

# **Tribunals (Scotland) Act 2014**

**Consultation on Draft Regulations regarding:**

**(1) the Transfer of Functions and Members of the Scottish Tax Tribunals to the Scottish Tribunals;**

**(2) the rules of procedure for the First-tier Tribunal for Scotland Tax Chamber and**

**(3) the Composition of the First-tier and Upper Tribunals for Scotland**

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## **PART 1: BACKGROUND**

1. The Tribunals (Scotland) Act 2014 (the 2014 Act) creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The Act creates two new tribunals, the First-tier Tribunal for Scotland (First-tier Tribunal) and the Upper Tribunal for Scotland (Upper Tribunal), known collectively as the Scottish Tribunals.
2. The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland were established by the Revenue Scotland and Tax Powers Act 2014, and are known collectively as the Scottish Tax Tribunals.

## **PART 2: CONSULTATION ON DRAFT REGULATIONS TO TRANSFER THE FUNCTIONS AND MEMBERS OF THE SCOTTISH TAX TRIBUNALS TO THE SCOTTISH TRIBUNALS AND REPEAL EXISTING REGULATIONS.**

3. This consultation seeks your views on draft regulations that transfer the functions and members of the First-tier Tax Tribunal to the First-tier Tribunal and transfer the functions and members of the Upper Tax Tribunal for Scotland to the Upper Tribunal for Scotland. It also seeks your views on draft regulations that repeal existing regulations regarding the Scottish Tax Tribunals made under powers contained in the Revenue Scotland and Tax Powers Act 2014.

### **Background**

4. Section 28(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the functions of the listed tribunals in Schedule 1 of the 2014 Act, to the First-tier Tribunal only; the Upper Tribunal only; or to the First-tier Tribunal and the Upper Tribunal.
5. Schedule 2 (see section 29) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the members of the listed tribunals to the First-tier or Upper Tribunals.
6. Section 80 of the 2014 Act allows Scottish Ministers to make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with the 2014 Act.

## Overview of Draft Regulations

7. The policy intent is for the tax tribunals to transfer into the Scottish Tribunals structure with their existing membership and functions in so far as practicable. Upon transfer the Scottish Tax Tribunals will be abolished and thereafter first instance decisions will be heard in the First-tier Tribunal Tax Chamber with onward appeal to the Upper Tribunal. Complex tax cases will be heard at first instance by the Upper Tribunal. Appeals in these cases will be heard by the Court of Session.
8. The draft regulations contained in **Annexes A and B** provide for:
  - the transfer of functions of the Scottish Tax Tribunals to the Scottish Tribunals;
  - Transitional arrangements to regulate how cases pending, in progress and new cases will be dealt with;
  - Consequential amendments and repeals required in light of the transfer of functions;
  - the transfer of legal and ordinary members of the Scottish Tax Tribunals to the Scottish Tribunals.
9. The draft regulations contained in **Annex C** repeal part 4 and schedule 2 of the Revenue Scotland and Tax Powers Act 2014. The draft regulations also repeal the following regulations as their provisions are covered in the 2014 Act or in regulations made under that Act:
  - Scottish Tax Tribunals (Conduct and Fitness Assessment Tribunal) Rules 2015.
  - Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015
  - Scottish Tax Tribunals (Eligibility for Appointment) Regulations 2014
  - Scottish Tax Tribunals (Voting and Offences etc.) Regulations 2015
10. The draft regulations are attached at **Annexes A, B and C**.

## Transfer of functions of the Scottish Tax Tribunals

11. It is proposed that the functions of the First-tier Tax Tribunal will transfer to the First-tier Tribunal with allocation to the Tax Chamber and that the functions of the Upper Tax Tribunal will transfer to the Upper Tribunal.
12. The draft regulations maintain the appeal route for complex first instance cases referred to the Upper Tribunal so that they may be appealed to the Court of Session.

## **Transitional arrangements**

13. We propose that from 1 April 2017 all applications to the First-tier Tax Tribunal will transfer to the First-tier Tribunal. Cases in progress on the day of transfer will be continued in the First-tier Tribunal. If a hearing is in progress then it will be completed by the First-tier Tribunal comprised of the same members, where possible. Time limits which have started to run prior to commencement of these regulations and have not expired shall continue to apply.
14. If a party wishes to appeal a decision of the First-tier Tax Tribunal but has not exercised this right before 1 April 2017 then the appeal route will be to the Upper Tribunal as opposed to the Upper Tax Tribunal. We propose that if a party has already exercised their right of appeal before 1
15. April 2017 then this will also be transferred to the Upper Tribunal as the Upper Tax Tribunal will be abolished.

## **Transfer of members**

16. The policy intent is for existing members of the Scottish Tax Tribunals to transfer into the Scottish Tribunals. Members will be subject to terms and conditions to be offered by Scottish Ministers.
17. The draft regulations propose that legal members of the First-tier Tax Tribunal will transfer in as legal members of the First-tier Tribunal. Legal members of the Upper Tax Tribunal will transfer in as legal members of the Upper Tribunal. Ordinary members of the First-tier Tax Tribunal will transfer in as ordinary members of the First-tier Tribunal with allocation to the Tax Chamber.
18. As there is currently no President of the Scottish Tax Tribunals (the post is being filled meantime by a temporary President), it is not specified in the regulations that the Tax Tribunal President will transfer into the Scottish Tribunals as the Chamber President of the First-tier Tax Chamber. The Judicial Appointments Board for Scotland is currently undertaking a recruitment exercise to recommend the appointment of a permanent Chamber President of the Tax Chamber. It is envisaged that this appointment will commence on 1 April 2017 to coincide with the transfer-in of the jurisdiction.

## QUESTIONS ON THE TRANSFER OF THE SCOTTISH TAX TRIBUNALS

Q1: Do you have any comments on the draft transfer of functions and members Regulations?

Q2: Are you content with the provisions regarding transitional arrangements?

Q3: Are you content with the provisions relating to the transfer of functions and members?

Q4: Do you have any other comments you wish to make?

## **PART 3: CONSULTATION ON DRAFT REGULATIONS THAT SET OUT THE RULES OF PROCEDURE FOR THE FIRST-TIER TRIBUNAL FOR SCOTLAND TAX CHAMBER**

### **Background**

1. Schedule 9, paragraph 2(2) (also see section 81) of the 2014 Act provides the power for the Scottish Ministers to make regulations for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of either or both the First-tier Tribunal and the Upper Tribunal.

### **Upper Tax Tribunal Rules**

2. The procedural rules for the Upper Tribunal that are currently being considered by the Scottish Parliament are designed to be applicable to both appeals from the housing jurisdictions that transfer into the Scottish Tribunals in December 2016 and the Scottish Tax Tribunals. Therefore, we propose to abolish the existing Upper Tax Tribunal Rules of Procedure.

### **First-tier Tax Tribunal Rules**

3. As the First-tier Tax Tribunal already has comprehensive procedural rules in place<sup>1</sup> these have been replicated where possible in the draft Tax Chamber Rules in **Annex D**. There are two main areas where the draft Rules differ from the existing rules of procedure to ensure consistency within the Scottish Tribunals.
4. Firstly, the draft Rules will allow the First-tier Tribunal to review a decision in the interests of justice, such as where there has been an administrative error.
5. Secondly, the draft Rules will allow a party to be accompanied by a supporter as well as or instead of a legal representative. The supporter may assist a party and provide moral support if required.

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<sup>1</sup> <http://www.legislation.gov.uk/ssi/2015/184/contents/made>

## QUESTIONS ON FIRST-TIER TAX CHAMBER RULES OF PROCEDURE

Q1: Do you have any comments on the draft regulations on the First-tier Tax Chamber Rules of Procedure?

Q2: Do you have any comments on the new provisions regarding review of decisions and allowing parties to be accompanied by a supporter?

Q3: Do you have any other comments you wish to make?

## **PART 4: CONSULTATION ON DRAFT REGULATIONS THAT SET OUT THE COMPOSITION OF THE FIRST-TIER AND UPPER TRIBUNAL FOR SCOTLAND**

### **Background**

1. Sections 38 and 40 of the 2014 Act allow the Scottish Ministers, by regulation, to determine the composition of the First-tier and Upper Tribunals.

### **Draft regulations**

2. The draft regulations in **Annex E** apply to the composition of members when hearing cases within the First-tier Tribunal Tax Chamber and appeals or referrals from the First-tier Tribunal Tax Chamber to the Upper Tribunal.
3. The policy intention is to mirror the existing composition for first instance cases as set out in section 29 of the Revenue Scotland and Tax Powers Act 2014. This means that first instance cases will be heard by one legal member sitting on their own, a legal member and one ordinary member or a legal member and more than one ordinary member.
4. We propose referrals or appeals from the First-tier Tribunal Tax Chamber to the Upper Tribunal may be heard by a legal member of the Upper Tribunal, the Chamber President of the First-tier Tax Chamber (as long as they were not involved in the decision at the first instance), the President of Tribunals, the Lord President or a member of the judiciary as defined by section 17 of the 2014 Act. The President of Tribunals will determine how the Upper Tribunal should be composed on a case by case basis.

## QUESTIONS ON COMPOSITION REGULATIONS

Q1: Do you have any comments on the proposals regarding the composition of the First-tier Tribunal Tax Chamber?

Q2: Do you have any comments on the proposals regarding the composition of the Upper Tribunal when hearing referrals or appeals from the First-tier Tribunal Tax Chamber?

Q3: Do you have any other comments you wish to make?

## **PART 5: RESPONDING TO THIS CONSULTATION**

We are inviting responses to this consultation by 4 December 2016

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at: <https://consult.scotland.gov.uk/tribunals-and-administrative-justice/tribunals-scotland-act-2014-draft-regulations>.

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 4 December 2016

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Tribunals and Administrative Justice Policy  
GW15 St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

### **Handling your response**

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

## **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to [Tribunals.consultations@gov.scot](mailto:Tribunals.consultations@gov.scot).

## **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to -consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

*Draft Regulations laid before the Scottish Parliament under section 79(2)(a) and (b) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.*

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D R A F T   S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

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**2017 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland (Transfer of functions of the First-tier Tax Tribunal for Scotland) Regulations 2017**

*Laid before the Scottish Parliament-* 2017

*Coming into force - -* 1 April 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2), 28(2) and (6) and 79(1), and paragraph 1(1) of schedule 2 to the Tribunals (Scotland) Act 2014<sup>(2)</sup> and all other powers enabling them to do so.

In accordance with section 11(1)(a) and (b) of that Act, the Scottish Ministers have obtained the Lord President's approval and have consulted such other persons as they considered appropriate. In accordance with section 79(2)(a) and (b) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament<sup>(3)</sup>.

**Citation and commencement**

**1.**—(1) These regulations may be cited as the First-tier Tribunal for Scotland (Transfer of functions of the First-tier Tax Tribunal for Scotland) Regulations 2017.

(2) These Regulations come into force on 1<sup>st</sup> April 2017.

**Interpretation**

**2.** In these Regulations—

the “2014 Act” means the Tribunals (Scotland) Act 2014;

the “First-tier Tax Tribunal for Scotland” means the tribunal established by section 21(1) of the Revenue Scotland and Tax Powers Act 2014<sup>(4)</sup>;

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<sup>(2)</sup> 2014 asp 10.

<sup>(3)</sup> The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

the “First-tier Tax Tribunal for Scotland functions” means the functions exercised by the First-tier Tax Tribunal for Scotland by virtue of section 21(2) of the Revenue Scotland and Tax Powers Act 2014; and

“the Upper Tax Tribunal for Scotland” means the tribunal established by section 21(3) of the Revenue Scotland and Tax Powers Act 2014.

### **Transfer of First-tier Tax Tribunal for Scotland functions to the First-tier Tribunal and abolition of First-tier Tax Tribunal for Scotland**

3.—(1) Subject to regulation 5, the First-tier Tax Tribunal for Scotland functions are transferred to the First-tier Tribunal with allocation to the First-tier Tribunal Tax Chamber.

(2) The First-tier Tax Tribunal for Scotland is abolished.

### **Transfer of First-tier Tax Tribunal for Scotland members to the First-tier Tribunal**

4.(1) Subject to paragraph (2) members of the First-tier Tax Tribunal for Scotland under the age of 75 on the coming into force of these Regulations are transferred to and become members of the First-tier Tribunal, with—

- (a) legal members of the First-tier Tax Tribunal for Scotland becoming legal members of the First-tier Tribunal; and
- (b) ordinary members of the First-tier Tax Tribunal for Scotland becoming ordinary members of the First-tier Tribunal;

(2) Members of the First-tier Tax Tribunal transferred to the First-tier Tribunal under paragraph (1) shall (subject to the provisions of the 2014 Act) be members of the First-tier Tribunal in accordance with terms and conditions to be offered by the Scottish Ministers on transfer, which will supersede any existing terms and conditions of appointment.

### **Transitional and savings provisions**

5. The schedule of these Regulations contains transitional and savings provisions.

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Edinburgh  
Date

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<sup>(4)</sup> 2014 asp 16.

## SCHEDULE

Regulation 5

### Transitional and savings provisions

#### **Applications and proceedings in progress before the First-tier Tax Tribunal for Scotland on 1<sup>st</sup> April 2017 to transfer to the First-tier Tribunal**

Any applications to the First-tier Tax Tribunal for Scotland already in progress on 1<sup>st</sup> April 2017 but not yet determined and any proceedings already in progress before that date shall be transferred to and be completed by the First-tier Tribunal but with so far as possible the same persons hearing and determining the case before the First-tier Tribunal as members of that tribunal as were prior to 1<sup>st</sup> April 2017 hearing the case as members of the First-tier Tax Tribunal for Scotland.

#### **Decisions, directions and orders of the First-tier Tax Tribunal for Scotland to continue in force**

6. Any decision (whether or not called a decision), direction or order given or made in applications to or proceedings before the First-tier Tax Tribunal for Scotland which is in force immediately before 1<sup>st</sup> April 2017 remains in force on and after that date as if it were a decision, direction or order of the First-tier Tribunal.

#### **Time limits in respect of applications to and proceedings before the First-tier Tax Tribunal for Scotland to carry over to the First-tier Tribunal**

7. Any time limit which has started to run before 1<sup>st</sup> April 2017 in respect of applications to and proceedings before the First-tier Tax Tribunal for Scotland (and which has not expired) shall continue to apply where applications and proceedings are transferred to the First-tier Tribunal.

#### **Unexercised right of appeal to Upper Tax Tribunal for Scotland, if exercised, is an appeal to the Upper Tribunal**

8. Where in respect of a decision of the First-tier Tax Tribunal for Scotland before 1<sup>st</sup> April 2017, there lies a right of appeal to the Upper Tax Tribunal for Scotland, which has not been exercised before that date but is still exercisable, any appeal on or after 1<sup>st</sup> April 2017 shall be to the Upper Tribunal as if the decision had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

#### **Savings provision**

9. Where in respect of a decision of the First-tier Tax Tribunal for Scotland before 1<sup>st</sup> April 2017 there lies a right of appeal to the Upper Tax Tribunal for Scotland which has been exercised before that date, the appeal shall continue as an appeal to the Upper Tribunal.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision for the transfer into the First-tier Tribunal for Scotland of the functions and members of the First-tier Tax Tribunal for Scotland.

*Draft Regulations laid before the Scottish Parliament under section 79(2)(b) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.*

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D R A F T   S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

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**2017 No.**

**TRIBUNALS AND INQUIRIES**

**The Upper Tribunal for Scotland (Transfer of functions of the Upper Tax Tribunal for Scotland) Regulations 2017**

*Laid before the Scottish Parliament-* 2017

*Coming into force - -* 1 April 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 28(2) and (6) and 79(1), and paragraph 1(1) of schedule 2 to the Tribunals (Scotland) Act 2014<sup>(5)</sup> and all other powers enabling them to do so.

In accordance with section 79(2)(b) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Upper Tribunal for Scotland (Transfer of functions of the Upper Tax Tribunal for Scotland) Regulations 2017.

(2) These Regulations come into force on 1<sup>st</sup> April 2017.

**Interpretation**

**2.** In these Regulations—

the “2014 Act” means the Tribunals (Scotland) Act 2014;

the “First-tier Tax Tribunal for Scotland” means the tribunal established by section 21(1) of the Revenue Scotland and Tax Powers Act 2014<sup>(6)</sup>;

“the Upper Tax Tribunal for Scotland” means the tribunal established by section 21(2) of the Revenue Scotland and Tax Powers Act 2014; and

the “Upper Tax Tribunal for Scotland functions” means the functions exercised by the Upper Tax Tribunal for Scotland by virtue of section 21(4) of the Revenue Scotland and Tax Powers Act 2014.

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<sup>(5)</sup> 2014 asp 10.

<sup>(6)</sup> 2014 asp 16.

**Transfer of Upper Tax Tribunal for Scotland functions to the Upper Tribunal and abolition of Upper Tax Tribunal for Scotland**

3.—(1) Subject to regulation 5, the Upper Tax Tribunal for Scotland functions are transferred to the Upper Tribunal.

(2) The Upper Tax Tribunal for Scotland is abolished.

**Transfer of Upper Tax Tribunal for Scotland members to the Upper Tribunal**

4. (1) Subject to paragraph (2), members of the Upper Tax Tribunal for Scotland under the age of 75 on the coming into force of these Regulations are transferred to and become legal members of the Upper Tribunal.

(2) Members of the Upper Tax Tribunal for Scotland transferred to the Upper Tribunal under paragraph (1) shall (subject to the provisions of the 2014 Act) be legal members of the Upper Tribunal in accordance with terms and conditions to be offered by the Scottish Ministers on transfer, which will supersede any existing terms and conditions of appointment.

**Transitional and savings provisions**

5. The schedule of these Regulations contains transitional and savings provisions.

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Date

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## SCHEDULE

Regulation 5

### Transitional and savings provisions

#### **Applications and proceedings in progress before the Upper Tax Tribunal for Scotland on 1st April 2017 to transfer to the Upper Tribunal**

Any applications to the Upper Tax Tribunal for Scotland already in progress on 1st April 2017 but not yet determined and any proceedings already in progress before that date shall be transferred to and be completed by the Upper Tribunal but with so far as possible the same persons hearing and determining the case before the Upper Tribunal as members of that tribunal as were prior to 1st April 2017 hearing the case as members of the Upper Tax Tribunal.

#### **Time limits in respect of applications to and proceedings before the Upper Tax Tribunal for Scotland to carry over to the Upper Tribunal**

6. Any time limit which has started to run before 1<sup>st</sup> April 2017 in respect of applications to and proceedings before the Upper Tax Tribunal for Scotland (and which has not expired) shall continue to apply where applications and proceedings are transferred to the Upper Tribunal.

#### **Unexercised right of appeal to Court of Session, if exercised, remains as an appeal to the Court of Session**

7. Where in respect of a decision of the Upper Tax Tribunal for Scotland before 1<sup>st</sup> April 2017, there lies a right of appeal to the Court of Session, which has not been exercised before that date but is still exercisable, any appeal on or after 1<sup>st</sup> April 2017 shall continue to be to the Court of Session as if the decision had been made by the Upper Tribunal and the appeal shall be an appeal from the Upper Tribunal for the purposes of section 48(1) of the 2014 Act.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations make provision for the transfer into the Upper Tribunal for Scotland of the functions of the Upper Tax Tribunal for Scotland, and for the transfer of members of the Upper Tax Tribunal for Scotland to the Upper Tribunal for Scotland.

2017 No.

**TRIBUNALS AND INQUIRIES****The Tribunals (Scotland) Act 2014 (Ancillary Provisions) (Scotland)  
Regulations 2017***Made* - - - - 2017*Coming into force* - - 1st April 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 80(1) and (2) (a) of the Tribunals (Scotland) Act 2014<sup>(7)</sup> and all other powers enabling them to do so.

In accordance with section 80(2) (a) of that Act a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Tribunals (Scotland) Act (Ancillary Provisions)(Scotland) Regulations 2017 and come into force on 1st April 2017.

**Revocation of Part 4 and schedule 2 of the Revenue Scotland and Tax Powers Act 2014**

2.—(1) Part 4 and schedule 2 of the Revenue Scotland and Tax Powers Act 2014<sup>(8)</sup> are repealed.

(2) Further consequential amendments to the Revenue Scotland and Tax Powers Act 2014 are contained in the schedule.

**Revocation of Regulations made under Part 4 and schedule 2 of the Revenue Scotland and Tax Powers Act 2014**

3.—(1) The regulations listed in paragraph (2) are repealed

(2) The regulations referred to in paragraph (1) are—

- (a) the Scottish Tax Tribunals (Conduct and Fitness Assessment Tribunal) Rules 2015<sup>(9)</sup>;
- (b) the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015<sup>(10)</sup>;
- (c) the Scottish Tax Tribunals (Eligibility for Appointment) Regulations 2014<sup>(11)</sup>;

<sup>(7)</sup> 2014 asp 10.

<sup>(8)</sup> 2014 asp 16.

<sup>(9)</sup> S.S.I. 2015/187.

<sup>(10)</sup> S.S.I. 2015/184.

<sup>(11)</sup> S.S.I. 2014/355.

(d) the Scottish Tax Tribunals (Voting and Offences etc.) Regulations 2015<sup>(12)</sup>.

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2017

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**SCHEDULE**

regulation 2(2)

**Amendments to the Revenue Scotland and Tax Powers Act 2014**

**1.**— (1) The Revenue Scotland and Tax Powers Act 2014 is amended in terms of paragraph (2).

(2) In section 249—(i) after “Tribunal” in both places occurring insert “for Scotland”; and  
(ii) for “Tribunal rules” substitute “Scottish Tribunal Rules”.

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<sup>(12)</sup> S.S.I. 2014/132.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations revoke Part 4 and schedule 2 of the Revenue Scotland and Tax Powers Act 2014 and 4 sets of regulations in relation to the Scottish Tax Tribunals made in 2014 and 2015 under those parts of that Act, and make further consequential amendments to that Act.

## SCOTTISH STATUTORY INSTRUMENTS

2016 No.

## TRIBUNALS

The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017

<i>Made</i>	- - - -	2017
<i>Laid before the Scottish Parliament</i>		2017
<i>Coming into force</i>		1st April 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014<sup>(13)</sup> and all other powers enabling them to do so.

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

**Citation and commencement**

1.—(1) These Regulations may be cited as The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017, and the Rules contained in the Schedule may be cited as The First-tier Tribunal for Scotland Tax Chamber Rules of Procedure 2017.

(2) These Regulations come into force on 1<sup>st</sup> April 2017.

**Application of Schedule**

2. The Rules in the Schedule to these Regulations apply to proceedings before the First-tier Tribunal for Scotland Tax Chamber, when exercising the functions allocated to it by regulation 3(1) of the First-tier Tribunal for Scotland (Transfer of functions of the First-tier Tax Tribunal for Scotland) Regulations 2017<sup>(14)</sup>.

*Name*

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Date

<sup>(13)</sup> 2014 asp 10.

<sup>(14)</sup> [\*\*\*].

## SCHEDULE

Regulation 2

### THE FIRST-TIER TRIBUNAL TAX CHAMBER RULES OF PROCEDURE 2017

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#### PART 1

#### Introduction

### **Interpretation**

#### **1. In these Rules—**

“the 2014 Act” means the Tribunals (Scotland) Act 2014;

the “RSTPA 2014” means the Revenue Scotland and Tax Powers Act 2014(c);

“appellant” means—

- (a) the person who starts proceedings (whether by notifying an appeal, by making an application, by a reference, or otherwise);
- (b) in proceedings started jointly by more than one person, such persons acting jointly or each such person, as the context requires;
- (c) in any case, a person substituted as an appellant under rule 9 (addition, substitution and removal of a party's case);

“Basic case” means a case allocated to the Basic category under rule 25 (allocation of cases to categories);

“chairing member” means the chairing member of the First-tier Tribunal, who is the legal member of the tribunal or, as the case may be, the member chosen by the Chamber President in terms of rule 19(1);

“Chamber President” means the Chamber President of the First-tier Tribunal

“Complex case” means a case allocated to the Complex category under rule 24;

“Convention Rights” has the meaning given to it in section 1 of the Human Rights Act 1998(a);

“Default Paper case” means a case allocated to the Default Paper category under rule 24;

“document” means anything in which information is recorded in any form, and an obligation under these Rules to provide or allow access to a document or a copy of a document for any purpose means, unless the First-tier Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

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

“First-tier Tribunal” means the First-tier Tribunal Tax Chamber;

“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 First-tier Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the First-tier Tribunal;

“practice direction” means a direction given under section 74 of the Tribunals (Scotland) Act 2014;

“respondent” means—

- (a) Revenue Scotland, where Revenue Scotland is not an appellant;
- (b) in proceedings brought by Revenue Scotland alone, a person against whom the proceedings are brought or to whom the proceedings relate;
- (c) in any case, a person substituted or added as a respondent under rule 8 (addition, substitution and removal of parties);

“review period” means the time period between an application by a party for a review under rule 37(1), or, as the case may be, the First-tier Tribunal’s decision to review a decision at its own instance under that rule 37(1), and the receipt by a party of a notification under rule 37(5);

“Standard case” means a case allocated to the Standard category under rule 24; and

### **Overriding objective and parties’ obligation to co-operate with the First-tier Tribunal**

**2.—** (1) The overriding objective of these Rules is to enable the First-tier Tribunal to deal with cases fairly and justly.

(2) Dealing with a case in accordance with the overriding objective includes—

(a) dealing with the case in ways which are 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;

(d) using any special expertise of the First-tier Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The First-tier 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.

(4) Parties must, insofar as reasonably possible—

(a) help the First-tier Tribunal to further the overriding objective; and

(b) co-operate with the First-tier Tribunal generally.

### **Mediation**

**3.** The First-tier Tribunal should seek, where appropriate—

(a) to bring to the attention of the parties the availability of mediation for the resolution of the dispute; and

(b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of mediation.

### **Delegation to staff**

**4.** (1) Staff of the Scottish Courts and Tribunals Service may, with the approval of the Chamber President, carry out functions of a judicial nature permitted or required to be done by the First-tier Tribunal.

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

(3) Within 14 days after the date that the First-tier 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 make a written application to the First-tier Tribunal for that decision to be considered afresh by a member of the First-tier Tribunal.

## **PART 2**

### **General Powers and Provisions**

#### **Case management powers**

**5.**—(1) Subject to the provisions of the 2014 Act and these Rules, the First-tier Tribunal may regulate its own procedure.

(2) The First-tier Tribunal may give an order in relation to the conduct or disposal of proceedings 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 First-tier Tribunal may—

(a) extend or shorten the time for complying with any rule or order;

(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 First-tier 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 First-tier 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 hearing;

(h) decide the form of any hearing;

(i) adjourn or postpone a hearing;

(j) require a party to produce a file of documents for a hearing;

(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 First-tier Tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) the First-tier Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;

(k) suspend the effect of its own decision pending the determination by the First-tier Tribunal or the Upper Tribunal, as the case may be, of an application for permission to appeal or an appeal.

### **Procedure for applying for and giving orders**

**6.**—(1) The First-tier 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 First-tier 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 First-tier Tribunal must afford parties an opportunity to make representations to it concerning whether the order should be imposed and the terms of the order.

### **Failure to comply with rules etc.**

**7.**—(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 First-tier 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 8 (dismissal of a party's case).

### **Dismissal of a party's case**

**8.**—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier 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 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(2) The First-tier 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 First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings fairly; or

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

### **Addition, substitution and removal of parties**

**9.**—(1) The First-tier 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) If the First-tier Tribunal gives an order under paragraph (1) it may give such consequential orders as it considers appropriate.

(3) A person who is not a party may make a written application to the First-tier Tribunal to be added or substituted as a party under this rule.

(4) If the First-tier 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 First-tier Tribunal.

### **Orders for expenses**

**10.**—(4) The First-tier 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.

(5) The First-tier Tribunal, of its own initiative or on the application of a party or the parties, may in exceptional circumstances fix by order a sum payable by a party in discharge of an award of expenses.

### **Representatives**

**11.**—(1) A party may be represented in any proceedings by a legal representative or lay representative whose details must be communicated to the First-tier Tribunal prior to any hearing.

(2) A party may show any document or communicate any information about the proceedings to that party's lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under paragraph (2), the lay representative or legal representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

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

(5) The First-tier 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 to do so would be in the interests of the efficient administration of justice.

### **Supporters**

**12.**—(1) A party who is an individual may be accompanied by another person 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 First-tier 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 to do so would be in the interests of the efficient administration of justice.

### **Calculating time**

**13.—**(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 before 5pm 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 or Sunday or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971.

### **Sending and delivery of documents**

**14.—**(1) Any document to be provided to the First-tier Tribunal under these Rules, a practice direction or an order must be—

(a) sent by pre-paid post or document exchange, or delivered by hand, to the address of the First-tier Tribunal; or

(b) sent or delivered by such other method as the First-tier Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party or representative provides a fax number, email address or other details for the electronic transmission of documents to them, that party or representative must accept delivery of documents by that method.

(3) If a party informs the First-tier Tribunal and all other parties that a particular form of communication (other than pre-paid post or delivery by hand) should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the First-tier Tribunal or a party sends a document to a party or the First-tier Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The First-tier 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 notification to the contrary.

### **Disclosure of documents and information**

**15.**— The First-tier Tribunal may at any stage of the proceedings, on its own initiative or on application by one or more of the parties, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention Rights of any person.

### **Evidence and submissions**

**16.**—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the First-tier Tribunal may give orders as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of any such evidence ;
- (c) whether the parties are permitted or required 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.

(2) The First-tier 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 of 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.

(3) The First-tier Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

### **Citation of witnesses and orders to answer questions or produce documents**

**17.**—(1) On the application of a party or on its own initiative, the First-tier Tribunal may—

- (a) by citation require any person to attend as a witness at a hearing at the time and place specified in the citation;
- (b) 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) A citation under paragraph (1)(a) must—

- (a) give the person required to attend at least 14 days' notice of the hearing, or such other period as the First-tier Tribunal may order; and

(b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.

(c) state that the person on whom the requirement is imposed may apply to the First-tier Tribunal to vary or set aside the citation or order, if the person did not have an opportunity to object to it before it was made or issued; and

(d) state the consequences of failure to comply with the citation or order.

### **Withdrawal**

**18.**—(1) A party may give notice to the First-tier Tribunal of the withdrawal of the case made by it in the First-tier Tribunal proceedings, or any part of that case—

(a) by sending or delivering to the First-tier Tribunal a notice of withdrawal; or

(b) orally at a hearing.

(2) The First-tier Tribunal must notify each party of its receipt of a withdrawal under this rule.

### **Chairing member and voting**

**19.** —(1) Where a matter is to be decided by two or more members of the First-tier Tribunal, the Chamber President must determine the chairing member.

(2) The decision of the First-tier Tribunal on an application must be made by majority with the chairing member having a casting vote.

### **Venue for hearings**

**20.** The First-tier Tribunal is to be convened at such time and place in Scotland as the President of Tribunals may determine.

### **Enforcement of decisions**

**21.** An order for the payment of a sum payable in pursuance of a decision of the First-tier Tribunal, or a copy of such an order certified by the First-tier Tribunal, may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

## **PART 3**

### **Procedure for cases in the First-tier Tribunal**

### **Proceedings concerning late notice of review**

**22.**—(1) A person may apply to the First-tier Tribunal to be allowed a late notice of review under section 236(2)(b) of RSTPA 2014 (late notice of review) only if—

(a) the person has approached Revenue Scotland for agreement under section 236(2)(a); and

(b) agreement has been refused or has been given only on limited grounds.

(2) Where permission to be allowed a late notice of review is sought under paragraph (1), the notice of review must include a request for the permission referred to in section 236(2)(b) of RSTPA 2014 and the reason why the notice of review was not provided in time.

### **Notice of appeal to the First-tier Tribunal**

**23.**—(1) The notice of appeal referred to in section 242(1) of RSTPA 2014 must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) details of the decision appealed against;
- (e) the result the appellant is seeking; and
- (f) the grounds for making the appeal.

(2) The appellant must provide with the notice of appeal a copy of any written record of any decision appealed against, and any statement of reasons for that decision, that the appellant has or can reasonably obtain.

(3) A person may apply to the First-tier Tribunal for permission to appeal under section 243(2)(b) of RSTPA 2014 (late notice of appeal) only if—

- (a) the person has approached Revenue Scotland for agreement under section 243(2)(a); and
- (b) agreement has been refused or has been given only on limited grounds.

(4) Where permission to appeal may be sought under paragraph (3)—

(a) the notice of appeal must include a request for the permission referred to in section 243(2)(b) of RSTPA 2014 and the reason why the notice of appeal was not provided in time; and

(b) unless the First-tier Tribunal gives such permission, the First-tier Tribunal must not admit the appeal.

(5) When the First-tier Tribunal receives the notice of appeal, it must give notice of the proceedings to the respondent.

### **Allocation of cases to categories**

**24.**—(1) When the First-tier Tribunal receives a notice of appeal, the First-tier Tribunal must give an order allocating the case to one of the categories set out in paragraph (2).

(2) The categories referred to in paragraph (1) are—

- (a) Default Paper cases, which will usually be disposed of without a hearing;
- (b) Basic cases, which will usually be disposed of after a hearing, with minimal exchange of documents before the hearing;
- (c) Standard cases, which will usually be subject to more detailed case management and be disposed of after a hearing; and
- (d) Complex cases, in respect of which see paragraphs (4) and (5) below.

(3) The First-tier Tribunal may give a further order re-allocating a case to a different category at any time, either on the application of a party or on its own initiative.

(4) The First-tier Tribunal may allocate a case as a Complex case under paragraph (1) or (3) only if the First-tier Tribunal considers that the case—

(a) will require lengthy or complex evidence or a lengthy hearing;

(b) involves a complex or important principle or issue; or

(c) involves a large financial sum.

(5) If a case is allocated as a Complex case, rule 30 (transfer of Complex cases to the Upper Tribunal) applies to the case.

### **Basic cases**

**25.**—(1) This rule applies to Basic cases.

(2) Rule 26 (respondent's statement of case) does not apply and, subject to paragraph (3) and any direction given by the First-tier Tribunal, the case will proceed directly to a hearing.

(3) If the respondent intends to raise grounds for contesting the proceedings at the hearing which have not previously been communicated to the appellant, the respondent must notify the appellant of such grounds.

(4) If the respondent is required to notify the appellant of any grounds under paragraph (3), the respondent must do so—

(a) as soon as reasonably practicable after becoming aware that such is the case; and

(b) in sufficient detail to enable the appellant to respond to such grounds at the hearing.

### **Respondent's statement of case**

**26.**—(1) A respondent must send or deliver a statement of case to the First-tier Tribunal, the appellant and any other respondent so that it is received—

(a) in a Default Paper case, within 42 days after the day the First-tier Tribunal sent the notice of appeal;

(b) in a Standard or Complex case, within 60 days after the day the First-tier Tribunal sent the notice of appeal.

(2) A statement of case must—

(a) in an appeal, state the legislative provision under which the decision under appeal was made; and

(b) set out the respondent's position in relation to the case.

(3) A statement of case may also contain a request that the case be dealt with at a hearing or without a hearing.

(4) If a respondent provides a statement of case to the First-tier Tribunal later than the time required by paragraph (1) or by any extension allowed under rule 5(3)(a), the statement of case must include a request for an extension of time and the reason why the statement of case was not provided in time.

### **Further steps in a Default Paper case**

**27.**—(1) This rule applies to Default Paper cases.

(2) The appellant may send or deliver a written reply to the First-tier Tribunal so that it is received within 30 days after the day on which the respondent sent to the appellant the statement of case to which the reply relates.

(3) The appellant's reply may—

(a) set out the appellant's response to the respondent's statement of case;

(b) provide any further information (including, where appropriate, copies of the documents containing such information) which has not yet been provided to the First-tier Tribunal and is relevant to the case; and

(c) contain a request that the case be dealt with at a hearing or without a hearing.

(4) The appellant must send or deliver a copy of any reply provided under paragraph (2) to each respondent at the same time as it is provided to the First-tier Tribunal.

(5) If the appellant provides a reply to the First-tier Tribunal later than the time required by paragraph (2) or by any extension allowed under rule 5(3)(a), the reply must include a request for an extension of time and the reason why the reply was not provided in time.

(6) Following receipt of the appellant's reply, or the expiry of the time for the receipt of the appellant's reply then, unless it orders otherwise and subject in any event to paragraph (7), the First-tier Tribunal must proceed to determine the case without a hearing.

(7) If any party has made a written request to the First-tier Tribunal for a hearing, the First-tier Tribunal must hold a hearing before determining the case.

### **Further steps in a Standard or Complex case**

**28.**—(1) This rule applies to Standard and Complex cases.

(2) Subject to any direction to the contrary, within 42 days after the day the respondent sent the statement of case (or, where there is more than one respondent, the date of the final statement of case) each party must send or deliver to the First-tier Tribunal and to each other party a list of documents—

(a) of which the party providing the list has possession, the right to possession, or the right to take copies; and

(b) which the party providing the list intends to rely upon or produce in the proceedings.

(3) A party which has provided a list of documents under paragraph (2) must allow each other party to inspect or take copies of the documents on the list.

### **Transfer of Complex cases to the Upper Tribunal**

**29.**—(1) If a case has been allocated as a Complex case the First-tier Tribunal may, with the consent of the parties, refer a case or a preliminary issue to the Chamber President with a request that the case or issue be considered for transfer to the Upper Tribunal.

(2) If a case or issue has been referred by the First-tier Tribunal under paragraph (1), the Chamber President may direct that the case or issue be transferred to and determined by the Upper Tribunal.

### **Decision with or without a hearing**

**30.**—(1) Subject to rule 27(6) (determination of a Default Paper case without a hearing) and the following paragraphs in this rule, the First-tier Tribunal must hold a hearing before making a decision which disposes of proceedings, or a part of proceedings, unless—

- (a) each party has consented to the matter being decided without a hearing; and
- (b) the First-tier Tribunal considers that it is able to decide the matter without a hearing.

(2) This rule does not apply to decisions under Part 4 of these Rules (reviewing and appealing decisions of the First-tier Tribunal).

(3) The First-tier Tribunal may dispose of proceedings, or a part of proceedings, under rule 8 (dismissal of a party's case) without a hearing.

### **Entitlement to attend a hearing**

**31.** Subject to rules 11(5) (representatives), 12(6) supporters and 33(4) (public and private hearings and powers to exclude), each party is entitled to attend a hearing together with any representative permitted by rule 11.

### **Notice of hearings**

**32.**—(1) The First-tier Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of any hearing (including any adjourned or postponed hearing) and any changes to the time and place of any hearing.

(2) In relation to a hearing to consider the disposal of proceedings, the period of notice under paragraph (1) must be at least 14 days except that the First-tier Tribunal may give less than 14 days' notice—

- (a) with the parties' consent; or
- (b) in urgent or exceptional circumstances.

### **Public and private hearings**

**33.**—(1) Subject to the following paragraphs, all hearings must be held in public.

(2) The First-tier Tribunal may give an order that a hearing, or part of it, is to be held in private if the First-tier Tribunal considers that restricting access to the hearing is justified—

- (a) in the interests of public order;
- (b) in order to protect a person's right to respect for their private and family life
- (c) in order to maintain the confidentiality of sensitive information;
- (d) in order to avoid serious harm to the public interest; or
- (e) because not to do so would prejudice the interests of justice.

(3) Where a hearing, or part of it, is to be held in private, the First-tier Tribunal may determine who is permitted to attend the hearing or part of it.

(4) The First-tier Tribunal may give an order excluding from any hearing, or part of it—

(a) any person whose conduct the First-tier Tribunal considers is disrupting or is likely to disrupt the hearing;

(b) any person whose presence the First-tier Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;

(c) any person where the purpose of the hearing would be defeated by the attendance of that person; or

(d) a person under the age of sixteen years.

(5) The First-tier Tribunal may give an order excluding a witness from a hearing until that witness gives evidence.

(6) When publishing a decision notice referred to in rule 35(2) resulting from a hearing which was held wholly or partly in private, the First-tier Tribunal must, so far as practicable, ensure that the report does not disclose information which was referred to only in a part of the hearing that was held in private (including such information which enables the identification of any person whose affairs were dealt with in the part of the hearing that was held in private) if to do so would undermine the purpose of holding the hearing in private.

### **Hearings in a party's absence**

**34.**—If a party fails to attend a hearing the First-tier Tribunal may proceed with the hearing if the First-tier Tribunal—

(a) is satisfied that the party has been notified of the hearing 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.

### **Notice of decisions and reasons**

**35.**—(1) Subject to the remainder of this rule, the First-tier Tribunal may give a decision orally at a hearing.

(2) The First-tier Tribunal must provide to each party within 30 days after the day of making a decision (other than a decision under Part 4 of these Rules) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following an order under rule 5(3)(e), or as soon as practicable thereafter, a decision notice which—

(a) states the First-tier Tribunal's decision; and

(b) notifies the party of any right of appeal against the decision and the time within which, and the manner in which, the right of appeal may be exercised.

(3) If the First-tier Tribunal does not provide written reasons for a decision, a party or an interested party may request in writing written decisions within 30 days after the day of the decision.

(4) The First-tier Tribunal must send a full written statement of findings and reasons to each party within 30 days after the day of receiving an application for full written reasons made in accordance with paragraph (4) or as soon as practicable thereafter.

## PART 4

### Reviewing and Appealing decisions of the First-tier Tribunal

#### Interpretation

**36.** In this Part —

“appeal” means the exercise of a right of appeal under section 46(1) of the 2014 Act; and

“review” means the internal review provided for by section 43(1) of the 2014 Act.

#### Reviews

**37.—**(1) An application of a party for a review under section 43(2)(b) of the 2014 Act must be made in writing to the First-tier Tribunal within 14 days after the day of the decision and must state on what grounds the decision should be reviewed (whether on the grounds of error of fact or law or both).

(2) If at any stage in the proceedings the First-tier Tribunal is satisfied that an application under paragraph (1) is totally without merit, it may refuse the application by giving notice to the applicant in writing that it has refused the application as totally without merit.

(3) The First-tier Tribunal must send a copy of any application under paragraph (1) to any other party involved in the proceedings within 10 working days after the day of receipt of the application.

(4) A notice of the decision arising from a review under paragraph (1) or from a review at the instance of First-tier Tribunal itself under section 43(2)(a) of the 2014 Act and reasons for the decision must as soon as reasonably practicable be sent by the First-tier Tribunal to each party.

(5) Where on review of any decision the First-tier Tribunal is considering setting it aside, or setting it aside and redeciding it (but not in deciding to confirm any decision it or correct some minor or accidental error contained in it) it must not set it aside, or set it aside and redecide it without first giving each party an opportunity to make representations to it before any decision is made to set it aside, or set it aside and redecide it.

(6) The members of the First-tier Tribunal making any decision in relation to a review under paragraph (1) or at the instance of First-tier Tribunal itself under section 43(2)(a) of the 2014 Act must as far as reasonably practicable be the same members who made the decision to which the review relates.

(7) The 30 days referred to in regulation 2(2) of the Scottish Tribunals (Time Limits) Regulations 2016 in respect of an application to the First-tier Tribunal is extended by any review period.

#### Application for permission to appeal a decision of the First-tier Tribunal

**38.—**(1) A person seeking permission to appeal must make a written application to the First-tier Tribunal for permission to appeal.

(2) An application under paragraph (1) must—

- (a) identify the decision of the First-tier Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state the result the party making the application is seeking.

**First-tier Tribunal's consideration of application for permission to appeal**

**39.**—(1) The First-tier Tribunal must send a record of its decision to the parties as soon as practicable.

(2) If the First-tier Tribunal refuses permission to appeal it must send with the record of its decision—

(a) a statement of its reasons for such refusal; and

(b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application must be made.

(3) The First-tier Tribunal may give permission to appeal against part only of the decision or on limited grounds, but must comply with paragraph (2) to the extent that permission is refused.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations set out the rules of procedure in respect of proceedings before the First-tier Tribunal for Scotland Tax Chamber.

*Draft Regulations laid before the Scottish Parliament under section 79(2)(c) of the Tribunals (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.*

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D R A F T   S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

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**2017 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland Tax Chamber and Upper Tribunal  
for Scotland (Composition) Regulations 2017**

*Made*        -        -        -        -        2017

*Coming into force*   -   -        1st April 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014<sup>(15)</sup> and all other powers enabling them to do so.

In accordance with section 11(2) of that Act, they have consulted the President of Tribunals.

In accordance with section 79(2)(c) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation, commencement and interpretation**

1. —(7) These Regulations may be cited as the First-tier Tribunal for Scotland Tax Chamber and Upper Tribunal for Scotland (Composition) Regulations 2017.

(8) These Regulations come into force on 1st April 2017.

(9) In these Regulations—

- (a) “the Act” means the Tribunals (Scotland) Act 2014;
- (b) “The Chamber President” means the Chamber President of the First-tier Tribunal; and
- (c) “The First-tier Tribunal” means the First-tier Tribunal for Scotland Tax Chamber.

**Composition of First-tier Tribunal**

2.—(1) Subject to paragraph (2) the First-tier Tribunal, when convened to decide any matter in a case, shall consist of—

- (a) a legal member;
- (b) a legal member and one ordinary member; or
- (c) a legal member with more than one ordinary member.

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<sup>(15)</sup> 2014 asp 10.

(2) The member or members are to be chosen by the Chamber President (who may choose him or herself).

(3) The Chamber President's discretion in choosing the member or members is subject to any relevant provisions in directions made under section 47(5)(b) of the Act.

**Composition of Upper Tribunal hearing appeals or referrals from First-tier Tribunal**

3.—(1) The Upper Tribunal, when deciding an appeal or a referral in a case decided by or referred from the First-tier Tribunal to the Upper Tribunal shall consist of—

- (a) a legal member of the Upper Tribunal;
- (b) the Chamber President (except a temporary Chamber President), acting either alone or with a legal or judicial member of the Upper Tribunal;
- (c) the President of Tribunals, acting either alone or with the Chamber President or a legal member or judicial member of the Upper Tribunal; or
- (d) the Lord President, acting either alone or with the Chamber President or a legal member or judicial member of the Upper Tribunal.

(2) A Chamber President referred to in paragraph (1) must not have had any involvement in the case prior to the appeal or referral of the case to the Upper Tribunal.

*Name*

Authorised to sign by the Scottish Ministers

St Andrew's House,

Edinburgh

Date

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision as to the composition of the First-tier Tribunal for Scotland (First-tier Tribunal) when dealing with a case in the Tax Chamber. They also make provision as to the composition of the Upper Tribunal for Scotland (Upper Tribunal) when hearing appeals or referrals from the First-tier Tribunal for Scotland Tax Chamber.

These two Tribunals were established by the Tribunals (Scotland) Act 2014. The First-tier Tribunal is divided into chambers according to the subject matter of the case, with the Tax Chamber dealing with devolved tax disputes. Members of the tribunals can be ordinary members, legal members or judicial members according to criteria set out in the Tribunals (Scotland) Act 2014 and regulations made under that Act. This instrument sets out what member or members may hear cases in the two tribunals.

**Tribunals (Scotland) Act 2014 - Consultation on Draft Regulations  
regarding:**

**(1) the Transfer of Functions and Members of the Scottish Tax Tribunals to  
the Scottish Tribunals;**

**(2) the rules of procedure for the First-tier Tribunal for Scotland Tax  
Chamber and**

**(3) the Composition of the First-tier and Upper Tribunals for Scotland**

**RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be returned with your response.

Are you responding as an individual or an organisation?

Individual

Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (anonymous)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No



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