds may not be advanced, whether by an applicant or otherwise, if they would give rise to an obligation or power to transfer the proceedings to the High Court in England and Wales under section 18(3) of the 2007 Act or paragraph (3).

(3) Where the High Court in England and Wales has transferred judicial review proceedings to the Upper Tribunal under any power or duty and subsequently the proceedings are amended or any party advances additional grounds—

- (a) if the proceedings in their present form could not have been transferred to the Upper Tribunal under the relevant power or duty had they been in that form at the time of the transfer, the Upper Tribunal must transfer the proceedings back to the High Court in England and Wales;
- (b) subject to sub-paragraph (a), where the proceedings were transferred to the Upper Tribunal under section 31A(3) of the Senior Courts Act 1981 (power to transfer judicial review proceedings to the Upper Tribunal), the Upper Tribunal may transfer proceedings back to the High Court in England and Wales if it appears just and convenient to do so.

## PART 5

### Hearings

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

**34.**—(1) Subject to paragraphs (2) and (3), 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.

(3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.

(4) Paragraph (3) does not affect the power of the Upper Tribunal to—

- (a) strike out a party's case, pursuant to rule 8(1)(b) or 8(2);
- (b) consent to withdrawal, pursuant to rule 17;
- (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
- (d) make a consent order disposing of proceedings, pursuant to rule 39,

without a 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; and
- (aa) [...]
- (b) the Upper Tribunal may give shorter notice—

- (i) with the parties' consent; or
- (ii) in urgent or exceptional cases.

**36A.—[...]**

**Public and private hearings**

**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.

(2ZA) [...]

(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 18, other than a young person who is a party in a special educational needs case or a disability discrimination in schools case.

(5) The Upper Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

**37A.—[...]**

**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**

**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 Upper Tribunal need not hold a hearing before making an order under paragraph (1).

## **Decisions**

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

(1A) Subject to paragraph (1B), in immigration judicial review proceedings, a decision which disposes of proceedings shall be given at a hearing.

(1B) Paragraph (1A) does not affect the power of the Upper Tribunal to—

- (a) strike out a party’s case, pursuant to rule 8(1)(b) or 8(2);
- (b) consent to withdrawal, pursuant to rule 17;
- (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
- (d) make a consent order disposing of proceedings, pursuant to rule 39,

without a hearing.

(2) Except where rule 22 (decision in relation to permission to appeal) applies, the Upper Tribunal must provide to each party as soon as reasonably practicable after making a decision (other than a decision under Part 7) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e)—

- (a) a decision notice stating the Upper Tribunal’s decision; and
- (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.

**40A.**—[...]

## **PART 7**

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

#### **Interpretation**

**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.

#### **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 Upper 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**

**44.**—(1) Subject to paragraphs (4A) and (4B), 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) on an appeal against a decision in proceedings in the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal;
- (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 working 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.

(3D) An application under paragraph (1) in respect of a decision in a financial services case 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 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.

(4) Where paragraph (3), (3A), (3D) or (4C) 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.

(4A) Where a decision that disposes of immigration judicial review proceedings is given at a hearing, a party may apply at that hearing for permission to appeal, and the Upper Tribunal must consider at the hearing whether to give or refuse permission to appeal.

(4B) Where a decision that disposes of immigration judicial review proceedings is given at a hearing and no application for permission to appeal is made at that hearing—

- (a) the Upper Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal; and
- (b) if permission to appeal is given to a party, it shall be deemed for the purposes of section 13(4) of the 2007 Act to be given on application by that party.

(4C) Where a decision that disposes of immigration judicial review proceedings is given pursuant to rule 30 and the Upper Tribunal records under rule 30(4A) that the application is totally without merit, an application under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received within 7 days after the later of the dates on which the Upper Tribunal sent to the applicant—

- (a) written reasons for the decision; or
- (b) notification of amended reasons for, or correction of, the decision following a review.

(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), (3D) 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) or (4A)(a) must—

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

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

**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 provide a record of its decision to the parties as soon as practicable.

(4) If the Upper Tribunal refuses permission to appeal it must provide 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 pursuant to rule 45(1) (review on an application for permission to appeal).

(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.

### **Setting aside 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 set aside and re-made under this rule; or
- (b) have received a written application for the decision to be set aside and re-made under this rule from the person to whom the decision related.

(2) The Upper Tribunal may set aside the decision, either in whole or in part, and re-make it if—

- (a) [...]
- (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) Rule 26(2) to (4), Parts 5 and 6 and this Part apply to a reference under this rule as they apply to a reference under rule 26(1).

### **Power to treat an application as a different type of application**

**48.** The Upper Tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other one of those things.

## **SCHEDULE A1**

**Rule 23**

### **Procedure in Quality Contracts Scheme cases**

**1.** This Schedule applies to quality contracts scheme cases.

#### **Notice of appeal**

**2.** The appellant must send or deliver to the Upper Tribunal the notice of appeal together with the following materials—

- (a) a copy of the notice of the decision being challenged;
- (b) a copy of any separate written statement of reasons;
- (c) copies of the most significant documents (or relevant extracts) on which the appellant relies in support of the grounds stated in its notice of appeal, including—
  - (i) the quality contracts scheme (or relevant extracts); and
  - (ii) any report of the QCS Board (or relevant extracts); and
- (d) a list of the materials referred to in sub-paragraphs (a) to (c) and where such materials may be accessed (e.g. link to internet webpage).

**3.** The appellant must, at the same time as sending its notice of appeal to the Upper Tribunal in accordance with paragraph 2, send a copy of the notice of appeal and of the additional materials to the respondent.

**4.** The Upper Tribunal must send a copy of the notice of appeal and a copy of the list referred to in paragraph 2(d) to the appropriate national authority.

**5.** The Upper Tribunal may, upon receipt of the notice of appeal, direct the respondent to—

- (a) give notice in at least one newspaper circulating in the area to which the scheme relates that a notice of appeal has been received;
- (b) give written notice to the persons consulted under section 125(3) (notice and consultation requirements) of the Transport Act 2000 and (if the case may be) those not consulted under section 125(3) but who in the opinion of the QCS Board, under section 126D(1)(b) (consideration of proposed schemes by boards) of that Act, ought to have been so consulted, that a notice of appeal has been received;
- (c) make arrangements for a place or website where copies of the notice of appeal and any response or reply and in each case their accompanying documents may be inspected;
- (d) ensure that each notice provided for in sub-paragraphs (a) and (b) states—
  - (i) where copies of the notice of appeal and other documents relating to the proceedings may be inspected; and
  - (ii) where information about the procedure for applying to be added as a party may be found.

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

**6.** A respondent must send or deliver to the Upper Tribunal its response to the notice of appeal together with the following materials—

- (a) a copy of the most significant documents (or relevant extracts) on which the respondent relies in support of the response;
- (b) a list of those documents.

**7.** The respondent must, at the same time as providing its response to the Upper Tribunal in accordance with paragraph 6, provide copies of that response and of those materials to—

- (a) the appellant; and
- (b) the appropriate national authority.

**8.** Any directions given by the Upper Tribunal to the respondent under paragraph 5 are also to be regarded as directions to the respondent to make available for inspection copies of its response and accompanying materials.

### **Appellant's reply**

**9.** The appellant must send or deliver to the Upper Tribunal its reply (if any) to a response under paragraph 6 together with the following materials—

- (a) a copy of any additional documents (or relevant extracts) relied on in support of the reply;
- (b) a list of those documents.

**10.** The appellant must, at the same time as providing its reply to the Upper Tribunal in accordance with paragraph 9, provide a copy of that reply and of those materials to the respondent.

**11.** The Upper Tribunal must send a copy of the appellant's reply and a copy of the list of documents referred to in paragraph 9(b) to the appropriate national authority.

**12.** Any directions given by the Upper Tribunal to the respondent under paragraph 5 are also to be regarded as directions to the respondent to make available for inspection copies of the appellant's reply and accompanying materials.

### **Adding further parties**

**13.** Any person who wishes to be added as a party to the proceedings, and has given notice to the respondent that they received the notice of the appeal in consequence of a direction made under paragraph 5, must apply to the Upper Tribunal in accordance with rule 9 within 1 month of the date on which they received notice of the appeal.

**14.** Any application to be added as a party must state—

- (a) the name and address of the person making the application;
- (b) the name and address of the representative (if any) of that person;
- (c) an address where documents for that person may be sent or delivered;
- (d) whether or not copies of the notice of appeal, any response and any reply has been inspected, along with their accompanying documents;
- (e) whether the person making the application supports or opposes the appeal; and
- (f) the grounds relied upon for adding the person as a party.

**15.** The person making the application must provide the following materials with the application—

- (a) a copy of the most significant documents (or relevant extracts) on which the person relies in support of the application, if not already listed by a party; and
- (b) a list of the documents referred to in sub-paragraph (a).

16. The Upper Tribunal must notify the parties of any application to be joined as a party and send a copy of the list of documents with the notification.

17. The Upper Tribunal may give further directions relating to any application to be added as a party and generally as to the conduct of the case.

## **SCHEDULE 1**

**Rule 24(1)**

### **Procedure after the notice of appeal in road transport cases**

1. This Schedule applies to road transport cases.
2. The only parties to the appeal are the appellant and any person added as a party under rule 9 (addition, substitution and removal of parties).
3. On receipt of a copy of a notice of appeal under rule 23(6)(b), the decision maker 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 decision maker 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 decision maker's note of the inquiry; and
  - (d) in an appeal under—
    - (i) section 50 of the Public Passenger Vehicles Act 1981 or section 37 of the Goods Vehicles (Licensing of Operators) Act 1995, or
    - (ii) section 35 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010,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;
  - (c) in an appeal under section 37(5) of the Goods Vehicles (Licensing of Operators) Act 1995, to 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;
  - (d) in an appeal under section 35(5) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010, to each person who made representations under section 11(4) or 18(2) of that Act.
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 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. [...]
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 decision maker 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, sections 27(3), 79(5) or 111(3) of the Data Protection Act 2018 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, sections 27(5), 79(7) or 111(5) of the Data Protection Act 2018 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 so that the Upper Tribunal receives the notice within 14 days of the date that the Minister received notice of the proposal.

**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 Upper 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 Upper 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).

## **SCHEDULE 3**

**Rule 26B**

### **Procedure in financial services cases and wholesale energy cases**

#### **Interpretation**

**1.** In this Schedule—

“further material” means—

- (a) in a single regulator case, documents which—
  - (i) were considered by the respondent in reaching or maintaining the decision to give the notice in respect of which the reference has been made; or
  - (ii) were obtained by the respondent in connection with the matter to which that notice relates (whether they were obtained before or after giving the notice) but which were not considered by it in reaching or maintaining that decision;but does not include documents on which the respondent relies in support of the referred action;
- (b) in a multiple regulator case—
  - (i) in relation to a respondent who is the primary regulator, documents which—
    - (aa) were considered by that regulator in reaching or maintaining its decision to give the notice in respect of which the reference has been made; or



- (bb) were obtained by that regulator in connection with the matter to which that notice relates (whether they were obtained before or after the notice was given) but which were not considered by that regulator in reaching or maintaining its decision;
  - (ii) in relation to a respondent who is the secondary regulator, documents which—
    - (aa) were considered by that regulator in reaching or maintaining its decision to take the secondary regulator action in relation to the notice in respect of which the reference has been made; or
    - (bb) were obtained by that regulator in connection with the matter to which that notice relates (whether they were obtained before or after the notice was given) but which were not considered by that regulator in reaching or maintaining its decision;
- but does not include documents on which either the primary regulator or the secondary regulator relies;

“multiple regulator case” means a case where—

- (a) any of the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England has given the notice in respect of which the reference has been made; and
- (b) such notice stated that another of those regulators had decided to take one of the following actions—
  - (i) to refuse a consent where such consent is required under the 2000 Act;
  - (ii) to give a conditional consent under the 2000 Act; or
  - (iii) to direct another regulator to take an action or not to take an action under the 2000 Act;

“primary regulator” means, in a multiple regulator case, the regulator giving the notice;

“reference notice” means the written notice required in making a reference in a financial services case or a wholesale energy case;

“referred action” means—

- (a) in a single regulator case, the act (or proposed act) on the part of the respondent that gave rise to the reference; and
- (b) in a multiple regulator case, the act (or proposed act) on the part of the primary regulator that gave rise to the reference;

“secondary regulator action” means an action taken by a secondary regulator, as stated in the notice given by the primary regulator;

“secondary regulator” means, in a multiple regulator case, a regulator specified in the notice other than the primary regulator;

“single regulator case” means a case that is not a multiple regulator case; and

“the 2000 Act” means the Financial Services and Markets Act 2000;

“the 2013 Regulations” means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013;

“the 2013 (NI) Regulations” means the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations (Northern Ireland) 2013.

## **Reference notice**

2.—(1) A reference notice must be signed by or on behalf of the applicant and sent or delivered by the applicant to the Upper Tribunal.

(2) A reference notice must be received by the Upper Tribunal no later than 28 days after notice was given of the decision in respect of which the reference is made.

(3) The reference notice must state—

- (a) the name and address of the applicant;
- (b) the name and address of the applicant’s representative (if any);

- (c) if no representative is named under sub-paragraph (b), an address where documents for the applicant may be sent or delivered; and
  - (d) the issues that the applicant wishes the Upper Tribunal to consider.
- (4) The applicant must send or deliver to the Upper Tribunal with the reference notice a copy of the notice of the decision in respect of which the reference has been made.
- (5) At the same time the applicant must send a copy of the reference notice—
- (a) in a single regulator case, to the respondent; and
  - (b) in a multiple regulator case, to each of the primary and secondary regulators.

### **Register of references and decisions**

**3.—**(1) The Upper Tribunal must keep a register of references and decisions in financial services cases and wholesale energy cases.

(2) The register must be open to inspection by any person without charge and at all reasonable hours.

(3) The Upper Tribunal may direct that the register is not to include particulars of a reference if it is satisfied that it is necessary to do so having regard in particular to—

- (a) any unfairness to the applicant or, except as regards a reference in respect of a decision of the Prudential Regulation Authority, any prejudice to the interests of consumers that might otherwise result;
- (b) as regards a reference in respect of a decision of the Financial Conduct Authority, any detriment to the stability of the UK financial system;
- (c) as regards a reference in respect of a decision of the Prudential Regulation Authority, any prejudice to the safety and soundness of persons authorised by it, or where section 2C of the 2000 Act applies, any prejudice to securing the appropriate degree of protection for policy holders; or
- (d) as regards a reference under the 2013 Regulations or the 2013 (NI) Regulations any detriment to the stability of the wholesale energy market as defined in those Regulations.

(4) Upon receiving a reference notice, the Upper Tribunal must—

- (a) subject to any direction given under sub-paragraph (3), enter particulars of the reference in the register; and
- (b) notify the parties either that it has done so or that it will not include particulars in the register, as the case may be.

(5) In a multiple regulator case, notification under sub-paragraph (4)(b) must be given to each of the primary and secondary regulators.

### **Respondent’s statement of case in a single regulator case**

**4.—**(1) The respondent in a single regulator case must send or deliver a written statement (“a statement of case”) in support of the referred action so that it is received by the Upper Tribunal no later than 28 days after the day on which the respondent received from the Upper Tribunal the notification required by paragraph 3(4)(b).

(2) The statement of case must—

- (a) identify the statutory provisions providing for the referred action;
- (b) state the reasons for the referred action; and
- (c) set out all the matters and facts upon which the respondent relies to support the referred action.

(3) The respondent must provide with the statement of case a list of—

- (a) any documents on which the respondent relies in support of the referred action; and
- (b) any further material which in the opinion of the respondent might undermine the decision to take that action.

(4) At the same time as it sends or delivers the statement of case, the respondent must send to the applicant a copy of the statement of case and of the list referred to in sub-paragraph (3).

### **Respondents' statements of case in a multiple regulator case**

**4A.**—(1) This paragraph applies in a multiple regulator case.

(2) The primary regulator must send or deliver either—

- (a) a written statement (a “statement of case”) in support of the referred action; or
- (b) a written notification that it does not itself advance a case in support of the referred action,

so that it is received by the Upper Tribunal no later than 28 days after the day on which the primary regulator received from the Upper Tribunal the notification required by paragraph 3(4)(b).

(3) A primary regulator providing a written notification under sub-paragraph (2)(b) must send or deliver a copy to the secondary regulator and the applicant and upon so doing—

- (a) the primary regulator shall not be required to take further steps in the proceedings unless the Upper Tribunal gives a direction to the contrary under rule 6; and
- (b) the respondent shall be the secondary regulator unless the Upper Tribunal orders otherwise.

(4) The secondary regulator must send or deliver a written statement (“a statement of case”) in support of its decision to take the secondary regulator action so that it is received by the Upper Tribunal no later than 28 days after the day on which the secondary regulator received from the Upper Tribunal the notification required by paragraph 3(4)(b).

(5) A statement of case must—

- (a) identify the statutory provisions providing for the referred action;
- (b) state the reasons in support for the referred action; and
- (c) set out all the matters and facts upon which the regulator relies to support the referred action.

(6) A regulator must provide with the statement of case a list of—

- (a) all documents on which it relies in support of the referred action;
- (b) any further material which, in the opinion of the regulator, might undermine its decision to—
  - (i) in the case of a primary regulator; take the referred action; and
  - (ii) in the case of a secondary regulator; take the secondary regulator action.

(7) The primary regulator and the secondary regulator must send to the applicant and the other regulator a copy of any statement of case required by sub-paragraphs (2) and (4) above and of the list referred to in sub-paragraph (6).

### **Applicant's reply**

**5.**—(1) The applicant must send or deliver a written reply so that it is received by the Upper Tribunal no later than 28 days after—

- (a) in a single regulator case, on the date on which the applicant received a copy of the statement of case;
- (aa) in a multiple regulator case, on the first date on which the applicant was in receipt of all the statements and, where relevant, notifications required under paragraphs 4A(2) and 4A(4); or
- (b) if a respondent amends its statement of case, the date on which the applicant received a copy of the amended statement of case.

(2) The reply must—

- (a) state the grounds on which the applicant relies in the reference;
- (b) identify all matters contained in the respondent's statement of case (or, where applicable, respondents' statements of case) which are disputed by the applicant;
- (c) state the applicant's reasons for disputing them.

(3) The applicant must send with the reply a list of all the documents on which the applicant relies in support of his case.

(4) At the same time the applicant must send to all other parties a copy of the reply and of the list referred to in sub-paragraph (3).

(5) Where the primary regulator has provided a written notification under paragraph 4A(2)(b), if the applicant wishes the Tribunal to direct that further steps in the proceedings be taken by the primary regulator, an application must be made at the time of sending the reply.

### **Secondary disclosure by a respondent**

**6.**—(1) After the applicant's reply has been sent or delivered, if there is any further material which might reasonably be expected to assist the applicant's case as disclosed by the applicant's reply and which is not listed in the list (or lists) provided in accordance with paragraph 4(3) (or paragraph 4A(6) where applicable), the respondent (or the respondents) must send or deliver to the Upper Tribunal a list (or lists) of such further material.

(2) Any list required to be sent or delivered by sub-paragraph (1) must be sent or delivered so that it is received no later than 14 days after the day on which the respondent in question received the applicant's reply.

(3) At the same time as it sends or delivers any list required by sub-paragraph (1) a respondent must send a copy to the applicant (and where applicable the other parties).

### **Exceptions to disclosure**

**7.**—(1) A list provided in accordance with paragraph 4(3), 4A(6) or 6(1) need not include any document that relates to a case involving a person other than the applicant which was taken into account by the respondent providing the list in the applicant's case only for the purposes of comparison with other cases.

(2) A list provided in accordance with paragraph 4(3), 4A(6), 5(3) or 6(1) need not include any document that is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 56 of the Investigatory Powers Act 2016.

(3) A list provided in accordance with paragraph 4(3), 4A(6), 5(3) or 6(1) need not include any document in respect of which an application has been or is being made under sub-paragraph (4).

(4) A party may apply to the Upper Tribunal (without giving notice to any other party) for a direction authorising the party making the application not to include in the list required by paragraph 4(3), 4A(6), 5(3) or 6(1) a document on the ground that disclosure of the document—

(a) would not be in the public interest; or

(b) would not be fair, having regard to—

(i) the likely significance of the document to the applicant in relation to the matter referred to the Upper Tribunal; and

(ii) the potential prejudice to the commercial interests of a person other than the applicant which would be caused by disclosure of the document.

(5) For the purpose of deciding an application by a party under sub-paragraph (4), the Upper Tribunal may—

(a) require the document to be produced to the Upper Tribunal together with a statement of the reasons why its inclusion in the list would—

(i) in the case of an application under sub-paragraph (4)(a), not be in the public interest; or

(ii) in the case of an application under sub-paragraph (4)(b), not be fair; and

(b) invite any other party to make representations.

(6) If the Upper Tribunal refuses an application under sub-paragraph (4), it must direct the party—

(a) to revise its list so as to include the document; and

(b) to send or deliver a copy of the revised list to the Upper Tribunal and to any other party.

(7) A party (“P”) who has sent or delivered a list under paragraph 4(3), 4A(6), 5(3) or 6(1) must, upon the request of another party, provide that other party with a copy of any document which P has which is specified in the list, or make it available for inspection or copying, and if P does not have it, tell the other party where to the best of P’s knowledge and belief it may be found.

(8) Sub-paragraph (7) does not apply to any document that is a protected item.

(9) In this paragraph “protected item” has the meaning provided by section 413 of the 2000 Act, section 311(2) of the Pensions Act 2004 or article 283(2) of the Pensions (Northern Ireland) Order 2005 or regulation 52(2) of the 2013 Regulations or regulation 51(2) of the 2013 (NI) Regulations.

### **Subsequent notices in relation to the referred action**

8. Where, after a reference notice has been sent or delivered, a respondent gives the applicant any further, amended or supplementary notice in relation to the referred action, that respondent must without delay send or deliver a copy of that notice to the Upper Tribunal.

### **References by third parties**

9.—(1) In the case of any reference made by an applicant under section 393 of the 2000 Act, regulation 40 of the 2013 Regulations or regulation 40 of the 2013 (NI) Regulations (third party rights) these rules apply subject to the modifications set out in this paragraph.

(2) In this paragraph—

- (a) if the reference was made under section 393(9) of the 2000 Act, regulation 40(9) of the 2013 Regulations or regulation 40(9) of the 2013 (NI) Regulations (reference to the Upper Tribunal by a third party to whom a decision notice was copied), the notice of the decision in respect of which the reference has been made is the decision notice which was copied to the applicant by the respondent that gave the notice; and
- (b) if the reference was made under section 393(11) of the 2000 Act, regulation 40(11) of the 2013 Regulations or regulation 40(11) of the 2013 (NI) Regulations (reference to the Upper Tribunal by a third party who alleges that they were not given a copy of a decision notice), the notice of the decision in respect of which the reference has been made is the decision notice which the applicant alleges was not copied to them.

(3) If the reference was made under section 393(11) of the 2000 Act, regulation 40(11) of the 2013 Regulations or regulation 40(11) of the 2013 (NI) Regulations, paragraph 2(4) does not apply.

(4) The duties of a respondent to—

- (a) set out information under paragraphs 4(2), 4A(2), 4A(4) or 4A(5); or
- (b) list material under paragraphs 4(3), 4A(6) or 6(1);

apply only to information or material which relate to the matters referred to the Upper Tribunal in accordance with section 393(9) or (as the case may be) section 393(11) of the 2000 Act, regulation 40(9) or, as the case may be, regulation 40(11) of the 2013 Regulations, or regulation 40(9) or, as the case may be, regulation 40(11) of the 2013 (NI) Regulations.

## **SCHEDULE 4**

**Rule 26C**

### **Procedure in financial sanctions cases**

#### **Interpretation**

1. In this Schedule—

“2017 Act” means the Policing and Crime Act 2017.

“financial sanctions legislation” has the meaning provided by section 143(4) of the 2017 Act.

“further material” means documents which—

- (a) were considered by the Treasury in reaching a decision under section 147(3) of the 2017 Act to impose the monetary penalty that is the subject of the appeal; or
- (b) were considered by the Minister in reaching a decision under section 147(4) of the 2017 Act to uphold the monetary penalty that is the subject of the appeal; or
- (c) were obtained by either the Treasury or the Minister in connection with a decision described above (whether they were obtained before or after making the decision) but which were not considered by them in reaching that decision, but does not include documents on which the respondent relies in support of the decision made.

### **Notice of Appeal**

2.—(1) A notice of appeal must be made in writing and received by the Upper Tribunal no later than 28 days after notice was given of the decision under challenge.

(2) The notice of appeal must state—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant’s representative (if any);
- (c) if no representative is named under sub-paragraph (b), an address where documents for the appellant may be sent or delivered;
- (d) details (including the full reference) of the decision challenged; and
- (e) the grounds on which the appellant relies.

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

- (a) any written record of the Treasury’s decision under section 147(3) of the 2017 Act;
- (b) any written record of the Minister’s decision under section 147(4) of the 2017 Act;
- (c) any separate written statement of reasons for either of those decisions.

(4) If the appellant provides the notice of appeal to the Upper Tribunal later than the time required by sub-paragraph (1) 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 of appeal 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 notice of appeal.

(5) At the same time as it sends the notice to the Upper Tribunal, the appellant must send a copy of the notice and any accompanying documents to the respondent.

### **Respondent’s statement of case**

3.—(1) On receipt of a copy of a notice of appeal, the respondent must send or deliver a written statement (“a statement of case”) in support of the decision taken so that it is received by the Upper Tribunal no later than 28 days after the day on which the respondent received from the Upper Tribunal the copy of the notice of appeal.

(2) The statement of case must—

- (a) identify the provisions of the financial sanctions legislation by reference to which the decision was made;
- (b) state the reasons for the decision; and
- (c) set out all the matters and facts upon which the respondent relies to support the decision.

(3) The respondent must provide with the statement of case a list of—

- (a) any documents (or relevant extracts) on which the respondent relies in support of the decision; and
- (b) any further material (or relevant extracts) which in the opinion of the respondent might undermine the decision taken.

(4) At the same time as it sends or delivers the statement of case to the Upper Tribunal, the respondent must send to the appellant a copy of the statement of case and of the list referred to in sub-paragraph (3).

### **Appellant's reply**

**4.**—(1) The appellant must send or deliver a written reply so that it is received by the Upper Tribunal no later than 28 days after the date on which the appellant received a copy of the statement of case.

(2) The reply must—

- (a) identify all matters contained in the respondent's statement of case which are disputed by the appellant; and
- (b) state the appellant's reasons for disputing them.

(3) The appellant must send with the reply a list of all the documents (or relevant extracts) on which the appellant relies in support of the appellant's case.

(4) At the same time as it sends or delivers the written reply required by sub-paragraph (1) to the Upper Tribunal, the appellant must send to the respondent a copy of the reply and of the list referred to in sub-paragraph (3).

### **Secondary disclosure by the respondent**

**5.**—(1) After the appellant's reply has been sent or delivered, if there is any further material (or relevant extracts) which might reasonably be expected to assist the appellant's case as disclosed by the appellant's reply and which is not listed in the list provided in accordance with paragraph 4(3), the respondent must send or deliver to the Upper Tribunal a list of such further material (or relevant extracts).

(2) Any list required to be sent or delivered by sub-paragraph (1) must be sent or delivered so that it is received no later than 14 days after the day on which the respondent received the appellant's reply.

(3) At the same time as it sends or delivers any list required by sub-paragraph (1) to the Upper Tribunal, the respondent must send a copy to the appellant.

### **Exceptions to disclosure**

**6.**—(1) A list provided in accordance with paragraph 3(3), 4(3) or 5(1) need not include any document:

- (a) that is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000; or
- (b) in respect of which an application has been or is being made under sub-paragraph (2).

(2) A party may apply to the Upper Tribunal (without giving notice to any other party) for a direction authorising the party making the application not to include in the list required by paragraph 3(3), 4(3) or 5(1) a document on the ground that disclosure of the document—

- (a) would not be in the public interest; or
- (b) should not otherwise be given.

(3) For the purpose of deciding an application by a party under sub-paragraph (2), the Upper Tribunal may—

- (a) require the document to be produced to the Upper Tribunal together with a statement of the reasons why—
  - (i) in the case of an application under sub-paragraph (2)(a), its disclosure would not be in the public interest; or
  - (ii) in the case of an application under sub-paragraph (2)(b), its disclosure should not be given; and
- (b) invite the other party to make representations.

(4) If the Upper Tribunal refuses an application under sub-paragraph (2), it must direct the party—

(a) to revise its list so as to include the document; and

(b) to send or deliver a copy of the revised list to the Upper Tribunal and to the other party.

(7) A party (“P”) who has sent or delivered a list under paragraph 3(3), 4(3) or 5(1) must, upon the request of the other party, provide that party with a copy of any document which P has which is specified in the list, or make it available for inspection or copying, and if P does not have it, tell the other party where to the best of P’s knowledge and belief it may be found.

(8) Sub-paragraph (7) does not apply to any document in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications as between client and professional legal adviser, could be maintained in legal proceedings.