

SCHEDULE 2

Regulation 2(2)

The Scottish Tax Tribunals (Fitness Assessment Tribunal) Rules 2015

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Explanatory Note

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.

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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—

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- (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.

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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.

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(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.