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STATUTORY INSTRUMENTS

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**1993 No. 355**

**The Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993**

**PART IV**

**APPEAL PROCEDURE**

**Interpretation of Part IV**

**25.**—(1) In this Part, unless the context otherwise requires—

“appeal” means an appeal under—

- (a) Part II of these Regulations;
- (b) section 81(1) of the Act;
- (c) paragraph 3 of Schedule 3 to the Act; or
- (d) paragraph 2 of Schedule 6 to the Act;

“committee” means a valuation appeal committee for a valuation area constituted in accordance with the Valuation (Local Panels and Appeal Committees Model Scheme) (Scotland) Order 1975(1);

“secretary” means the secretary or assistant secretary to the local valuation panel from which the committee is constituted, or any other person for the time being authorised by that panel to act as secretary or assistant secretary to the committee.

(2) Any reference in this Part to a party to an appeal means the person or persons who made the appeal and—

- (a) in the case of an appeal under Part II of these Regulations or under paragraph 2 of Schedule 6 to the Act, the assessor;
- (b) in the case of any other appeal, the levying authority.

**Withdrawal of appeals**

**26.**—(1) An appeal may be withdrawn—

- (a) by notice in writing to that effect being given to the secretary of the committee by or on behalf of each appellant; or
- (b) with leave of the committee, by an appellant giving intimation to that effect at a hearing.

(2) Where, after an appeal under Part II of these Regulations has been lodged, the assessor decides that the proposal to which the appeal relates is well-founded, he shall—

- (a) proceed in accordance with regulation 14; and
- (b) inform the secretary of the committee accordingly;

and the appeal shall be deemed to be withdrawn.

### **Disposal by written representations**

**27.**—(1) An appeal may be disposed of on the basis of written representations if all the parties have given their agreement in writing.

(2) Where all the parties have given their agreement as mentioned in paragraph (1), the secretary shall serve notice on the parties accordingly and each party may, within four weeks of service of such a notice, serve on the secretary a notice stating—

- (a) his reasons or further reasons for the disagreement giving rise to the appeal; or
- (b) that he does not intend to make further representations.

(3) A copy of any notice served in pursuance of paragraph (2) shall be served by the secretary on the other party or parties to the appeal, and shall be accompanied by a statement of the effect of paragraphs (4) and (5).

(4) Any party on whom a notice is served under paragraph (3) may, within four weeks of service of such a notice, serve on the secretary a further notice stating—

- (a) his response to the other party's statement; or
- (b) that he does not intend to make further representations;

and the secretary shall serve a copy of any such further notice on the other party or parties.

(5) After expiry of the period of four weeks referred to in paragraph (4), the secretary shall submit to the committee—

- (a) any information transmitted to him under these Regulations; and
- (b) any notice under paragraph (2) or (4).

(6) Following receipt of the documents referred to in paragraph (5), the committee may—

- (a) require any party to furnish in writing further particulars of the grounds relied on and of any relevant facts or contentions; or
- (b) order that the appeal be disposed of on the basis of a hearing.

(7) Where further particulars are supplied by a party in response to a requirement under paragraph (6)(a), the secretary shall serve a copy of those particulars on every other party and each such party may, within four weeks of such service, serve on the secretary any further statement he wishes to make in response.

(8) Any party may, at any time before an appeal is determined under this regulation, withdraw his agreement under paragraph (1) by serving notice on the secretary.

### **Notice of hearing**

**28.**—(1) Where—

- (a) an appeal has been made to the committee and the notice of appeal has not been withdrawn or deemed to be withdrawn; and
- (b) the appeal is not one which is to be disposed of on the basis of written representations;

the secretary shall issue to each party a notice for the hearing of the appeal by the committee.

(2) The secretary shall give to each party not less than 35 days' notice of the date, time and place set for the hearing of the appeal.

(3) The secretary shall advertise the date, time and place appointed for any hearing by causing a notice giving such information to be conspicuously displayed—

- (a) at an office of the levying authority for the area of the relevant local valuation panel; and

(b) at the place appointed for the hearing (unless that place is such an office as is referred to in sub-paragraph (a)).

(4) The notice required by paragraph (3) shall name a place where a list of the appeals to be heard may be inspected.

#### **Statement of evidence**

**29.**—(1) The committee may require a party, before such date as the committee may specify—

- (a) to provide any other party to the appeal with a written statement outlining the evidence which he proposes to lead at the hearing; or
- (b) to furnish any other party to the appeal with a copy of all productions on which he proposes to found at the hearing.

(2) Where the committee makes any requirement under paragraph (1), it shall not be competent, unless the committee so allows, for a party to lead evidence other than in accordance with the material previously provided by him.

#### **Power to require attendance of witnesses and to order recovery of documents**

**30.**—(1) Except in a case which is to be disposed of on the basis of written representations and subject to paragraphs (2) and (3), the committee may, on the motion of any party to the proceedings or *ex proprio motu*, by notice in writing—

- (a) grant to a party such commission and diligence for the recovery of documents, or provide such other means of recovery thereof, as could be granted or provided by the Court of Session in a cause before them, such recovery being effected, where a commission and diligence has been granted, by execution thereof or in that or any other case in any manner in which recovery could be provided for by the Court of Session in such a cause; and
- (b) require the attendance of any person as a witness or require the production of any document relating to the question to be determined;

and may appoint the time at or within which or the place at which any act required in pursuance of this regulation is to be done.

(2) No person shall be required in obedience to a requirement imposed under paragraph (1) to attend at any place which is more than 10 miles from the place where he resides unless the necessary expenses are paid or tendered to him by the party at whose instance his attendance has been required or by the committee, as the case may be.

(3) Nothing in this regulation shall empower the committee to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the proceedings were proceedings in a court of law.

(4) Any notice given under paragraph (1) shall contain a reference to the provisions of section 82(3) of the Act (by which any person who fails to comply with any such notice shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale).

#### **Failure to appear or be represented at hearing**

**31.**—(1) If no appellant appears or is represented at the hearing of an appeal, the committee may dismiss the appeal and shall, in that event, notify the appellant or appellants of the decision to dismiss the appeal.

(2) An appellant may, within 14 days from such notification or such longer period as the committee may in special circumstances allow, represent in writing to the committee that there was reasonable excuse for his absence and the committee may, if satisfied that there was such excuse,

recall the said decision and appoint a further date, time and place for the hearing of the appeal, of which it shall give the parties not less than 7 days' notice.

### **Arrangements at hearing**

**32.**—(1) The hearing shall be in public unless the committee with reasonable cause otherwise decides, but nothing in these Regulations shall prevent a member of the Council on Tribunals or of its Scottish Committee from attending any hearing in that capacity.

(2) The committee may at its discretion consider on the day of the hearing representations from parties as to the order of that day's list of appeal cases, and may thereafter alter that order.

(3) The committee may at its discretion—

- (a) at any time postpone or adjourn a hearing, giving parties such intimation as it considers reasonable; or
- (b) consider—
  - (i) any request for adjournment of a hearing made by a party; and
  - (ii) representations by any other party as to that request;and, if it thinks fit, adjourn the hearing.

(4) In any case where a hearing has been adjourned before it has commenced, the date set for the adjourned hearing shall, for the purposes of regulation 28(2), be deemed to be the date set for the hearing.

### **Procedure at hearing**

**33.** At the hearing of an appeal—

- (a) the committee shall decide the order in which the parties shall be heard and may consider submissions by parties as to that order before reaching its decision;
- (b) a party may call and examine witnesses, give evidence on his own behalf, and cross-examine—
  - (i) any other party to the appeal who gives evidence; and
  - (ii) any witness called by another party;
- (c) the committee 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; and
- (d) any written statement (including an affidavit) admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988(2) may be received in evidence without being spoken to by a witness if—
  - (i) all parties to the appeal so agree; or
  - (ii) in the absence of such agreement, the committee at its discretion so decides.

### **Representation at hearing**

**34.**—(1) At the hearing of an appeal, a party may—

- (a) conduct his own case; or
- (b) subject to paragraphs (2) and (3), be represented by any person whether or not legally qualified.

(2) A member of the local valuation panel from which the committee is constituted shall not be entitled to represent any party to an appeal.

(3) The committee may, if satisfied that there are good and sufficient reasons for doing so, refuse to permit a particular person to represent a party at a hearing.

### **Record of evidence**

**35.** Where a party requires a record to be made of the evidence led at the hearing, he—

- (a) may make arrangements for the taking, at his expense, of such a record; and
- (b) shall inform the committee accordingly.

### **Decisions**

**36.—**(1) The decision of the committee on an appeal may be given—

- (a) orally at the end of a hearing;
- (b) orally at an adjourned sitting of a hearing; or
- (c) in writing.

(2) A written statement of the reasons for the decision shall be given to all parties in every case and, where the decision is given orally, such a written statement shall be issued by the committee to all parties within seven days of the decision being given.

### **Orders**

**37.—**(1) On deciding an appeal, other than an appeal under Part II of these Regulations, the committee may in consequence of the decision by order require—

- (a) the reversal of a decision of a levying authority;
- (b) the quashing of a calculation of an amount payable as council tax or council water charge;
- (c) where the calculation of an amount has been quashed, the re-calculation of that amount;
- (d) the quashing of a penalty imposed under paragraph 2 of Schedule 3 to the Act;
- (e) the alteration of a list (prospectively or retrospectively).

(2) On deciding an appeal under Part II of these Regulations, the committee may in consequence of the decision by order require an assessor to alter a list in accordance with any provision made by or under the Act.

(3) The assessor shall comply with any order under sub-paragraph (e) of paragraph (1) or under paragraph (2) within six weeks beginning on the day of its making.

(4) An order under this regulation may require any matter ancillary to its subject-matter to be attended to.