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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 187**

**TRIBUNALS AND INQUIRIES**

**The Scottish Tax Tribunals (Conduct and  
Fitness Assessment Tribunal) Rules 2015**

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

The Scottish Ministers make the following Rules in exercise of the powers conferred by paragraphs 22, 23 and 32(1) of Schedule 2 to the Revenue Scotland and Tax Powers Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

**1.**—(1) These Rules may be cited as the Scottish Tax Tribunals (Conduct and Fitness Assessment Tribunal) Rules 2015 and the Rules contained in Schedules 1 and 2 may be cited, respectively, as—

- (a) the Scottish Tax Tribunals (Conduct) Rules 2015; and
- (b) the Scottish Tax Tribunals (Fitness Assessment Tribunal) Rules 2015.

(2) These Rules come into force on 1st June 2015.

**Application of Schedules**

**2.**—(1) The Rules in Schedule 1 are made for the purposes of paragraph 22(1) of Schedule 2 to the Revenue Scotland and Tax Powers Act 2014.

(2) The Rules in Schedule 2 are made for the purposes of paragraph 32(1) of Schedule 2 to the Revenue Scotland and Tax Powers Act 2014.

St Andrew's House, Edinburgh  
29th April 2015

*JOHN SWINNEY*  
A member of the Scottish Government

SCHEDULE 1

Regulation 2(1)

The Scottish Tax Tribunals (Conduct) Rules 2015

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**Interpretation**

**1.** In these Rules—

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

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

**Disciplinary judge**

**2.** The Scottish Ministers are to appoint a judge of the Inner House of the Court of Session (to be known as “the disciplinary judge”) for the purposes of—

(a) supervising the operation generally of these Rules and reporting to the Scottish Ministers about that matter as appropriate; and

(b) carrying out the other functions specified by these Rules.

**Making a complaint**

**3.—(1)** A complaint is validly made where a complaint document is received by the Scottish Ministers.

(2) A “complaint document” is a document in writing which—

(a) is legible;

- (b) contains an allegation of misconduct on the part of a named or identifiable member of the Scottish Tax Tribunals; and
  - (c) states the name, address and telephone number of the person who is making the complaint.
- (3) A complaint document is to be accompanied by all documents within the control of the person complaining upon which the person seeks to rely in making the allegation.
- (4) For the purposes of this rule—
- (a) a document may be sent by any method which the Scottish Ministers have indicated to be an acceptable means of sending it;
  - (b) if sent by an electronic means indicated to be acceptable a document is to be treated as valid only if it is capable of being used for subsequent reference.
- (5) A complaint is not validly made where the complaint document (or any communication associated with it) indicates that the person complaining does not want the member of the Scottish Tax Tribunals against whom the complaint is made to see a copy of the complaint document or any document accompanying it.

#### **Time limit**

- 4.—(1) Subject to this rule, the Scottish Ministers are to dismiss any allegation of misconduct in a complaint document which founds on anything occurring more than 3 months before the date on which the complaint was received.
- (2) The person complaining may make a case in writing to the Scottish Ministers that there are exceptional circumstances which justify allowing the allegation to proceed.
- (3) Where such a case is not made at the time of making the complaint, the Scottish Ministers are to write to the person inviting him or her, by such date as is specified, to make such a case.
- (4) Where such a case is made, it is to be put before the disciplinary judge and he or she is to then decide whether the allegation is to be allowed to proceed.
- (5) Where an allegation is dismissed under this rule, the Scottish Ministers are to write to the person complaining to that effect.

#### **Allegations of criminal conduct**

- 5.—(1) This rule applies to an allegation which is not dismissed under rule 4.
- (2) If it appears to the Scottish Ministers that the allegation is of an act or omission which may constitute a criminal offence—
- (a) further consideration under these Rules is suspended until—
    - (i) the relevant prosecutor indicates that no criminal proceedings are to be taken; or
    - (ii) any such proceedings have been concluded; and
  - (b) the Scottish Ministers are to write to the person complaining to that effect.

#### **Notification of member of the Scottish Tax Tribunals**

- 6.—(1) This rule applies to an allegation—
- (a) which is not dismissed under rule 4; and
  - (b) whose consideration is not currently suspended under rule 5.
- (2) The Scottish Ministers are to send to the member of the Scottish Tax Tribunals—
- (a) a document (which may be the complaint document) containing the allegation;
  - (b) all information about the allegation which is in or accompanied the complaint document.

### **Initial assessment of complaint**

7.—(1) This rule applies to an allegation once it is sent to the member of the Scottish Tax Tribunals under rule 6.

(2) The Scottish Ministers are to carry out an initial assessment of the allegation.

(3) If the Scottish Ministers consider the allegation falls into paragraph (4), they are to dismiss the allegation.

(4) An allegation falls into this paragraph if—

- (a) it does not contain sufficient information to enable a proper understanding of the grounds of the allegation to be achieved;
- (b) it is about a judicial decision;
- (c) it raises a matter which has already been dealt with (whether under these Rules or otherwise), and does not present any material new evidence; or
- (d) it raises a matter which falls within the functions of the Judicial Complaints Reviewer.

(5) Where a complaint is dismissed under paragraph (3), the Scottish Ministers are to write to the person complaining and the member of the Scottish Tax Tribunals to that effect.

(6) If it appears to the Scottish Ministers that the allegation relates to judicial proceedings which are not concluded, they are to refer the allegation to the disciplinary judge for advice as to whether it would be appropriate for consideration under these Rules to continue before the judicial proceedings are concluded.

(7) Where the disciplinary judge advises that it would be inappropriate for that to occur—

- (a) no further action is to be taken under these Rules until the proceedings have been concluded; and
- (b) the Scottish Ministers are to write to the person complaining and to the member of the Scottish Tax Tribunals to that effect.

(8) Where an allegation is not dismissed under paragraph (3) and its consideration is not suspended under paragraph (7), the Scottish Ministers are to write to the person complaining, and to the member of the Scottish Tax Tribunals, to inform them of that fact and of the next step under these Rules.

### **Consideration by disciplinary judge**

8.—(1) This rule applies to an allegation—

- (a) which is not dismissed under rule 7; and
- (b) whose consideration is not currently suspended under that rule.

(2) The allegation is to be considered by the disciplinary judge in accordance with the following paragraphs.

(3) If the disciplinary judge is of the view that the allegation falls into paragraph (4), he or she is to dismiss the allegation and is to inform the Scottish Ministers accordingly.

(4) An allegation falls into this paragraph if—

- (a) it does not contain sufficient information to enable a proper understanding of the grounds of the allegation to be achieved;
- (b) it is about a judicial decision;
- (c) it raises a matter which has already been dealt with (whether under these Rules or otherwise) and does not present any material new evidence;
- (d) it raises a matter which falls within the functions of the Judicial Complaints Reviewer;

- (e) it is vexatious;
- (f) it is without substance; or
- (g) it is insubstantial, that is to say that even if substantiated, it would not require any disciplinary action to be taken.

(5) In forming his or her view as to whether paragraph (4)(f) or (g) applies, the disciplinary judge is to take due account of the extent to which the conduct concerned complies with any relevant guidance relating to the conduct of members of the Scottish Tax Tribunals issued by the President under section 59 of RSTPA 2014.

(6) Where a complaint is dismissed under paragraph (3), the Scottish Ministers are to write to the person complaining and the member of the Scottish Tax Tribunals to that effect.

(7) If the disciplinary judge is of the view that one or more allegations in a complaint fall outside paragraph (4), he or she is to go on to consider whether paragraph (8) applies and is to inform the Scottish Ministers accordingly.

(8) This paragraph applies where the disciplinary judge thinks that the allegation, if substantiated, would raise a possible question of fitness for office.

(9) Where the Scottish Ministers are informed that paragraph (8) applies, further consideration under these Rules is suspended until the Scottish Ministers decide whether to establish a fitness assessment tribunal to consider the fitness for office of the member of the Scottish Tax Tribunals.

(10) In the event that the Scottish Ministers decide to establish a fitness assessment tribunal, consideration under these Rules is to cease; and the Scottish Ministers are to write to the person complaining, to the member of the Scottish Tax Tribunals and to the President to that effect.

### **Referral to a nominated judge**

9.—(1) This rule applies to an allegation—

- (a) which is not dismissed under rule 8; and
- (b) whose consideration is not currently suspended under that rule.

(2) The Scottish Ministers are to refer the allegation to a judge nominated by the disciplinary judge.

(3) The nominated judge is to be a judge of the Court of Session.

(4) Where on initial consideration of the allegation the nominated judge thinks that the matter may be capable of resolution to the satisfaction of the person complaining without further investigation, he or she may communicate with the person complaining and the member of the Scottish Tax Tribunals as he or she thinks fit with a view to securing that outcome.

(5) Where that outcome is achieved, the nominated judge is to write to the Scottish Ministers to that effect and consideration under these Rules is to cease.

### **Investigation and report**

10.—(1) This rule applies to an allegation referred to a nominated judge which is incapable of resolution under rule 9(4).

(2) The nominated judge is to investigate the allegation and to determine—

- (a) the facts of the matter;
- (b) whether the allegation is substantiated (or substantiated in part); and if so, to recommend whether the President should exercise a power mentioned in paragraph 24(1) of Schedule 2 to the RSTPA 2014 or take other action.

(3) The report of the nominated judge is to—

- (a) be in writing;
- (b) contain reasons for its conclusions; and
- (c) be submitted to the disciplinary judge.

(4) In deciding whether an allegation is to any extent substantiated and in making any recommendation in consequence the nominated judge is to take due account of the extent to which the conduct concerned complies with any relevant guidance relating to the conduct of member of the Scottish Tax Tribunals issued by the President under section 59 of RSTPA 2014.

### **Procedure and conduct of investigation**

**11.**—(1) For the purposes of the investigation the nominated judge may—

- (a) make such inquiries into the allegation as he or she considers appropriate;
- (b) obtain and consider any documents which appear to be relevant;
- (c) interview any persons he or she considers appropriate.

(2) The nominated judge is to—

- (a) give an interviewee reasonable notice of the date and time of the interview;
- (b) permit an interviewee to be accompanied by a person of his or her choosing for the doing of such of the following for the interviewee as the interviewee requires —
  - (i) providing moral support;
  - (ii) helping to manage papers;
  - (iii) taking notes;
  - (iv) offering advice.

(3) The nominated judge is to arrange for any interview to be recorded by equipment which records digitally on an appropriate storage medium.

(4) The member of the Scottish Tax Tribunals is to comply with a request that he or she be interviewed.

(5) The procedure and conduct of an investigation is such (consistent with respecting the principles of fairness and natural justice) as the nominated judge thinks fit; but—

- (a) the member of the Scottish Tax Tribunals is to be afforded the opportunity to submit a written response to the allegation;
- (b) the person complaining and the member of the Scottish Tax Tribunals are each to be afforded the opportunity to submit written comments on any information obtained by the nominated judge which he or she has not previously seen;
- (c) so far as the determination of questions of fact is concerned—
  - (i) the investigation is to be conducted with the aim of ascertaining, so far as reasonably possible, the truth;
  - (ii) findings of fact are to be made on the balance of probabilities;
- (d) so far as possible, the investigation is to be conducted without disclosure to third parties of the identity of the person complaining or the member of the Scottish Tax Tribunals.

(6) Before the investigation starts the nominated judge is to prepare and issue to the person complaining and the member of the Scottish Tax Tribunals a statement of the procedure he or she has decided on.

(7) Where, after the investigation starts, the nominated judge wishes to depart from that procedure in a material way, he or she is to inform the person complaining and the member of the Scottish Tax Tribunals in writing before proceeding.

(8) The nominated judge is to make a note of the substance of all conversations in the course of the investigation which are material to it and is to create and maintain a file containing—

- (a) those notes;
- (b) all documents relevant to the investigation; and
- (c) all recordings of interviews carried out in the course of the investigation.

### **Review by disciplinary judge**

**12.**—(1) This rule applies where the nominated judge has reported under rule 10.

(2) The disciplinary judge is to review the determinations in the report.

(3) Having reviewed the determinations, the disciplinary judge may require that the nominated judge reconsiders any of them.

(4) Such a requirement is to be in writing.

(5) For the purposes of reconsidering a determination, the nominated judge may—

- (a) make such further inquiries into the allegation as he or she considers appropriate;
- (b) obtain and consider any further documents which appear to be relevant;
- (c) interview (or re-interview) any persons he or she considers appropriate.

(6) Paragraphs (2) and (3) of rule 11 apply to an interview under paragraph (5)(c) as they apply to an interview conducted under paragraph (1)(c) of that rule.

(7) The nominated judge is to make a note of the substance of all conversations in the course of reconsideration of a determination which are material to it and is to update the nominated judge's file with—

- (a) those notes;
- (b) all additional documents relevant to the reconsideration;
- (c) all recordings of interviews carried out in the course of the reconsideration.

(8) Having carried out all reconsiderations required by the disciplinary judge, the nominated judge is to resubmit his or her report.

(9) In relation to any determination which the nominated judge was required to reconsider, the report is to contain statements of—

- (a) what the nominated judge did in reconsidering the determination;
- (b) what the outcome of the reconsideration was.

### **Substantiated complaint: disciplinary action**

**13.**—(1) The disciplinary judge is to send to the Scottish Ministers and the President—

- (a) where no requirement is imposed under rule 12(3), a copy of the report submitted under rule 10(3)(c);
- (b) in any other case, a copy of the report submitted under rule 12(8).

(2) Paragraph (3) applies where—

- (a) the report finds the allegation to be substantiated (or substantiated in part);
- (b) the report recommends that the President should exercise a power mentioned in paragraph 24(1) of Schedule 2 to the RSTPA 2014; and
- (c) the President proposes to exercise a power mentioned in that provision.

(3) The President is to write to the member of the Scottish Tax Tribunals who is the subject of the report inviting him or her to make written representations.

(4) The President's letter is to contain or be accompanied by such information (including where appropriate the report) as he or she considers to be appropriate for the purpose of giving the member of the Scottish Tax Tribunals a fair opportunity to make any representations.

(5) The member of the Scottish Tax Tribunals who is the subject of the report is to make any representations by such date as is specified in the invitation.

(6) The President is to consider any representations before deciding whether to exercise a power.

(7) Where the member of the Scottish Tax Tribunals who is the subject of the report is the President—

- (a) paragraph (1) does not require a copy of the report to be sent to the President; and
- (b) if the report finds the allegation to be substantiated (or substantiated in part) and the Scottish Ministers propose to take the action specified in paragraph (8), paragraphs (3) to (6) apply subject to the modifications that—
  - (i) references to the President are to be read as references to the Scottish Ministers; and
  - (ii) the reference in paragraph (6) to “exercise a power” is to be read as a reference to “take the action specified in paragraph (8)”.

(8) The action specified is the Scottish Ministers giving the President—

- (a) formal advice;
- (b) a formal warning; or
- (c) a reprimand.

**Notification of outcome, etc.**

**14.**—(1) This rule applies where—

- (a) the President has received a report under rule 13(1); and
  - (b) the President has taken all action (if any) which he or she proposes to take in consequence.
- (2) The Scottish Ministers are to write to the person complaining to inform the person of—
- (a) the outcome of the investigation of the complaint; and
  - (b) the action (if any) taken by the President in consequence.

(3) The Scottish Ministers' letter is to contain or be accompanied by such information as the Scottish Ministers consider to be appropriate for the purpose of giving the person complaining a fair understanding of the matters mentioned in paragraph (2)(a) and (b).

(4) Except where the President has already done so in pursuance of rule 13, he or she is to write to the member of the Scottish Tax Tribunals who is the subject of the report to inform him or her of the matters mentioned in paragraph (2)(a) and (b).

(5) After paragraphs (2) and (4) have been complied with, the President may publish or disclose to any person such information concerning the whole matter (including the identity of the person complaining or the member of the Scottish Tax Tribunals who is the subject of the report or both) as he or she considers to be appropriate.

(6) Where the member of the Scottish Tax Tribunals who is the subject of the report is the President, this rule does not apply except for paragraphs (2) to (5) which apply subject to the modification that references to the President are to be taken to be references to the Scottish Ministers.

### **Withdrawal of complaint**

**15.**—(1) A person complaining may, by writing to the Scottish Ministers to that effect, withdraw the complaint at any time before the President has received a report about it under rule 13(1).

(2) Where a complaint is withdrawn before it is referred to a nominated judge under rule 9, the disciplinary judge is to consider whether further consideration of an allegation of misconduct in it is appropriate.

(3) If so, the allegation is to continue to be considered under these Rules as if the complaint had not been withdrawn.

(4) Where a complaint is withdrawn after it is referred to a nominated judge under rule 9, the nominated judge is to consider whether further investigation of an allegation of misconduct in it is appropriate.

(5) If so, the allegation is to continue to be investigated under these Rules as if the complaint had not been withdrawn.

(6) Where an allegation is continuing to be investigated by virtue of paragraph (3) or (5), any requirement in these Rules or in the statement of the procedure decided on under rule 11(6) to communicate a matter to or to seek comments from the person complaining ceases to apply.

### **Consideration of matters in absence of a complaint**

**16.**—(1) Paragraph (2) applies where no complaint is validly made under these Rules but the disciplinary judge receives information from any source which suggests to him or her that consideration under these Rules of an allegation of misconduct is appropriate.

(2) The allegation is to be considered under these Rules (with the necessary modifications to reflect the lack of a person complaining) as if—

- (a) a complaint containing it had been made validly under rule 3; and
- (b) rule 4 did not apply.

### **Ceasing to hold office**

**17.** Where a member of the Scottish Tax Tribunals against whom a complaint under these Rules has been made ceases to hold office or dies, consideration of the complaint under these Rules is to cease.

## SCHEDULE 2

Regulation 2(2)

### The Scottish Tax Tribunals (Fitness Assessment Tribunal) Rules 2015

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## Interpretation

### 1. In these Rules—

“clerk to the fitness assessment tribunal” means the person nominated by the Scottish Ministers to act as clerk to a fitness assessment tribunal;

“fitness assessment tribunal” means a fitness assessment tribunal constituted under paragraph 31(1) or (2) of Schedule 2 to the RSTPA 2014;

“fitness case” means the issue of whether the member of the Scottish Tax Tribunals is unfit to hold his or her office;

“investigating officer” means the person appointed in accordance with rule 3(1), and references to an investigating officer are to be read as references to a substitute investigating officer where one has been appointed;

“member of the Scottish Tax Tribunals” means the person with regard to whom a fitness assessment tribunal has been constituted;

“the parties” are the member of the Scottish Tax Tribunals and the presenting officer;

“presenting officer” means the person appointed in accordance with rule 7(1), and references to a presenting officer are to be read as references to a substitute presenting officer where one has been appointed;

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

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

“statement of reasons” means a statement of the grounds on which it is alleged that the member of the Scottish Tax Tribunals is unfit to hold office.

## Commencement of investigation

2. When a fitness assessment tribunal is constituted, the clerk to the fitness assessment tribunal must give the member of the Scottish Tax Tribunals written notice of—

- (a) the decision of the Scottish Ministers to constitute the fitness assessment tribunal;
- (b) the membership of the fitness assessment tribunal.

## Investigation

3.—(1) The chairing member of the fitness assessment tribunal must appoint an investigating officer from a list of persons who have been nominated for that purpose by the Scottish Ministers.

(2) Such an appointment is to be made within two months of the date on which written notice is given in terms of rule 2.

(3) The investigating officer is to investigate the fitness case and in so doing—

- (a) must consider the existing information relating to the fitness case and make such further enquiries as the investigating officer considers appropriate;
  - (b) may obtain and consider any documents and productions which appear to be relevant; and
  - (c) may interview any person the investigating officer considers appropriate to interview, including the member of the Scottish Tax Tribunals if that person agrees to be interviewed.
- (4) If the investigating officer considers that it cannot be established that the member of the Scottish Tax Tribunals is unfit to hold his or her office, the investigating officer must—
- (a) recommend to the fitness assessment tribunal that no further procedure is required; and
  - (b) give reasons for that recommendation in writing.
- (5) The clerk to the fitness assessment tribunal must provide a copy of the recommendation and reasons to the member of the Scottish Tax Tribunals.
- (6) If the investigating officer considers that further procedure is required, the investigating officer must—
- (a) submit a recommendation for further procedure;
  - (b) provide a statement of reasons to the fitness assessment tribunal; and
  - (c) provide a list and copies of any documents and a list of any other productions that are relied on in the statement of reasons.
- (7) The clerk to the fitness assessment tribunal must provide the member of the Scottish Tax Tribunals with—
- (a) written notice of that recommendation;
  - (b) a copy of the statement of reasons; and
  - (c) a list and copies of any documents and a list of any productions that are relied on in the statement of reasons.
- (8) If the investigating officer is unable to fulfil his or her duties, the chairing member of the fitness assessment tribunal may appoint a substitute investigating officer from the list of persons referred to in paragraph (1).

#### **Application for further specification of reasons**

**4.—**(1) The member of the Scottish Tax Tribunals may apply to the fitness assessment tribunal for further specification of the information contained in the statement of reasons.

- (2) The application must—
- (a) specify the matters in relation to which further specification is sought; and
  - (b) be made within 21 days of the date on which written notice is given under rule 3(7)(a).

(3) Where the fitness assessment tribunal grants the application, it must direct the investigating officer to provide such further specification in writing as the fitness assessment tribunal considers appropriate within 21 days of the decision to grant the application.

(4) Where the fitness assessment tribunal refuses the application, it must notify the member of the Scottish Tax Tribunals in writing within 21 days of the receipt of the application by the fitness assessment tribunal and give reasons for its decision.

#### **Response to statement of reasons**

**5.—**(1) The member of the Scottish Tax Tribunals may lodge a written response to the investigating officer's recommendation and statement of reasons.

- (2) Any written response must—

- (a) be submitted to the clerk to the fitness assessment tribunal within 28 days of—
  - (i) the date of the written notice provided under rule 3(7)(a);
  - (ii) the date on which the fitness assessment tribunal notifies the member of the Scottish Tax Tribunals that it has refused an application for further specification in terms of rule 4(4); or
  - (iii) the date on which the investigating officer provides further specification in terms of rule 4(3),
 whichever is the latest;
- (b) state to what extent any facts set out in the statement of reasons are admitted or denied;
- (c) include any statement of facts that the member of the Scottish Tax Tribunals wishes to make;
- (d) indicate any issues of law that the member of the Scottish Tax Tribunals intends to raise;
- (e) provide the names and addresses of any persons that the member of the Scottish Tax Tribunals may wish to provide as witnesses; and
- (f) provide a list and copies of any documents and a list of any productions to which the member of the Scottish Tax Tribunals may wish to refer at any hearing.

(3) The fitness assessment tribunal may, on cause shown, allow the member of the Scottish Tax Tribunals to lodge a supplementary written response containing further information falling within the scope of paragraph (2)(b) to (f).

#### **Consideration of recommendation etc.**

6.—(1) The fitness assessment tribunal must consider the investigating officer's recommendation and statement of reasons and any written response by the member of the Scottish Tax Tribunals, and determine whether—

- (a) the investigation should proceed to a hearing; or
  - (b) no further procedure is required.
- (2) The fitness assessment tribunal must give reasons in writing for its determination.

#### **Representation at hearings**

7.—(1) If the fitness assessment tribunal determines that the investigation is to proceed to a hearing, the chairing member of the fitness assessment tribunal must appoint a presenting officer from a list of persons who have been nominated for that purpose by the Scottish Ministers.

(2) The investigating officer must provide to the presenting officer copies of all documents supplied to or by the fitness assessment tribunal and the member of the Scottish Tax Tribunals.

(3) The fitness case is to be presented by the presenting officer.

(4) The presenting officer may instruct the investigating officer to carry out such further investigations as the presenting officer considers necessary.

(5) The member of the Scottish Tax Tribunals may be represented before the fitness assessment tribunal by an advocate or solicitor, or any other person authorised by the fitness assessment tribunal.

(6) If the presenting officer is unable to fulfil his or her duties, the chairing member of the fitness assessment tribunal may appoint a substitute presenting officer from the list of persons referred to in paragraph (1).

### **Duty to disclose information**

**8.**—(1) The presenting officer and the investigating officer must disclose to the member of the Scottish Tax Tribunals any information not previously disclosed that—

- (a) is likely to form part of the facts and circumstances placed before the fitness assessment tribunal by the presenting officer;
- (b) may materially strengthen the member of the Scottish Tax Tribunals' position before the fitness assessment tribunal; or
- (c) may materially undermine the presenting officer's position before the fitness assessment tribunal.

(2) During the relevant period, the presenting officer must—

- (a) keep under review all the information that may be relevant to the fitness case of which the presenting officer is aware; and
- (b) disclose to the member of the Scottish Tax Tribunals any information not previously disclosed in accordance with paragraph (1).

(3) In this rule, "relevant period" means the period which begins when the presenting officer complies with paragraph (1) and ends when the fitness assessment tribunal reports to the Scottish Ministers.

### **Preliminary hearing**

**9.**—(1) Before proceeding to a hearing under rule 10, the fitness assessment tribunal must hold a preliminary hearing.

(2) The clerk to the fitness assessment tribunal must give the parties written notice of the date, time and place of the preliminary hearing.

(3) At the preliminary hearing, the fitness assessment tribunal may—

- (a) confirm with the member of the Scottish Tax Tribunals what facts, if any, are in dispute;
- (b) hear argument from the parties on and decide any legal or other preliminary issue raised in any written response or supplementary written response lodged under rule 5;
- (c) make any case management directions, including directions as to the lodging of documents or the attendance of witnesses, that it considers necessary for the future conduct of the proceedings; and
- (d) fix a hearing under rule 10.

### **Hearing**

**10.**—(1) If the fitness assessment tribunal determines that a hearing is necessary, it may fix—

- (a) a hearing on legal submissions only; or
- (b) a hearing at which—
  - (i) the parties may present oral and documentary evidence and refer to productions;
  - (ii) witnesses may be examined; and
  - (iii) the parties may make submissions on fact and law.

(2) The clerk to the fitness assessment tribunal must give the parties written notice of the date, time and place of the hearing.

### **Conduct of hearings**

- 11.**—(1) Subject to paragraph (3), hearings of the fitness assessment tribunal are to be in private.
- (2) The fitness assessment tribunal is to deliberate in the absence of any other person.
- (3) The fitness assessment tribunal may conduct the hearing or any part of it in public if—
- (a) the member of the Scottish Tax Tribunals so requests; or
  - (b) for any reason the fitness assessment tribunal considers that the circumstances are such as to make a private hearing inappropriate.
- (4) All hearings must be recorded by electronic means or otherwise as approved by the fitness assessment tribunal.

### **Powers of fitness assessment tribunal**

- 12.**—(1) Subject to the provisions of Schedule 2 to the RSTPA 2014 and these Rules, the fitness assessment tribunal may regulate its own procedure.
- (2) The fitness assessment 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 fitness assessment tribunal may, on cause shown—
- (a) extend or shorten the time for complying with any rule or direction;
  - (b) permit a party to amend a document;
  - (c) adjourn or postpone a hearing;
  - (d) sist proceedings.
- (4) If any hearing is postponed or adjourned, the clerk to the fitness assessment tribunal must give the parties written notice of the date, time and place to which the hearing has been postponed or adjourned.

### **Termination of proceedings**

- 13.**—(1) If the presenting officer considers at any time that it cannot be established that the member of the Scottish Tax Tribunals is unfit to hold his or her office, the presenting officer must—
- (a) recommend to the fitness assessment tribunal that no further procedure is required; and
  - (b) give reasons for that recommendation in writing.
- (2) The clerk to the fitness assessment tribunal must provide a copy of the recommendation and reasons to the member of the Scottish Tax Tribunals.
- (3) If the member of the Scottish Tax Tribunals ceases to hold office at any stage in the proceedings, the proceedings are terminated.
- (4) At any stage in the proceedings, the fitness assessment tribunal may—
- (a) on the basis of a recommendation by the investigating officer or the presenting officer;
  - (b) on the basis of a submission by the member of the Scottish Tax Tribunals; or
  - (c) on its own motion,
- determine that it cannot be established that the member of the Scottish Tax Tribunals is unfit to hold his or her office.

### **Decision and report**

**14.—**(1) Where the fitness assessment tribunal, having considered the evidence, proposes to make findings of fact on disputed issues, it must send to the parties a draft of its findings and invite them to comment on the draft by such date as the fitness assessment tribunal specifies.

(2) The fitness assessment tribunal must have regard to any comments made under paragraph (1), but need not give the parties an opportunity to comment on any alterations made to the draft before the submission of its report.

(3) The fitness assessment tribunal must send a copy of its report to the member of the Scottish Tax Tribunals, to the Scottish Ministers and to the President.

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### **EXPLANATORY NOTE**

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

These Rules make provision in relation to complaints about the conduct of a member of the Scottish Tax Tribunals (Schedule 1) and in relation to proceedings before a fitness assessment tribunal constituted to ascertain whether such a member is unfit to continue in office (Schedule 2).