

SCHEDULE

The Upper Tribunal for Scotland Rules of Procedure 2016

PART 4

General Powers and Provisions

Case management

7.—(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;
- (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;

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- (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

8.—(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 reason for making that application.

(4) Before making an order, the Upper Tribunal must afford parties an opportunity to make representations to it concerning whether the order should be imposed and the terms of the order.

Failure to comply with rules etc.

9.—(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 10 (dismissal of a party's case).

Dismissal of a party's case

10.—(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 7(3)(1)(i) (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;
- (b) the appellant has failed to co-operate with the Upper Tribunal to such an extent that the Upper Tribunal cannot deal with the proceedings fairly; or
- (c) in proceedings which have been transferred from the First-tier Tribunal, the Upper Tribunal considers there is no reasonable prospect of the appellant's case, or any part of it, succeeding.

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

Addition, substitution and removal of parties

11.—(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.

Orders for expenses

12.—(1) The Upper Tribunal may make an order for expenses as taxed by the Auditor of the Court of Session in proceedings on appeal from the First-tier Tribunal if the First-tier Tribunal had the power to make an order for expenses, and only on the basis on which the First-tier Tribunal had the power to award expenses.

(2) Notwithstanding paragraph (1) and without prejudice to that paragraph, the Upper Tribunal may make an order for expenses as taxed by the Auditor of the Court of Session against a party if that party's act, omission or other conduct has caused any other party to incur expense which it would be unreasonable for that other party to be expected to pay, with the maximum recoverable expenses being the expenses incurred.

(3) The Upper Tribunal, of its own initiative or on the application of a party or the parties, may in exceptional circumstances fix by order a sum payable by a party in discharge of an award of expenses.

Representatives

13.—(1) A party may be represented in any proceedings by a legal representative or lay representative whose details must 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 lay representative or legal 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 lay representative or legal representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(4) Anything permitted or required to be done by a party under these Rules, a practice direction or an order may be done by a lay representative, except signing of an affidavit or a precognition.

(5) The Upper Tribunal may order that a lay representative is not to represent a party if—

- (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

Supporters

14.—(1) A party who is an individual may be accompanied by another person to act as a supporter.

(2) A supporter may assist the party by—

- (a) providing moral support;

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- (b) helping to manage tribunal documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—
 - (i) points of law and procedure;
 - (ii) issues which the party might wish to raise with the tribunal.

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

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

(5) A supporter may not represent the party.

(6) The Upper Tribunal may order that a person is not to act as a supporter of a party if—

- (a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

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 “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 by hand, 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 or an interested party provides a fax number, email address or other details for the electronic transmission of documents to them, that party or interested party must accept delivery of documents by that method.

(3) If a party or an interested party informs the Upper Tribunal and all other parties and interested 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 or interested party, that form of communication must not be so used.

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

(1) 1971 c.80.

(5) The Upper Tribunal and each party and interested party may assume that the address provided by a party or interested 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 or any interested party, 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 7(1) and (2) (case management powers), the Upper Tribunal may give orders as to—

- (a) subject to paragraph (4), issues on which parties may lead fresh evidence or make submissions;
- (b) the nature of any such evidence;
- (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 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.

(4) Fresh evidence may only be led in an appeal if the Upper Tribunal is satisfied—

- (a) that the evidence—
 - (i) could not have been obtained with reasonable diligence at the First-tier Tribunal stage;
 - (ii) is relevant and will probably have an important influence on the hearing; and
 - (iii) is apparently credible; or
- (b) that the interests of justice justify the evidence being led.

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—

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- (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 (if appropriate) 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.

Withdrawal

20.—(1) A party may give notice to the Upper Tribunal of the withdrawal of the case made by that party in the Upper Tribunal proceedings, 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.

(2) Unless satisfied that a party has already been notified, the Upper Tribunal must notify each party of its receipt of a withdrawal under this rule.

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.

Venue for hearings

22. The Upper Tribunal is to be convened at such time and place in Scotland as the President may determine.

Enforcement of decisions

23. An order for the payment of a sum payable in pursuance of a decision of the Upper Tribunal, or a copy of such an order certified by the Upper Tribunal, may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the Court of Session.