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WELSH STATUTORY INSTRUMENTS

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**2005 No. 758**

**The Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005**

**PART 5**

Appeals: General

**Interpretation**

**21.** In this Part, “list” means a local non-domestic rating list or the central non-domestic rating list compiled on or after 1 April 2005.

**Jurisdiction: exceptions**

**22.**—(1) Where the appellant is an employee or member of the relevant valuation tribunal, the appeal must not be dealt with by that tribunal but by such other valuation tribunal as may be appointed for that purpose by the National Assembly.

(2) Where it appears to the president of the relevant valuation tribunal that by reason of a conflict of interests, or the appearance of such a conflict, it would be inappropriate for an appeal to be dealt with by that tribunal, the National Assembly must, on being so notified by the president, appoint another tribunal to deal with that appeal.

(3) Where the appellant is a former member or employee of the valuation tribunal by which, in pursuance of any provision of this regulation, the appeal would fall to be dealt with, and the president determines that it shall not be dealt with by that tribunal, it shall be dealt with by such other tribunal as may be appointed for the purpose by the National Assembly.

**Arrangements for appeals**

**23.**—(1) It shall be the duty of the president of a valuation tribunal to secure that arrangements are made for appeals under —

- (a) regulation 8 or 13;
- (b) paragraph 4 of Schedule 4A(1) to the Act as it applies for the purposes of Part 3 of the Act (in these Regulations called an “appeal against a completion notice”); or
- (c) paragraph 5C of Schedule 9 to the Act (penalties),

to be determined in accordance with the following provisions of these Regulations.

(2) A valuation tribunal must not hear an appeal under regulation 13 until any appeal under regulation 8 in respect of the same proposal has been decided.

(3) Where two or more appeals relating to the same hereditament or hereditaments are referred under regulation 13, the order in which the appeals are dealt with shall be the order in which the

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(1) Schedule 4A was inserted by paragraph 36 of Schedule 5 to the Local Government and Housing Act 1989 (c. 42).

alterations in question would, but for the disagreements which occasion the appeals, have taken effect.

(4) Where an appeal under regulation 13 and an appeal under regulation 13 of the Council Tax (Alteration of Lists and Appeals) Regulations 1993(2) relate to the same property —

- (a) the president of the valuation tribunal must secure that appeals are dealt with in such order as appears to the president best designed to secure the interests of justice;
- (b) the listing officer shall be joined as a party to the appeal under regulation 13 of these Regulations; and
- (c) the valuation officer shall be joined as a party to the appeal under regulation 13 of the Council Tax (Alteration of Lists and Appeals) Regulations 1993.

(5) The clerk must, as soon as is reasonably practicable, give written notice to any person who is made a party to an appeal under paragraph (4).

### **Withdrawal**

24.—(1) Without prejudice to regulation 8(2), an appeal may be withdrawn before the commencement of a hearing or of consideration of written representations, where notice to that effect is given to the clerk —

- (a) in the case of an appeal against a completion notice or an appeal under paragraph 5C of Schedule 9 to the Act (penalties), by the appellant in writing, and
- (b) in any other case, but subject to paragraph (2), by the valuation officer.

(2) Subject to paragraph (4), notice may not be given by a valuation officer under paragraph (1) unless every other party to the appeal has given written consent to the valuation officer for the withdrawal of the appeal.

(3) The clerk must notify the appellant when the clerk has received the notice of withdrawal under paragraph (1)(a), and shall serve a copy of the notice of receipt on all the other parties to the appeal.

(4) Where, after the referral of an appeal under regulation 13, the valuation officer alters the list in accordance with the proposal, or there is an agreement under regulation 12, the valuation officer or, as the case may be, the central valuation officer must notify the clerk accordingly, and the appeal shall be deemed to have been withdrawn.

(5) Where, following the initiation of an appeal against imposition of a penalty, the valuation officer decides to remit the penalty, the valuation officer shall notify the clerk accordingly, and the appeal shall be deemed to have been withdrawn.

### **Disposal by written representations**

25.—(1) An appeal under these Regulations may be disposed of on the basis of written representations if all the parties have given their agreement in writing.

(2) Where all the parties have given their agreement as mentioned in paragraph (1), the clerk must serve notice on the parties accordingly; and within four weeks of service of such a notice on them each party may serve on the clerk a notice stating —

- (a) that party's reasons or further reasons for the disagreement giving rise to the appeal; or
- (b) that that party does not intend to make further representations.

(3) A copy of any notice served in pursuance of paragraph (2) must be served by the clerk on the other party or parties to the appeal, and shall be accompanied by a statement of the effect of paragraphs (4) and (5).

(4) Any party on whom a notice is served under paragraph (3) may within four weeks of that service serve on the clerk a further notice stating their reply to the other party's statement, or that they do not intend to make further representations, as the case may be; and the clerk shall serve a copy of any such further notice on the other party or parties.

(5) After the expiry of four weeks beginning with the expiry of the period of four weeks mentioned in paragraph (4) the clerk must submit copies of —

- (a) any information transmitted to the clerk under these Regulations; and
- (b) any notice under paragraph (2) or (4),

to a valuation tribunal constituted as provided in regulation 30.

(6) The valuation tribunal to which an appeal is referred as provided in paragraph (5) may if it thinks fit —

- (a) require any party to furnish in writing further particulars of the grounds relied on and of any relevant facts or contentions; or
- (b) order that the appeal be disposed of on the basis of a hearing.

(7) Where any party has furnished any particulars in response to a request by a valuation tribunal under paragraph 6(a), the clerk must serve a copy of the particulars on every other party, and each of those other parties may, within four weeks of such service, serve on the clerk any further statement they wish to make in response.

### **Pre-hearing review**

**26.** With a view to clarifying the issues to be dealt with at a hearing, a chairman appointed under regulation 8 of the Valuation and Community Charge Tribunals Regulations 1989(3) —

- (a) may on the application of a party or of the chairman's own motion, not less than four weeks after giving notice to the parties to that effect, order a pre-hearing review to be held; and
- (b) must endeavour at the pre-hearing review to secure that all the parties make such admissions and agreements as ought reasonably to be made by them in relation to the proceedings.

### **Notice of hearing**

**27.—**(1) Where an appeal is to be disposed of on the basis of a hearing, the clerk must give the parties not less than four weeks' notice of the date, time and place appointed for the hearing.

(2) The clerk must advertise the date, time and place appointed for any hearing by causing a notice giving such information to be conspicuously displayed —

- (a) at the valuation tribunal's office,
- (b) outside an office of the relevant authority appointed by the authority for that purpose, or
- (c) in another place within that authority's area.

(3) The notice required by paragraph (2) must name a place where a list of the appeals to be heard may be inspected.

(4) Where the hearing of an appeal has been postponed, the clerk must take such steps as are practicable in the time available —

- (a) to notify the parties to the appeal of the postponement; and
- (b) to advertise the postponement.

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(3) S.I. 1989/439; relevant amendment was made by regulation 7(1) of S.I. 1995/563.

### **Disqualification from participating**

**28.**—(1) A person shall be disqualified from participating as a member in the hearing or determination of, or acting as clerk or officer of a valuation tribunal in relation to —

- (a) an appeal against a completion notice if they are a member of the relevant authority concerned; or
- (b) an appeal under regulation 13 if they are a member of the special authority concerned.

(2) References in this regulation to the relevant authority concerned and to the special authority concerned are references to the relevant authority and the special authority in whose area is situated the hereditament which is the subject of the appeal.

### **Representation at the hearing**

**29.** Any party to an appeal which is to be decided at a hearing may appear in person (with assistance from any person they wish), by counsel or solicitor, or any other representative (other than a person who is a member, clerk or other employee of the valuation tribunal).

### **Conduct of the hearing**

**30.**—(1) Subject to paragraph (2), a valuation tribunal's functions of hearing or determining an appeal shall be discharged by three members of the tribunal, who shall include at least one chairman; and a chairman shall preside.

(2) Where all parties to an appeal who appear so agree, the appeal may be decided by two members of a valuation tribunal, and notwithstanding the absence of a chairman.

(3) The hearing shall take place in public, unless the valuation tribunal orders otherwise on the application of a party, and on being satisfied that the interests of that party would be prejudicially affected.

(4) If at a hearing of an appeal to which a valuation officer or a listing officer is a party every other party fails to appear, the valuation tribunal may dismiss the appeal.

(5) If, at a hearing of an appeal against a completion notice, the appellant does not appear, the valuation tribunal may dismiss the appeal.

(6) If, at the hearing of an appeal, any party does not appear, the valuation tribunal may hear and determine the appeal in his absence.

(7) The valuation tribunal may require any witness to give evidence by oath or affirmation, and shall have power for that purpose to administer an oath or affirmation in due form.

(8) Unless the valuation tribunal determines otherwise —

- (a) at the hearing of an appeal under regulation 8, or arising from an alteration of a list by the valuation officer, the valuation officer shall begin the hearing; and
- (b) at the hearing of an appeal against a completion notice, the relevant authority shall begin the hearing;

and in any other case parties at the hearing may be heard in such order as the tribunal may determine.

(9) Parties at the hearing may examine any witness before the valuation tribunal and call witnesses.

(10) A hearing may be adjourned to such time and place and on such terms (if any) as the valuation tribunal thinks fit; and reasonable notice of the time and place to which the hearing has been adjourned shall be given to every party.

(11) Subject to paragraph (12), a valuation tribunal may enter and inspect —

- (a) the hereditament which is the subject of the appeal, and

(b) as far as is practicable, any comparable land or property to which the attention of the tribunal is drawn.

(12) When a valuation tribunal intends to enter any premises in accordance with paragraph (11) it shall give notice to the parties who shall be entitled to be represented at the inspection; and where the tribunal deems it appropriate, such representation shall be limited to one person to represent those parties having the same interest in the appeal.

(13) Where at the hearing of an appeal under regulation 13 —

(a) the valuation officer contends that the proposal was not validly made; and

(b) the valuation tribunal does not uphold his contention,

the tribunal shall not immediately proceed to determine the appeal unless every party so agrees.

(14) Subject to any provision of this Part, the valuation tribunal —

(a) shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it, and generally to the just handling of the proceedings;

(b) shall, so far as appears to it appropriate, seek to avoid formality in its proceedings; and

(c) shall not be bound by any enactment or rule of law relating to the admissibility of evidence before courts of law.

#### **Evidence: general**

**31.—**(1) This regulation applies to information supplied in pursuance of regulation 42 or paragraph 5 of Schedule 9 to the Act or section 82 of the General Rate Act 1967.

(2) Subject to the provisions of this regulation, information to which this regulation applies shall in any relevant proceedings be admissible as evidence of any fact stated in it; and any record purporting to contain such information shall, unless the contrary is shown, be presumed —

(a) to have been supplied by the person by whom it purports to have been supplied;

(b) to have been supplied by that person in any capacity in which it purports to have been supplied.

(3) Information to which this regulation applies shall not be used in any relevant proceedings by a valuation officer unless —

(a) not less than three weeks' notice has previously been given to every other party to the proceedings.

(b) the notice specifies in relation to any information to be so used —

(i) the documents or other media in or on which that information is held;

(ii) the hereditament or hereditaments to which it relates, and the rateable value or rateable values in the list current at the date of the notice;

(iii) the name and address of the person providing the information; and

(iv) a summary of the terms of any lease (including the rent, dates of rental reviews and description of the repairing obligations); and

(c) any person who has given not less than 24 hours' notice of his intention to do so, has been permitted by that officer at any reasonable time —

(i) to inspect the documents or other media in or on which such information is held; and

(ii) to make a copy of, or of any extract from, any document containing such information.

(4) Subject to paragraph (5), any person to whom notice relating to any hereditament has been given under paragraph (3)(a) may before the hearing serve notice on the valuation officer specifying

other hereditaments as being hereditaments which are comparable in character or otherwise relevant to that person's case, and requiring the valuation officer —

- (a) to permit him at any reasonable time specified in the notice to inspect and (if they so desire) to make a copy of any document containing information to which this regulation applies which relates to those other hereditaments and is in the possession of the valuation officer; and
- (b) to produce at the hearing or to submit to the valuation tribunal such documents as before the hearing they have informed the valuation officer that they require.

(5) The number of hereditaments specified in a notice under paragraph (4) shall not exceed four, or if greater, the number specified in the notice under paragraph (3)(a).

(6) Nothing in the foregoing provisions of this regulation shall be construed as requiring the making available for inspection or copying, or the production of, any document insofar as it contains information other than information —

- (a) constituting direct evidence of the rent payable in respect of the specified hereditaments, or
- (b) which is otherwise reasonably required for the purposes of the relevant proceedings.

(7) Where a notice has been given to the valuation officer under paragraph (4), and the valuation officer refuses or fails to comply with the notice, the person who gave the notice may apply to the valuation tribunal or, as the case may be, the arbitrator appointed to determine the appeal; and that tribunal or arbitrator may, if satisfied that it is reasonable to do so, direct the valuation officer to comply with the notice as respects all the hereditaments or such of them as the tribunal or arbitrator may determine.

(8) In this regulation “relevant proceedings” means any proceedings on or in consequence of an appeal, and any proceedings on or in consequence of a reference to arbitration under regulation 38.

(9) If any information required to be made available for inspection in accordance with this regulation is not maintained in documentary form, the duty to make it so available is satisfied if a print-out, photographic image or other reproduction of the document which has been obtained from the storage medium adopted in relation to the document is made available for inspection.

### **Evidence of lists and other documents**

**32.** The contents of a list may be proved by the production of a copy of it, or of the relevant part, purporting to be certified to be a true copy by the valuation officer; and the contents of a completion notice may be proved by the production of a copy of it purporting to be certified to be a true copy by the proper officer of the relevant authority.

### **Decisions**

**33.—**(1) An appeal may be decided by a majority of the members participating; and where (pursuant to regulation 30(2)) it falls to be disposed of by two members and they are unable to agree, it shall be remitted by the clerk to be decided by a valuation tribunal consisting of three different members.

(2) Where an appeal is disposed of on the basis of a hearing, the decision may be reserved or given orally at the end of the hearing.

(3) Subject to paragraph (4), as soon as reasonably practicable after a decision has been made, it must —

- (a) in the case of a decision given orally, be confirmed,
- (b) in any other case, be communicated,

by notice in writing to the parties; and the notice must be accompanied by a statement of the reasons for the decision.

(4) Nothing in paragraph (3) shall require notice to be given to a party if it would be repetitive of any copy record sent to him in accordance with regulation 36.

(5) In the case of an appeal against a completion notice, the clerk must send notice of the decision to the valuation officer for the relevant authority.

## **Orders**

**34.**—(1) On or after deciding an appeal under regulation 13, the valuation tribunal may, subject to paragraph (4), require a valuation officer, in consequence of the decision, by order to alter a list in accordance with any provision made by or under the Act.

(2) On or after deciding an appeal against imposition of a penalty the valuation tribunal may order the valuation officer whose notice is the subject of the appeal to mitigate or remit the penalty.

(3) The valuation officer must comply with an order under paragraph (1) or (2) within the period of two weeks beginning on the day of its making.

(4) Subject to paragraph (5), where the decision is that a disputed rateable value should be an amount greater than —

- (a) the amount shown in the list at the date of the proposal; and
- (b) the amount contended for in the proposal,

the order shall require the list to be altered with effect from the day on which the decision is given.

(5) Paragraph (4) shall not apply where the order requires the list to be altered to show —

- (a) property previously rated as a single hereditament becoming liable to be rated in parts, or
- (b) property previously liable to be rated in parts becoming liable to be rated as a single hereditament, or
- (c) any part of a hereditament becoming part of a different hereditament.

(6) Where it appears that circumstances giving rise to an alteration ordered by a valuation tribunal have at the date of the decision ceased to exist, the order may require the alteration to be made in respect of such period as appears to the tribunal to be commensurate with the duration of those circumstances.

(7) An order under this regulation may require any matter ancillary to its subject-matter to be attended to.

## **Review of decisions**

**35.**—(1) Subject to paragraphs (2) and (3), a valuation tribunal constituted as provided in paragraph (4) shall have power, on written application by a party, to review or set aside by certificate under the hand of the presiding member —

- (a) any decision on any of the grounds mentioned in paragraph (5), and
- (b) the decision on an appeal against a completion notice on the additional grounds mentioned in paragraph (6).

(2) Paragraph (1) does not apply where an appeal against the decision in question has been determined by the Lands Tribunal.

(3) An application under paragraph (1) may be dismissed if it is not made within the period of four weeks beginning on the day on which notice is given (whether in accordance with regulation 33(3) or regulation 36(3)) of the decision in question.

(4) So far as is reasonably practicable, the valuation tribunal appointed to review a decision shall consist of the same members as constituted the tribunal which took the decision.

(5) The grounds referred to in paragraph (1)(a) are —

- (a) that the decision was wrongly made as a result of clerical error;
- (b) that a party did not appear and can show reasonable cause why he did not do so; and
- (c) that the decision is affected by a decision of, or on appeal from, the High Court or the Lands Tribunal in relation to an appeal in respect of the hereditament which was the subject of the valuation tribunal's decision.

(6) The grounds mentioned in paragraph (1)(b) are that new evidence, the existence of which could not have been ascertained by reasonably diligent inquiry or could not have been foreseen, has become available since the conclusion of the proceedings to which the decision relates.

(7) If a valuation tribunal sets aside a decision in pursuance of this regulation, it must revoke any order made in consequence of that decision and must order a re-hearing or redetermination before either the same or a different tribunal.

(8) The clerk must as soon as reasonably practicable notify the parties to the appeal in writing of —

- (a) a determination that the valuation tribunal will not undertake a review under paragraph (1);
- (b) the determination of the valuation tribunal, having undertaken a review under paragraph (1), that it will not set aside the decision concerned;
- (c) the issue of any certificate under paragraph (1); and
- (d) the revocation of any order under paragraph (7).

(9) Where in relation to a decision in respect of which an application under paragraph (1) is made, an appeal to the Lands Tribunal remains undetermined on the relevant day, the clerk must notify the Lands Tribunal as soon as reasonably practicable after the occurrence of the relevant event.

(10) In paragraph (9) —

“the relevant day” means the day on which, as the case may be, —

- (a) the application under paragraph (1) is made;
  - (b) an event referred to in any of sub-paragraphs (a) to (d) of paragraph (8) occurs; and
- “the relevant event”, in relation to a relevant day, means the event occurring on that day.

### **Records of decisions, etc**

**36.**—(1) It shall be the duty of the clerk to make arrangements for each decision, each order made under regulation 34 and the effect of each certificate and revocation under regulation 35 to be recorded.

(2) Records may be kept in any form, whether documentary or otherwise, and must contain the particulars specified in the Schedule to these Regulations.

(3) A copy, in documentary form, of the relevant entry in the record must, as soon as reasonably practicable after the entry has been made, be sent (by post, fax or electronic communication) to each party to the appeal to which the entry relates.

(4) Each record must be retained for the period of six years beginning on the day on which an entry was last made in it.

(5) Any person may, at a reasonable time stated by or on behalf of the valuation tribunal concerned and without making payment, inspect records which are required to be made by paragraph (1).



(6) If without reasonable excuse a person having custody of records intentionally obstructs a person in exercising the right conferred by paragraph (5) that person shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(7) The member who presided at the hearing or determination of an appeal may authorise the correction of any clerical error in the record, and a copy of the corrected entry shall be sent to the persons to whom a copy of the original entry was sent.

(8) The production in any proceedings in any court of law of a document purporting to be certified by the clerk to be a true copy of a record of that valuation tribunal shall, unless the contrary is proved, be sufficient evidence of the document and of the facts it records.

### **Appeals**

**37.**—(1) An appeal shall lie to the Lands Tribunal in respect of a decision or order which is given or made by a valuation tribunal on —

- (a) an appeal under regulation 8 or 13; or
- (b) an appeal against a completion notice.

(2) An appeal under paragraph (1) against a decision or order shall lie at the instance of any party —

- (a) who appeared at the hearing or, if the appeal was disposed of by written representations, who made such representations, or
- (b) whose application for the review of the decision on the ground set out in regulation 35(5)(b), has been determined by the valuation tribunal as mentioned in regulation 35(8)(b).

(3) Subject to paragraph (4), an appeal under paragraph (1) may be dismissed if it is not made within four weeks of the date on which notice is given of the decision or order that is the subject matter of the appeal.

(4) Where —

- (a) in relation to an application under paragraph (1) of regulation 35 (review of decisions) made within four weeks of the date on which notice was given of the decision which is the subject matter of the appeal, notice is given as mentioned in paragraph (8)(a) of that regulation, or
- (b) notice is given as mentioned in paragraph (8)(b) of that regulation,

the appeal may be dismissed if it is not made within four weeks of the service of the notice under that paragraph (8)(a) or (b).

(5) The Lands Tribunal may confirm, vary, set aside, revoke or remit the decision or order of the valuation tribunal, and may make any order the tribunal could have made.

(6) Valuation officers must act in accordance with any order made by the Lands Tribunal; and paragraph 9 of Schedule 11 to the Act shall have effect subject to this requirement.

### **Arbitration**

**38.**—(1) Where at any time before the beginning of a hearing or the consideration by a valuation tribunal of written representations it is so agreed in writing between the persons who, if a dispute were to be the subject of an appeal to the tribunal, would be the parties to the appeal, the question shall be referred to arbitration.

(2) In any arbitration in pursuance of this regulation the award may include any order which could have been made by a valuation tribunal in relation to the question; and paragraph 9 of Schedule 11 to the Act shall apply to such an order as it applies to an order recorded in pursuance of these Regulations.

### **Notification of further proceedings**

**39.**—(1) Where a valuation officer —

- (a) applies to a valuation tribunal under regulation 35 for the review of a decision in consequence of which an order requiring the alteration of a list was made; or
- (b) appeals to the Lands Tribunal under regulation 37 against a decision in consequence of which such an order was made, or against such an order,

the valuation officer must, at the same time or as soon as reasonably practicable thereafter, notify the authority concerned of the application or appeal.

(2) For the purposes of paragraph (1), the authority concerned —

- (a) where the application or appeal relates to the alteration of a local non-domestic rating list, is the relevant authority for whose area the list was compiled; and
- (b) in any other case, is the National Assembly.

(3) Where a valuation officer appeals to the Lands Tribunal as mentioned in paragraph (1)(b), or receives notice of such an appeal instituted by another party the valuation officer must, at the same time or as soon as reasonably practicable thereafter, notify the clerk to the relevant valuation tribunal of the appeal.

(4) Where, in relation to a decision or order made on an appeal against a completion notice, an authority appeals to the Lands Tribunal under regulation 37, or receives notice of such an appeal instituted by another party it must, at the same time, or as soon as reasonably practicable thereafter, notify the clerk to the relevant valuation tribunal of the appeal.