

## SCHEDULE

### THE FIRST-TIER TRIBUNAL FOR SCOTLAND LOCAL TAXATION CHAMBER RULES OF PROCEDURE 2022

#### PART 2

##### Procedure in respect of non-domestic rates appeals

#### Interpretation

**24.** In this Part—

“the 1982 Act of Sederunt” means the Act of Sederunt (Valuation Appeal Rules Amendment) 1982(1),

“the 1995 Regulations” means the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995(2),

“the 2022 Order” means the Valuation Timetable (Scotland) Order 2022(3),

“the 2022 Regulations” means the Valuation (Proposals Procedure) (Scotland) Regulations 2022(4),

“appeal” means an appeal or complaint under the Valuation Acts, and “appellant” shall be construed accordingly,

“lands and heritages” is to be construed in accordance with section 42 of the 1854 Act,

“net annual value” has the meaning given in section 6(8) of the Valuation and Rating (Scotland) Act 1956(5),

“non-domestic rates” means non-domestic rates levied under section 7B of the 1975 Act,

“rateable value” has the meaning given in section 6(9) of the Valuation and Rating (Scotland) Act 1956(6).

#### Commencement Information

**II** Sch. rule 24 in force at 1.4.2023, see [reg. 1\(2\)](#)

#### Appeals lodged prior to 1 April 2023

**25.—(1)** This rule applies instead of rule 26 (notice of appeal) and rule 27 (confirmation of receipt of appeal by the First-tier Tribunal) to appeals lodged in accordance with paragraph (2) prior to 1 April 2023.

(2) An appeal has been lodged for the purposes of this rule if prior to 1 April 2023 a notice of appeal was lodged with an assessor in accordance with regulation 3(2) of the 1995 Regulations and such appeal has not been withdrawn or otherwise disposed of.

(1) S.I. 1982/1508.

(2) S.I. 1995/572.

(3) S.S.I. 2022/368.

(4) S.S.I. 2022/369.

(5) 1956 c. 60. Section 6(8) was amended by schedule 6 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47) and section 76(2)(a) of the Land Reform (Scotland) Act 2016 (asp 18).

(6) Section 6(9) was amended by section 10(1) of the Local Government Finance Act 1963 (c. 12) and schedule 6 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47).

(3) The assessor with whom the notice referred to in paragraph (1) of regulation 3 of the 1995 Regulations has been lodged must, no later than 30 April 2023—

- (a) notify the First-tier Tribunal that such appeal has been duly lodged, and
- (b) send to the First-tier Tribunal the notice of appeal lodged with them and any additional information in their possession relevant to the appeal.

(4) The First-tier Tribunal may, subject to the requirements in paragraph (5), write to the appellant by letter delivered by post or email requesting that they confirm they intend to proceed with the appeal.

(5) The requirements in this paragraph are that the request referred to in paragraph (4) must—

- (a) be sent to the appellant no later than 30 June 2023,
- (b) request confirmation that the appellant intends to proceed with the relevant appeal,
- (c) request a response within no less than 28 days from the date of issue of the letter,
- (d) inform the appellant—
  - (i) that they retain the right to pursue the appeal,
  - (ii) that if a response does not reach the First-tier Tribunal within the time specified their appeal may be treated as withdrawn,
  - (iii) of the consequences of such a withdrawal in respect of whether an appeal on the same grounds may be made in the future,
  - (iv) where they may be able to access advice in respect of their appeal and the request for confirmation, and
- (e) provide details of how the appellant may contact the First-tier Tribunal if they require further information.

(6) Where the First-tier Tribunal has written to the appellant in accordance with paragraph (4) and has not received a response within the time specified, the First-tier Tribunal may treat the appeal in respect of which confirmation was requested as withdrawn.

(7) In respect of any appeal which is proceeding to a hearing, the First-tier Tribunal requires to give to each party not less than 70 days' notice of the date, time and place set for the hearing of the appeal.

(8) The notice period specified in paragraph (7) applies to cases to which this rule applies instead of any other notice period which would otherwise apply to that case.

[<sup>F1</sup>(9) The appellant must, not later than 35 days before the date set for the hearing, provide to the assessor and the First-tier Tribunal a written statement specifying—

- (a) the grounds of appeal; and
- (b) if the appeal relates to the rateable value or net annual value of the lands and heritages as entered in the valuation roll, the valuation which the appellant considers should be entered in the roll and the grounds on which that valuation is arrived at.

(10) The assessor must provide to the appellant and the First-tier Tribunal a written statement specifying the grounds on which the entry in the valuation roll was arrived at—

- (a) within 28 days, beginning on the date of receipt of the statement described in paragraph (9), and
- (b) not later than 21 days before the date set for the hearing.

(11) If the appellant does not provide the written statement specified in paragraph (9), in accordance with that paragraph, the First-tier Tribunal may dismiss the appeal in accordance with rule 6(3)(c) (dismissal of a case).]

**F1** Sch. rule 25(9)-(11) inserted (1.4.2023) by The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (S.S.I. 2023/40), regs. 1, 2(8)

**Commencement Information**

**I2** Sch. rule 25 in force at 1.4.2023, see reg. 1(2)

**Notice of appeal**

**26.**—(1) An appeal to the First-tier Tribunal is to be made by the appellant giving written notice to the First-tier Tribunal in accordance with the following paragraphs.

(2) Subject to paragraphs (3) and (4), a notice of appeal must include, and may only include—

- (a) the full name, address and, where available, email address of the appellant,
- (b) where applicable, the full name, address and, where available, email address of any authorised representative,
- (c) where applicable, any other specified address (which may be an email address) as being the address of the appellant for receipt of any documents from the First-tier Tribunal in connection with the appeal,
- (d) the address of the lands and heritages to which the appeal relates,
- (e) a statement that the notice is a notice of appeal,
- (f) notice of whether the appeal is brought under section 3ZA(6)(b) or (c) of the 1975 Act,
- (g) subject to paragraph (3), the details of the proposal made by the appellant to alter an entry in the valuation roll under section 3ZA of the 1975 Act,
- (h) the details of the period within which the proposal under (g) was made,
- (i) notice sent <sup>F2</sup>... under regulation [<sup>F3</sup>15] of the 2022 Regulations (unless the appellant does not have that notice),
- (j) that the appeal has been made in accordance with the dates relating to the lodging of appeals set out in regulation [<sup>F4</sup>18] of the 2022 Regulations,
- (k) the details of the assessor responsible for the valuation of the lands and heritages, and
- (l) the signature of the appellant or their authorised representative, as the case may be.

(3) Paragraph (2) applies to complaints under the Valuation Acts with the following modifications—

- (a) in sub-paragraph (e) the word “appeal” is substituted with “complaint”, and
- (b) sub-paragraphs (f) to (j) do not apply.

(4) Information under paragraph (2)(g) may only be included with any notice of appeal to the First-tier Tribunal if it falls within one of the following categories—

- (a) information (including documents if applicable) that was exchanged in accordance with the 2022 Regulations before the date specified in schedule 1 of the 2022 Order as the last date for the assessor to issue notice of a decision,
- (b) any relevant new information that has become available since the date specified in schedule 1 of the 2022 Order as the last date for the assessor to issue notice of a decision, and which did not exist on that date.

(5) A notice of appeal is to be served on the First-tier Tribunal within the period of time specified in [<sup>F5</sup>schedule 1 of the 2022 Order.]

**Changes to legislation:** There are currently no known outstanding effects for the The First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022, PART 2. (See end of Document for details)

- F2** Words in sch. rule 26(2)(i) omitted (1.4.2023) by virtue of The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (S.S.I. 2023/40), regs. 1, **2(9)(a)(i)(aa)**
- F3** Word in sch. rule 26(2)(i) substituted (1.4.2023) by The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (S.S.I. 2023/40), regs. 1, **2(9)(a)(i)(bb)**
- F4** Word in sch. rule 26(2)(j) substituted (1.4.2023) by The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (S.S.I. 2023/40), regs. 1, **2(9)(a)(ii)**
- F5** Words in sch. rule 26(5) substituted (1.4.2023) by The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (S.S.I. 2023/40), regs. 1, **2(9)(b)**

#### Commencement Information

- I3** Sch. rule 26 in force at 1.4.2023, see **reg. 1(2)**

#### Confirmation of receipt of appeal by the First-tier Tribunal

- 27.—**(1) Within 14 days of receipt of the notice of appeal, the First-tier Tribunal must—
- (a) send an acknowledgement of receipt of the notice of appeal to the appellant, and
  - (b) send to the assessor a copy of the notice of appeal, and anything supplied under rule [<sup>F6</sup>26] (notice of appeal) and any order extending the time limit for appealing.
- (2) Upon receiving a copy of the notice of appeal sent in accordance with paragraph (1), the assessor must within 21 days, beginning on the date of receipt—
- (a) send to the First-tier Tribunal—
    - (i) the rateable value of the lands or heritages to which the appeal relates,
    - (ii) a copy of the proposal made by the appellant,
    - (iii) a copy of the notice that requires to be issued in accordance with regulation [<sup>F7</sup>15] of the 2022 Regulations,
  - (b) notify the First-tier Tribunal as to the assessor’s preferred form for a hearing or, if no preference, notification of such, and
  - (c) send to the appellant a copy of the information and documents set out in sub-paragraph (a).
- (3) Upon receipt of the [<sup>F8</sup>information and] documents in paragraph (2)(a) and notification in accordance with paragraph (2)(b), the First-tier Tribunal must within 14 days from the date of receipt invite the appellant’s views as to the appellant’s preferred form for a hearing.

- F6** Word in sch. rule 27(1)(b) substituted (1.4.2023) by The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (S.S.I. 2023/40), regs. 1, **2(10)(a)**
- F7** Word in sch. rule 27(2)(a)(iii) substituted (1.4.2023) by The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (S.S.I. 2023/40), regs. 1, **2(10)(b)**
- F8** Words in sch. rule 27(3) inserted (1.4.2023) by The First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (S.S.I. 2023/40), regs. 1, **2(10)(c)**

**Commencement Information**

**14** Sch. rule 27 in force at 1.4.2023, see [reg. 1\(2\)](#)

**Withdrawal of appeal**

**28.**—(1) The appellant may submit a request to the First-tier Tribunal to withdraw an appeal—

- (a) at any time before the hearing of the appeal by sending a notice requesting withdrawal in writing to the First-tier Tribunal, or
- (b) orally, at the hearing of the appeal.

(2) An appeal may not be withdrawn unless and until the First-tier Tribunal, either in writing or during the course of an appeal hearing, gives its permission for such a withdrawal.

(3) Without prejudice to paragraph (2), the First-tier Tribunal may take into account whether or not the appellant and the assessor have reached an agreement as to the alteration of the entry to which the appeal relates, and may take into account the terms of any such agreement.

**Commencement Information**

**15** Sch. rule 28 in force at 1.4.2023, see [reg. 1\(2\)](#)

**Application for referral to the Upper Tribunal**

**29.**—(1) The assessor or the appellant may make an application to the First-tier Tribunal seeking referral of the appeal to the Upper Tribunal for determination under section 1(3A) of the 1949 Act<sup>(7)</sup>, but any such application must be made more than 14 days prior to any date set for the hearing of the appeal.

(2) An application under paragraph (1) is to include representations by the applicant as to which of the criteria set out in sub-paragraphs (a) to (e) of paragraph (1) of rule 30 (decision on referral to the Upper Tribunal) apply to the appeal.

(3) The party who makes an application under paragraph (1) must, at the same time as they make that application, send a copy of it to the other party, and that other party may make written representations to the First-tier Tribunal on the application, and must send a copy of any such representations to the applicant.

(4) The assessor and the appellant may make a joint application to the First-tier Tribunal in accordance with the terms of section 15(2AA) of the Local Government (Financial Provisions) (Scotland) Act 1963 seeking referral of an appeal to the Upper Tribunal for determination under section 1(3A) of the 1949 Act, but any such application must be made more than 14 days prior to any date set for the hearing of the appeal.

(5) The First-tier Tribunal may on its own initiative refer an appeal to the Upper Tribunal for determination under section 1(3A) of the 1949 Act where it is satisfied that one or more of the criteria set out in sub-paragraphs (a) to (e) of paragraph (1) of rule 30 is met.

**Commencement Information**

**16** Sch. rule 29 in force at 1.4.2023, see [reg. 1\(2\)](#)

(7) Section 1(3A) was inserted by the Rating and Valuation (Amendment) (Scotland) Act 1984 (c. 31), section 12(1).

**Decision on referral to the Upper Tribunal**

**30.**—(1) Where an application under rule 29(1) or (4) (application for referral to the Upper Tribunal) has been made, and it appears to the First-tier Tribunal that—

- (a) the facts of the case are complex or highly technical,
- (b) the evidence to be given by expert opinion is complex or highly technical,
- (c) the law applicable to the case is uncertain or difficult to apply,
- (d) the case raises a fundamental or general issue likely to be used as a precedent in other cases, or
- (e) the lands and heritages to which the appeal relates are part of larger subjects situated in more than one valuation area and the valuation of those subjects is appealed in more than one such area,

the First-tier Tribunal must refer the appeal to the Upper Tribunal for determination, and shall notify the parties accordingly.

(2) Not later than 42 days from the date on which an application under rule 29(1) or (4) is received, the First-tier Tribunal must decide, without hearing the parties in person, whether the appeal is to be heard by the First-tier Tribunal or referred to the Upper Tribunal for determination and, in so deciding, the First-tier Tribunal is to have regard to the application and any written representations thereon, including any further representations the First-tier Tribunal may request of either of the parties.

(3) Where an application has been made under rule 29(1) or (4) and the First-tier Tribunal has decided not to refer the appeal to the Upper Tribunal, the First-tier Tribunal must within 14 days of the date on which it made its decision notify that decision with reasons in writing to parties and, subject to paragraph (4), proceed with the appeal as if no such application had been made, save that no further application may be made under rule 29.

(4) No hearing of an appeal by the First-tier Tribunal is to proceed, except by agreement of the parties to the appeal, within 35 days after the date of notification in accordance with paragraph (3) of the First-tier Tribunal's decision not to refer the appeal to the Upper Tribunal.

(5) Where an application has been made under rule 29(1) or (4) and the First-tier Tribunal has decided to refer the appeal to the Upper Tribunal for determination, or where the First-tier Tribunal has referred an appeal on its own initiative under rule 29(5), but the Upper Tribunal, in accordance with section 1(3B) of the 1949 Act<sup>(8)</sup>, declines to proceed to determine it, the appeal must be remitted to the First-tier Tribunal which will proceed with the appeal as if no such reference had been made, save that no further application may be made under rule 29.

(6) Where the Upper Tribunal has in accordance with paragraph (5) declined to proceed to determine the appeal, the First-tier Tribunal must (subject to rule 9 (disposal of an appeal without a hearing)) of new issue to each party, in accordance with the provisions of rule 11 (notice of hearings), a notice of the date of the hearing of the appeal by the First-tier Tribunal, and these Rules operate as if the date so set were the date originally set for the hearing.

**Commencement Information**

**17** Sch. rule 30 in force at 1.4.2023, see **reg. 1(2)**

<sup>(8)</sup> Section 1(3B) was inserted by the Rating and Valuation (Amendment) (Scotland) Act 1984, section 12(1).

### Appeal against refusal to refer to the Upper Tribunal

**31.**—(1) Where an application has been made under rule 29(1) or (4) (application for referral to the Upper Tribunal) and the First-tier Tribunal has decided not to refer the appeal (“the original appeal”) to the Upper Tribunal, the applicant may lodge with the Upper Tribunal an appeal against that decision of the First-tier Tribunal<sup>(9)</sup>.

(2) An appeal to the Upper Tribunal as provided for in paragraph (1) is to be made by way of notice given by the applicant to the Upper Tribunal within 21 days after the date of notification in accordance with rule 30(3) (decision on referral to the Upper Tribunal) of the First-tier Tribunal’s decision not to refer the original appeal to the Upper Tribunal.

(3) The notice of appeal referred to in paragraph (2) must specify the grounds on which the appeal is made, and must be accompanied by a copy of the First-tier Tribunal’s decision in respect of the application made under rule 29(1) or (4) as the case may be and its reasons for that decision.

(4) The applicant must, at the same time as giving notice to the Upper Tribunal under paragraph (2), send a copy of that notice to the other party.

(5) Where an appeal has been made under paragraph (1) and the Upper Tribunal has decided to refuse it, the First-tier Tribunal must—

- (a) proceed with the original appeal as if no appeal under paragraph (1) had been made, save that no further appeal under that paragraph or further application to or referral from the First-tier Tribunal under rule 29 may be made, and
- (b) subject to rule 9 (disposal of an appeal without a hearing), of new issue to each party, in accordance with the provisions of rule 11 (notice of hearings), a notice of the date of the hearing in respect of the original appeal by the First-tier Tribunal, and these rules operate as if the date so set were the date originally set for the hearing.

#### Commencement Information

**18** Sch. rule 31 in force at 1.4.2023, see [reg. 1\(2\)](#)

### Appeal to the Lands Valuation Appeal Court

**32.**—(1) A decision of the First-Tier Tribunal under this Part may be appealed to the Lands Valuation Appeal Court in accordance with the Valuation of Lands (Scotland) Amendment Act 1879<sup>(10)</sup>.

(2) An appeal under paragraph (1) must be lodged in accordance with the 1982 Act of Sederunt.

(3) Paragraphs (4) to (8) apply where a party seeking to appeal a decision of the First-tier Tribunal, or a decision in a case decided prior to 1 April 2023 by a body exercising functions that have been transferred to the First-tier Tribunal, makes a written application to the First-tier Tribunal—

- (a) for a written statement of the reasons for the decision to be provided, where this has not already been issued,
- (b) to prepare a stated case for the purpose of an appeal to the Lands Valuation Appeal Court.

(4) A party making an application to the First-tier Tribunal of the kind specified in paragraph (3) in respect of a case decided prior to 1 April 2023—

- (a) must make such an application before 1 April 2024, and

<sup>(9)</sup> Section 1(3BA) of the 1949 Act was inserted by the Local Government and Housing Act 1989 (c. 42), Schedule 6, paragraph 1, and empowers the Tribunal to determine appeals to which rule 29 refers.

<sup>(10)</sup> 1879 c. 42.

- (b) may, until 30 September 2023, only make such an application if that party has previously made an equivalent application to the body that originally heard the case, and either—
  - (i) received written confirmation that such body will not provide the statement or prepare the stated case, as the case may be, or
  - (ii) 28 days have passed and they have not received a response from that body.
- (5) Where a party submits an application to the First-tier Tribunal of the kind specified in paragraph (3) in respect of a case decided prior to 1 April 2023—
  - (a) the application will be considered by a legal member of the First-tier Tribunal, and
  - (b) the legal member considering the application shall determine whether, having regard to the information available to the First-tier Tribunal at that time—
    - (i) where the application is of the kind specified in paragraph (3)(a), it is possible for the First-tier Tribunal to provide an accurate statement of reasons,
    - (ii) where the application is of the kind specified in paragraph (3)(b), it is possible for a sufficiently full statement of the case to be prepared to enable proper consideration by the Lands Valuation Appeal Court.
- (6) Where a legal member has carried out an assessment under paragraph (5)(b) they must—
  - (a) if they determine that head (i) or (ii) of paragraph (5)(b) (as the case may be) should be answered in the affirmative, accept the application made to the First-tier Tribunal,
  - (b) if they determine that head (i) or (ii) of paragraph (5)(b) (as the case may be) should be answered in the negative, either
    - (i) refer the case to the First-tier Tribunal for rehearing, or
    - (ii) reject the application made to the First-tier Tribunal,
 as they deem appropriate, having had regard to all the circumstances.
- (7) Where an application is accepted in accordance with paragraph (6)(a), the First-tier Tribunal will—
  - (a) where the application is of the kind specified in paragraph (3)(a), provide the written statement of reasons to the applicant within 28 days,
  - (b) where the application is of the kind specified in paragraph (3)(b), prepare the stated case in accordance with the 1982 Act of Sederunt.
- (8) Where a case is referred to the First-tier Tribunal under paragraph (6)(b)(i)—
  - (a) such case is to be considered as an appeal under rule 25 (appeals lodged prior to 1 April 2023) save that the First-tier Tribunal may waive the requirements on parties in paragraphs (3) and (7) of that rule if it considers it appropriate to do so, and
  - (b) the First-tier Tribunal must write to the parties within 14 days of the decision to refer the case—
    - (i) informing them that the case has been so referred in accordance with this rule, and
    - (ii) advising parties what further information, if any, they require to submit.

#### Commencement Information

**19** Sch. rule 32 in force at 1.4.2023, see [reg. 1\(2\)](#)



**Changes to legislation:**

There are currently no known outstanding effects for the The First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022, PART 2.