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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 184**

**TRIBUNALS AND INQUIRIES**

**The Scottish Tax Tribunals (Time Limits  
and Rules of Procedure) Regulations 2015**

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|--|---------|------------------------|
| <i>Made</i>                                    | - - - - | <i>29th April 2015</i> |
| <i>Laid before the Scottish<br/>Parliament</i> | - - - - | <i>1st May 2015</i>    |
| <i>Coming into force</i>                       | - -     | <i>1st June 2015</i>   |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 39, 51, 52, 53, 54, 55, 56 and 249 of the Revenue Scotland and Tax Powers Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 51(4) of that Act, they have consulted with the President of the Scottish Tax Tribunals and such other persons as they considered appropriate.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 and the Rules contained in Schedules 1 and 2 may be cited, respectively, as—

- (a) the First-tier Tax Tribunal for Scotland Rules of Procedure 2015; and
  - (b) the Upper Tax Tribunal for Scotland Rules of Procedure 2015.
- (2) These Regulations come into force on 1st June 2015.
- (3) In regulations 3 and 4, “RSTPA 2014” means the Revenue Scotland and Tax Powers Act 2014.

**Application of Schedules**

2.—(1) The Rules in Schedule 1 apply to all proceedings before the First-tier Tax Tribunal for Scotland.

- (2) The Rules in Schedule 2 apply to all proceedings before the Upper Tax Tribunal for Scotland.

**Time limits for permission to appeal - application to decision making forum**

3.—(1) For the purposes of the permissions mentioned in section 34(3)(a) of RSTPA 2014 (application for permission to appeal made to the First-tier Tribunal) or section 36(3)(a) of RSTPA 2014 (application for permission to appeal made to the Upper Tribunal), the following time limit applies.

(2) An application for permission to appeal must be received by the First-tier Tax Tribunal for Scotland or the Upper Tax Tribunal for Scotland, as appropriate, within the period of 30 days from the relevant date.

(3) The relevant date is the later of—

- (a) the date on which the decision appealed against was sent to the appellant;
- (b) the date on which the statement of reasons for the decision was sent to the appellant.

**Time limits for permission to appeal – application to appellate forum**

4.—(1) For the purposes of the permission mentioned in section 34(3)(b) of RSTPA 2014 (application for permission to appeal made to the Upper Tribunal following refusal by the First-tier Tribunal), the following time limit applies.

(2) An application for permission to appeal must be received by the Upper Tax Tribunal for Scotland within the period of 30 days from the relevant date.

(3) The relevant date is the date on which notice of the First-tier Tax Tribunal for Scotland's refusal of permission to appeal was sent to the appellant.

St Andrew's House, Edinburgh  
29th April 2015

*JOHN SWINNEY*  
A member of the Scottish Government

## SCHEDULE 1

Regulation 2(1)

### The First-tier Tax Tribunal for Scotland Rules of Procedure 2015

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## PART 1

### Introduction

#### **Interpretation**

**1.** In these Rules—

“appellant” means—

- (a) the person who starts proceedings (whether by notifying an appeal, by making an application, by a reference, or otherwise);
- (b) in proceedings started jointly by more than one person, such persons acting jointly or each such person, as the context requires;

(c) in any case, a person substituted as an appellant under rule 9 (addition, substitution and removal of parties);

“Basic case” means a case allocated to the Basic category under rule 24 (allocation of cases to categories);

“Complex case” means a case allocated to the Complex category under rule 24;

“Default Paper case” means a case allocated to the Default Paper category under rule 24;

“document” means anything in which information is recorded in any form, and an obligation under these Rules to provide or allow access to a document or a copy of a document for any purpose means, unless the First-tier Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“party” means a person who is (or was at the time that the First-tier Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the First-tier Tribunal;

“practice direction” means a direction given under section 57 of RSTPA 2014;

“President” means the President of the Scottish Tax Tribunals;

“respondent” means—

- (a) Revenue Scotland, where Revenue Scotland is not an appellant;
- (b) in proceedings brought by Revenue Scotland alone, a person against whom the proceedings are brought or to whom the proceedings relate;
- (c) in any case, a person substituted or added as a respondent under rule 9 (addition, substitution and removal of parties);

“RSTPA 2014” means the Revenue Scotland and Tax Powers Act 2014;

“Standard case” means a case allocated to the Standard category under rule 24.

### **Overriding objective and parties’ obligation to co-operate with the First-tier Tribunal**

2.—(1) The overriding objective of these Rules is to enable the First-tier Tribunal to deal with cases fairly and justly.

- (2) Dealing with a case in accordance with the overriding objective includes—
  - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated expenses and the resources of the parties;
  - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
  - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
  - (d) using any special expertise of the First-tier Tribunal effectively; and
  - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The First-tier Tribunal must seek to give effect to the overriding objective when it—
  - (a) exercises any power under these Rules; or
  - (b) interprets any rule or practice direction.
- (4) Parties must, insofar as reasonably possible—
  - (a) help the First-tier Tribunal to further the overriding objective; and
  - (b) co-operate with the First-tier Tribunal generally.

## **Mediation**

3. The First-tier Tribunal should seek, where appropriate—
- (a) to bring to the attention of the parties the availability of mediation for the resolution of the dispute; and
  - (b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of mediation.

## **PART 2**

### **General Powers and Provisions**

#### **Delegation to staff**

4.—(1) Staff of the Scottish Courts and Tribunals Service may, with the approval of the President, carry out functions of a judicial nature permitted or required to be done by the First-tier Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date that the First-tier Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may make a written application to the First-tier Tribunal for that decision to be considered afresh by a member of the First-tier Tribunal.

#### **Case management powers**

5.—(1) Subject to the provisions of RSTPA 2014 and these Rules, the First-tier Tribunal may regulate its own procedure.

(2) The First-tier Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the First-tier Tribunal may by direction—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, or regulation 3(2) of the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 (time limit for permission to appeal to the Upper Tax Tribunal for Scotland);
- (b) conjoin or take concurrently two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 18 (lead cases) or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information, evidence or submissions to the First-tier Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management hearing;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a file of documents for a hearing;

- (j) sist proceedings;
- (k) 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 First-tier Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the First-tier Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (l) suspend the effect of its own decision pending the determination by the First-tier Tribunal or the Upper Tribunal, as the case may be, of an application for permission to appeal or an appeal.

### **Procedure for applying for and giving directions**

6.—(1) The First-tier Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

- (2) An application for a direction may be made—
  - (a) by sending or delivering a written application to the First-tier Tribunal; or
  - (b) orally during the course of a hearing.

(3) An application for a direction must include the reasons for making that application.

(4) The First-tier Tribunal must send notice of any direction to every party and to any other person affected by the direction.

(5) If a party or other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the First-tier Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

### **Failure to comply with rules etc.**

7.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction 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 a direction, the First-tier Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 8 (striking out a party's case); or
- (d) restricting a party's participation in proceedings.

### **Striking out a party's case**

8.—(1) The proceedings, or the appropriate part of them, will be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The First-tier Tribunal must strike out the whole or a part of the proceedings if the First-tier 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 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

- (3) The First-tier Tribunal may strike out the whole or a part of the proceedings if—
- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
  - (b) the appellant has failed to co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings fairly and justly; or
  - (c) the First-tier Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(4) The First-tier Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) The effect of proceedings being struck out is that all issues are determined against the appellant. The effect of proceedings being partially struck out is that the relevant issues are determined against the appellant.

(6) If the proceedings, or a part of them, have been struck out under paragraph (1) or (3)(a), the appellant may make a written application for the proceedings, or a part of them, to be reinstated.

(7) An application under paragraph (6) must be received by the First-tier Tribunal within 30 days after the date that the First-tier Tribunal sent notification of the striking out to the appellant.

- (8) This rule applies to a respondent as it applies to an appellant except that—
- (a) a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and
  - (b) a reference to an application for the reinstatement of proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent taking further part in the proceedings.

(9) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the First-tier Tribunal need not consider any response or other submissions made by that respondent, and may summarily determine any or all issues against that respondent.

#### **Addition, substitution and removal of parties**

**9.—**(1) The First-tier Tribunal may give a direction 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 First-tier Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) A person who is not a party may make a written application to the First-tier Tribunal to be added or substituted as a party under this rule.

(4) If the First-tier 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 First-tier Tribunal.

#### **Orders for expenses**

**10.—**(1) The First-tier Tribunal may only make an order in respect of expenses—

- (a) in relation to wasted expenses and expenses incurred in applying for such expenses;

- (b) if the First-tier Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings; or
- (c) if—
  - (i) the proceedings have been allocated as a Complex case under rule 24 (allocation of cases to categories); and
  - (ii) the taxpayer (or, where more than one party is a taxpayer, one of them) has not sent or delivered a written request to the First-tier Tribunal, within 30 days of receiving notice that the case had been allocated as a Complex case, that the proceedings be excluded from potential liability for expenses under this sub-paragraph.
- (2) The First-tier Tribunal may make an order under paragraph (1) on an application or on its own initiative.
- (3) A person making an application for an order under paragraph (1) must—
  - (a) send or deliver a written application to the First-tier Tribunal and to the person against whom it is proposed that the order be made; and
  - (b) send or deliver with the application a schedule of the expenses claimed in sufficient detail to allow the First-tier Tribunal to undertake a summary assessment of such expenses if it decides to do so.
- (4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 30 days after the date on which the First-tier Tribunal sends—
  - (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
  - (b) notice under rule 17(2) of its receipt of a withdrawal which ends the proceedings.
- (5) The First-tier Tribunal may not make an order under paragraph (1) against a person (the “paying person”) without first—
  - (a) giving that person an opportunity to make representations; and
  - (b) if the paying person is an individual, considering that person’s financial means.
- (6) The amount of expenses to be paid under an order under this rule may be ascertained by—
  - (a) summary assessment by the First-tier Tribunal;
  - (b) agreement of a specified sum by the paying person and the person entitled to receive the expenses (the “receiving person”); or
  - (c) assessment of the whole or a specified part of the expenses, including the expenses of the assessment, incurred by the receiving person, if not agreed.
- (7) Following an order for assessment under paragraph (6)(c)—
  - (a) the paying person or the receiving person may apply to the Auditor of the Court of Session (as specified in the order); or
  - (b) the First-tier Tribunal may make a remit to the Auditor of the Court of Session, for the taxation of the expenses according to the fees payable in that Court.
- (8) Upon making an order for the assessment of expenses, the First-tier Tribunal may order an amount to be paid on account before the expenses are assessed.
- (9) In this rule—
  - “taxpayer” means a party who is liable to pay, or has paid, the tax, interest or penalty to which the proceedings relate or part of such tax, interest or penalty, or whose liability to do so is in issue in the proceedings; and

“wasted expenses” means any expenses incurred by a party—

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of such a representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the First-Tier Tribunal considers it is unreasonable to expect that party to pay.

### **Representatives**

**11.**—(1) A party may appoint a representative to represent that party in the proceedings.

(2) If a party appoints a representative, that party or the representative must send or deliver to the First-tier Tribunal and to each other party to the proceedings notice of the representative’s name and address.

(3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(4) A person who receives due notice of the appointment of a representative—

- (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and
- (b) may assume that the representative is and remains authorised as such until they receive notification that this is not so from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, with the permission of the First-tier Tribunal, may act as a representative or otherwise assist in presenting the party’s case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a party in accordance with paragraph (5).

### **Calculating time**

**12.**—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction 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 or Sunday, Christmas Day, Good Friday or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971(2).

### **Sending and delivery of documents**

**13.**—(1) Any document to be provided to the First-tier Tribunal under these Rules, a practice direction or a direction must be—

- (a) sent by pre-paid post or document exchange, or delivered by hand, to the address specified for the proceedings; or
- (b) sent or delivered by such other method as the First-tier Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party or representative provides a fax number, email address or other details for the electronic transmission of documents to them, that party or representative must accept delivery of documents by that method.

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(2) 1971 c.80.

(3) If a party informs the First-tier Tribunal and all other 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, that form of communication must not be so used.

(4) If the First-tier Tribunal or a party sends a document to a party or the First-tier 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.

(5) The First-tier Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving notification to the contrary.

### **Use of documents and information**

**14.—**(1) The First-tier Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the First-tier Tribunal considers should not be identified.

(2) The First-tier Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the First-tier Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the First-tier Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the First-tier Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be provided to the second party; and
- (b) provide to the First-tier Tribunal the excluded document or information, and the reason for its exclusion, so that the First-tier Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) If the First-tier Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the First-tier Tribunal may give a direction that the documents or information be disclosed to that representative if the First-tier Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not be disclosed either directly or indirectly to any other person without the First-tier Tribunal’s consent.

(6) The First-tier Tribunal may, on its own initiative or on the application of a party, give a direction that certain documents or information must or may be disclosed to the First-tier Tribunal on the basis that the First-tier Tribunal will not disclose such documents or information to other persons, or specified other persons.

(7) A party making an application for a direction under paragraph (6) may withhold the relevant documents or information from other parties until the First-tier Tribunal has granted or refused the application.

(8) The First-tier Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of an order made under paragraph (1) or a direction given under paragraph (2) or (6).

### **Evidence and submissions**

**15.**—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the First-tier Tribunal may give directions as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (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 a direction 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 First-tier Tribunal may—

- (a) admit evidence whether or not the evidence would be admissible in a court in Scotland; or
- (b) exclude evidence that would otherwise be admissible where—
  - (i) the evidence was, without reasonable excuse, not provided within the time allowed by a direction or a practice direction;
  - (ii) the evidence was, without reasonable excuse, otherwise provided in a manner that did not comply with a direction or a practice direction; or
  - (iii) it would otherwise be unfair to admit the evidence.

(3) The First-tier Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

### **Citation of witnesses and orders to answer questions or produce documents**

**16.**—(1) On the application of a party or on its own initiative, the First-tier Tribunal may—

- (a) by citation require any person to attend as a witness at a hearing at the time and place specified in the citation;
- (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 at least 14 days' notice of the hearing, or such other period as the First-tier Tribunal may direct; and
- (b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.

(3) A person who receives a citation or order may apply to the First-tier Tribunal for it to be varied or set aside if the person did not have an opportunity to object to it before it was made or issued.

(4) A person making an application under paragraph (3) must do so as soon as reasonably practicable after receiving notice of the citation or order.

- (5) A citation or order under this rule must—
- (a) state that the person on whom the requirement is imposed may apply to the First-tier 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
  - (b) state the consequences of failure to comply with the citation or order.

### **Withdrawal**

17.—(1) Subject to any provision in RSTPA 2014 relating to withdrawal or settlement of particular proceedings, a party may give notice to the First-tier Tribunal of the withdrawal of the case made by it in the First-tier Tribunal proceedings, or any part of that case—

- (a) by sending or delivering to the First-tier Tribunal a notice of withdrawal; or
- (b) orally at a hearing.

(2) The First-tier Tribunal must notify each party of its receipt of a withdrawal under this rule.

(3) A party who has withdrawn their case may make a written application to the First-tier Tribunal for the case to be reinstated.

(4) An application under paragraph (3) must be received by the First-tier Tribunal within 30 days after—

- (a) the date that the First-tier Tribunal received the notice under paragraph (1)(a); or
- (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

### **Lead cases**

18.—(1) This rule applies if—

- (a) two or more cases have been started before the First-tier Tribunal;
- (b) in each such case the First-tier Tribunal has not made a decision disposing of the proceedings; and
- (c) the cases give rise to common or related issues of fact or law.

(2) The First-tier Tribunal may give a direction—

- (a) specifying one or more cases falling under paragraph (1) as a lead case or lead cases; and
- (b) sisting the other cases falling under paragraph (1) (“the related cases”).

(3) When the First-tier Tribunal makes a decision in respect of the common or related issues—

- (a) the First-tier Tribunal must send a copy of that decision to each party in each of the related cases; and
- (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) Within 30 days after the date that the First-tier Tribunal sent a copy of the decision to a party under paragraph (3)(a), that party may make a written application for a direction that the decision does not apply to, and is not binding on the parties to, that case.

(5) The First-tier Tribunal must give directions in respect of cases which are sisted under paragraph (2)(b), providing for the disposal of or further steps in those cases.

(6) If the lead case or cases are withdrawn or disposed of before the First-tier Tribunal makes a decision in respect of the common or related issues, the First-tier Tribunal must give directions as to—

- (a) whether another case or other cases are to be heard as a lead case or lead cases; and
- (b) whether any direction affecting the related cases should be set aside or amended.

### **Chairing member**

19. Where a matter is to be decided by two or more members of the First-tier Tax Tribunal, the President must determine the chairing member.

### **Venue for hearings**

20. The First-tier Tribunal is to be convened at such time and place in Scotland as the President may determine.

### **Enforcement of decisions**

21. An order for the payment of a sum payable in pursuance of a decision of the First-tier Tribunal, or a copy of such an order certified by the First-tier Tribunal, may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the Sheriff Court of any sheriffdom in Scotland.

## **PART 3**

### **Procedure for cases in the First-tier Tribunal**

#### **CHAPTER 1**

#### **Starting Proceedings and Allocation of Cases to Categories**

### **Proceedings concerning late notice of review**

22.—(1) A person may apply to the First-tier Tribunal for permission to appeal under section 236(2)(b) of RSTPA 2014 (late notice of review) only if—

- (a) the person has approached Revenue Scotland for agreement under section 236(2)(a); and
- (b) agreement has been refused or has been given only on limited grounds.

(2) Where permission to appeal may be sought under paragraph (1), the notice of review must include a request for the permission referred to in section 236(2)(b) of RSTPA 2014 and the reason why the notice of review was not provided in time.

### **Notice of appeal to the First-tier Tribunal**

23.—(1) The notice of appeal referred to in section 242 of RSTPA 2014 must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) details of the decision appealed against;
- (e) the result the appellant is seeking; and
- (f) the grounds for making the appeal.

(2) The appellant must provide with the notice of appeal a copy of any written record of any decision appealed against, and any statement of reasons for that decision, that the appellant has or can reasonably obtain.

(3) A person may apply to the First-tier Tribunal for permission to appeal under section 243(2)(b) of RSTPA 2014 (late notice of appeal) only if—

- (a) the person has approached Revenue Scotland for agreement under section 243(2)(a); and

- (b) agreement has been refused or has been given only on limited grounds.
- (4) Where permission to appeal may be sought under paragraph (3)—
  - (a) the notice of appeal must include a request for the permission referred to in section 243(2) (b) of RSTPA 2014 and the reason why the notice of appeal was not provided in time; and
  - (b) unless the First-tier Tribunal gives such permission, the First-tier Tribunal must not admit the appeal.
- (5) When the First-tier Tribunal receives the notice of appeal, it must give notice of the proceedings to the respondent.

### **Allocation of cases to categories**

**24.**—(1) When the First-tier Tribunal receives a notice of appeal, the First-tier Tribunal must give a direction allocating the case to one of the categories set out in paragraph (2).

- (2) The categories referred to in paragraph (1) are—
  - (a) Default Paper cases, which will usually be disposed of without a hearing;
  - (b) Basic cases, which will usually be disposed of after a hearing, with minimal exchange of documents before the hearing;
  - (c) Standard cases, which will usually be subject to more detailed case management and be disposed of after a hearing; and
  - (d) Complex cases, in respect of which see paragraphs (4) and (5) below.

(3) The First-tier Tribunal may give a further direction re-allocating a case to a different category at any time, either on the application of a party or on its own initiative.

(4) The First-tier Tribunal may allocate a case as a Complex case under paragraph (1) or (3) only if the First-tier Tribunal considers that the case—

- (a) will require lengthy or complex evidence or a lengthy hearing;
  - (b) involves a complex or important principle or issue; or
  - (c) involves a large financial sum.
- (5) If a case is allocated as a Complex case—
- (a) rule 10(1)(c) (expenses in Complex cases) applies to the case; and
  - (b) rule 29 (transfer of Complex cases to the Upper Tribunal) applies to the case.

## **CHAPTER 2**

### **Procedure After Allocation of Cases to Categories**

#### **Basic cases**

**25.**—(1) This rule applies to Basic cases.

(2) Rule 26 (respondent’s statement of case) does not apply and, subject to paragraph (3) and any direction given by the First-tier Tribunal, the case will proceed directly to a hearing.

(3) If the respondent intends to raise grounds for contesting the proceedings at the hearing which have not previously been communicated to the appellant, the respondent must notify the appellant of such grounds.

(4) If the respondent is required to notify the appellant of any grounds under paragraph (3), the respondent must do so—

- (a) as soon as reasonably practicable after becoming aware that such is the case; and
- (b) in sufficient detail to enable the appellant to respond to such grounds at the hearing.

### **Respondent's statement of case**

**26.**—(1) A respondent must send or deliver a statement of case to the First-tier Tribunal, the appellant and any other respondent so that it is received—

- (a) in a Default Paper case, within 42 days after the First-tier Tribunal sent the notice of appeal;
- (b) in a Standard or Complex case, within 60 days after the First-tier Tribunal sent the notice of appeal.

(2) A statement of case must—

- (a) in an appeal, state the legislative provision under which the decision under appeal was made; and
- (b) set out the respondent's position in relation to the case.

(3) A statement of case may also contain a request that the case be dealt with at a hearing or without a hearing.

(4) If a respondent provides a statement of case to the First-tier Tribunal later than the time required by paragraph (1) or by any extension allowed under rule 5(3)(a) (power to extend time), the statement of case must include a request for an extension of time and the reason why the statement of case was not provided in time.

### **Further steps in a Default Paper case**

**27.**—(1) This rule applies to Default Paper cases.

(2) The appellant may send or deliver a written reply to the First-tier Tribunal so that it is received within 30 days after the date on which the respondent sent to the appellant the statement of case to which the reply relates.

(3) The appellant's reply may—

- (a) set out the appellant's response to the respondent's statement of case;
- (b) provide any further information (including, where appropriate, copies of the documents containing such information) which has not yet been provided to the First-tier Tribunal and is relevant to the case; and
- (c) contain a request that the case be dealt with at a hearing or without a hearing.

(4) The appellant must send or deliver a copy of any reply provided under paragraph (2) to each respondent at the same time as it is provided to the First-tier Tribunal.

(5) If the appellant provides a reply to the First-tier Tribunal later than the time required by paragraph (2) or by any extension allowed under rule 5(3)(a) (power to extend time), the reply must include a request for an extension of time and the reason why the reply was not provided in time.

(6) Following receipt of the appellant's reply, or the expiry of the time for the receipt of the appellant's reply then, unless it directs otherwise and subject in any event to paragraph (7), the First-tier Tribunal must proceed to determine the case without a hearing.

(7) If any party has made a written request to the First-tier Tribunal for a hearing, the First-tier Tribunal must hold a hearing before determining the case.

### **Further steps in a Standard or Complex case**

**28.**—(1) This rule applies to Standard and Complex cases.

(2) Subject to any direction to the contrary, within 42 days after the date the respondent sent the statement of case (or, where there is more than one respondent, the date of the final statement of case) each party must send or deliver to the First-tier Tribunal and to each other party a list of documents—

- (a) of which the party providing the list has possession, the right to possession, or the right to take copies; and
  - (b) which the party providing the list intends to rely upon or produce in the proceedings.
- (3) A party which has provided a list of documents under paragraph (2) must allow each other party to inspect or take copies of the documents on the list.

### **Transfer of Complex cases to the Upper Tribunal**

**29.**—(1) If a case has been allocated as a Complex case the First-tier Tribunal may, with the consent of the parties, refer a case or a preliminary issue to the President with a request that the case or issue be considered for transfer to the Upper Tribunal.

(2) If a case or issue has been referred by the First-tier Tribunal under paragraph (1), the President may direct that the case or issue be transferred to and determined by the Upper Tribunal.

## **CHAPTER 3**

### **Hearings**

#### **Decision with or without a hearing**

**30.**—(1) Subject to rule 27(6) (determination of a Default Paper case without a hearing) and the following paragraphs in this rule, the First-tier Tribunal must hold a hearing before making a decision which disposes of proceedings, or a part of proceedings, unless—

- (a) each party has consented to the matter being decided without a hearing; and
- (b) the First-tier Tribunal considers that it is able to decide the matter without a hearing.

(2) This rule does not apply to decisions under Part 4 (correcting, setting aside and appealing decisions of the First-tier Tribunal).

(3) The First-tier Tribunal may dispose of proceedings, or a part of proceedings, under rule 8 (striking out a party's case) without a hearing.

#### **Entitlement to attend a hearing**

**31.** Subject to rule 33(4) (exclusion of a person from a hearing), each party is entitled to attend a hearing together with any representative permitted by rule 11.

#### **Notice of hearings**

**32.**—(1) The First-tier Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of any hearing (including any adjourned or postponed hearing) and any changes to the time and place of any hearing.

(2) In relation to a hearing to consider the disposal of proceedings, the period of notice under paragraph (1) must be at least 14 days except that the First-tier Tribunal may give less than 14 days' notice—

- (a) with the parties' consent; or
- (b) in urgent or exceptional circumstances.

#### **Public and private hearings and power to exclude**

**33.**—(1) Subject to the following paragraphs, all hearings must be held in public.

(2) The First-tier Tribunal may give a direction that a hearing, or part of it, is to be held in private if the First-tier Tribunal considers that restricting access to the hearing is justified—

- (a) in the interests of public order or national security;
  - (b) in order to protect a person's right to respect for their private and family life;
  - (c) in order to maintain the confidentiality of sensitive information;
  - (d) in order to avoid serious harm to the public interest; or
  - (e) because not to do so would prejudice the interests of justice.
- (3) Where a hearing, or part of it, is to be held in private, the First-tier Tribunal may determine who is permitted to attend the hearing or part of it.
- (4) The First-tier Tribunal may give a direction excluding from any hearing, or part of it—
- (a) any person whose conduct the First-tier Tribunal considers is disrupting or is likely to disrupt the hearing;
  - (b) any person whose presence the First-tier Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
  - (c) any person where the purpose of the hearing would be defeated by the attendance of that person; or
  - (d) a person under the age of sixteen years.
- (5) The First-tier Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.
- (6) When publishing a decision notice referred to in rule 36(2) resulting from a hearing which was held wholly or partly in private, the First-tier Tribunal must, so far as practicable, ensure that the report does not disclose information which was referred to only in a part of the hearing that was held in private (including such information which enables the identification of any person whose affairs were dealt with in the part of the hearing that was held in private) if to do so would undermine the purpose of holding the hearing in private.

### **Hearings in a party's absence**

- 34.** If a party fails to attend a hearing the First-tier Tribunal may proceed with the hearing if the First-tier Tribunal—
- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
  - (b) considers that it is in the interests of justice to proceed with the hearing.

## **CHAPTER 4**

### **Decisions**

#### **Consent orders**

- 35.—**(1) The First-tier Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.
- (2) Notwithstanding any other provision of these Rules, the First-tier Tribunal need not hold a hearing before making an order under paragraph (1) or provide reasons for the order.

#### **Notice of decisions and reasons**

- 36.—**(1) Subject to the remainder of this rule, the First-tier Tribunal may give a decision orally at a hearing.

(2) The First-tier Tribunal must provide to each party within 30 days after making a decision (other than a decision under Part 4) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e), or as soon as practicable thereafter, a decision notice which—

- (a) states the First-tier Tribunal’s decision; and
- (b) notifies the party of any right of appeal against the decision and the time within which, and the manner in which, the right of appeal may be exercised.

(3) Unless each party agrees that it is unnecessary, and in any event subject to rule 33(6), the decision notice must—

- (a) include a summary of the findings of fact and reasons for the decision; or
- (b) be accompanied by full written findings of fact and reasons for the decision.

(4) If the First-tier Tribunal provides no findings and reasons, or summary findings and reasons only, in or with the decision notice, a party to the proceedings may make a written application for full written findings and reasons, and must do so before making an application for permission to appeal under rule 40 (application for permission to appeal).

(5) An application under paragraph (4) must be sent or delivered to the First-tier Tribunal so that it is received within 30 days after the date that the First-tier Tribunal sent or otherwise provided the decision notice under paragraph (2) to the party making the application.

(6) The First-tier Tribunal must send a full written statement of findings and reasons to each party within 30 days after receiving an application for full written reasons made in accordance with paragraphs (4) and (5), or as soon as practicable thereafter.

## PART 4

### Correcting, Setting Aside and Appealing decisions of the First-tier Tribunal

#### **Interpretation**

**37.** In this Part, “appeal” means the exercise of a right of appeal under section 34 of RSTPA 2014.

#### **Clerical mistakes and accidental slips or omissions**

**38.** The First-tier Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, a direction or any document produced by it (or record of such a thing), by—

- (a) sending notification of the amended decision or direction, or a copy of the amended document or record, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, direction, document or record.

#### **Setting aside a decision which disposes of proceedings**

**39.—**(1) The First-tier 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 First-tier 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 First-tier 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 First-tier Tribunal so that it is received no later than 30 days after the date on which the First-tier Tribunal sent notice of the decision to the party.

(4) If the First-tier Tribunal sets aside a decision or part of a decision under this rule, the First-tier Tribunal must notify the parties as soon as practicable.

#### **Application for permission to appeal a decision of the First-tier Tribunal**

**40.**—(1) A person seeking permission to appeal must make a written application to the First-tier Tribunal for permission to appeal.

- (2) An application under paragraph (1) must—
  - (a) identify the decision of the First-tier Tribunal to which it relates;
  - (b) identify the alleged error or errors in the decision; and
  - (c) state the result the party making the application is seeking.

#### **First-tier Tribunal's consideration of application for permission to appeal**

**41.**—(1) The First-tier Tribunal must send a record of its decision to the parties as soon as practicable.

- (2) If the First-tier 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 Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application must be made.

(3) The First-tier Tribunal may give permission to appeal against part only of the decision or on limited grounds, but must comply with paragraph (2) to the extent that permission is refused.

#### **Power to treat an application as a different type of application**

**42.** The First-tier Tribunal may treat an application for a decision to be corrected or set aside, or for permission to appeal against a decision, as an application for any other one of those things.

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Explanatory Note

## PART 1

### Introduction

#### **Interpretation**

**1.** In these Rules—

“appellant” means—

- (a) a person who makes an appeal or application, or applies for permission to appeal, to the Upper Tribunal;
- (b) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who started the proceedings in the First-tier Tribunal; or
- (c) in any case, a person substituted as an appellant under rule 9(1) (addition, substitution and removal of parties);

“dispose of proceedings” includes, unless indicated otherwise, disposing of a part of the proceedings;

“document” means anything in which information is recorded in any form, and an obligation under these Rules or any practice direction or direction to provide or allow access to a document or a copy of a document for any purpose means, unless the Upper Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“party” means a person who is (or was at the time that the Upper Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the Upper Tribunal;

“practice direction” means a direction given under section 57 of RSTPA 2014;

“President” means the President of the Scottish Tax Tribunals;

“respondent” means—

- (a) in an appeal, or application for permission to appeal, against a decision of the First-tier Tribunal, any person other than the appellant who—
  - (i) was a party before the First-tier Tribunal;
  - (ii) otherwise has a right of appeal against the decision of the First-tier Tribunal and has given notice to the Upper Tribunal that they wish to be a party to the appeal;
- (b) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who was a respondent in the proceedings in the First-tier Tribunal;
- (c) in any case, a person substituted or added as a respondent under rule 9 (addition, substitution and removal of parties);

“RSTPA 2014” means the Revenue Scotland and Tax Powers Act 2014.

### **Overriding objective and parties’ obligation to co-operate with the Upper Tribunal**

2.—(1) The overriding objective of these Rules is to enable the Upper Tribunal to deal with cases fairly and justly.

- (2) Dealing with a case in accordance with the overriding objective includes—
  - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated expenses and the resources of the parties;
  - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
  - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
  - (d) using any special expertise of the Upper Tribunal effectively; and
  - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Upper Tribunal must seek to give effect to the overriding objective when it—
  - (a) exercises any power under these Rules; or
  - (b) interprets any rule or practice direction.
- (4) Parties must, insofar as reasonably possible—
  - (a) help the Upper Tribunal to further the overriding objective; and
  - (b) co-operate with the Upper Tribunal generally.

### **Mediation**

- 3. The Upper Tribunal should seek, where appropriate—
  - (a) to bring to the attention of the parties the availability of mediation for the resolution of the dispute; and
  - (b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of mediation.

## **PART 2**

### **General Powers and Provisions**

#### **Delegation to staff**

4.—(1) Staff of the Scottish Courts and Tribunals Service may, with the approval of the President, carry out functions of a judicial nature permitted or required to be done by the Upper Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date on which the Upper Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may make a written application to the Upper Tribunal for that decision to be considered afresh by a member of the Upper Tribunal.

### **Case management powers**

5.—(1) Subject to the provisions of RSTPA 2014 and these Rules, the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may by direction—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, or regulation 3(2) or 4(2) of the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 (time limit for permission to appeal to the Upper Tax Tribunal for Scotland or to the Court of Session);
- (b) conjoin or take concurrently two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 18 (lead cases) or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a file of documents for a hearing;
- (j) sist proceedings;
- (k) 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;
- (l) suspend the effect of its own decision pending an appeal of that decision;
- (m) in an appeal, or an application for permission to appeal, against the decision of the First-tier Tribunal, suspend the effect of that decision pending the determination of the application for permission to appeal, and any appeal;
- (n) 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 directions**

6.—(1) The Upper Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction 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 a direction must include the reason for making that application.

(4) The Upper Tribunal must send notice of any direction to every party and to any other person affected by the direction.

(5) If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Upper Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

### **Failure to comply with rules etc.**

7.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction, 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 a direction, 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;
- (c) exercising its power under rule 8 (striking out a party's case); or
- (d) restricting a party's participation in the proceedings.

### **Striking out a party's case**

8.—(1) The proceedings, or the appropriate part of them, will be struck out if the appellant has failed to comply with a direction that stated that failure by the appellant to comply with the direction would lead to the striking out of the proceedings or part of them.

(2) The Upper Tribunal must strike out 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 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Upper Tribunal may strike out the whole or a part of the proceedings if—

- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out 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 and justly; 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 part of it, succeeding.

(4) The Upper Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) The effect of proceedings being struck out is that all issues are determined against the appellant. The effect of proceedings being partially struck out is that the relevant issues are determined against the appellant.

(6) If the proceedings, or a part of them, have been struck out under paragraph (1) or (3)(a), the appellant may make a written application for the proceedings, or a part of them, to be reinstated.

(7) An application under paragraph (6) must be received by the Upper Tribunal within 30 days after the date on which the Upper Tribunal sent notification of the striking out to the appellant.

(8) This rule applies to a respondent as it applies to an appellant except that—

- (a) a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and
- (b) a reference to an application for the reinstatement of proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent taking further part in the proceedings.

(9) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Upper Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

#### **Addition, substitution and removal of parties**

**9.—**(1) The Upper Tribunal may give a direction 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 a direction under paragraph (1) it may give such consequential directions 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**

**10.—**(1) The Upper Tribunal may not make an order in respect of expenses in proceedings transferred or referred by, or on appeal from, the First-tier Tribunal except to the extent and in the circumstances that the First-tier Tribunal had the power to make an order in respect of expenses.

(2) In other proceedings, the Upper Tribunal may not make an order in respect of expenses except—

- (a) in relation to wasted expenses and expenses incurred in applying for such expenses; or
- (b) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings.

(3) The Upper Tribunal may make an order for expenses on an application or on its own initiative.

(4) A person making an application for an order for expenses must—

- (a) send or deliver a written application to the Upper Tribunal and to the person against whom it is proposed that the order be made; and
  - (b) send or deliver with the application a schedule of the expenses claimed in sufficient detail to allow summary assessment of such expenses by the Upper Tribunal.
- (5) An application for an order for expenses may be made at any time during the proceedings but may not be made later than 30 days after the date on which the Upper Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
  - (b) notice under rule 17(2) that a withdrawal which ends the proceedings has taken effect.
- (6) The Upper Tribunal may not make an order for expenses against a person (the “paying person”) without first—
- (a) giving that person an opportunity to make representations; and
  - (b) if the paying person is an individual, considering that person’s financial means.
- (7) The amount of expenses to be paid under an order under this rule may be ascertained by—
- (a) summary assessment by the Upper Tribunal;
  - (b) agreement of a specified sum by the paying person and the person entitled to receive the expenses (the “receiving person”); or
  - (c) assessment of the whole or a specified part of the expenses, including the expenses of the assessment, incurred by the receiving person, if not agreed.
- (8) Following an order for assessment under paragraph (7)(c)—
- (a) the paying person or the receiving person may apply to the Auditor of the Court of Session (as specified in the order); or
  - (b) the Upper Tribunal may make a remit to the Auditor of the Court of Session,
- for the taxation of the expenses according to the fees payable in that Court.
- (9) Upon making an order for the assessment of expenses, the Upper Tribunal may order an amount to be paid on account before the expenses are assessed.
- (10) In this rule, “wasted expenses” means any expenses incurred by a party—
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of such a representative; or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the First-Tier Tribunal considers it is unreasonable to expect that party to pay.

## **Representatives**

- 11.**—(1) A party may appoint a representative to represent that party in the proceedings.
- (2) If a party appoints a representative, that party must send or deliver to the Upper Tribunal and to each other party to the proceedings notice of the representative’s name and address.
- (3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.
- (4) A person who receives due notice of the appointment of a representative—
- (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and
  - (b) may assume that the representative is and remains authorised as such until they receive notification that this is not so from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, subject to the permission of the Upper Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a party under paragraph (5).

### **Calculating time**

**12.**—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction 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 or Sunday, Christmas Day, Good Friday or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971.

### **Sending and delivery of documents**

**13.**—(1) Any document to be provided to the Upper Tribunal under these Rules, a practice direction or a direction must be—

(a) sent by pre-paid post or by document exchange, or delivered by hand, to the address specified for the proceedings; 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 provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

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

(4) If the Upper Tribunal or a party sends a document to a 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.

(5) The Upper Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving notification to the contrary.

### **Use of documents and information**

**14.**—(1) The Upper Tribunal may make an order prohibiting the disclosure or publication of—

(a) specified documents or information relating to the proceedings; or

(b) any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified.

(2) The Upper Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

(a) the Upper Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and

(b) the Upper Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Upper Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be provided to the second party; and
- (b) provide to the Upper Tribunal the excluded document or information, and the reason for its exclusion, so that the Upper Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) If the Upper Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Upper Tribunal may give a direction that the documents or information be disclosed to that representative if the Upper Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not be disclosed either directly or indirectly to any other person without the Upper Tribunal’s consent.

(6) The Upper Tribunal may, on its own initiative or on the application of a party, give a direction that certain documents or information must or may be disclosed to the Upper Tribunal on the basis that the Upper Tribunal will not disclose such documents or information to other persons, or specified other persons.

(7) A party making an application for a direction under paragraph (6) may withhold the relevant documents or information from other parties until the Upper Tribunal has granted or refused the application.

(8) The Upper Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of an order made under paragraph (1) or a direction given under paragraph (2) or (6).

### **Evidence and submissions**

**15.—**(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Upper Tribunal may give directions as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (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 a direction 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—

- (a) admit evidence whether or not—
  - (i) the evidence would be admissible in a court in Scotland; or

- (ii) the evidence was available to a previous decision maker; or
- (b) exclude evidence that would otherwise be admissible where—
  - (i) the evidence was not, without reasonable excuse, provided within the time allowed by a direction or a practice direction;
  - (ii) the evidence was, without reasonable excuse, otherwise provided in a manner that did not comply with a direction or a practice direction; or
  - (iii) 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, and may administer an oath for that purpose.

### **Citation of witnesses and orders to answer questions or produce documents**

- 16.**—(1) On the application of a party or on its own initiative, the Upper Tribunal may—
- (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 of the hearing or such other period as the Upper Tribunal may direct; and
  - (b) where the person is not a party, make provision for the person’s necessary expenses of attendance to be paid, and state who is to pay them.
- (3) A person who receives a citation or order may apply to the Upper Tribunal for it to be varied or set aside if the person did not have an opportunity to object to it before it was made or issued.
- (4) A person making an application under paragraph (3) must do so as soon as reasonably practicable after receiving notice of the citation or order.
- (5) A citation or order under this rule must—
- (a) 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
  - (b) state the consequences of failure to comply with the citation or order.

### **Withdrawal**

- 17.**—(1) Subject to any provision in RSTPA 2014 relating to withdrawal or settlement of particular proceedings, a party may give notice to the Upper Tribunal of the withdrawal of the case made by it 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) The Upper Tribunal must notify each party of its receipt of a withdrawal under this rule.
- (3) A party which has withdrawn its case may make a written application to the Upper Tribunal for the case to be reinstated.
- (4) An application under paragraph (3) must be received by the Upper Tribunal within 30 days after—
- (a) the date on which the Upper Tribunal received the notice under paragraph (1)(a); or

- (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

### **Lead cases**

**18.**—(1) This rule applies if—

- (a) two or more cases have been started before the Upper Tribunal;
- (b) in each such case the Upper Tribunal has not made a decision disposing of the proceedings; and
- (c) the cases give rise to common or related issues of fact or law.

(2) The Upper Tribunal may give a direction—

- (a) specifying one or more cases falling under paragraph (1) as a lead case or lead cases; and
- (b) sisting the other cases falling under paragraph (1) (“the related cases”).

(3) When the Upper Tribunal makes a decision in respect of the common or related issues—

- (a) the Upper Tribunal must send a copy of that decision to each party in each of the related cases; and
- (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) Within 30 days after the date that the Upper Tribunal sent a copy of the decision to a party under paragraph (3)(a), that party may make a written application for a direction that the decision does not apply to, and is not binding on the parties to, that case.

(5) The Upper Tribunal must give directions in respect of cases which are sisted under paragraph (2)(b), providing for the disposal of or further steps in those cases.

(6) If the lead case or cases are withdrawn or disposed of before the Upper Tribunal makes a decision in respect of the common or related issues, the Upper Tribunal must give directions as to—

- (a) whether another case or other cases are to be heard as a lead case or lead cases; and
- (b) whether any direction affecting the related cases should be set aside or amended.

### **Chairing member**

**19.** 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**

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

### **Enforcement of decisions**

**21.** 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 Sheriff Court of any sheriffdom in Scotland.

## PART 3

### Procedure for Cases in the Upper Tribunal

#### **Application to the Upper Tribunal for permission to appeal a decision of the First-tier Tribunal**

**22.**—(1) A person may make a written application to the Upper Tribunal for permission to appeal to the Upper Tribunal against a decision of the First-tier Tribunal only if—

- (a) the person has made an application for permission to appeal to the First-tier Tribunal; and
- (b) that application has been refused, has not been admitted or has been granted only on limited grounds.

(2) An application for permission to appeal must state—

- (a) the name and address of the appellant;
- (b) the name and address of the representative (if any) of the appellant;
- (c) an address where documents for the appellant may be sent or delivered;
- (d) details (including the full reference) of the decision challenged;
- (e) the grounds on which the appellant relies; and
- (f) whether the appellant wants the application to be dealt with at a hearing.

(3) The appellant must provide with the application a copy of—

- (a) any written record of the decision being challenged;
- (b) any separate written statement of reasons for that decision; and
- (c) if the application is for permission to appeal against a decision of the First-tier Tribunal, the notice of refusal of permission to appeal from the First-tier Tribunal.

(4) If the appellant provides the application to the Upper Tribunal later than the time required by regulation 3(2) or 4(2) of the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 or by an extension of time allowed 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 was not provided in time; and
- (b) unless the Upper Tribunal extends time for the application under rule 5(3)(a), the Upper Tribunal must not admit the application.

(5) In this rule, a reference to notice of a refusal of permission to appeal is to be taken to include a reference to notice of a grant of permission to appeal on limited grounds.

#### **Decision in relation to permission to appeal a decision of the First-tier Tribunal**

**23.**—(1) If the Upper Tribunal refuses permission to appeal, it must send notice of the refusal and of the reasons for the refusal to the appellant.

(2) If the Upper Tribunal gives permission to appeal—

- (a) the Upper Tribunal must send notice of the permission, and of the reasons for any limitations or conditions on such permission, to each party;
- (b) subject to any direction by the Upper Tribunal, the application for permission to appeal stands as the notice of appeal and the Upper Tribunal must send to each respondent a copy of the application for permission to appeal and any documents provided with it by the appellant; and

- (c) the Upper Tribunal may, with the consent of the appellant and each respondent, determine the appeal without obtaining any further response.
- (3) Where the Upper Tribunal, without a hearing, determines an application for permission to appeal, the appellant may make a written application for the decision to be reconsidered at a hearing if the Upper Tribunal—
  - (a) refuses permission to appeal; or
  - (b) gives permission to appeal on limited grounds or subject to conditions.
- (4) An application under paragraph (3) must be received by the Upper Tribunal within 14 days after the date on which the Upper Tribunal sent notice of its decision regarding the application to the appellant.

#### **Notice of appeal to the Upper Tribunal**

- 24.**—(1) This rule applies—
- (a) if the First-tier Tribunal has given permission for a party to appeal to the Upper Tribunal; or
  - (b) subject to any other direction by the Upper Tribunal, if the Upper Tribunal has given permission to appeal and has given a direction that the application for permission to appeal does not stand as the notice of appeal.
- (2) The appellant must provide a notice of appeal to the Upper Tribunal so that it is received within 30 days after the date that the First-tier Tribunal or Upper Tribunal (as appropriate) sent notice of such permission to the appellant.
- (3) The notice of appeal must include the information listed in rule 22(2)(a) to (f) (content of the application for permission to appeal) and, where the Upper Tribunal has given permission to appeal, the Upper Tribunal’s case reference.
- (4) If the First-tier Tribunal has granted permission to appeal, the appellant must provide with the notice of appeal a copy of—
- (a) any written record of the decision being challenged;
  - (b) any separate written statement of reasons for that decision; and
  - (c) the notice of permission to appeal.
- (5) If the appellant provides the notice of appeal to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule 5(3)(a) (power to extend time)—
- (a) the notice of appeal must include a request for an extension of time and the reason why the notice was not provided in time; and
  - (b) unless the Upper Tribunal extends time for the notice of appeal under rule 5(3)(a), the Upper Tribunal must not admit the notice of appeal.
- (6) When the Upper Tribunal receives the notice of appeal, it must send a copy of the notice and any accompanying documents to each respondent.

#### **Response to the notice of appeal**

- 25.**—(1) Subject to any direction given by the Upper Tribunal, a respondent may provide a written response to a notice of appeal.
- (2) Any response provided under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received—
- (a) if an application for permission to appeal stands as the notice of appeal, no later than 30 days after the date on which the respondent was sent notice that permission to appeal had been granted;

- (b) in any other case, no later than 30 days after the date on which the Upper Tribunal sent a copy of the notice of appeal to the respondent.
- (3) The response must state—
  - (a) the name and address of the respondent;
  - (b) the name and address of the representative (if any) of the respondent;
  - (c) an address where documents for the respondent may be sent or delivered;
  - (d) whether the respondent opposes the appeal;
  - (e) the grounds on which the respondent relies, including (in the case of an appeal against the decision of the First-tier Tribunal) any grounds on which the respondent was unsuccessful in the proceedings which are the subject of the appeal, but intends to rely in the appeal; and
  - (f) whether the respondent wants the case to be dealt with at a hearing.
- (4) If the respondent provides the response to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.
- (5) When the Upper Tribunal receives the response, it must send a copy of the response and any accompanying documents to the appellant and each other party.

#### **Appellant's reply**

- 26.**—(1) Subject to any direction given by the Upper Tribunal, the appellant may provide a written reply to any response provided under rule 25 (response to the notice of appeal).
- (2) Any reply provided under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received within 30 days after the date on which the Upper Tribunal sent a copy of the response to the appellant.
- (3) When the Upper Tribunal receives the reply, it must send a copy of the reply and any accompanying documents to each respondent.

#### **Cases transferred or referred to the Upper Tribunal, applications made directly to the Upper Tribunal and proceedings without notice to a respondent**

- 27.**—(1) Paragraphs (2) and (3) apply to—
  - (a) a case transferred or referred to the Upper Tribunal from the First-tier Tribunal; or
  - (b) a case which is started by an application made directly to the Upper Tribunal.
- (2) In a case to which this paragraph applies—
  - (a) the Upper Tribunal must give directions as to the procedure to be followed in the consideration and disposal of the proceedings;
  - (b) the preceding rules in this Part will only apply to the proceedings to the extent provided for by such directions.
- (3) If a case or matter to which this paragraph applies is to be determined without notice to or the involvement of a respondent—
  - (a) any provision in these Rules requiring a document to be provided by or to a respondent; and
  - (b) any other provision in these Rules permitting a respondent to participate in the proceedings,
 does not apply to that case or matter.

## PART 4

### Hearings

#### **Decision with or without a hearing**

**28.**—(1) Subject to paragraph (2), the Upper Tribunal may make any decision without a hearing.

(2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.

#### **Entitlement to attend a hearing**

**29.** Subject to rule 31(4) (exclusion of a person from a hearing), each party is entitled to attend a hearing together with any representative permitted by rule 11.

#### **Notice of hearings**

**30.**—(1) The Upper Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any change to the time and place of the hearing.

(2) The period of notice under paragraph (1) must be at least 14 days except that the Upper Tribunal may give shorter notice—

- (a) with the parties' consent; or
- (b) in urgent or exceptional circumstances.

#### **Public and private hearings and power to exclude**

**31.**—(1) Subject to the following paragraphs, all hearings must be held in public.

(2) The Upper Tribunal may give a direction that a hearing, or part of it, is to be held in private if the Upper Tribunal considers that restricting access to the hearing is justified—

- (a) in the interests of public order or national security;
- (b) in order to protect a person's right to respect for their private and family life;
- (c) in order to maintain the confidentiality of sensitive information;
- (d) in order to avoid serious harm to the public interest; or
- (e) because not to do so would prejudice the interests of justice.

(3) Where a hearing, or part of it, is to be held in private, the Upper Tribunal may determine who is entitled to attend the hearing or part of it.

(4) The Upper Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Upper Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Upper Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person where the purpose of the hearing would be defeated by the attendance of that person; or
- (d) a person under the age of sixteen years.

(5) The Upper Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

(6) When publishing a decision notice referred to in rule 34(2) resulting from a hearing which was held wholly or partly in private, the Upper Tribunal must, so far as practicable, ensure that the report does not disclose information which was referred to only in a part of the hearing that was held in private (including such information which enables the identification of any person whose affairs were dealt with in the part of the hearing that was held in private) if to do so would undermine the purpose of holding the hearing in private.

### **Hearings in a party's absence**

**32.** If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

## **PART 5**

### **Decisions**

#### **Consent orders**

**33.**—(1) The Upper Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Upper Tribunal need not hold a hearing before making an order under paragraph (1) or provide reasons for the order.

#### **Notice of decisions and reasons**

**34.**—(1) Subject to the remainder of this rule, the Upper Tribunal may give a decision orally at a hearing.

(2) The Upper Tribunal must provide to each party, as soon as reasonably practicable after making a decision (other than a decision under Part 6) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e), a decision notice which

- (a) states the Upper Tribunal's decision; and
- (b) notifies the party of any right of appeal against the decision and the time within which, and the manner in which, the right of appeal may be exercised.

(3) Unless each party agrees that it is unnecessary, and in any event subject to rule 31(6), the Upper Tribunal must provide written reasons for its decision with a decision notice provided under paragraph (2) unless—

- (a) the decision was made with the consent of the parties; or
- (b) the parties have consented to the Upper Tribunal not giving written reasons.

(4) The Upper Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

(5) The Upper Tribunal must, subject to rule 31(6), publish reports of its decisions, including on a website.

## PART 6

### Correcting, Setting Aside and Appealing Decisions of the Upper Tribunal

#### Interpretation

35. In this Part, “appeal” means the exercise of a right of appeal under section 36 of RSTPA 2014.

#### Clerical mistakes and accidental slips or omissions

36. The Upper Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, a direction or any document produced by it (or record of such a thing) by—

- (a) sending notification of the amended decision or direction, or a copy of the amended document or record, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, direction, document or record.

#### Setting aside a decision which disposes of proceedings

37.—(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 30 days after the date on which the Upper Tribunal sent notice of the decision to the party.

(4) If the Upper Tribunal sets aside a decision or part of a decision under this rule, the Upper Tribunal must notify the parties as soon as practicable.

#### Application for permission to appeal a decision of the Upper Tribunal

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

- (2) An application under paragraph (1) must—
- (a) identify the decision of the Upper 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.

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

**39.**—(1) The Upper Tribunal must send a record of its decision to the parties as soon as practicable.

(2) 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 Court of Session for permission to appeal and the time within which, and the method by which, such an application must be made.

(3) The Upper Tribunal may give permission to appeal against part only of the decision or on limited grounds, but must comply with paragraph (2) to the extent that permission is refused.

### **Power to treat an application as a different type of application**

**40.** The Upper Tribunal may treat an application for a decision to be corrected or set aside, or for permission to appeal against a decision, as an application for any other one of those things.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision for the Scottish Tax Tribunal Rules which regulate the practice and procedure to be followed in proceedings before the First-tier Tax Tribunal for Scotland or the Upper Tax Tribunal for Scotland.