

# Appealing decisions to the Upper Tribunal

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## Introduction

1. This chapter is relevant to individuals who have an award of Scottish Adult Disability Living Allowance (Scottish Adult DLA) and who have:

- appealed to the First-tier Tribunal for Scotland about their Scottish Adult DLA determination
- do not agree with the decision made by the Tribunal
- want to challenge the decision.

2. Individuals appeal to the First-tier Tribunal for Scotland Social Security Chamber when they disagree with one of the following:

- a re-determination
- a determination, where they have requested a re-determination and Social Security Scotland have not made the re-determination within 56 days
- a process decision

made by Social Security Scotland. Please see the chapter on Appeals to the First-tier Tribunal for information on how individuals can appeal re-determinations, process decisions and determinations where Social Security Scotland have failed to make a re-determination within 56 days. The First-tier Tribunal for Scotland Social Security Chamber is referred to as the First-tier Tribunal in this chapter.

3. This chapter is also relevant where Social Security Scotland wants to challenge a decision made by the First-tier Tribunal.
4. The Upper Tribunal:
  - hears appeals arising from decisions made by the First-tier Tribunal
  - is independent
  - listens to both sides involved in the appeal
  - considers all the facts and evidence before making a decision on the appeal.
5. An appeal to the Upper Tribunal can be made with permission and:
  - by a party in the case that was heard by the First-tier Tribunal
  - only on a point of law<sup>1</sup>.
6. The Upper Tribunal can agree with and uphold the decision made by the First-tier Tribunal on the point of law<sup>2</sup>.
7. If it does not agree with the decision, it can quash the decision.
8. If it quashes the decision of the First-tier Tribunal, the Upper Tribunal can do any of the following<sup>3</sup>:
  - re-make the decision
  - send the case back to the First-tier Tribunal and give them directions on how to reconsider the case
  - make such order as it sees fit.

*1 Tribunals (Scotland) Act 2014, s.46*

*2 Tribunals (Scotland) Act 2014, s.47(1)*

*3 Tribunal (Scotland) Act 2014, s.47(2)*

## **Right to appeal to the Upper Tribunal**

9. Individuals and Social Security Scotland can appeal decisions of the First-tier Tribunal to the Upper Tribunal. Individuals and Social Security Scotland are known as the parties to an appeal.
10. Individuals cannot appeal to the Upper Tribunal against:
  - a decision by the First-tier Tribunal in an appeal against a process decision
  - a decision by the First-tier Tribunal on whether to give permission for a late appeal to be brought against a process decision<sup>1</sup>.
11. The parties must apply by letter or email to the First-tier Tribunal for permission to appeal one of its decisions<sup>2</sup>. There is no form for applying for permission.
12. If the First-tier Tribunal refuses permission, the party who has applied for permission to appeal may apply to the Upper Tribunal for permission for the decision to be appealed<sup>3</sup>.

13. A party makes an appeal on a point of law when it thinks the First-tier Tribunal made a legal mistake with its decision. Examples of this include the First-tier Tribunal:

- failing to apply the law correctly
- ignoring relevant factors or considering irrelevant factors
- not giving adequate reasons
- having insufficient evidence for its decision.

*1 SS(S) Act 2018, s.61(4)(a)*

*2 The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, para 33(1)*

*3 Tribunals (Scotland) Act 2014, s.46(3)*

### **Applying to the First-tier Tribunal for permission to appeal to the Upper Tribunal**

14. The First-tier Tribunal must receive an application for permission to appeal one of its decisions within 30 days of the relevant date<sup>1</sup>.

15. The 'relevant date' is the later of either the date when<sup>2</sup>:

- the decision which is being appealed
- the written statement of reasons for the decision

was sent to the party applying to appeal.

16. If a decision is given verbally at a Tribunal hearing, the 'relevant date' is when written reasons are sent to the parties<sup>3</sup>. For this to be considered the relevant date, the written reasons must be requested either:

- at the hearing
- in writing within 14 days from the day after the last day of the hearing.

17. In the circumstances where either:

- the written reasons were not requested at the hearing
- the written reasons were not requested in writing within 14 days from the day after the last day of the hearing
- the Tribunal did not commit to provide written reasons at the hearing,

the 'relevant date' is the date of the oral hearing.

18. Where an application for permission to appeal is received after 30 days, the application must include:

- a request for an extension of time
- the reasons why the application was not made on time<sup>4</sup>.

19. The First-tier Tribunal can extend the period beyond 30 days if it considers an extension is in the interests of justice<sup>5</sup>. However, the Tribunal will not admit the application if it doesn't extend the time period<sup>6</sup>.

**Example: applying for permission to appeal when the First-tier Tribunal's decision was given at an oral hearing**

Jamie:

- does not agree with the re-determination on his review of Scottish Adult DLA
- appeals to the First-tier Tribunal
- has his case considered at an oral hearing.

The First-tier Tribunal both:

- makes a decision
- communicates that decision to both parties at the hearing.

12 days later, Jamie requests the written statement of reasons to explain the decision. This is within the 14 day period allowed. The First-tier Tribunal sends the written statement of reasons to Jamie and to Social Security Scotland.

Jamie now has 30 days to apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal. The 30 days start on the day the First-tier Tribunal sends the written statement of reasons to the parties.

20. The application for permission to appeal must state<sup>7</sup> the:

- decision of the First-tier Tribunal
- points of law the party wants to appeal
- result that the party is looking for.

21. The First-tier Tribunal considers the application and decides if it will grant permission to appeal.

22. It must notify all parties of its decision as soon as reasonably practicable.

23. If the First-tier Tribunal refuses permission to appeal it must explain in writing:

- the reasons for the refusal
- the appealing party's right to apply to the Upper Tribunal for permission to appeal
- how to apply and the time limits for doing that.

*1 The Scottish Tribunals (Time Limits) Regulations 2016, regulation 2(1)*

*2 The Scottish Tribunals (Time Limits) Regulations 2016, regulation 2(3)*

- 3 *The Scottish Tribunals (Time Limits) Regulations 2016, regulation 2(4)*  
4 *The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 33(3)(a)*  
5 *The Scottish Tribunals (Time Limits) Regulations 2016, regulation 2(2)*  
6 *The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, Schedule, para 33(3)(b)*  
7 *The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, para 33(2)*

## **Applying to the Upper Tribunal for permission to appeal if the First-tier Tribunal refuses permission**

24. A party can apply to the Upper Tribunal for permission to appeal. This is if the First-tier Tribunal refuses to give permission to appeal to the Upper Tribunal<sup>1</sup>.

25. A party applies by completing the 'Upper Tribunal Appeal and Permission Request Form' that can be found on the Upper Tribunal's website [The Upper Tribunal for Scotland \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk). The application must include:

- the decision of the First-tier Tribunal that is being challenged
- the points of law which the person making the application wants to appeal
- a copy of any separate written statement of reasons for that decision
- a copy of the notice of refusal of permission to appeal from the First-tier Tribunal.

26. A party must apply for permission to appeal:

- to the Upper Tribunal
- against a decision of the First-tier Tribunal
- within 30 days of the relevant date<sup>2</sup>.

27. The 'relevant date' is when notice of the First-tier Tribunal's refusal of permission to appeal is sent to the applying party<sup>3</sup>.

28. If a party applies for permission to appeal after 30 days, the party must:

- request an extension of time
- explain why their application for permission to appeal was not made in time
- say why it is in the interests of justice that the time be extended.

29. The Upper Tribunal can extend the period beyond 30 days if it considers this is in the interests of justice<sup>4</sup>.

30. The Upper Tribunal can:

- refuse the permission to appeal
- give permission to appeal
- give permission to appeal on limited grounds or subject to conditions.

31. The Upper Tribunal must send each party a notice of its decision including:

- the reasons for refusing permission
- the limited grounds or conditions to which permission is subject.

32. The party applying for permission to appeal can apply to the Upper Tribunal for a hearing to reconsider the decision. They can do this by email or by letter. This is if the Upper Tribunal refuses permission to appeal or if it only gives permission to appeal on limited grounds, and no hearing has been held. The party must apply within 14 calendar days of when they received the notice from the Upper Tribunal.

33. At the hearing, the application for permission must be heard and decided by a member or members of the Upper Tribunal who are different from the member or members who refused permission to appeal without a hearing.

34. Parties are presumed to have received notice from the Upper Tribunal 48 hours after it is sent to them. This is the case as long as the information is sent by either post or email to the last known addresses of the parties<sup>5</sup>.

35. This is unless it can be shown that the information was received earlier or later.

**Example: where the Upper Tribunal refuses permission to appeal and a party asks for this decision to be reconsidered at a hearing**

The First-tier Tribunal has refused Dorota's application for permission to appeal their decision. Dorota applies to the Upper Tribunal to ask for permission to appeal. Her application includes:

- details of the decision
- the written statement of reasons
- the notice of refusal of permission to appeal from the First-tier Tribunal.

Dorota also includes the points of law on which she wishes to appeal.

The Upper Tribunal:

- considers the application
- decides to refuse the application for permission to appeal
- notifies Dorota of their decision.

Dorota applies to the Upper Tribunal for their decision to be reconsidered at a hearing within 14 days of receiving notification. At the hearing, the application is decided by members of the Upper Tribunal who were not involved in refusing her permission to appeal.

<sup>1</sup> *The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 3(1)*  
<sup>2</sup> *The Scottish Tribunals (Time Limits) Regulations 2016, regulation 3(1)*  
<sup>3</sup> *The Scottish Tribunals (Time Limits) Regulations 2016, regulation 3(2)*  
<sup>4</sup> *The Scottish Tribunals (Time Limits) Regulations 2016, regulation 3(3)*  
<sup>5</sup> *The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 1(2)*

## Notice of appeal

36. If the First-tier Tribunal gives permission to appeal, the appealing party has 30 days to send a 'notice of appeal' to the Upper Tribunal. The 30 days starts when the party is presumed to have received permission to appeal<sup>1</sup>.

37. The appealing party should send a notice of appeal by completing the 'Upper Tribunal Appeal and Permission Request Form' on the Upper Tribunal's website [The Upper Tribunal for Scotland \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk). A notice of appeal must include all of the following<sup>2</sup>:

- identify the decision being appealed
- any written record of the First-tier Tribunal's decision being appealed
- the points of law which the party wants to appeal
- the views of the party on if the appeal should include a hearing
- any separate written statement of reasons for the decision
- the notice of permission to appeal.

38. The Upper Tribunal must send a copy of<sup>3</sup>:

- the notice
- any accompanying documents

to the other party who is responding to the appeal. This party is known as the respondent.

39. A notice of appeal lodged after the 30 day time limit must include<sup>4</sup>:

- a request for an extension of the time limit
- the reasons why the notice was late
- the reasons why the extension is in the interests of justice.

40. The Upper Tribunal does not admit the notice of appeal if it does not extend the time limit.

41. A valid notice of appeal is provided to the Upper Tribunal if the Upper Tribunal gives permission to appeal against a decision of the First-tier Tribunal.

### **Example: a party's application to the Upper Tribunal for permission to appeal to the Upper Tribunal counts as a notice of appeal**

The First-tier Tribunal has refused Social Security Scotland's application for permission to appeal the First-tier Tribunal's decision.

Social Security Scotland applies to the Upper Tribunal to ask for permission to appeal. It does this by:

- completing and sending the Upper Tribunal Appeal and Permission Request Form on the Upper Tribunal's website

- including details of the First-tier Tribunal's decision
- including the point of law it wants to challenge
- including the written statement of reasons
- including the notice from the First-tier Tribunal refusing permission to appeal.

The Upper Tribunal considers the application for permission to appeal and gives their permission.

Social Security Scotland does not have to:

- provide a separate notice of appeal
- complete another form

for the appeal to go ahead.

Social Security Scotland has provided a valid notice of appeal to the Upper Tribunal in these circumstances.

- 1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 4(1)
- 2 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 4(2) and 4(3)
- 3 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 4(4)
- 4 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 4(5)

### **Non-disclosure of documents and information that could cause serious harm to physical or mental health**

42. The Upper Tribunal may give a direction prohibiting the disclosure of a document or information to a person ("the recipient") if:

- the document or information relates to the physical or mental health of a person,
- a registered medical practitioner or a registered nurse has advised either the Upper Tribunal, or one or more of the parties, that disclosure of the information is likely to cause serious harm to the recipient's, or some other person's, physical or mental health,
- the Upper Tribunal is satisfied that disclosure of the harmful document or information would be likely to cause serious harm to the physical or mental health of the recipient or some other person, and
- the Upper Tribunal is satisfied that it is in the interests of justice and proportionate to give such a direction<sup>1</sup>.

43. An example could be information about a diagnosis of malignancy. See the chapter on Special Rules for Terminal Illness for information on when a medical professional may decide not to tell a person that they are terminally ill or other information relating to their physical or mental health.

44. The Upper Tribunal can issue a direction to prohibit the disclosure of a document or information to a person on its own initiative.



45. In addition, if either party to an appeal considers that the Upper Tribunal should withhold information from a person because it is likely to cause serious harm to their physical or mental health, the party can make a request for the Tribunal to withhold the information.

46. The party who makes that request must provide the information to the Tribunal, request that it is not disclosed, and set out the reasons why the party thinks the information should be withheld<sup>2</sup>. Guidance on how to make such a request to the Tribunal is set out in Operational Guidance.

47. Where the Tribunal decides that information should not be disclosed to a party to the appeal who has a representative, or any other person acting on their behalf, the Tribunal can disclose the information to the representative or person acting on behalf of the party<sup>3</sup>. This could be the party's appointee for example.

48. The Tribunal must be satisfied that disclosing the information is in the interests of the party and their representative, or person acting on their behalf, won't disclose it to the party at risk of harm. The representative should not disclose the information to anyone else unless the Tribunal consents<sup>4</sup>.

1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 17(2)

2 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 17(3)

3 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 17(5)

4 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 17(6)

## **Response to the notice of appeal<sup>1</sup>**

49. The Upper Tribunal sends:

- a copy of the notice of appeal
- any accompanying documents

to the respondent, who is the other party involved in the First-tier Tribunal's decision.

50. The respondent can choose to provide a written response to the Upper Tribunal.

51. They must do so within 30 days of when the Upper Tribunal send a copy of the notice of appeal to the respondent

**52.** The response must state:

- the name and address of the respondent
- the name and address of any representative of the respondent
- an address where documents for the respondent can be sent

- whether the respondent opposes the appeal
- if the respondent wants the case to be dealt with at a hearing or not
- the grounds on which the respondent opposes the appeal.

These include any grounds on which the respondent:

- was unsuccessful in the First-tier Tribunal appeal
- intends to rely on in the Upper Tribunal appeal.

53. If the response is provided to the Upper tribunal after the 30 day time limit, the respondent must:

- ask for an extension
- explain why the response wasn't provided in time.

54. When the Upper Tribunal receives the response it must send both:

- a copy of the response
- any accompanying documents

to the party who is appealing.

55. The party who is appealing has 30 days to provide a written reply to the Upper Tribunal. The 30 days starts on the day the Upper Tribunal send a copy of the response to the party who is appealing.

56. If the reply is sent to the Upper Tribunal later than the 30 days, the reply must include both:

- a request for an extension of time
- the reason why the reply was not sent in time.

57. When the Upper Tribunal receives the reply it must send both:

- a copy of the reply
- any accompanying documents

to the respondent.

1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 5

## **Who is in the Upper Tribunal**

58. When the Upper Tribunal considers a case that is appealed from the First-tier Tribunal, it is made up of one of the following<sup>1</sup>:

- i) A member of the Upper Tribunal acting alone

- ii) Two or three members of the Upper Tribunal.
- iii) The Chamber President acting alone, or with no more than two members of the Upper Tribunal. The Chamber President, must not:
  - have had any involvement in the case that is being appealed
  - be a temporary Chamber President.
- iv) The President of the Scottish Tribunals acting in any of the following situations
  - alone
  - with the Chamber President (The Chamber President must not have had any involvement in the case that is being appealed)
  - with no more than two members of the Upper Tribunal.
- v) The Lord President, acting in any of the following situations:
  - alone
  - with the Chamber President (The Chamber President must not have had any involvement in the case that is being appealed)
  - with no more than two members of the Upper Tribunal.

59. A member of the Upper Tribunal may:

- be a legal member
- be a judicial member
- not be an ordinary member.

60. An ordinary member is someone who has expertise in the subject area.

61. A legal member is someone who is legally qualified.

62. A judicial member is a judge of the Court of Session, including a temporary judge.

63. The President of the Scottish Tribunals has the authority to decide:

- whether a member acting alone is to be a legal member or a judicial member
- how many members are to be legal members and how many members are to be judicial members.

<sup>1</sup> The First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018, reg 5(1) and (2)

## **The Upper Tribunal's case management powers**

64. The Upper Tribunal can give an order in relation to the conduct of proceedings This includes an order amending, suspending or setting aside an earlier order.

65. In particular, it can do any of the following<sup>1</sup>:

- Join two or more sets of proceedings or hear them at the same time, if they raise common issues.
- Allow or require a party to amend a document.
- Allow or require a party or another person to provide documents, information, evidence or submissions.
- Deal with an issue in the proceedings as a preliminary issue. This is an issue that is dealt with ahead of other issues. This is because the way it is decided will determine how the other issues should be approached.
- Hold a hearing to consider any matter, including a case management issue.
- Adjourn, postpone, or decide the form of a hearing.
- Require a party to produce or lodge documents.
- Sist proceedings. This means to suspend proceedings.
- Transfer proceedings to another court or tribunal both:
  - if that other court or tribunal has jurisdiction in relation to the proceedings
  - and because of a change of circumstances since the proceedings were started, the Upper Tribunal no longer has jurisdiction in relation to the proceedings.
- Transfer proceedings to another court or tribunal. This is if the Upper Tribunal considers that the other court or tribunal is a more appropriate forum for determining the case.
- Suspend the effect of its own decision pending an appeal of its decision.
- Suspend the effect of the decision of the First-tier Tribunal that is being appealed. This is pending the determination of any permission to appeal or any appeal.
- Require the First-tier Tribunal to provide either or both:
  - reasons for their decision
  - other information or documents in relation to the decision.

66. The Upper Tribunal can also specify that a case is a lead case or that multiple cases are lead cases in a situation where:

- two or more cases are before the Upper Tribunal
- the proceedings have not been finally determined
- the cases give rise to common or related issues of fact or law.

67. The Upper Tribunal can also sist the other cases until the common or related issues have been determined.

*1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 8(3)*

## Hearings

The Upper Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of the hearing. The Upper Tribunal should give at least 14 calendar days' notice before the hearing. It can give shorter notice in either of these situations<sup>1</sup>:

- if the parties agree
- in urgent or exceptional circumstances<sup>1</sup>.

68. The Upper Tribunal can proceed with a hearing if a party does not attend. However, it must be satisfied that:

- the party has been notified of the hearing or reasonable steps have been taken to notify the party of the hearing
- it is in the interests of justice to proceed with the hearing<sup>2</sup>.

69. The Upper Tribunal generally holds hearings in public<sup>3</sup>.

70. However, the Upper Tribunal can hold a hearing, or part of a hearing, in private. This is if it considers that restricting access to the hearing is justified:

- in the interests of public order
- in order to protect a person's right to respect for their private and family life
- in order to maintain the confidentiality of sensitive information
- in order to avoid serious harm to the public interest
- because holding it in public would prejudice the interests of justice.

71. The Upper tribunal can decide who attends the private hearing, or the private part of a hearing.

72. The Upper Tribunal can exclude from any hearing, or part of any hearing<sup>4</sup>:

- anyone whose conduct it considers is disrupting or is likely to disrupt the hearing
- anyone whose presence it thinks is likely to prevent another person from giving evidence or making submissions freely

- any person where the purpose of the hearing would be defeated by the attendance of that person.

73. The Upper Tribunal may also give a direction excluding a witness from a hearing until that witness gives evidence<sup>5</sup>.

74. The Upper Tribunal may publish a decision following a hearing which was held wholly or partly in private. In this case it must, as far as possible, ensure that the decision does not disclose information which was referred to in a part of the hearing held in private.

*1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 24*

*2 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 26*

*3 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 25(1)*

*4 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 25(4)*

*5 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 25(5)*

## **Representatives<sup>1</sup>**

75. Any party in the appeal can be represented by a representative. A representative can be a lay or legal representative. A lay representative can be anyone who can act on the party's behalf. For example, this could be a friend or family member.

76. A party can tell the Upper Tribunal both:

- that they will be represented by a representative
- who the representative is

in advance of a hearing, but they are not required to do so.

77. If there is a change, a party can decide to be represented by a different person at a hearing. This is even if they have shared the details of another representative with the Upper Tribunal.

*1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 13*

## **Evidence and submissions<sup>1</sup>**

78. The Upper Tribunal can give orders about evidence and submissions including orders about the following:

- The issues on which the parties can provide fresh evidence or make submissions and the nature of this evidence.

- Whether the parties are allowed to provide expert evidence. If this is the case, then the Upper Tribunal can decide if the parties must jointly appoint a single expert to provide the evidence.
- Any limit on the number of witnesses whose evidence a party may put forward.
- The manner in which any evidence or submissions are to be provided. For example, this is if they should be given orally at a hearing or by written submissions or witness statements.
- The time when the evidence or submissions must be provided.

79. The Upper Tribunal can exclude evidence if:

- the evidence was not provided within the time allowed and without reasonable excuse
- the evidence was provided in a manner that did not comply with an order or a practice direction of the Tribunal and without reasonable excuse
- it considers that it would be unfair to admit the evidence.

*1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 18*

## **Witnesses<sup>1</sup>**

80. The Upper Tribunal can by citation require anyone to attend as a witness at a hearing. It can do this on its own initiative or at the request of one of the parties to the appeal.

81. The Upper Tribunal can also order anyone to either:

- answer any questions
- provide documents that they have

which relate to the case.

82. The citation for a person to attend as a witness must include all of the following:

- at least 14 calendar days' notice of the hearing or any other period of time the Upper Tribunal sets
- information about how the witness's expenses for attending can be paid, if the witness is not a party in the case
- state that the person who is cited can apply to the Upper Tribunal to have the citation varied or set aside if the person did not have an opportunity to object before the citation was made or issued. The person must apply as soon as reasonably practicable after receiving the citation.

- the consequences of failing to comply with the citation or order.

83. The Upper Tribunal cannot make someone either:

- give any evidence
- 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.

*1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 19*

### **Withdrawing or deciding to stop an appeal<sup>1</sup>**

84. A party to the appeal can notify the Upper Tribunal that they want to withdraw their appeal. They can do this by:

- sending the Upper Tribunal a notice of withdrawal
- saying it at a hearing.

85. The notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal.

86. The Upper Tribunal must notify each party in writing that a withdrawal has taken effect. This is unless the Upper Tribunal is satisfied that the parties have already been notified.

87. The party who withdraws their appeal can apply to the Upper Tribunal for the case to be reinstated. The party must both:

- satisfy the Tribunal that they have a good reason for this
- apply to the Upper Tribunal in writing, explaining the reasons.

88. The Upper Tribunal must receive the application to reinstate the appeal within 31 days of the earlier of the following dates:

- the day when the party who withdrew the case is presumed to have received the notification that the withdrawal has taken effect
- the day of the hearing if the party who withdrew the case did so verbally at the hearing.

*1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 20*

### **Upper Tribunal's decision**



89. The Upper Tribunal can agree with and uphold the decision made by the First-tier Tribunal on the point of law. If it does not agree with the decision, it can quash the decision<sup>1</sup>.

90. If it quashes the decision of the First-tier Tribunal, the Upper Tribunal can<sup>2</sup>:

- re-make the decision
- send the case back to the First-tier Tribunal
- make another order as it considers appropriate.

91. In re-making the decision, the Upper Tribunal can do anything that the First-tier Tribunal could do when re-making the decision and reach findings in fact as it considers appropriate.

92. In remitting the case to the First-tier Tribunal, the Upper Tribunal can give directions for the First-tier Tribunal's reconsideration. For example it can give directions on:

- issues of law or facts
- procedural issues, including which Tribunal members should be chosen to reconsider the case.

93. The Upper Tribunal must give each party a decision notice which both<sup>3</sup>:

- states its decision
- tells the parties if they have any appeal rights and the time limits and manner for appealing.

The Upper Tribunal must do this as soon as reasonably practicable after making the decision.

94. A party can request written reasons if the Upper Tribunal does not provide them for a decision. The party must request them within 14 days of the decision being made.

95. The Upper Tribunal can both:

- give a decision orally at a hearing
- publish any of its decisions if it considers it is in the public interest to do so.

*1 Tribunals (Scotland) Act 2014, section 47(1)*

*2 Tribunals (Scotland) Act 2014, section 47(2)*

*3 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 27(2)*

## **The Upper Tribunal's powers to review and set aside its decisions<sup>1</sup>**

96. The Upper Tribunal can decide to review its own decision if it considers it necessary in the interests of justice to do so. It can also do so at the request of a party.

97. A party must apply for the Upper Tribunal to review a decision:

- in writing within 14 days of the decision being made
- explaining the reasons for applying.

98. The Upper Tribunal must send a copy of the application:

- to any other party involved in the proceedings
- within 10 working days beginning with the day the Upper Tribunal receives the application.

99. The Upper Tribunal must decide the review as soon as reasonably practicable. The same Tribunal members should decide the case if practicable. If this is not possible, members selected by the President should decide the review.

100. In a review, the Upper Tribunal can<sup>2</sup>:

- take no action
- set the decision aside. This means they cancel it.
- correct a minor or accidental error in the decision.

101. Where a decision is set aside by the Upper Tribunal in a review it can<sup>3</sup>:

- re-decide the matter
- make any other order that it thinks is appropriate.

102. The Upper Tribunal must notify the parties of the decision as soon as is practicable.

*1 The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018, Schedule, para 28*

*2 Tribunals (Scotland) Act 2014, section 44(1)*

*3 Tribunals (Scotland) Act 2014, section 44(4)*

### **Appealing against a decision of the Upper Tribunal**

103. A decision of the Upper Tribunal can be appealed to the Court of Session<sup>1</sup>.

104. A decision can be appealed by any party in the case and on a point of law only<sup>2</sup>.

105. An appeal of an Upper Tribunal decision requires the permission of the Upper Tribunal. If the Upper Tribunal refuses its permission, permission can be requested from the Court of Session<sup>3</sup>.

*1 Tribunals (Scotland) Act 2014, section 48(1)*

*2 Tribunals (Scotland) Act 2014, section 48(2)*

*3 Tribunals (Scotland) Act 2014, section 48(3)*