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## STATUTORY INSTRUMENTS

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# 2008 No. 2698

## The Tribunal Procedure (Upper Tribunal) Rules 2008

### PART 7

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

#### Interpretation

**41.** In this Part—

“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) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Upper Tribunal so that it is received no later than 1 month after the date on which the Tribunal sent notice of the decision to the party.

**Status:** Point in time view as at 03/11/2008.

**Changes to legislation:** The Tribunal Procedure (Upper Tribunal) Rules 2008, PART 7 is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## Application for permission to appeal

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

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

- (a) on an appeal against a decision in a social security and child support case (as defined in the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008<sup>M1</sup>);
- (b) on an appeal against a decision in proceedings in the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal<sup>M2</sup>; 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.

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

- (a) written reasons for the decision;
- (b) notification of amended reasons for, or correction of, the decision following a review; or
- (c) notification that an application for the decision to be set aside has been unsuccessful.

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

(6) If the person seeking permission to appeal provides the application to the Upper Tribunal later than the time required by paragraph (3) or (4), or by any extension of time under rule 5(3)(a) (power to extend time)—

- (a) the application must include a request for an extension of time and the reason why the application notice was not provided in time; and
- (b) unless the Upper Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Upper Tribunal must refuse the application.

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

- (a) identify the decision of the 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.

### Marginal Citations

**M1** S.I. 2008/2685 (L. 13).

**M2** The War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal is established by the First-tier [Tribunal and Upper Tribunal \(Chambers\) Order 2008](#) (S.I. 2008/2684).

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

**45.**—(1) On receiving an application for permission to appeal the Upper Tribunal may review the decision in accordance with rule 46 (review of a decision), but may only do so if—

- (a) when making the decision the Upper Tribunal overlooked a legislative provision or binding authority which could have had a material effect on the decision; or
- (b) since the Upper Tribunal's decision, a court has made a decision which is binding on the Upper Tribunal and which, had it been made before the Upper Tribunal's decision, could have had a material effect on the decision.

(2) If the Upper Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision or part of it, the Upper Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Upper Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Upper Tribunal refuses permission to appeal it must send with the record of its decision—

- (a) a statement of its reasons for such refusal; and
- (b) notification of the right to make an application to the relevant appellate court for permission to appeal and the time within which, and the method by which, such application must be made.

(5) The Upper Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission.

### **Review of a decision**

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

- (a) pursuant to rule 45(1) (review on an application for permission to appeal); or
- (b) pursuant to rule 47 (reviews of decisions in proceedings under the Forfeiture Act 1982).

(2) The Upper Tribunal must notify the parties in writing of the outcome of any review and of any rights of review or appeal in relation to the outcome.

(3) If the Upper Tribunal decides to take any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (2) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

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

**47.**—(1) A person who referred a question to the Upper Tribunal under rule 26 (references under the Forfeiture Act 1982) must refer the Upper Tribunal's previous decision in relation to the question to the Upper Tribunal if they—

- (a) consider that the decision should be reviewed; or
- (b) have received a written application for the decision to be reviewed from the person to whom the decision related.

(2) The Upper Tribunal may review the decision if—

- (a) the decision was erroneous in point of law;
- (b) the decision was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) there has been a relevant change in circumstances since the decision was made.

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(3) When a person makes the reference to the Upper Tribunal, they must also notify the person to whom the question relates that the reference has been made.

(4) The Upper Tribunal must notify the person who made the reference and the person who to whom the question relates of the outcome of the reference.

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

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