

## SCHEDULE

### THE FIRST-TIER TRIBUNAL FOR SCOTLAND TAX CHAMBER RULES OF PROCEDURE 2017

## PART 2

### General Powers and Provisions

#### Case management powers

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

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

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

- (a) extend or shorten the time for complying with any rule or order;
- (b) conjoin or take concurrently two or more sets of proceedings or parts of proceedings raising common issues;
- (c) specify one or more cases as a lead case or lead cases where—
  - (i) two or more cases are before the First-tier Tribunal;
  - (ii) in each such case the proceedings have not been finally determined; and
  - (iii) the cases give rise to common or related issues of fact or law;and sist the other cases until the common or related issues have been determined;
- (d) permit or require a party to amend a document;
- (e) permit or require a party or another person to provide documents, information, evidence or submissions to the First-tier Tribunal or a party;
- (f) deal with an issue in the proceedings as a preliminary issue;
- (g) hold a hearing to consider any matter, including a case management hearing;
- (h) decide the form of any hearing;
- (i) adjourn or postpone a hearing;
- (j) require a party to produce a file of documents for a hearing;
- (k) sist proceedings;
- (l) 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;
- (m) 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.

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### **Procedure for applying for and giving orders**

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

(2) An application for an order 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 an order must include the reasons for making that application.

(4) Before making an order, the First-tier Tribunal must afford parties an opportunity to make representations to it concerning whether the order should be made and the terms of the order.

### **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 an order 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 an order, 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; or
- (c) exercising its power under rule 8 (dismissal of a party's case).

### **Dismissal of a party's case**

8.—(1) The First-tier Tribunal must dismiss 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)(1) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(2) The First-tier Tribunal may dismiss the whole or a part of the proceedings if—

- (a) the appellant has failed to comply with an order which stated that failure by the appellant to comply with the order could lead to the dismissal of the proceedings or part of them; or
- (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.

(3) The First-tier Tribunal may not dismiss the whole or a part of the proceedings under paragraph (1) or (2) without first giving the appellant an opportunity to make representations in relation to the proposed dismissal.

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

9.—(1) The First-tier Tribunal may make an order 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 makes an order under paragraph (1) it may make such consequential orders 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 make an order for expenses as taxed by the Auditor of the Court of Session against a party if that party's act, omission or other conduct has caused any other party to incur expense which it would be unreasonable for that other party to be expected to pay, with the maximum recoverable expenses being the expenses incurred.

(2) The First-tier Tribunal, of its own initiative or on the application of a party or the parties, may in exceptional circumstances fix by order a sum payable by a party in discharge of an award of expenses.

### **Representatives**

**11.**—(1) A party may be represented in any proceedings by a legal representative or lay representative whose details must be communicated to the First-tier Tribunal prior to any hearing.

(2) A party may show any document or communicate any information about the proceedings to that party's lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under paragraph (2), the lay representative or legal representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(4) Anything permitted or required to be done by a party under these Rules, a practice direction or an order may be done by a lay representative, except signing of a witness statement.

(5) The First-tier Tribunal may order that a lay representative is not to represent a party if—

- (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

### **Supporters**

**12.**—(1) A party who is an individual may be accompanied by another person to act as a supporter.

(2) A supporter may assist the party by—

- (a) providing moral support;
- (b) helping to manage tribunal documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—
  - (i) points of law and procedure;
  - (ii) issues which the party might wish to raise with the tribunal.

(3) The party may show any document or communicate any information about the proceedings to that party's supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

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- (5) A supporter may not represent the party.
- (6) The First-tier Tribunal may order that a person is not to act as a supporter of a party if—
  - (a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or
  - (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

### **Calculating time**

**13.**—(1) An act required by these Rules, a practice direction or an order 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 an order 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 or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971.

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

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

- (a) sent by pre-paid post or document exchange, or delivered by hand, to the address of the First-tier Tribunal; 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.

(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.

### **Disclosure of documents and information**

**15.** The First-tier Tribunal may at any stage of the proceedings, on its own initiative or on application by one or more of the parties, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention Rights of any person.

### **Evidence and submissions**

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

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

- (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 an order 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 exclude evidence that would otherwise be admissible where—
- (a) the evidence was not, without reasonable excuse, provided within the time allowed by an order or a practice direction.
  - (b) the evidence was otherwise, without reasonable excuse, provided in a manner that did not comply with an order or a practice direction; or
  - (c) 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**

- 17.—(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 order;
  - (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;
  - (c) 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
  - (d) state the consequences of failure to comply with the citation or order.

#### **Withdrawal**

- 18.—(1) 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.

#### **Chairing member and voting**

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

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(2) The decision of the First-tier Tribunal on an application must be made by majority with the chairing member having a casting vote.

### **Venue for hearings**

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