

SCHEDULE

The Upper Tribunal for Scotland Social Security Rules of Procedure 2018

PART 4

General Powers and Provisions

Delegation to staff

7.—(1) Staff of the Scottish Courts and Tribunals Service may, with the approval of the President, carry out functions of a judicial nature permitted or required to be undertaken by the Upper Tribunal, provided that they are of a preliminary or an incidental nature.

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

(3) Where the Upper Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may, within the period of 14 days beginning with the day on which the party is presumed to have received the notice, make a written application to the Upper Tribunal for that decision to be considered afresh by a member of the Upper Tribunal.

Case management

8.—(1) Subject to the provisions of the 2014 Act and these Rules, the Upper Tribunal may regulate its own procedure.

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

(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 or order;
- (b) conjoin or take concurrently two or more sets of proceedings or parts of proceedings raising common issues;
- (c) specify one or more cases as a lead case or lead cases where—
 - (i) two or more cases are before the Upper Tribunal;
 - (ii) in each such case the proceedings have not been finally determined; and
 - (iii) the cases give rise to common or related issues of fact or law,and sist the other cases until the common or related issues have been determined;
- (d) permit or require a party to amend a document;
- (e) permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party;
- (f) deal with an issue in the proceedings as a preliminary issue;
- (g) hold a hearing to consider any matter, including a case management issue;
- (h) decide the form of any hearing;
- (i) adjourn or postpone a hearing;
- (j) require a party to produce or lodge documents including but not confined to a note of argument and the Appeal Appendix;
- (k) sist proceedings;

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- (l) 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;
- (m) suspend the effect of its own decision pending an appeal of that decision;
- (n) in an appeal against the decision of the First-tier Tribunal, suspend the effect of that decision pending the determination of any permission to appeal or any appeal;
- (o) require the First-tier Tribunal to provide reasons for the decision, or other information or documents in relation to the decision or any proceedings before the First-tier Tribunal.

Procedure for applying for and giving orders

9.—(1) The Upper Tribunal may give an order on the application of one or more of the parties or on its own initiative.

- (2) An application for an order 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 an order must include the reasons for making that application.
- (4) The Tribunal must send written notice of any order to each party to the case.

(5) If a party sent a notice of the order under paragraph (4) wishes to challenge the order, the party may do so by applying for another order which amends, suspends or sets aside the first order.

Failure to comply with rules etc.

10.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or an order, 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 an order, 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; or
- (c) exercising its power under rule 11 (dismissal of a party's case).

Dismissal of a party's case

11.—(1) The Upper Tribunal must dismiss 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 8(3)(1) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(2) The Upper Tribunal may dismiss the whole or a part of the proceedings if—

- (a) the appellant has failed to comply with an order which stated that failure by the appellant to comply with the order could lead to the dismissal of the proceedings or part of them; or
- (b) the appellant has failed to co-operate with the Upper Tribunal to such an extent that the Upper Tribunal considers that it cannot deal with the proceedings fairly.

(3) The Upper Tribunal may not dismiss the whole or a part of the proceedings under paragraph (1) or (2)(b) without first giving the appellant an opportunity to make representations in relation to the proposed dismissal.

(4) If the proceedings, or part of them, have been dismissed under paragraph (2)(a), the appellant may apply for the proceedings, or part of them, to be reinstated, where the appellant can satisfy the Upper Tribunal that the appellant has good reason to apply for reinstatement.

(5) An application under paragraph (4) must be made in writing and received by the Upper Tribunal within the period of 31 days beginning with the day on which the notification sent to the appellant under paragraph (8) is presumed to have been received.

(6) An application under paragraph (4) must set out the reasons on which the appellant relies in applying for reinstatement.

(7) This rule applies to a respondent as it does to an appellant except that-

- (a) a reference to the dismissal of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and
- (b) a reference to an application for the reinstatement of proceedings which have been dismissed is to be read as a reference to an application for the lifting of the bar on the respondent taking further part in the proceedings.

(8) The Upper Tribunal must notify each party in writing that dismissal has taken place.

Addition, substitution and removal of parties

12.—(1) The Upper Tribunal may give an order adding, substituting or removing a party as an appellant or a respondent including where—

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

(2) If the Upper Tribunal gives an order under paragraph (1) it may give such consequential orders as it considers appropriate.

(3) A person who is not a party may make a written application to the Upper Tribunal to be added or substituted as a party under this rule.

(4) If the Upper Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the Upper Tribunal.

Representatives

13.—(1) A party may be represented in any proceedings by a representative whose details may be communicated to the Upper Tribunal prior to any hearing.

(2) A party may show any document or communicate any information about the proceedings to that party's representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under paragraph (2), the representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(4) For the avoidance of doubt, a party may be represented at a hearing by a person other than any person whose details have been communicated to the Upper Tribunal under paragraph (1).

Supporters

14. A party who is an individual may be accompanied by another person, who is not a representative, to act as a supporter.

Calculating time

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

(2) If the time specified by these Rules, a practice direction or an order 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 this rule and in rule 28 (reviews), “working day” means any day except a Saturday, a Sunday, or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971(1).

Sending and delivery of documents

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

(a) sent by pre-paid post or by document exchange, or delivered to, the address of the Upper Tribunal; or

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

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

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

(4) If the Upper Tribunal or a party sends a document to a party or the Upper Tribunal by email or any other electronic means of communication, the recipient may request that the sender provides a hard copy of the document to the recipient, and the recipient must make any 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.

Disclosure of documents and information

17. The Upper Tribunal may at any stage of the proceedings, on its own initiative or on application by one or more of the parties, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person.

Evidence and submissions

18.—(1) Without restriction on the general powers in rule 8(1) and (2) (case management powers), the Upper Tribunal may give orders as to—

(a) issues on which parties may lead fresh evidence or make submissions;

(b) the nature of any such evidence;

(1) 1971 c.80.

- (c) whether the parties are permitted 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 an order 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 exclude evidence that would otherwise be admissible where—
- (a) the evidence was not, without reasonable excuse, provided within the time allowed by an order or a practice direction;
 - (b) the evidence was otherwise, without reasonable excuse, provided in a manner that did not comply with an order or a practice direction; or
 - (c) it would otherwise be unfair to admit the evidence.
- (3) The Upper Tribunal may consent to a witness giving, or require any witness to give, evidence on oath or affirmation, and may administer an oath or affirmation for that purpose.

Citation of witnesses and orders to answer questions or produce documents

- 19.**—(1) On the application of a party or on its own initiative, the Upper Tribunal may—
- (a) by citation require any person to attend as a witness at a hearing at the time and place specified in the 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 citation under paragraph (1)(a) must—
- (a) give the person required to attend 14 days' notice prior to the day of the hearing or such other period as the Upper Tribunal may order;
 - (b) where the person is not a party, state how expenses of attendance necessarily incurred may be recovered;
 - (c) state that the person on whom the requirement is imposed may apply to the Upper Tribunal to vary or set aside the citation or order, if the person did not have an opportunity to object to it before it was made or issued; and
 - (d) state the consequences of failure to comply with the citation or order.
- (3) A person making an application referred to in sub-paragraph (2)(c) must do so as soon as reasonably practicable after receiving notice of the citation or order.
- (4) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce at a civil trial of an action in a court of law in Scotland.

Withdrawal

- 20.**—(1) Subject to paragraph (2), a party may give notice to the Upper Tribunal of the withdrawal of the party's case, or any part of that case—
- (a) by sending or delivering to the Upper Tribunal a notice of withdrawal; or
 - (b) orally at a hearing.

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(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) Unless satisfied that a party has already been notified, the Upper Tribunal must notify each party in writing that a withdrawal has taken effect under this rule.

(4) Where a case has been withdrawn in accordance with paragraphs (1) and (2), the party which has withdrawn its case may apply to the Upper Tribunal for the case to be reinstated, where the party can satisfy the Tribunal that the party has good reason to apply for reinstatement.

(5) An application under paragraph (4) must be made in writing and be received by the Upper Tribunal within the period of 31 days beginning with the earlier of—

- (a) the day on which the party which has withdrawn its case is presumed to have received the notification sent under paragraph (3) that the withdrawal has taken effect; or
- (b) if the party which has withdrawn its case was present at the hearing when the case was withdrawn orally under paragraph (1)(b), the day of that hearing.

(6) An application under paragraph (4) must set out the reasons on which the applicant relies in applying for reinstatement of the case.

Chairing member

21. Where a matter is to be decided by two or more members of the Upper Tribunal, the President must determine the chairing member.