

SCHEDULE 1

The Upper Tribunal for Scotland Local Taxation Rules of Procedure 2022

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.

Commencement Information

I1 Sch. 1 rule 3 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

I2 Sch. 1 rule 4 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Changes to legislation: There are currently no known outstanding effects for the The Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022, PART 3. (See end of Document for details)

Commencement Information

I3 Sch. 1 rule 5 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

I4 Sch. 1 rule 6 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

I5 Sch. 1 rule 7 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

16 Sch. 1 rule 8 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

17 Sch. 1 rule 9 in force at 1.4.2023, see [reg. 1\(2\)](#)

Changes to legislation: There are currently no known outstanding effects for the The Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022, PART 3. (See end of Document for details)

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).

Commencement Information

18 [Sch. 1 rule 10](#) in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

19 [Sch. 1 rule 11](#) in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

I10 Sch. 1 rule 12 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

I11 Sch. 1 rule 13 in force at 1.4.2023, see [reg. 1\(2\)](#)

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).

Commencement Information

I12 Sch. 1 rule 14 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Changes to legislation: There are currently no known outstanding effects for the The Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022, PART 3. (See end of Document for details)

(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.

Commencement Information

I13 Sch. 1 rule 15 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

I14 Sch. 1 rule 16 in force at 1.4.2023, see [reg. 1\(2\)](#)

Administration of Oaths

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

Commencement Information

I15 Sch. 1 rule 17 in force at 1.4.2023, see [reg. 1\(2\)](#)

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(1).

Commencement Information

I16 Sch. 1 rule 18 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

(1) 1971 c. 80.

(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.

Commencement Information

I17 Sch. 1 rule 19 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Commencement Information

118 Sch. 1 rule 20 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

Changes to legislation: There are currently no known outstanding effects for the The Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022, PART 3. (See end of Document for details)

(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⁽²⁾ (offences in relation to proceedings before the Scottish Tribunals).

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Commencement Information

I19 Sch. 1 rule 21 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

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Commencement Information

I20 Sch. 1 rule 22 in force at 1.4.2023, see [reg. 1\(2\)](#)

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.

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Commencement Information

I21 Sch. 1 rule 23 in force at 1.4.2023, see [reg. 1\(2\)](#)

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⁽³⁾.

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Commencement Information

I22 Sch. 1 rule 24 in force at 1.4.2023, see [reg. 1\(2\)](#)

(2) S.S.I. 2016/342.
(3) S.S.I. 2023/XXX.

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Changes to legislation:

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