
STATUTORY INSTRUMENTS

1994 No. 1812

INCOME TAX

**The General Commissioners (Jurisdiction
and Procedure) Regulations 1994**

<i>Made</i>	- - - -	<i>6th July 1994</i>
<i>Laid before Parliament</i>		<i>14th July 1994</i>
<i>Coming into force</i>	- -	<i>1st September 1994</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 46A and 56B of the Taxes Management Act 1970⁽¹⁾, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992⁽²⁾ and with the consent of the Lord Advocate, hereby makes the following Regulations:

PART I
INTRODUCTORY

Citation, commencement and application

1.—(1) These Regulations may be cited as the General Commissioners (Jurisdiction and Procedure) Regulations 1994 and shall come into force on 1st September 1994.

(2) These Regulations do not apply in relation to—

- (a) any proceedings in respect of which notice of the place, date and time of the hearing was given or, in the case of more than one such notice, first given by the Clerk prior to 1st September 1994, and in respect of which an election is made by any party to the proceedings, by notice served on the Clerk, that these Regulations shall not apply, or
- (b) any proceedings under section 100C of the Taxes Management Act 1970⁽³⁾ in respect of which a summons was issued prior to 1st September 1994 by the General Commissioners to the defendant (or, in Scotland, the defender) to appear before them at a time and place stated in the summons.

(1) 1970 c. 9; section 46A was inserted by paragraph 3, and section 56B by paragraph 4, of Schedule 16 to the Finance (No. 2) Act 1992 (c. 48). Section 56B was amended by section 254 of the Finance Act 1994 (c. 9).

(2) 1992 c. 53.

(3) 1970 c. 9; section 100C together with sections 100, 100A, 100B and 100D was substituted for section 100 by section 167 of the Finance Act 1989 (c. 26).

(3) Where these Regulations apply in relation to any proceedings in respect of which notice of the place, date and time of the hearing was given or, as the case may be, first given by the Clerk prior to 1st September 1994, anything done in relation to those proceedings prior to that date which, if the proceedings had been brought before the General Commissioners on or after that date, could have been done pursuant to these Regulations, shall have effect as if done pursuant to these Regulations.

(4) An election under paragraph (2)(a) above shall be made prior to the time of commencement of the hearing of the proceedings in question or, in the case of a hearing which commenced before 1st September 1994 but which was adjourned, prior to the time of commencement of the first continuation of the hearing on or after that date, and shall be irrevocable.

Interpretation

2. In these Regulations unless the context otherwise requires—

“the Board” means the Commissioners of Inland Revenue;

“the Clerk”, in relation to any proceedings, means the Clerk to the General Commissioners;

“division” shall be construed in accordance with section 2(1) of the Management Act⁽⁴⁾;

“final determination” means the decision finally determining any proceedings before a Tribunal;

“General Commissioners” shall be construed in accordance with section 2(1) of the Management Act, and “the General Commissioners”, in relation to any proceedings, means the General Commissioners for a division before whom the proceedings are brought (and references to a General Commissioner are to be read accordingly);

“inspector” means an inspector of taxes;

“the Management Act” means the Taxes Management Act 1970⁽⁵⁾;

“party” means a party to any proceedings, and for the purposes of these Regulations—

(a) where the proceedings relate to an assessment, decision or determination made by the Board, the Board and any inspector or other officer of the Board for the time being concerned with the proceedings shall together constitute a party to those proceedings;

(b) where the proceedings relate to an assessment, decision or determination made by an inspector or other officer of the Board, that person and any other inspector or other officer of the Board for the time being concerned with the proceedings shall together constitute a party to those proceedings;

and references to “the Revenue” are references to a party within paragraph (a) or, as the case may be, paragraph (b) above

“proceedings” means—

(a) any appeal to the General Commissioners under the Taxes Acts;

(b) any proceedings before the General Commissioners which under the Taxes Acts are to be heard and determined in the same way as such an appeal;

(c) any proceedings before the General Commissioners which relate to a penalty and are not within paragraph (a) or paragraph (b) above;

“proceedings in Northern Ireland” means any proceedings (as defined in this regulation) which fall within the meaning of that expression as defined in section 58(3) of the Management Act⁽⁶⁾;

⁽⁴⁾ Section 2(1) was amended by section 134(1) of the Finance Act 1988 (c. 39).

⁽⁵⁾ 1970 c. 9.

⁽⁶⁾ Section 58(3) was substituted by section 135(2) of the Finance Act 1988.

“proceedings in Scotland” means any proceedings (as defined in this regulation) which fall to be determined by reference to the law of Scotland;

“Special Commissioners” shall be construed in accordance with section 4(1) of the Management Act(7);

“the Taxes Acts” has the meaning given by section 118(1) of the Management Act(8);

“Tribunal”, in relation to any proceedings, means, subject to regulation 11(3), two or more, but not more than five, General Commissioners for a division before whom the proceedings are brought.

PART II

PREPARATION FOR A HEARING

Listing and notice of hearing

3.—(1) Except in relation to proceedings under section 100C of the Management Act, any party to proceedings which are to be heard by the General Commissioners may serve notice on the Clerk that he wishes a date for the hearing to be fixed.

(2) On receipt of a notice under paragraph (1) above the Clerk shall send notice to each party of the place, date and time of the hearing.

(3) Unless the parties otherwise agree or a Tribunal otherwise directs, the date of the hearing specified in a notice under paragraph (2) above shall be not earlier than twenty eight days after the date on which the notice is sent to the parties.

Summoning of witnesses

4.—(1) Where a party to any proceedings requires the attendance of a person at the hearing of those proceedings to give evidence or to produce any document in his possession, custody or power relevant to the subject matter of the proceedings, a General Commissioner may, on the application of that party, issue a summons (in this regulation referred to as a “witness summons”) requiring the attendance of that person at the hearing, or the production of the document, wherever that person may be in the United Kingdom.

(2) A witness summons issued under paragraph (1) above shall state the name and address of, or otherwise describe, the person to be served and shall be signed by the General Commissioner issuing it, and it shall be the responsibility of the party on whose application the summons was issued to serve it on that person.

(3) Service of a witness summons under this regulation shall be effected—

- (a) in the case of an individual, by leaving a copy of the summons with him;
- (b) in the case of a body corporate registered in the United Kingdom, by leaving a copy of the summons with the secretary or clerk of the body corporate;
- (c) in the case of a foreign body corporate with a place of business in the United Kingdom, by leaving a copy of the summons with a person authorised to accept service of process on the body corporate.

(7) Section 4 was substituted by paragraph 1 of Schedule 22 to the Finance Act 1984 (c. 43) and amended by paragraph 30 of Schedule 10 to the Courts and Legal Services Act 1990 (c. 41).

(8) The definition of “the Taxes Acts” in section 118(1) was amended by paragraph 32(d) of Schedule 8 to the Development Land Tax Act 1976 (c. 24), Schedule 31 to the Income and Corporation Taxes Act 1988 (c. 1), and paragraph 2(1) and (11) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12).

(4) A person who in obedience to a witness summons attends the hearing of any proceedings and gives evidence—

- (a) is a witness of the party on whose application the summons was issued, and
- (b) may not be cross-examined by that party without the leave of the Tribunal hearing the proceedings.

(5) Leave shall not be given by a Tribunal under paragraph (4)(b) above unless the Tribunal decides that the witness may be treated as a hostile witness.

(6) No person shall be required to attend in obedience to a witness summons unless it has been served on him at least seven days before the hearing or, if it has been served on him within that period, he has informed the Clerk that he accepts such service.

(7) No person shall be required to attend and give evidence or to produce any document in obedience to a witness summons unless the party serving the summons either—

- (a) pays or tenders to that person, at the time when the summons is served on him, a sum sufficient to cover his reasonable expenses of travelling to and from, and his attendance at, the hearing, or
- (b) has agreed with that person prior to service of the summons, to pay such a sum to him at a different time.

(8) No person shall be compelled in obedience to a witness summons to give any evidence or produce any document that he could not be compelled to give or produce in an action in a court of law in that part of the United Kingdom by reference to the law of which the proceedings are to be determined.

(9) No person who has been appointed as an auditor for the purposes of any enactment or who is a tax adviser within the meaning of section 20B(10) of the Management Act⁽⁹⁾ shall be compelled in obedience to a witness summons to produce any document if, having regard to section 20B(9) to (13) of that Act, he would not be obliged to deliver or make available that document in response to a notice under section 20(3) or (8A)⁽⁹⁾ of that Act.

(10) Where, in the case of any document, a person could under section 20B(14)⁽⁹⁾ of that Act comply with such a notice by delivering a copy of parts of the document and making those parts available for inspection, he shall not be compelled in obedience to a witness summons to do more at the hearing than—

- (a) produce a photographic or other facsimile copy of those parts of the document, and
- (b) make those parts of the document available for inspection by the Tribunal.

(11) On the application, by notice served on the Clerk, of a person on whom a witness summons has been served, a General Commissioner may set aside the summons in whole or in part; and the party on whose application the summons was issued shall be entitled to be heard on such an application.

(12) Subject to paragraphs (6) to (11) above, if a person on whom a witness summons is served—

- (a) fails to attend in obedience to the summons, or

⁽⁹⁾ Sections 20 to 20D were substituted for section 20 by Schedule 6 to the Finance Act 1976 (c. 40), and subsections (9) to (14) of section 20B were substituted for subsection (9) of that section by section 144(7) of the Finance Act 1989. Subsection (3) of the substituted section 20 was amended by section 142(4) of the Finance Act 1989 and subsection (8A) was inserted by section 126(3) of the Finance Act 1988.

⁽⁹⁾ Sections 20 to 20D were substituted for section 20 by Schedule 6 to the Finance Act 1976 (c. 40), and subsections (9) to (14) of section 20B were substituted for subsection (9) of that section by section 144(7) of the Finance Act 1989. Subsection (3) of the substituted section 20 was amended by section 142(4) of the Finance Act 1989 and subsection (8A) was inserted by section 126(3) of the Finance Act 1988.

⁽⁹⁾ Sections 20 to 20D were substituted for section 20 by Schedule 6 to the Finance Act 1976 (c. 40), and subsections (9) to (14) of section 20B were substituted for subsection (9) of that section by section 144(7) of the Finance Act 1989. Subsection (3) of the substituted section 20 was amended by section 142(4) of the Finance Act 1989 and subsection (8A) was inserted by section 126(3) of the Finance Act 1988.

(b) attends, but refuses to be sworn or to affirm, or
(c) refuses to answer any lawful question, or
(d) refuses to produce any document which he has been required by the summons to produce, the Tribunal hearing the proceedings may summarily determine a penalty against him not exceeding £1,000.

(13) Any penalty determined by a Tribunal under paragraph (12) above shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

(14) This regulation shall apply to proceedings in Scotland—

- (a) with the omission of paragraphs (4) and (5) above;
- (b) with the substitution for references to issuing a summons and to a witness summons of references to issuing a citation and to a witness citation.

Agreement of documents

5. If a party agrees a document for the purposes of any proceedings he shall be deemed, subject to the terms of the agreement, to admit for the purposes of those proceedings—

- (a) that the document was written and signed or executed by the person by whom, and on the date on which, it purports to have been, and
- (b) if it purports to be a copy of another document, that it is a true copy of that document,

but, subject to any enactment or rule of law, in the absence of an express admission or agreement, he shall not be deemed to admit the truth of the contents of that document.

Proceedings to be heard together or in succession

6.—(1) Where two or more proceedings have been brought before, but have not yet been heard by, the General Commissioners for one or more divisions and it appears to two or more of the General Commissioners for one of those divisions—

- (a) that some common issue arises in both or all of them, or
- (b) that both or all of them are relevant to some common issue,

those Commissioners may, of their own motion or on an application by a party to any of those proceedings, direct that those proceedings be heard at the same time or consecutively and by the same Tribunal within their division.

(2) A direction shall not be given under paragraph (1) above except on notice sent to all the parties to the proceedings in question who shall be entitled to be heard before any direction is given.

(3) On the giving of a direction under paragraph (1) above, the Clerk to the General Commissioners by whom the direction is given shall send notice of the date and terms of the direction to all the parties to the proceedings and, except where all the proceedings have been brought before the General Commissioners for the same division, to the Clerk to the other division or, if more than one, each other division of General Commissioners concerned.

Joining of additional parties

7.—(1) If it appears to a Tribunal, whether on the application of a party or otherwise, that it is desirable that any person other than the Revenue be made a party to any proceedings, the Tribunal may order such person to be joined as a party in the proceedings and may give such directions for giving effect to, or in connection with, the order as it thinks fit.

(2) Where pursuant to an order under paragraph (1) above a person is joined as a party in any proceedings by reason of a question arising in those proceedings which may affect his liability to tax

or in which he otherwise has an interest, he shall not be entitled, unless all the other parties consent, to be present at the hearing of the proceedings except during such part of the hearing as relates to that question, and a Tribunal shall, if necessary, hear any such question separately from the rest of the proceedings.

(3) On the application of a person who has been joined as a party in the circumstances specified in paragraph (2) above, a Tribunal may, if it is satisfied that it would be to the convenience of the parties to do so, transfer the proceedings to the General Commissioners for the division in which the applicant ordinarily resided at the date of the application, or to the Special Commissioners.

Postponements and Adjournments

8.—(1) A Tribunal may postpone the hearing of any proceedings, and the Clerk shall send notice to the parties of the place, date and time of the postponed hearing.

(2) A Tribunal may from time to time adjourn the hearing of any proceedings and, subject to paragraph (3) below, the Clerk shall send notice to the parties of the place, date and time of the adjourned hearing.

(3) If the place, date and time of the adjourned hearing are announced before the adjournment in the presence of the parties, no notice need be sent by the Clerk under paragraph (2) above.

(4) When any hearing is adjourned in order that further information or evidence may be obtained, the Tribunal hearing the proceedings may give directions regarding the disclosure of such information or evidence to the parties prior to the resumption of the hearing.

Expert evidence

9.—(1) Unless a Tribunal otherwise directs, no expert evidence may be adduced by a party at the hearing of any proceedings unless—

- (a) he has agreed with the other party or parties that the substance of the evidence shall be disclosed in the form of a written report or opinion in advance of the hearing and not later than such date as is specified in the agreement, and the substance of the evidence has been so disclosed, or
- (b) where no such agreement has been reached or where the substance of the evidence has not been so disclosed, an application is made to a Tribunal under paragraph (2) below by the party seeking to adduce the evidence to determine whether a direction should be given under paragraph (3) below, and the party seeking to adduce the evidence complies with a direction given under that paragraph.

(2) An application under this paragraph—

- (a) shall be made not later than twenty one days after the date on which notice is sent by the Clerk under regulation 3(2) or, if the Tribunal so permits, at any later time prior to or in the course of the hearing, and
- (b) shall state whether the party is willing to disclose the substance of the evidence prior to its being given at the hearing and, if not, the reasons for his objection.

(3) On an application under paragraph (2) above, unless it considers that there are special reasons for not doing so, the tribunal shall direct that the substance of the evidence shall be disclosed in the form of a written report or opinion to such other parties and within such period as it may specify.

(4) This regulation shall not apply to proceedings in Scotland.

PART III

HEARING AND DETERMINATION OF PROCEEDINGS

Power of Tribunal to obtain information

10.—(1) A Tribunal hearing any proceedings may at any time before the final determination of those proceedings serve notice on any party, other than the Revenue, directing him within the time specified in the notice—

- (a) to deliver to it such particulars as it may require for the purpose of determining any of the issues in the proceedings, and
- (b) to make available for inspection by it, or by an officer of the Board, all such books, accounts or other documents in his possession or power as may be specified or described in the notice, being books, accounts or other documents which, in the opinion of the Tribunal, contain or may contain information relevant to the subject matter of the proceedings.

(2) Any officer of the Board may at all reasonable times inspect and take copies of, or extracts from, any particulars delivered under paragraph (1)(a) above, and the Tribunal or any officer of the Board may take copies of, or extracts from, any books, accounts or other documents made available for inspection under paragraph (1)(b) above.

(3) If any person fails to comply with a notice served under this regulation, the Tribunal may summarily determine a penalty against him not exceeding £300 and, if the failure continues after the determination of such penalty, a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty was determined (but excluding any day for which a further penalty has already been determined).

(4) Any penalty determined by the Tribunal under paragraph (3) above shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

Constitution and sittings of Tribunal

11.—(1) A Tribunal hearing any proceedings shall, where possible, comprise at least three General Commissioners but the validity of any proceedings before a Tribunal shall not be challenged where the Tribunal in question is comprised of two General Commissioners.

(2) The General Commissioners comprising a Tribunal shall decide which one of them shall preside at the hearing of proceedings before them.

(3) Proceedings before any Tribunal may be continued by any one or more of the General Commissioners comprising that Tribunal if all the parties give their consent.

Representation at hearing

12. At the hearing of any proceedings before a Tribunal—

- (a) a party other than the Revenue may be represented by any person whether or not legally qualified, except that if in a particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than one who is legally qualified or who has been admitted a member of an incorporated society of accountants, to represent a party at the hearing;
- (b) the Revenue may be represented by a barrister, advocate, solicitor or any officer of the Board.

Hearings to be in private

13.—(1) Subject to paragraphs (2) and (3) below, any proceedings before a Tribunal shall be heard in private.

(2) The following persons shall be entitled to be present at the hearing of any proceedings before a Tribunal and may remain present during the deliberations of the Tribunal but shall take no part in those deliberations—

- (a) the Clerk and any of the staff of the General Commissioners;
- (b) a member of the Council on Tribunals or the Scottish Committee of that Council in the capacity of member;
- (c) any of the Special Commissioners;
- (d) a member of the Judicial Studies Board or one of its committees in the capacity of member.

(3) A Tribunal, with the consent of the parties, may permit any other person to attend the hearing of any proceedings before it.

(4) For the purposes of paragraph (1) above, proceedings which are heard at the same time as other proceedings and by the same Tribunal pursuant to a direction under regulation 6(1) shall be taken to be heard in private.

Failure of parties to attend hearing

14.—(1) If a party fails to attend or to be represented at a hearing of which he has been duly notified, the Tribunal may—

- (a) unless it is satisfied that there is good and sufficient reason for such absence, hear and determine the proceedings in the absence of the party or his representative, or
- (b) postpone or adjourn the hearing.

(2) Before deciding to hear and determine any proceedings in the absence of a party or his representative, the Tribunal shall consider any representations in writing or otherwise submitted by or on behalf of that party in response to the notice of hearing and shall give any party present at the hearing an opportunity to be heard in regard to those representations.

Procedure and evidence at hearing

15.—(1) At the beginning of the hearing of any proceedings the Tribunal shall, except where it considers it unnecessary to do so, explain the order of proceeding which it proposes to adopt.

(2) The Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification and determination of the issues before it and generally to the just handling of the proceedings and, so far as appears to it appropriate, shall seek to avoid formality in its procedure.

(3) The parties shall be heard in such order as the Tribunal shall determine and shall be entitled—

- (a) to give evidence,
- (b) to call witnesses,
- (c) to question any witnesses including other parties who give evidence, and
- (d) to address the Tribunal both on the evidence and generally on the subject matter of the proceedings.

(4) In assessing the truth and weight of any evidence, the Tribunal may take account of its nature and source, and the manner in which it is given.

(5) Evidence before the Tribunal may be given orally or, if the Tribunal so directs, by affidavit or a statement made or recorded in a document, but at any stage of the hearing the Tribunal may, on the application of any party or of its own motion, require the personal attendance as a witness of—

- (a) the maker of an affidavit, or
- (b) the maker of such a statement, or
- (c) in the case of an oral statement recorded in a document, the person by whom the statement was so recorded.

(6) The Tribunal may receive evidence of any fact which appears to the Tribunal to be relevant to the subject matter of the proceedings notwithstanding that such evidence would be inadmissible in proceedings before a court of law in that part of the United Kingdom by reference to the law of which the proceedings before the Tribunal are to be determined, but, save in cases where claims for privilege are allowed (including, in proceedings in Scotland, claims for protection from disclosure by virtue of any rule of law relating to the confidentiality of communications), it shall not refuse to admit any evidence which would be admissible in such proceedings.

(7) The Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Decisions of Tribunal

16.—(1) Any decision of a Tribunal shall be made by the votes of the majority of the General Commissioners comprising that Tribunal and, in the event of an equality of votes, the General Commissioner presiding at the hearing shall be entitled to a second or casting vote.

(2) The final determination may be given orally by a Tribunal at the end of the hearing or may be reserved and in either event shall be recorded in a document which shall be signed and dated by the Tribunal.

(3) The Clerk shall send to each party a notice setting out the final determination recorded under paragraph (2) above.

(4) Except where the final determination is given at the end of the hearing, it shall be treated as having been made on the date on which the notice is sent to the parties under paragraph (3) above.

(5) Every notice sent to the parties under paragraph (3) above shall be accompanied by a notification of the provisions of—

- (a) the Management Act,
- (b) these Regulations, and
- (c) rules of court,

relating to appeals from the General Commissioners and of the time within which, and the manner in which, such appeals shall be made.

Review of Tribunal's final determination

17.—(1) If, on the application of a party or of its own motion, a Tribunal is satisfied that—

- (a) the final determination was wrongly made as a result of an administrative error on the part of the Clerk or any of the staff of the General Commissioners or a party, or
- (b) a party, who was entitled to be heard at a hearing but failed to appear or to be represented, had good and sufficient reason for failing to appear or to be represented, or
- (c) accounts or other information relevant to a party's case had been sent to the Clerk or to the appropriate inspector or other officer of the Board prior to the hearing of the proceedings but had not been received by the Tribunal until after the hearing,

the Tribunal may review and set aside or vary the final determination.

(2) An application for the purposes of paragraph (1) above shall be made to the Tribunal not later than fourteen days after the date on which notice setting out the final determination was sent

to the parties under regulation 16(3), or by such later time as the Tribunal may allow, and shall be in writing stating the grounds in full.

(3) Where the Tribunal proposes to review of its own motion the final determination, it shall serve notice of that proposal on the parties not later than fourteen days after the date on which notice setting out the final determination was sent to the parties under regulation 16(3).

(4) The parties shall have an opportunity to be heard on a review, or in relation to any application or proposal for review, under this regulation and the review shall be determined by the Tribunal which decided the case or, where it is not practicable for it to be heard by that Tribunal, by another Tribunal; and if, having reviewed the final determination, the Tribunal sets aside that determination, it shall substitute such determination as it thinks fit or order a rehearing before either the same or a differently constituted Tribunal.

(5) Regulation 16 shall apply to a decision by a Tribunal varying a final determination or substituting a new final determination, as it applies to a final determination.

PART IV

SPECIAL PROCEDURE

Proceedings relating to tax on chargeable gains

18.—(1) Where the market value of an asset on a particular date or the apportionment of an amount or value is a material question in any proceedings relating to tax on chargeable gains, the Tribunal hearing the proceedings shall, if so required by any party, record in its final determination that market value or apportionment.

(2) The final determination on an appeal of the market value of an asset on a particular date or of the apportionment of any amount or value may be proved in any proceedings relating to tax on chargeable gains by a certificate stating the material particulars signed by—

- (a) an inspector where the appeal was settled by agreement, or
- (b) the Clerk where the General Commissioners determined the appeal, or
- (c) the clerk or registrar of another tribunal where the material question was determined by that other tribunal in accordance with section 47 or 47B of the Management Act⁽¹⁰⁾,

and a document purporting to be such a certificate may be received in evidence in any such proceedings without further proof.

(3) In this regulation the expression “final determination on an appeal” shall be construed in accordance with regulation 11(2) of the Capital Gains Tax Regulations 1967⁽¹¹⁾, and the expression “material question in any proceedings” shall be construed in accordance with regulation 15(a) of those Regulations.

References of questions of value to other tribunals

19.—(1) A question in an appeal which is required to be determined in accordance with section 47 or 47B of the Management Act may be referred to the appropriate tribunal by the Tribunal before whom the appeal is brought or, if the hearing of the appeal has not begun, by an inspector or other officer of the Board.

⁽¹⁰⁾ Section 47 was amended by Part VII of Schedule 14 to the Finance Act 1974 (c. 30), section 54(1) of the Finance Act 1975 (c. 7), paragraph 8 of Schedule 7, and Schedule 8, to the Capital Gains Tax Act 1979 (c. 14), and paragraph 2(2) of Schedule 10 to the Taxation of Chargeable Gains Act 1992. Section 47B was inserted by paragraph 22 of Schedule 9 to the Finance Act 1986 (c. 41) and amended by paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988.

⁽¹¹⁾ S.I. 1967/149.

(2) Where any question in an appeal has been referred to another tribunal in accordance with section 47 or 47B of the Management Act, the Tribunal before whom the appeal is brought may make a final determination of the remaining questions in the appeal and may at the request of any party state a case thereon under regulation 22 without awaiting the determination of the question referred to the other tribunal.

Case stated procedure

20.—(1) Within thirty days after the final determination of any proceedings falling within paragraph (a) or (b) of the definition of “proceedings” in regulation 2 is made by a Tribunal or, as the case may be, within thirty days after a decision varying such a final determination or substituting for it a new final determination is made by a Tribunal under regulation 17, any party to the proceedings, if dissatisfied with the determination or decision as being erroneous in point of law, may by notice served on the Clerk require the Tribunal to state and sign a case for the opinion of the High Court.

(2) A case stated pursuant to a requirement under paragraph (1) above shall set forth the facts and the final determination of the Tribunal.

(3) After a party has required a case to be stated under paragraph (1) above, the Tribunal may by notice served on him require him within not less than twenty eight days to identify the question of law on which he requires the case to be stated.

(4) If a party fails to comply with a notice served under paragraph (3) above, or if the Tribunal is not satisfied that the question identified is a question of law, or until the fee specified in section 56(3) of the Management Act(12) has been paid, the Tribunal may refuse to state a case.

(5) Where a final determination of a Tribunal is set aside or varied under regulation 17, a requirement for a case to be stated in respect of that determination shall cease to be valid.

Consideration of draft case

21.—(1) Within fifty six days after the receipt of a notice served under regulation 20(1) requiring a case to be stated or, if a notice is served under regulation 20(3), within fifty six days after the day on which a question of law is identified to the satisfaction of the Tribunal, the Clerk shall send a draft of the case to the party who required the case to be stated and to the other party or parties.

(2) Within fifty six days after the draft case is sent to the parties under paragraph (1) above, any party may make representations on the draft to the Clerk in writing and shall at the same time send a copy of any representations so made to the other party or parties.

(3) Within twenty eight days after the latest date on which representations may be made under paragraph (2) above, any party may make further representations on the draft to the Clerk in writing in response to any representations made under paragraph (2) above, and shall at the same time send a copy of such further representations to the other party or parties.

(4) A failure by the Clerk to send a draft case within the time specified in paragraph (1) above, or a failure by a party to make representations within the time specified in paragraph (2) or (3) above, or to send a copy of representations under either of those paragraphs to the other party or parties, shall not affect the validity of the case after it has been stated and signed pursuant to regulation 22, or of any subsequent proceedings in relation to the case.

(5) Where a party fails to send a copy of any representations to another party in accordance with paragraph (2) or (3) above, that other party may apply to the Clerk for a copy of the representations.

(12) Section 56(3) was amended by paragraph 6 of Schedule 22 to the Finance Act 1984 and by S.I. 1994/1813.

Preparation and submission of final case

22.—(1) Subject to paragraph (2) below, as soon as may be after the latest date on which representations may be made under regulation 21, the Tribunal whose decision is questioned, after taking into account any representations made under that regulation, shall state and sign the case.

(2) If a member of the Tribunal has died or ceased to be a General Commissioner, then the case shall be stated and signed by the continuing Commissioner or Commissioners or, if there is no continuing Commissioner, by the Clerk.

(3) After the case has been stated and signed the Clerk shall send it to the party who required it to be stated, and shall notify the other party or parties that the case has been sent to that party.

(4) The party requiring the case shall—

(a) transmit the case to the High Court within thirty days of receiving it, and

(b) at or before the time when he transmits the case to the High Court, send notice of the fact that the case has been stated on his application, together with a copy of the case, to the other party or parties.

Case stated procedure — Scotland and Northern Ireland

23.—(1) In relation to proceedings in Scotland, references in regulations 20(1) and 22(4) to the High Court shall be taken as references to the Court of Session as the Court of Exchequer.

(2) In relation to proceedings in Northern Ireland—

(a) the reference in regulation 20(1) to the High Court shall be taken as a reference to the Court of Appeal in Northern Ireland;

(b) the procedure relating to the transmission of a case stated under regulation 22 to the Court of Appeal in Northern Ireland shall be that for the time being in force in Northern Ireland as respects cases stated by a county court in exercise of its general jurisdiction, and regulation 22(4) shall not apply.

PART V

MISCELLANEOUS

Irregularities

24.—(1) Any irregularity resulting from any failure to comply with any provision of these Regulations or with any direction given by a Tribunal before the Tribunal has reached its final determination shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of a Tribunal, the Tribunal before reaching its final determination may, and if it considers that any person may have been prejudiced by that irregularity shall, give such directions as it thinks just to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or a decision of a Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the General Commissioner presiding at the hearing or any other of the General Commissioners comprising the Tribunal, or by the Clerk if all the General Commissioners comprising the Tribunal have died or ceased to be General Commissioners, by certificate under his hand.

Notices

25. Every notice required by these Regulations shall be in writing unless a Tribunal authorises it to be given orally.

Service

26.—(1) Any notice or other document (other than a summons under regulation 4) required or authorised by these Regulations to be sent or delivered to, or served on, any person shall be duly sent or delivered to, or served on, that person—

- (a) if it is sent to him at his proper address by post; or
- (b) if it is sent to him at that address by facsimile transmission or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form; or
- (c) if it is delivered to him or left at his proper address.

(2) Any such document may—

- (a) in the case of a body corporate, be sent or delivered to, or left with, the secretary or clerk of that body;
- (b) in the case of a foreign body corporate, be sent or delivered to, or left with, the person authorised to accept service of process on it;
- (c) in the case of a partnership, be sent or delivered to, or left with, any partner;
- (d) in the case of an unincorporated association other than a partnership, be sent or delivered to, or left with, any member of the governing body of the association.

(3) For the purposes of this regulation, a person's proper address is—

- (a) in the case of the secretary or clerk of a body corporate registered in the United Kingdom, the address of the registered or principal office of that body corporate;
- (b) in the case of the person authorised to accept service of process on a foreign body corporate, the address of the principal office or place of business of that body corporate in the United Kingdom;
- (c) in the case of the General Commissioners for a division or their Clerk, the address of the Clerk;
- (d) in the case of any other person, the usual or last known address of that person.

Substituted service

27. If any person to or on whom any notice or other document (other than a summons under regulation 4) is required to be sent, delivered or served for the purposes of these Regulations cannot be found or has died and has no known representative, or is out of the United Kingdom, or if for any other reason service on him cannot be readily effected, a Tribunal may dispense with the requirement that the notice or other document be sent or delivered to, or served on him or may make an order for substituted service on such other person or in such other form (whether by advertisement in a newspaper or otherwise) as the Tribunal may think fit.

Dated 5th July 1994

Mackay of Clashfern, C

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

I consent,

Dated 6th July 1994

Rodger of Earlsferry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the procedure and practice to be followed in connection with appeals to, and other proceedings before, the General Commissioners under the Taxes Acts and also deal with jurisdictional matters relating to such proceedings. Regulations governing procedure and jurisdiction have also been made in relation to the Special Commissioners (S.I.1994/1811), and a third set of Regulations contains amendments and repeals of primary and secondary legislation relating to procedure and jurisdiction in proceedings before the General Commissioners and Special Commissioners (S.I. 1994/1813).

The Regulations are in a number of parts, of which Part I (regulations 1 and 2) is introductory. Regulation 1 provides for citation, commencement and application, and regulation 2 contains definitions.

Part II (regulations 3 to 9) deals with the listing of proceedings (regulation 3), and matters preparatory to the hearing of proceedings, namely the power of the General Commissioners to summon witnesses (with penalties for non-compliance) (regulation 4), agreement on documentary and expert evidence (regulations 5 and 9), joining and postponement of proceedings (regulations 6 and 8) and joining of additional parties (regulation 7).

Part III (regulations 10 to 17) deals with the hearing itself, and includes regulations relating to the power of the General Commissioners to obtain information (with penalties for non-compliance) (regulation 10), representation at the hearing (regulation 12), failure to attend the hearing (regulation 14), the order of proceeding and evidence adduced at the hearing (regulation 15), and the decision of the General Commissioners (regulations 16 and 17).

Part IV (regulations 18 to 23) provides special procedural rules for capital gains tax appeals where a question relating to the market value of an asset is involved (regulation 18), for referring questions of value to other tribunals (regulation 19), and for appealing by way of case stated against a decision of the General Commissioners (regulations 20 to 23). Regulation 23 makes special provision for proceedings in Scotland and Northern Ireland.

Part V (regulations 24 to 27) contains miscellaneous provisions dealing with procedural irregularities (regulation 24), notices required by the Regulations (regulation 25), and service of documents (regulations 26 and 27).