

STATUTORY INSTRUMENTS

2008 No. 2698

The Tribunal Procedure (Upper Tribunal) Rules 2008

PART 5

Hearings

Decision with or without a hearing

34.—(1) Subject to [^{F1}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.

[^{F2}(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.]

Textual Amendments

- F1** Words in rule 34(1) substituted (1.11.2013) by [The Tribunal Procedure \(Amendment No. 4\) Rules 2013 \(S.I. 2013/2067\)](#), rules 1, **14(a)**
- F2** Rule 34(3)(4) inserted (1.11.2013) by [The Tribunal Procedure \(Amendment No. 4\) Rules 2013 \(S.I. 2013/2067\)](#), rules 1, **14(b)**

Entitlement to attend a hearing

35.—[^{F3}(1)] Subject to rule 37(4) (exclusion of a person from a hearing), each party is entitled to attend a hearing.

[^{F4}(2) In a national security certificate appeal the relevant Minister is entitled to attend any hearing.]

Textual Amendments

- F3** Rule 35(1): Rule 35 renumbered as Rule 35(1) (18.1.2010) by [The Tribunal Procedure \(Amendment\) Rules 2010 \(S.I. 2010/43\)](#), rules 1, **11(a)**

F4 Rule 35(2) inserted (18.1.2010) by [The Tribunal Procedure \(Amendment\) Rules 2010 \(S.I. 2010/43\)](#), rules 1, [rule 11\(b\)](#)

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; ^{F5} ... [^{F6}and]

^{F7}(aa)

(b) ^{F8} ... the Upper Tribunal may give shorter notice—

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

Textual Amendments

F5 Word in rule 36(2)(a) omitted (15.2.2010) by virtue of [The Tribunal Procedure \(Amendment No. 2\) Rules 2010 \(S.I. 2010/44\)](#), rules 1, [17\(a\)\(i\)](#)

F6 Word in rule 36(2)(a) inserted (21.7.2020) by [The Tribunal Procedure \(Amendment\) Rules 2020 \(S.I. 2020/651\)](#), rules 1(1), [5\(10\)\(a\)](#)

F7 Rule 36(2)(aa) omitted (21.7.2020) by virtue of [The Tribunal Procedure \(Amendment\) Rules 2020 \(S.I. 2020/651\)](#), rules 1(1), [5\(10\)\(b\)](#)

F8 Words in rule 36(2)(b) omitted (21.7.2020) by virtue of [The Tribunal Procedure \(Amendment\) Rules 2020 \(S.I. 2020/651\)](#), rules 1(1), [5\(10\)\(c\)](#)

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

^{F9}**36A.**

Textual Amendments

F9 [Rule 36A](#) omitted (6.4.2021) by virtue of [The Tribunal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/322\)](#), rules 1(1), [2](#)

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.

[^{F10}(2ZA) Without prejudice to paragraph (2), the Upper Tribunal may direct that a hearing, or part of it, is to be held in private if—

- (a) the Upper Tribunal directs that the proceedings are to be conducted wholly or partly as video proceedings or audio proceedings;
- (b) it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing;

(c) a media representative is not able to access the proceedings remotely while they are taking place; and

(d) such a direction is necessary to secure the proper administration of justice.]

[^{F11}(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 [^{F12}the requirement at rule 14(11) (prevention of disclosure or publication of documents and information)]; ^{F13} ...

(d) any person where the purpose of the hearing would be defeated by the attendance of that person^{F14}; or

(e) a person under [^{F15}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.

Textual Amendments

F10 Rule 37(2ZA) inserted (temp.) (10.4.2020) by virtue of [The Tribunal Procedure \(Coronavirus\) \(Amendment\) Rules 2020 \(S.I. 2020/416\)](#), rules 1(2), **5(3)**

F11 Rule 37(2A) inserted (18.1.2010) by [The Tribunal Procedure \(Amendment\) Rules 2010 \(S.I. 2010/43\)](#), rules 1, **12**

F12 Words in rule 37(4)(c) substituted (1.9.2009) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2009 \(S.I. 2009/1975\)](#), rules 1, **20**

F13 Word in rule 37(4)(c) omitted (1.4.2009) by virtue of [Tribunal Procedure \(Amendment\) Rules 2009 \(S.I. 2009/274\)](#), rules 1, **19(a)**

F14 Rule 37(4)(e) and word inserted (1.4.2009) by [Tribunal Procedure \(Amendment\) Rules 2009 \(S.I. 2009/274\)](#), rules 1, **19(b)**

F15 Words in rule 37(4)(e) substituted (1.9.2014) by [The Tribunal Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/2128\)](#), rules 1(a), **13**

[^{F16}Coronavirus temporary rule (recording of remote hearings)]

37A.—(1) In the circumstances set out in paragraph (3), the Upper Tribunal must direct that the hearing be recorded, if practicable.

(2) Where the Upper Tribunal has made a direction under paragraph (1), it may direct the manner in which the hearing must be recorded.

(3) The circumstances referred to in paragraph (1) are that the hearing, or part of it, is—

(a) held in private under rule 37(2ZA); or

- (b) only treated as held in public by virtue of a media representative being able to access the proceedings remotely while they are taking place.]

[^{F17}(4) On the application of any person, any recording made pursuant to a direction under paragraph (1) is to be accessed with the consent of the Upper Tribunal in such manner as the Upper Tribunal may direct.]

Textual Amendments

- F16** Rule 37A inserted (temp.) (10.4.2020) by virtue of [The Tribunal Procedure \(Coronavirus\) \(Amendment\) Rules 2020 \(S.I. 2020/416\)](#), rules 1(2), **5(4)**
- F17** [Rule 37A\(4\)](#) inserted (temp.) (21.7.2020) by virtue of [The Tribunal Procedure \(Amendment\) Rules 2020 \(S.I. 2020/651\)](#), rules 1(1), **5(11)** (with rule 1(2))

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.

Changes to legislation:

There are currently no known outstanding effects for the The Tribunal Procedure (Upper Tribunal) Rules 2008, PART 5.