

2022 No. 365

TRIBUNALS AND INQUIRIES

The Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022

Made - - - - - *8th December 2022*

Laid before the Scottish Parliament *12th December 2022*

Coming into force - - - *1st April 2023*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 76(1) and (2) and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014(a) and all other powers enabling them to do so.

In accordance with section 76(3) of that Act, the Scottish Ministers have consulted the Lord President and, to the extent they considered appropriate, persons having an interest in the operation and business of the Scottish Tribunals.

In accordance with paragraph 4(3) of schedule 9 of that Act, the Scottish Ministers have consulted the President of Tribunals and such other persons as they considered appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022 and the Rules contained in schedule 1 may be cited as the Upper Tribunal for Scotland Local Taxation Rules of Procedure 2022.

(2) These Regulations come into force on 1 April 2023.

Disapplication of the Upper Tribunal for Scotland Rules 2016

2. The Upper Tribunal for Scotland Rules of Procedure 2016(b) do not apply to proceedings before the Upper Tribunal when the Upper Tribunal is exercising functions under section 1(3A) or (3BA) of the Lands Tribunal Act 1949(c) (“the 1949 Act”).

(a) 2014 asp 10.

(b) The Rules are contained in schedule 1 of S.S.I. 2016/232. The Rules were amended by S.S.I. 2016/333.

(c) 1949 c. 42. Relevantly amended by the Rating and Valuation (Amendment) (Scotland) Act 1984 (c. 31), section 12(1), and the Local Government and Housing Act 1989 (c. 42), section 145 and schedule 6, paragraph 1.

Application of Rules in schedule 1

3. The Rules in schedule 1 of these Regulations apply to all proceedings before the Upper Tribunal when exercising functions under section 1(3A) or (3BA) of the 1949 Act.

Application of fees in schedule 2

4. The fees specified in schedule 2—
- (a) apply to the proceedings before the Upper Tribunal specified in regulation 3,
 - (b) are payable to the Upper Tribunal in respect of the matters specified in that schedule.

Form of appeal referral: schedule 3

5. Schedule 3 sets out the form of notice of the referral of an appeal from the First-tier Tribunal to the Upper Tribunal under section 1(3A) of the 1949 Act.

Revocation

6. The following provisions are revoked—
- (a) Part 4 (references under section 1(3A) of the Lands Tribunal Act 1949) of the Lands Tribunal for Scotland Rules 2003(a),
 - (b) Items 3 and 4 of the schedule of the Lands Tribunal for Scotland (Amendment) (Fees) Rules 1996(b).

St Andrew's House,
Edinburgh
8th December 2022

ELENA WHITHAM
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2003/452.
(b) S.I. 1996/519.

SCHEDULE 1

Regulation 3

The Upper Tribunal for Scotland Local Taxation Rules of Procedure 2022

CONTENTS

PART 1

Interpretation

- | | | |
|----|----------------|---|
| 1. | Interpretation | 5 |
|----|----------------|---|

PART 2

Role of the Upper Tribunal

- | | | |
|----|--|---|
| 2. | Purpose of the Upper Tribunal and overriding objective | 6 |
|----|--|---|

PART 3

General Powers and Provisions

- | | | |
|-----|--|----|
| 3. | Making of references | 6 |
| 4. | Notice of appeal against a decision of the First-tier Tribunal | 7 |
| 5. | Confirmation of receipt of appeal | 7 |
| 6. | Determination declined | 7 |
| 7. | Delegation to staff | 7 |
| 8. | Case management | 7 |
| 9. | Procedure for applying for and giving orders | 8 |
| 10. | Failure to comply with rules etc. | 8 |
| 11. | Dismissal of a party's case | 9 |
| 12. | Addition, substitution and removal of parties | 9 |
| 13. | Expenses | 9 |
| 14. | Fees | 10 |
| 15. | Representation | 10 |
| 16. | Supporters | 10 |
| 17. | Administration of Oaths | 11 |
| 18. | Calculating time | 11 |
| 19. | Sending and delivery of documents | 11 |
| 20. | Evidence and submissions | 12 |
| 21. | Citation of witnesses and orders to provide further particulars, answer questions or produce documents | 12 |
| 22. | Withdrawal of Party | 13 |
| 23. | Chairing member | 14 |
| 24. | Transitional and saving provisions | 14 |

PART 4

Hearings

- | | | |
|-----|------------------------------------|----|
| 25. | Decision with or without a hearing | 14 |
| 26. | Hearings of the Tribunal | 14 |

27.	Entitlement to attend a hearing	14
28.	Hearings in a party's absence	15

PART 5
Decisions

29.	Decision of the Upper Tribunal	15
30.	Enforcement of decisions	15
31.	Reviews	15

PART 6
Appealing Decisions of the Upper Tribunal

32.	Appeal	16
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PART 1

Interpretation

Interpretation

1.—(1) In these Rules—

“the 1949 Act” means the Lands Tribunal Act 1949**(a)**,

“the 2014 Act” means the Tribunals (Scotland) Act 2014**(b)**,

“Appeal Appendix” means all the documents and authorities to be relied on for the purpose of the appeal along with an inventory of those documents and authorities,

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

“appellant” means—

- (a) a person who makes an appeal to the Upper Tribunal,
- (b) a person who has had an application to the First-tier Tribunal referred to the Upper Tribunal, or
- (c) a person substituted as an appellant under rule 12 (addition, substitution and removal of parties),

“document” means anything in which information is recorded in any form,

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000**(c)**,

“excluded decision” means a decision falling under section 51 of the 2014 Act,

“the First-tier Tribunal” means the First-tier Tribunal for Scotland Local Taxation Chamber,

“the First-tier Tribunal Rules” means the rules of procedure of the First-tier Tribunal**(d)**,

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication,

“party” means a person who is (or was at the time that the Upper Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the Upper Tribunal,

“practice direction” means a practice direction issued in terms of section 74 of the 2014 Act,

“the President” means the President of Tribunals,

“proceedings” includes, unless indicated otherwise, a part of the proceedings,

“representative” means a lay representative or a legal representative,

“respondent” means—

- (a) in an appeal against a decision of the First-tier Tribunal not to refer to the Upper Tribunal any appeal or complaint made to the committee, the First-tier Tribunal and any person other than the appellant who was a party before the First-tier Tribunal,
- (b) in proceedings referred to the Upper Tribunal from the First-tier Tribunal, a person who was a respondent in the proceedings in the First-tier Tribunal, or
- (c) in any case, a person substituted or added as a respondent under rule 12 (addition, substitution and removal of parties),

(a) 1949 c. 42.

(b) 2014 asp 10.

(c) 2000 c. 7; section 15(1) was amended by the Communications Act 2003 (c. 21), schedule 17, paragraph 158.

(d) Set out in the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022, S.S.I. 2022/364.

“the Upper Tribunal” means the Upper Tribunal for Scotland when exercising functions under section 1(3A) or (3BA) of the 1949 Act, and

“witness statement” means a written statement of a witness ordered by the Upper Tribunal to stand for the evidence-in-chief of the witness.

(2) For the purposes of these Rules, where information is sent—

- (a) via the postal service to the last known address held for an individual, or
- (b) by email to the last known email address held for the individual,

the individual is presumed to have received the information 48 hours after it is sent, unless the contrary is shown.

PART 2

Role of the Upper Tribunal

Purpose of the Upper Tribunal and overriding objective

2.—(1) The Upper Tribunal hears and decides appeals that have been referred to it from the First-tier Tribunal, and appeals against a decision of the First-tier Tribunal not to refer an appeal to the Upper Tribunal.

(2) The overriding objective of these Rules is to secure that proceedings before the Upper Tribunal to which the Rules apply are handled fairly and justly.

(3) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are transparent, proportionate to the importance of the case, the complexity of the issues, the anticipated expenses and the resources of the parties,
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings,
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings and are treated with dignity and respect,
- (d) using any special expertise of the Upper Tribunal effectively, and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(4) The Upper Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules, or
- (b) interprets any rule or practice direction.

(5) Parties must, insofar as reasonably possible—

- (a) help the Upper Tribunal to further the overriding objective, and
- (b) co-operate with the Upper Tribunal generally.

PART 3

General Powers and Provisions

Making of references

3. An appeal may be referred to the Upper Tribunal under section 1(3A) of the 1949 Act by the First-Tier Tribunal sending to the Upper Tribunal a notice of referral together with a copy of the appeal lodged in accordance with rule 26 (notice of appeal) of the First-tier Tribunal Rules and copies of any application for referral and written representations made in accordance with rule 29 (application for referral to the Upper Tribunal) of those Rules.

Notice of appeal against a decision of the First-tier Tribunal

4.—(1) A party to an appeal to the First-tier Tribunal may lodge with the Upper Tribunal a notice of appeal against a decision of the First-tier Tribunal not to refer an appeal made to it to the Upper Tribunal.

(2) A notice of appeal under this rule must—

- (a) identify that the appeal is against a decision of the First-tier Tribunal under section 1(3BA) of the 1949 Act, and
- (b) identify the decision of the First-tier Tribunal to which it relates.

(3) The party appealing under this rule must provide with the notice of appeal a copy of—

- (a) the notice of appeal made to the First-tier Tribunal in accordance with rule 26 of the First-tier Tribunal Rules, and
- (b) the written decision of the First-tier Tribunal not to refer that appeal to the Upper Tribunal, provided in accordance with rule 31 of the First-tier Tribunal Rules.

Confirmation of receipt of appeal

5. On receipt of a reference in accordance with rule 3 (making of references) or a notice of appeal in accordance with rule 4 (notice of appeal against a decision of the First-tier Tribunal), a copy of the reference or notice must within 14 days be sent by the Upper Tribunal to each of the other parties to the proceedings and to such other persons whom it considers should receive a copy, setting a date by which representations to it as respects the notice or reference may be made.

Determination declined

6. If the Upper Tribunal declines to proceed to determine any appeal under section 1(3B) of the 1949 Act, it must give notice of its decision with reasons to all parties having an interest in the appeal and must refer the matter back to the First-tier Tribunal.

Delegation to staff

7.—(1) Staff of the Scottish Courts and Tribunals Service may, with the approval of the President, carry out functions of a judicial nature permitted or required to be undertaken by the Upper Tribunal, provided that they are of a preliminary or an incidental nature.

(2) The approval referred to in paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Where the Upper Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may, within the period of 14 days beginning with the day on which the party is presumed to have received the notice, make a written application to the Upper Tribunal for that decision to be considered afresh by a member of the Upper Tribunal.

Case management

8.—(1) Subject to the provisions of the 2014 Act, these Rules and any practice direction given by the President the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give an order in relation to the conduct of proceedings before it 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 Upper Tribunal may—

- (a) extend or shorten the time for complying with any rule or order, notwithstanding that that time might have expired,
- (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 Upper 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 Upper 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 issue,
- (h) decide the form of any hearing,
- (i) adjourn or postpone a hearing,
- (j) require a party to produce or lodge documents including but not confined to a note of argument and the Appeal Appendix,
- (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 Upper Tribunal no longer has jurisdiction in relation to the proceedings, or
 - (ii) the Upper 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 an appeal of that decision,
- (n) in an appeal against the decision of the First-tier Tribunal, suspend the effect of that decision pending the determination of any permission to appeal or any appeal,
- (o) require the First-tier Tribunal to provide reasons for the decision, or other information or documents in relation to the decision or any proceedings before the First-tier Tribunal.

Procedure for applying for and giving orders

9.—(1) The Upper 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 Upper 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 Upper Tribunal must afford parties an opportunity to make representations to it concerning whether the order should be imposed and the terms of the order.

(5) The Upper Tribunal must send written notice of any order to each party to the case.

Failure to comply with rules etc.

10.—(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 Upper 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 11 (dismissal of a party's case).

Dismissal of a party's case

11.—(1) The Upper Tribunal must dismiss the whole or a part of the proceedings if the Upper 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 8(3)(1) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(2) The Upper 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,
- (b) the appellant has failed to co-operate with the Upper Tribunal to such an extent that the Upper Tribunal considers that it cannot deal with the proceedings fairly, or
- (c) the Upper Tribunal considers there is no reasonable prospect of the appellant's case, or any part of it, succeeding.

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

(4) The Upper Tribunal must notify each party in writing that dismissal has taken place.

Addition, substitution and removal of parties

12.—(1) The Upper Tribunal may give 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) A person who is not a party may make a written application to the Upper Tribunal to be added or substituted as a party under this rule.

(3) The Upper Tribunal may, on receipt of an application from a person who appears to it to have an interest in any proceedings, give an order adding or as the case may be substituting that person as a party to those proceedings.

(4) If the Upper Tribunal gives an order under paragraph (1) or (3) it may give such consequential orders as it considers appropriate.

(5) If the Upper 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 Upper Tribunal.

Expenses

13.—(1) Except as provided for in paragraph (2), the Upper Tribunal may not order payment of expenses.

(2) Notwithstanding paragraph (1) and without prejudice to that paragraph, the Upper 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.

Fees

14.—(1) The Upper Tribunal may waive the whole or part of the fees payable by a party where it considers that the financial circumstances of the party are such that undue hardship would be caused by payment of the said fees.

(2) Hearing fees, unless the Upper Tribunal otherwise directs, are payable by the party by whom the proceedings were instituted (without prejudice to any right to recover the amount of the fee from any other party by virtue of any order as to expenses).

Representation

15.—(1) In any proceedings before the Tribunal any party to the proceedings may appear and may be heard in person or be represented by counsel or a solicitor or, with the leave of the Tribunal, by any other person.

(2) Where a party will be represented in any proceedings by a representative, the details of that representative must be communicated to the Upper Tribunal prior to any hearing.

(3) A party may show any document or communicate any information about the proceedings to that party's representative 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 representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(5) For the avoidance of doubt, a party may be represented at a hearing by a person other than a person whose details have been communicated to the Upper Tribunal under paragraph (2), provided any change of representative is in accordance with paragraph (1) and is communicated to the Upper Tribunal in accordance with paragraph (2).

(6) Anything permitted or required to be done by a party under these Rules, a practice direction or an order may be done by a representative, including a lay representative, except signing of an affidavit or a precognition.

(7) The Upper 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 making such an order would be in the interests of the efficient administration of justice.

Supporters

16.—(1) A party who is an individual may be accompanied by another person, who is not a representative, 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.

(5) A supporter may not represent the party.

- (6) The Upper 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 making such an order would be in the interests of the efficient administration of justice.

Administration of Oaths

17. The Upper Tribunal may administer oaths to witnesses in due form.

Calculating time

18.—(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 by 5 pm 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, a Sunday, or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(a).

Sending and delivery of documents

19.—(1) Any document to be provided to the Upper Tribunal or any other person under these Rules must be—

- (a) sent by—
 - (i) recorded delivery service or registered post,
 - (ii) document exchange, or
- (b) delivered to the address of the Upper Tribunal, where applicable, or
- (c) sent or delivered by such other method as the Upper Tribunal may permit or direct.

(2) Any document to be provided under these Rules is to be deemed to have been duly given if sent in accordance with paragraph (1) to the recipient’s ordinary address or to the address specified by that person for intimation under these Rules.

(3) The Upper Tribunal, on being satisfied that all practicable steps have been taken to provide a document to a person in accordance with paragraph (1), may dispense with intimation upon such person or may take such other steps as it thinks fit.

(4) Subject to paragraph (5), if a party provides an email address or other details for the electronic communication of documents to them, that party must accept delivery of documents by that method.

(5) If a party informs the Upper Tribunal and all other parties that a particular form of communication, other than post, should not be used to provide documents to that party, that form of communication must not be so used.

(6) If the Upper Tribunal or a party sends a document to a party or the Upper Tribunal by email or any other electronic means of communication, the recipient may request that the sender provides a hard copy of the document to the recipient, and the recipient must make any such a request as soon as reasonably practicable after receiving the document electronically.

(7) The Upper 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 written notification to the contrary.

(8) In this rule, “document” includes a notice, a practice direction and an order.

(a) 1971 c. 80.

Evidence and submissions

20.—(1) Subject to paragraph (2), evidence before the Upper Tribunal may be given orally or by written submission.

(2) Without restriction on the general powers in rule 8(1) and (2) (case management powers), the Upper Tribunal may give orders as to—

- (a) issues on which parties may lead fresh evidence (see paragraph (5)) or make submissions,
- (b) the nature of any such evidence,
- (c) whether the parties are permitted 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.

(3) The Upper 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.

(4) The Upper Tribunal may consent to a witness giving, or require any witness to give, evidence on oath or affirmation, and may administer an oath or affirmation for that purpose.

(5) Fresh evidence may only be led in an appeal if the Upper Tribunal is satisfied—

- (a) that the evidence—
 - (i) could not have been obtained with reasonable diligence at the First-tier Tribunal stage,
 - (ii) is relevant and will probably have an important influence on the hearing, and
 - (iii) is apparently credible, or
- (b) that the interests of justice justify the evidence being led.

Citation of witnesses and orders to provide further particulars, answer questions or produce documents

21.—(1) On the application of a party or on its own initiative, the Upper Tribunal may—

- (a) require a party to provide in writing further particulars of that party's case,
- (b) order a record to be made up,
- (c) by citation require any person to attend as a witness at a hearing,
- (d) 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) The Upper Tribunal may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

(3) A citation under paragraph (1)(c)—

- (a) must—
 - (i) give the person required to attend 14 days' notice prior to the day of the hearing or such other longer period as the Upper Tribunal may order,

- (ii) where the person is not a party, state if appropriate how expenses of attendance necessarily incurred may be recovered,
 - (iii) state that the person on whom the requirement is imposed may apply to the Upper Tribunal to vary or set aside the citation, if the person did not have an opportunity to object to it before it was made or issued, and
 - (iv) state the consequences of failure to comply with the citation, and
- (b) may not require a person to attend at any place which is more than 10 miles from the place where that person resides unless the necessary expenses are paid or tendered to that person by the party at whose instance attendance has been required or by the Upper Tribunal as the case may be.
- (4) An order under paragraph (1)(d) must—
- (a) state that the person on whom the requirement is imposed may apply to the Upper Tribunal to vary or set aside the order, if the person did not have an opportunity to object to it before it was made, and
 - (b) state the consequences of failure to comply with the order.
- (5) The Upper Tribunal may also by notice in writing order any party who intends, at a hearing—
- (a) to use or put in evidence any documents, or
 - (b) to rely for valuation purposes on properties comparable to those to which the proceedings relate

to produce the documents, or, as the case may be, to supply, in such form as may be required by the Upper Tribunal, a list of the properties, on such date before the hearing as the Upper Tribunal may specify.

(6) The Upper Tribunal may not require any person to produce any document or to answer any question which that person would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the proceedings were proceedings in a court of law in Scotland.

(7) A person making an application referred to in sub-paragraph (3)(a)(iii) must do so as soon as reasonably practicable after receiving notice of the citation or order.

(8) Any notice given under paragraph (3) or order given under paragraph (1)(d) must contain a reference to the provisions of regulation 2 of the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016^(a) (offences in relation to proceedings before the Scottish Tribunals).

Withdrawal of Party

22.—(1) The Upper Tribunal may, on such terms as to expenses or otherwise as it thinks fit, consent to any party withdrawing from the proceedings.

(2) Subject to paragraph (3), a party may give notice to the Upper Tribunal of the withdrawal of the party's case, or any part of that case—

- (a) by sending or delivering to the Upper Tribunal a notice of withdrawal, or
- (b) orally at a hearing.

(3) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal.

(4) Unless satisfied that a party has already been notified, the Upper Tribunal must notify each party in writing that a withdrawal has taken effect under this rule.

(a) S.S.I. 2016/342.

Chairing member

23. Where a matter is to be decided by two or more members of the Upper Tribunal, the President must determine the chairing member.

Transitional and saving provisions

24. These procedures apply in accordance with the transitional and saving provisions in schedule 1 of the Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023(a).

PART 4

Hearings

Decision with or without a hearing

25.—(1) Subject to paragraph (2), the Upper Tribunal may make any decision without a hearing.

(2) The Upper Tribunal must have regard to any view expressed by any party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.

Hearings of the Tribunal

26.—(1) Hearings of the Upper Tribunal are to be on such dates and at such times and places as the President may from time to time determine.

(2) The Upper Tribunal must—

- (a) give each party entitled to attend a hearing reasonable notice in writing of the time and place of the hearing (including any adjourned or postponed hearing) and any change to the time and place of the hearing, and
- (b) give notice by such method as it may determine (whether by way of advertisement or otherwise) to any other persons whom it considers have an interest in the proceedings, of the date, time and place of the hearing.

(3) The period of notice under paragraph (2) must be at least 21 days prior to the day of the hearing except that the Upper Tribunal may give shorter notice—

- (a) with the consent of the parties, or
- (b) in urgent or exceptional circumstances.

(4) Hearings of the Upper Tribunal must be held in public unless the Upper Tribunal, on its own initiative or following an application by an appellant, decides that it is necessary that a hearing be held in private to ensure a fair hearing.

(5) Where, in accordance with paragraph (4), a hearing is to be held in private, the Upper Tribunal may, with the agreement of parties, permit any other person to attend.

Entitlement to attend a hearing

27. Each party is entitled to participate at a hearing together with any representatives and supporters permitted by rules 15 (representation) and 16 (supporters).

(a) S.S.I. 2023/XXX.

Hearings in a party's absence

28.—(1) If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

- (a) is satisfied that the party has been notified of the hearing in accordance with rule 26 (hearings of the Tribunal) or that reasonable steps have been taken to notify the party of the hearing, and
- (b) considers that it is in the interests of justice to proceed with the hearing.

(2) Where a hearing has proceeded in a party's absence in accordance with paragraph (1), the Upper Tribunal, on an application made by that party within 7 days of receiving notice of the decision in that hearing, may if it is satisfied that there was sufficient reason for such absence, set aside its decision on such terms as to expenses or otherwise as it thinks fit.

PART 5

Decisions

Decision of the Upper Tribunal

29.—(1) The Upper Tribunal may give a decision orally at a hearing.

(2) The Upper Tribunal must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings or on a preliminary issue dealt with following an order under rule 8(3)(f) (dealing with an issue as a preliminary issue)—

- (a) a decision notice in accordance with this rule stating the Upper Tribunal's decision,
- (b) a statement of the Upper Tribunal's reasons for its decision, and
- (c) notification of any rights of appeal against the decision and the time and manner in which such rights of appeal may be exercised.

(3) Where an amount awarded or value determined by the Upper Tribunal is dependent upon the decision of the Upper Tribunal on a question of law which is in dispute in the proceedings, the Upper Tribunal must ascertain, and state in its decision the alternative amount or value (if any) which it would have awarded or determined if it had decided otherwise on the question of law.

(4) The Upper Tribunal may at any time correct any clerical mistake or other accidental slip or omission if, before making the correction, it has given notice of its intention to make it to all those who were parties to the proceedings.

(5) When a correction is made under paragraph (4), or for the purpose of giving effect to any decision of the Lands Valuation Appeal Court in a case stated for their opinion, the Upper Tribunal must give notice that it has been made to all the parties to the proceedings by sending to each of them a copy of the decision as corrected.

(6) The Upper Tribunal may publish any of its decisions if it considers it in the public interest so to do, with the manner of publication also at the discretion of the Upper Tribunal.

Enforcement of decisions

30. An order for the payment of a sum payable in pursuance of a decision of the Upper Tribunal, or a copy of such an order certified by the Upper Tribunal, may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the Court of Session.

Reviews

31. Decisions of the Upper Tribunal are excluded decisions and accordingly may not be reviewed under section 43 of that Act.

PART 6

Appealing Decisions of the Upper Tribunal

Appeal

32.—(1) Decisions of the Upper Tribunal are excluded decisions and accordingly may not be appealed under section 48 of that Act.

(2) A party may appeal a decision of the Upper Tribunal to the Lands Valuation Appeal Court in accordance with the Valuation of Lands (Scotland) Amendment Act 1879^(a).

^(a) 1879 c. 42.

SCHEDULE 2

Regulation 4

<i>Item</i>	<i>Fee payable</i>
Applications etc.	
1. On an appeal or complaint under section 1(3A) of the Lands Tribunal Act 1949 (valuation for rating)–	
(a) where the net annual value does not exceed £10,000	£100
(b) where the net annual value exceeds £10,000 but not £50,000	£150
(c) where the net annual value exceeds £50,000 but not £100,000	£300
(d) where the net annual value exceeds £100,000	£500
2. On an appeal under section 1(3BA) of the Lands Tribunal Act 1949 (non-referral of valuation appeal or complaint)	£78
Hearing Fees, etc.	
3. On the hearing of a matter referred under section 1(3A) of the Lands Tribunal Act 1949 (valuation for rating)–	
(a) Where the amount is determined in terms of a lump sum–	£50 in respect of every £5,000 or part of £5,000 of such lump sum but not less than £155 for each day on which the Tribunal sits and not exceeding in any case £5,000
(b) Where the amount is determined in terms of rent or other annual payment–	£50 in respect of every £500 or part of £500 of such rent or other annual payment but not less than £155 for each day on which the Tribunal sits and not exceeding in any case £5,000
(c) Where there is a settlement as to amount, for each day on which the Tribunal sits	£155
4. On the hearing of any other application or appeal or reference including the hearing of preliminary pleas-in-law or legal debates in which no fee is payable by reference to an amount determined	£155 for each day on which the Tribunal sits

Miscellaneous fees

5. On certifying a copy of an order or determination of the Tribunal	£ 7.50
6. For each sheet of a copy of all or part of any document	£ 1.20
7. On a case for the decision of the Lands Valuation Appeal Court – an application for appeal by way of stated case (to include drafting of case and any necessary copies)	£ 55
8. On an application for the cancellation of a hearing	£ 75
9. On an application during the course of proceedings which is not specifically referred to in the above table of fees (eg an application for (i) an extension to the period in which answers or adjustments are required to be lodged, or (ii) the continuation or sisting of an application)	£ 35

SCHEDULE 3

Regulation 5

The First-tier Tribunal sitting at (*place*) on (*date*) in accordance with the provisions of section 1(3A) of the Lands Tribunal Act 1949 and regulation 26 of the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2023 (“2023 Regulations”) refers for determination by the Upper Tribunal for Scotland the appeal or complaint of which particulars are set out below.

Particulars

1. Description of property to which this reference relates. (Here describe the lands and heritages to which the appeal or complaint relates with sufficient precision to enable them to be identified, including a reference to the relevant entry in the valuation roll.)

2. Details of parties to which this reference relates.

(a) (Give name and address of the appellant/complainant.)

(b) (Give name and address of the assessor.)

3. A copy of the appeal or complaint made in accordance with regulation 23 of the 2023 Regulations and copies of the application and written representations made in accordance with regulation 26 of the 2023 Regulations are attached.

Signed

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make the Upper Tribunal for Scotland Local Taxation Rules of Procedure 2022 regulating the practice and procedure to be followed in the Upper Tribunal for Scotland in relation to any appeal or complaint under the Valuation Acts referred to it by the First-tier Tribunal, or when hearing an appeal against a decision by the First-tier Tribunal not to make such a referral.

These Rules will apply until such time as the powers of the Scottish Civil Justice Council and the Court of Session to make Tribunal Rules (under paragraph 13(2) to (5) of schedule 9 of the Tribunals (Scotland) Act 2014) come into force and are exercised.

The Upper Tribunal for Scotland, set up by section 1 of the Tribunals (Scotland) Act 2014, hears appeals from, and referrals to it by, the First-tier Tribunal for Scotland, which is divided into chambers based on the subject-matter of the cases before it. Regulation 3 of the Upper Tribunal for Scotland (Transfer of Valuation for Rating Appeal Functions of the Lands Tribunal for Scotland) Regulations 2023 transferred the valuation appeals functions of the Lands Tribunal for Scotland to the Upper Tribunal.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrew's House, Edinburgh EH1 3DG, and online at www.legislation.gov.uk.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the King's Printer for Scotland.

£6.90

<http://www.legislation.gov.uk/id/ssi/2022/365>

ISBN 978-0-11-105597-7



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