
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the procedures which apply for referring to the tribunal a dispute as to whether information or a document required under an information notice is subject to legal professional privilege. There are separate procedures depending on whether the notice is given in the course of correspondence or in the course of an inspection under Part 7 of the Revenue Scotland and Tax Powers Act 2014. In this respect the details of regulations 5 and 6 differ slightly to reflect the different circumstances of the requests for information or documents.

Regulation 2 defines certain terms used in the Regulations.

Regulation 4 makes it clear that any information or documents requested under Part 7, and which are not in dispute, must be provided to Revenue Scotland in accordance with the original notice requesting them.

Regulation 5 sets out procedures and time limits for referring disputes to the tribunal which arise in the course of correspondence. The regulation requires the taxpayer to compile a list of the documents which that person considers are covered by privilege. This list is then sent to Revenue Scotland to give it the opportunity to specify which documents are in dispute. This procedure is intended to reduce the number of documents which the Tribunal eventually needs to consider. The time for referring the matter to the tribunal is split in regulation 5 to allow for the exchange of details by correspondence. The time allowed also includes the original time for complying with the notice.

Regulation 6 sets out procedures where the dispute arises in the course of an inspection visit. The regulation contains rules for removing documents during an inspection. These rules protect the person providing the information by ensuring that Revenue Scotland designated officers cannot see that information in advance of the tribunal's decision. The rules also protect Revenue Scotland by ensuring that the documents agreed on are not changed. Regulation 5 does not contain a requirement to produce a list as the nature and contents of documents can be discussed at the inspection visit and then only the disputed documents need to be put into a sealed container and delivered to the tribunal.

In regulation 6 the time allowed for referral to the tribunal is longer. This is because the request and removal of documents is more immediate and the longer time ensures that both Revenue Scotland and the person providing the documents have a similar time to reflect on whether the items actually need to be referred to the tribunal.

Regulation 7 makes it clear that where information or documents are referred to the tribunal under these Regulations the notice under Part 7 will be treated as having been complied with until such time as the tribunal makes a decision about the status of the information or documents.

Regulation 8 makes it clear that the tribunal may either direct that the whole of a document is covered by privilege or that part of it is so covered. It also provides that the tribunal must direct which part or parts of a document (if any) may be disclosed. It also provides for the security of any document pending the determination of its status by the tribunal.

Regulation 9 allows for a dispute to be resolved by agreement at any time, including after the document or information has been delivered to the tribunal.