DELEGATED POWERS AND LAW REFORM COMMITTEE

AGENDA

29th Meeting, 2018 (Session 5)

Tuesday 2 October 2018

The Committee will meet at 10.00 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take items 5, 6, 7, 8 and 9 in private.

2. **Instruments subject to affirmative procedure:** The Committee will consider the following—

   - First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft];
   - First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018 [draft];
   - First-tier Tribunal for Scotland (Chambers) Amendment Regulations 2018 [draft].

3. **Instruments subject to negative procedure:** The Committee will consider the following—

   - First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (SSI 2018/273);
   - Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018 (SSI 2018/274);
   - Social Security Appeals (Expenses and Allowances) (Scotland) Regulations 2018 (SSI 2018/275);
   - Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2018 (SSI 2018/276);
   - Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018 (SSI 2018/279);
   - Parking Attendants (Wearing of Uniforms) (Falkirk Council Parking Area) Regulations 2018 (SSI 2018/280);
   - Road Traffic (Parking Adjudicators) (Falkirk Council) Regulations 2018 (SSI 2018/281);
   - Plant Health (Scotland) Amendment (No. 2) Order 2018 (SSI 2018/283);
4. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

   Islands (Scotland) Act 2018 (Commencement) Regulations 2018 (SSI 2018/282 (C.19)).

5. **Transport (Scotland) Bill:** The Committee will consider further the delegated powers provisions in this Bill at Stage 1.

6. **Damages (Investment Returns and Periodical Payments) (Scotland) Bill:** The Committee will consider further the delegated powers provisions in this Bill at Stage 1.

7. **Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill:** The Committee will consider further the contents of a report to the Justice Committee.

8. **Offensive Weapons Bill (UK Parliament legislation):** The Committee will consider the contents of a report to the Justice Committee.

9. **Trade Bill (UK Parliament legislation):** The Committee will consider the contents of a report to the Finance and Constitution Committee.

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The papers for this meeting are as follows—

**Agenda Items 2, 3 and 4**

Briefing on Instruments (private)  
DPLR/S5/18/29/1(P)

**Agenda Items 2 and 3**

Instrument Responses  
DPLR/S5/18/29/2

**Agenda Item 5**

*Transport (Scotland) Bill - As Introduced*

*Transport (Scotland) Bill - Delegated Powers Memorandum*

Briefing Paper (private)  
DPLR/S5/18/29/3(P)

**Agenda Item 6**

*Damages (Investment Returns and Periodical Payments) (Scotland) Bill - As Introduced*

*Damages (Investment Returns and Periodical Payments) (Scotland) Bill - Delegated Powers Memorandum*

Briefing Paper (private)  
DPLR/S5/18/29/4(P)

**Agenda Item 7**

*Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill - As Introduced*

*Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill - Delegated Powers Memorandum*

Draft Report (private)  
DPLR/S5/18/29/5(P)

**Agenda Item 8**

*Offensive Weapons Bill (UK Parliament legislation) - Legislative Consent Memorandum*

Draft Report (private)  
DPLR/S5/18/29/6(P)

**Agenda Item 9**

*Trade Bill (UK Parliament legislation) - Legislative Consent Memorandum*

Draft Report (private)  
DPLR/S5/18/29/7(P)
Section 40(3) of the Tribunals (Scotland) Act 2014 provides that where regulations provide for a matter to be decided by a single member of the Upper Tribunal ("UT"), the regulations must include provision for determining whether the single member is to be an ordinary, legal or judicial member of the Tribunal.

Regulation 5(1) of this instrument provides that the UT, when deciding a case appealed from the First-tier Tribunal to the UT, must consist of one of the membership compositions set out in subparagraphs (a) to (e). Subparagraph (a) provides that there may be a member of the UT acting alone. Regulation 5(3) provides that, for the purposes of the regulation, a member may be a legal member or a judicial member (but not an ordinary member). Regulation 5(4) provides that the President of the Tribunals may determine which of the alternative compositions in those subparagraphs (a) to (e) applies.

(1) Is it considered that regulation 5(1) and (3) breach the requirement in section 40(3), as the regulation does not appear to include provision for determining whether the single member is to be a legal or a judicial member? If not, please fully explain why it is considered that the provisions comply with section 40(3)?

(2) Is corrective action proposed?

The Scottish Government responded as follows:

Section 40(3) of the Tribunals (Scotland) Act 2014 ("the 2014 Act") says that the regulations must include provision for determining which of three categories of member can sit as a single member, where a single member can act alone in a matter. That subsection applies to draft regulation 5(1)(a), which makes such provision.

The rule of statutory construction is that words in the singular include the plural (see section 22 of the Interpretation and Legislative Reform (Scotland) Act 2010), therefore the Scottish Government does not see any difficulty in providing for two different types of member to be able to act alone in such cases.

As the question implies, the only issue can relate to how the determination between the two available categories of member is to be made in particular cases.
The Scottish Government considers that provision for that determination would be made by regulation 5(3), which provides—

“The authority to determine the composition of the Upper Tribunal in respect of the alternative compositions referred to in paragraph (1) is delegated to the President of the Scottish Tribunals.”

In the draft regulations, paragraph (1) has five sub-paragraphs setting out various compositions that the Upper Tribunal can take. Within those sub-paragraphs some choices require to be made and it is helpful to consider paragraph (1)(b), which provides for “two or three members of the Upper Tribunal” to decide a case. The 2014 Act contains a separate requirement requiring provision to be made for determining the types of member who can decide such cases, at section 40(4). Again the draft regulations provide that the member can be a legal member or a judicial member, but not an ordinary member. Three potential compositions are therefore possible for a two member Upper Tribunal, two members of either type, or one of each type.

The provision at draft regulation 5(1)(a) provides for two potential compositions where a member of the Upper Tribunal acts alone. That member can either be a legal member or can be a judicial member.

In either situation, the provision for the President of the Scottish Tribunals to determine that composition addresses the statutory requirements, at subsections (3) and (4) of section 40 of the 2014 Act.

The Scottish Government does not see a need for corrective action.
First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018 [draft]

On 19 September 2018, the Scottish Government was asked:

1. Draft regulation 5 provides that it will be competent to assign to the Social Security Chamber, on a temporary basis, as president who is also the president of another chamber of the First-tier Tribunal for Scotland. It disapplies a number of provisions of the Tribunals (Scotland) Act 2014 that would quarrel with this approach. It states,

   “5. Until the Scottish Ministers begin to provide a type of assistance under the 2018 Act that requires determination on the basis of ongoing entitlement, within the meaning of section 51 of that Act, the following provisions of the Tribunals (Scotland) Act 2014 will not apply in relation to the presidency of the First-tier Tribunal Social Security Chamber—…”

The phrase “[u]ntil the Scottish Ministers begin to provide a type of assistance…” does not express the precise point at which the listed provisions of primary legislation begin to apply again. It appears that this may occur on the provision of the first such type of assistance. Alternatively, it might occur on receipt of the first such type of assistance. Or further legislation might be prepared to identify the point at which the change occurs.

The policy note explains,

“The purpose of the exclusion is to allow an existing chamber president to take on the role of temporary president of the new chamber. This is the product of further thought and discussion during the consultation period. The transitional provision was not included in the draft regulations as consulted upon.

It is anticipated that the temporary president will be in place for the duration of delivery of the first wave of benefits. A dedicated chamber president will be appointed in time for when the second wave of benefits, including disability benefits, begin to be delivered.”

We note that if a temporary president is in place for the duration of the delivery of the first wave of benefits, some thought would need to be given to the point at which the provisions listed in regulation 5 are to apply again, in order to avoid their presidency over the Social Security Chamber breaching those provisions.

Please could you explain at precisely what point the disapplied provisions of primary legislation are intended to apply again, and why it is considered that regulation 5 clearly implements the policy intention?

The Scottish Government responded as follows:

Section 51(1) of the Social Security (Scotland) Act 2018 (“the 2018 Act”) states that the Scottish Ministers may, by regulations, provide that a determination of an individual's entitlement to a specified type of social security assistance is to be made on the basis that the individual has ongoing entitlement to assistance of that type.

In practice, only some of the types of assistance that can be given under the Act will be given as ongoing assistance. They will not include the first two types of
assistance to be introduced, being early years assistance under section 32 and
funeral expense assistance under section 34 both under the 2018 Act. Draft
regulations have been laid for early years assistance (the Early Years Assistance
(Best Start Grants) (Scotland) Regulations 2018) and do not contain provision for
early years assistance to be provided on an ongoing basis, nor do the powers
narrated for those regulations refer to section 51. These two types of assistance are
what the policy note is referring to as the “first wave of benefits”, though it is possible
that some of the initial types of assistance in the “second wave” will also not be given
as ongoing assistance.

The Scottish Ministers interpret draft regulation 5 as referring to the point at which
the Scottish Ministers make regulations under section 51(1) of the 2018 Act which
provide that a determination of an individual’s entitlement to a specified type of
assistance is to be made on the basis that the individual has ongoing entitlement to
that type of assistance. Theoretically, if regulations using the power contain a mix of
provisions for ongoing entitlement and one-off entitlement with different
commencement dates for each type, then it would refer to the date that provisions
under section 51(1) come into force. However, it is not currently envisaged that
regulations would make such mixed provision.

Other interpretations could be argued for, but this interpretation is the earliest date at
which the disapplication of listed provisions of the Tribunals (Scotland) Act 2014 can
cease. All other interpretations would continue the disapplication to a later date.

Regulation 5 enables an interim arrangement to be made and continued, by
disapplying listed provisions that would otherwise prevent that arrangement. That
interim arrangement must end, or have already ended, at the time the disapplication
of those provisions ceases.

In practice Ministers intend to approach interpretation of regulation 5 in a way that
ensures no issue could arise. Ministers intend to put in place arrangements that do
not contravene the listed provisions no later than the earliest date that could be
argued to be the date the disapplication of those provisions ceases, i.e. before the
point of commencement of regulations that are made under section 51(1). As that is
the Scottish Ministers’ intention, the Scottish Government does not see a difficulty
with the wording of regulation 5.
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (SSI 2018/273)

On 20 September 2018, the Scottish Government was asked:

Each of the following questions relate to provision made in the schedule of the instrument.

1. Rule 3 delegates to staff of the Scottish Courts and Tribunals Service (SCTS), subject to the approval of the President of the Scottish Tribunals, functions of a judicial nature which are permitted or required to be undertaken by the First-tier Tribunal (“FTT”), provided they are of a preliminary or an incidental nature.

   a. Please clarify (including by giving examples) which judicial functions “of a preliminary or an incidental nature” are so capable of delegation to SCTS staff, with the approval of the President?

   b. The enabling powers cited in the preamble to make the scheduled rules (paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014) do not expressly permit the delegation of judicial functions to members of staff of SCTS. In this instance judicial functions have been conferred on the FTT by legislation. As a general rule, there requires to be an express power to sub-delegate, and otherwise the person on whom a power to legislate is conferred cannot use that power to confer further power which has legislative effect. One might expect to see particularly clear wording authorising the delegation of judicial functions to civil servants.

   Please explain therefore why rule 3 is properly made within the enabling powers to make the instrument, given that the rule delegates to the President the ability to specify certain judicial functions of the FTT (of a specified description in specified circumstances) to be exercisable by SCTS staff?

   c. By virtue of section 61A of the Judiciary and Courts (Scotland) Act 2008, the Parliament has defined the administrative support functions of SCTS for the Scottish Tribunals and their members. Please also explain why it is considered to be a usual and expected use of the temporary powers to make the rules of the Scottish Tribunals contained in paragraph 4(2) referred to above, that this instrument delegates certain judicial functions of the Upper Tribunal to SCTS staff?

2. The rules do not appear to require intimation to the other parties either by the FTT or the party making an application for: an order of the FTT (rule 5); permission to appeal (rules 33 and 34); or a review of a decision (rule 35).

   a. Is there a reason why such provision is not made?

   b. Please explain how the lack of provision on intimation complies with article 6 of the Convention (see e.g., Schmidt v Latvia (app. no. 22493/05), which requires “Contracting States to ensure that the domestic authorities have acted with the requisite diligence in apprising the litigants of the proceedings so that their right to fair trial is not jeopardised”).


3. In relation to rule 13(3), is it intended that the respondent would only need to inform the FTT, and not the appellant, that a particular form of communication (other than post) should not be used to provide documents to that party for the rule to apply that the appellant must not use that form of communication?

4. In relation to rule 9(3)(a):

   a. Is the policy intention that the requirement to provide documents to the representative only applies prospectively to any documents required to be provided after the notice of appointment is received by the person, or does it also apply to all documents in the case which have been provided to the represented party (or their previous representative) before that party was represented?

   b. Is this sufficiently clear?

5. The Policy Note states at the foot of page 6 that provision for expenses has been removed from the rules of procedure for the Social Security Chamber. Is there any inconsistency with this policy intention, insofar as rule 16(2)(b) requires that the citation of a person who is not a party must make provision for the person’s necessary expenses of attendance to be paid and to state who is to pay them?

6. Rule 22(2) provides that an individual must start appeal proceedings against a process decision by sending a notice of appeal and any accompanying documents to the FTT. However, rule 22(3)(g) refers to providing reasons why the notice of appeal was not sent or delivered to the Scottish Ministers sooner (where the notice of appeal is received after the end of the 31 period but within 1 year of being informed of the decision). By way of contrast, equivalent rules 20(3) and 20(5)(g), which apply to more general appeals, both refer to providing the notice of appeal to the Scottish Ministers. Is there a drafting error in rule 22(2), insofar as it refers to sending a notice to the FTT?

7. Rule 29(1) provides that the FTT may give reasons for a decision which disposes of proceedings – (a) orally at a hearing; or (b) in a full written statement of reasons to each party. The word “may” (rather than “must”) in rule 29(1) appears to confer discretion on the FTT not to provide any reasons (unless a party subsequently applies in writing for a full written statement of reasons – rule 29(2)). In what circumstances would the FTT not providing reasons comply with the requirement in article 6(1) of the Convention that the courts give sufficient reasons for their decisions (H. v. Belgium).

8. In relation to rule 35:

   a. Paragraph (5) refers to the notice provided under “paragraph (7)”. Should this instead be a reference to “paragraph (4)”?

   b. Likewise, please explain why reference is made to a notice “under paragraph (4)” in rule 35(7)? Is paragraph (7) not the notice of the FTT’s decision on a review, which follows after receiving any response to the application and the FTT’s provisional views on that application?
The Scottish Government responded as follows:

1. (a) Judicial functions of a preliminary or incidental nature capable of delegation to SCTS might include—

   - making a decision on whether a request to extend the time limit for complying with a particular rule should be extended, in terms of rule 4(3)(a), and
   - making an initial assessment as to whether a notice of appeal submitted under rule 20 contains sufficient information to be considered valid.

The rule has intentionally not been drafted to specify particular functions which may be delegated to staff; it is a matter for the Chamber President to determine what functions may appropriately be delegated.

1. On (b) and (c), the Scottish Government considers that delegation of functions to SCTS staff is catered for by section 69(2)(c) of the Tribunals (Scotland) Act 2014. This permits something to be done on behalf of certain persons, one of whom is the Chamber President. Although this provision is not cited expressly in the preamble to the Regulations, the Scottish Government considers this to be caught by the reference to “all other powers enabling [the Scottish Ministers to make the Regulations]”.

2. The Scottish Government has considered the case of Schmidt v Latvia and regards it as being of limited relevance in relation to the rules mentioned. The principle underlying the judgment is that parties must be apprised of “the proceedings”. It does not follow that every stage in the proceedings requires intimation. The provisions to which the rules cover relate to the question do not universally require input from all parties, nor do they alter the rights of the party who is not the applicant. They are stages in the process; any party who is not the applicant would have the chance to input before their rights could be altered. For example, where the FTT does not grant permission to appeal to the UT, the status quo for the other party or parties is maintained.

In any event, the FTT requires to act in a manner which is ECHR compliant. This would require it to intimate matters to other parties, should there be any case where Article 6 ECHR so requires.

In relation to the policy that underpins the specific rules:

On rule 5, relating to giving of orders, the Scottish Government believes, in policy terms, that it makes for a more expeditious procedure for the giving of orders that parties should in general have the opportunity to challenge them after they have been given, rather than challenging prospective orders (see paragraph (5)). In practice many of the orders given are likely to be so straightforward and incidental in nature that it would not be justifiable to delay the progress of proceedings to give the other party or parties the opportunity to have an input. An example may arise where the FTT gives an order requiring a party to produce a particular document, or where one party requests a short extension of time to comply with a particular rule. Given the likely vulnerability of appellants, it is in their interests that proceedings be dealt with as quickly and efficiently as possible. This speaks in favour of avoiding delaying their progress to allow notice to be given of prospective orders of this kind. As noted above the FTT would, however, be bound to give such notice if there was a particular reason why it considered that Article 6 ECHR required it to do so.
Rules 33 and 34 – In terms of section 46 of the Tribunals (Scotland) Act 2014, reaching a decision on whether or not to grant permission to appeal a decision of the FTT is a matter for the FTT, in the first instance. The Scottish Government does not consider that involvement of the other party or parties in that process is necessary. They will, of course, be informed, and have the opportunity to input, in the event that an appeal to the UT goes ahead. This is consistent with the approach in the rules of the other chambers of the FTT.

On rule 35, express provision is made that each party be informed in the event that the FTT decides to grant a request for a review. The Scottish Government considers this is sufficient. Input from the other party or parties does not appear relevant to the FTT’s decision as to whether to undertake a review of its own decision. This is, in the first instance, simply an internal re-visiting of its own decision.

In relation to rule 13(3), the Scottish Government confirms that the intention is that it is sufficient that the FTT be informed by a party that a particular form of communication is not to be used. It will fall to the FTT to advise the other party or parties.

4. In relation to rule 9(3)(a), the Scottish Government does not intend that the requirement should apply only prospectively to any documents that require to be provided after the notice of appointment is received. A representative should be in possession of all documents that the rules have required the other party to provide to his or her client. This may involve providing again some documents, that a representative may not have received from his or her client. The Scottish Government will bring forward an amendment to ensure that this intention is reflected more clearly in the regulations.

5. As regards expenses, the Policy Note is referring, at the foot of page 6, to the policy that the FTT is not to have any involvement in making decisions on payment of expenses. The references in witness citations to expenses of a witness being met is a different matter, and not inconsistent with that policy.

6. In relation to rule 22(4)(g), the Scottish Government agrees that there is a drafting error insofar as the rule refers to a failure to send a notice more promptly to the Scottish Ministers, when it is a failure to send it to the FTT. The Scottish Government will bring forward a corrective amendment.

7. On question 7, the Scottish Government has considered the case of *H v Belgium*. It refers to the well-established principle, under Scots common law as well as ECHR Article 6 where it is relevant, that parties are entitled to understand the reasons for which decisions are reached.

In some cases the reason for an outcome is so obvious that the FTT may consider no further explanation is needed. This may arise, for example, where both parties are at a hearing and it is obvious what the basis of the disposal is. For example one party may concede that the appeal is fully merited or without foundation, or the case may turn on a matter of fact that is conclusively established. The rule is drafted to give the FTT discretion for such situations.

However, in any case where the FTT does not give a full written statement of reasons for its disposal of a case, rule 29 gives any party the right to apply for such a statement. In any event, the FTT requires to act in a manner which is ECHR
compliant. This would require it to give reasons for its decisions, should there be any case where Article 6 ECHR so requires. This would be the case even if no application for reasons was made.

8. On rule 35, in relation to point (a), the reference should be to paragraph (4) rather than paragraph (7). In relation to point (b), the reference should be to paragraph (1) rather than paragraph (4). The Scottish Government will bring forward corrective amendments for these points.
Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018 (SSI 2018/274)

On 21 September 2018, the Scottish Government was asked:

Each of the following questions relate to provision made in the schedule of the instrument.

1. Rule 7(1) and (2) delegates to staff of the Scottish Courts and Tribunals Service (SCTS), subject to the approval of the President of the Scottish Tribunals, functions of a judicial nature which are permitted or required to be undertaken by the Upper Tribunal (“UT”), provided they are of a preliminary or an incidental nature.

   a. Please clarify (including by giving examples) which judicial functions “of a preliminary or an incidental nature” are so capable of delegation to SCTS staff, with the approval of the President?

   b. The enabling powers cited in the preamble to make the scheduled rules (paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014) do not expressly permit the delegation of judicial functions to members of staff of SCTS. In this instance judicial functions have been conferred on the UT by legislation. As a general rule, there requires to be an express power to sub-delegate, and otherwise the person on whom a power to legislate is conferred cannot use that power to confer further power which has legislative effect. One might expect to see particularly clear wording authorising the delegation of judicial functions to civil servants.

   Please explain therefore why rule 7 is properly made within the enabling powers to make the instrument, given that the rule delegates to the President the ability to specify certain judicial functions of the UT (of a specified description in specified circumstances) to be exercisable by SCTS staff?

   c. By virtue of section 61A of the Judiciary and Courts (Scotland) Act 2008, the Parliament has defined the administrative support functions of SCTS for the Scottish Tribunals and their members. Please also explain why it is considered to be a usual and expected use of the temporary powers to make the rules of the Scottish Tribunals contained in paragraph 4(2) referred to above, that this instrument delegates certain judicial functions of the UT to SCTS staff?

2. Some of the rules do not appear to require intimation to the other parties, either by the UT or the party making an application. This appears to apply to an application for permission to appeal to the UT (rule 3), an order on application of one or more parties (rule 9); and an application for permission to appeal a decision of the UT (rule 30).

   a. Is there a reason why such provision is not made?

   b. Please explain how the lack of provision on intimation complies with article 6 of the Convention (see e.g., Schmidt v Latvia (app. no. 22493/05), which requires “Contracting States to ensure that the domestic authorities have
3. The Policy Note states near the top of page 4 that provision for expenses has been removed from the rules for the UT. Is there any inconsistency with this policy intention, insofar as rule 19(2)(b) requires that the citation of a person who is not a party must state how expenses of attendance necessarily incurred may be recovered?

4. Is any corrective action proposed?

The Scottish Government responded as follows:

1. (a) Judicial functions of a preliminary or incidental nature capable of delegation to SCTS might include—

   - making an initial assessment as to whether an application for permission to appeal submitted under rule 3 contains sufficient information to be considered valid, and
   - making a decision on whether a request to extend the time limit for complying with a particular rule should be extended, in terms of rule 8(3)(a).

   The rule has intentionally not been drafted to specify particular functions which may be delegated to staff; it is a matter for the President of the Scottish Tribunals to determine what functions may appropriately be delegated.

2. The Scottish Government has considered the case of Schmidt v Latvia and regards it as being of limited relevance in relation to the rules mentioned. The principle underlying the judgment is that parties must be apprised of “the proceedings”. It does not follow that every stage in the proceedings requires intimation. The provisions to which the rules covered by the question relate do not universally require input from all parties, nor do they alter the rights of the party who is not the applicant. They are stages in the process; any party who is not the applicant would have the chance to input before their rights could be altered. For example, where the UT does not grant permission to appeal, the status quo for the other party or parties is maintained.

In any event, the UT requires to act in a manner which is ECHR compliant. This would require it to intimate matters to other parties, should there be any case where Article 6 ECHR so requires.
In relation to the policy that underpins the specific rules:

Rule 3 – In terms of section 46 of the Tribunals (Scotland) Act 2014, reaching a decision on whether or not to grant permission to appeal to the UT is a matter for the UT, where the First-tier Tribunal has refused permission. The Scottish Government does not consider that involvement of the other party or parties in that process is necessary. They will, of course, be informed, and have the opportunity to input, in the event that an appeal to the UT goes ahead.

On rule 9, relating to giving of orders, the Scottish Government believes, in policy terms, that it makes for a more expeditious procedure for the giving of orders that parties should in general have the opportunity to challenge them after they have been given, rather than challenging prospective orders (see paragraph (5)). In practice many of the orders given are likely to be so straightforward and incidental in nature that it would not be justifiable to delay the progress of proceedings to give the other party or parties the opportunity to have an input. An example may arise where the UT gives an order requiring a party to produce a particular document, or where one party requests a short extension of time to comply with a rule. Given the likely vulnerability of applicants for assistance, it is in their interests that proceedings be dealt with as quickly and efficiently as possible. This speaks in favour of avoiding delaying their progress to allow notice to be given of prospective orders of this kind. As noted above the UT would, though, be bound to give notice if there was a particular reason why it considered that Article 6 ECHR required it to do so.

Rule 30 - In terms of section 48 of the Tribunals (Scotland) Act 2014, it is a matter for the UT, in the first instance, to make a decision on whether or not to grant permission to appeal its decision. The Scottish Government does not consider that involvement of the other party or parties in that process is necessary. This is consistent with the approach of the generic rules of procedure of the Upper Tribunal for Scotland.

3. As regards expenses, the Policy Note is referring to the policy that the UT is not to have any involvement in making decisions on payment of expenses. The reference in witness citations to how expenses of a witness are to be met is a different matter, and not inconsistent with that policy.

4. The Scottish Government does not see a need for corrective action.