
STATUTORY INSTRUMENTS

1994 No. 1811

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

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(1), or section 249 of the Inheritance Tax Act 1984(2), any party to proceedings which are to be heard by the Special 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 and on being satisfied that the Special Commissioners have jurisdiction over the proceedings and that he has sufficient particulars of the proceedings and of the issues for determination, the Clerk shall, unless the Presiding Special Commissioner otherwise directs, send notice to each party of the place, date and time of the hearing.

(3) Unless the parties otherwise agree or the 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.

General power to give directions

4.—(1) A Special Commissioner prior to the hearing of any proceedings, for the purpose of enabling the parties to prepare for the hearing or of assisting a Tribunal to determine any of the issues in those proceedings, may on the application of a party or of his own motion, give such directions as he thinks fit.

(2) A Tribunal hearing any proceedings may, for the purpose of assisting the determination of any of the issues in those proceedings, on the application of a party or of its own motion, give such directions as it thinks fit.

(3) An application by a party for any directions under this Part of these Regulations (otherwise than during a hearing) shall be made in writing to the Clerk and, unless it is accompanied by the written consent of all the parties, shall be served by the Clerk on any other party who might be affected by such directions.

(4) If any such other party, by notice to the Special Commissioners and the other party or parties, objects to the directions sought in the application, the Special Commissioner concerned shall

(1) 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). Section 100C was applied with modifications in relation to petroleum revenue tax by paragraph 1(1) of Schedule 2 to the Oil Taxation Act 1975 and with modifications in relation to stamp duty reserve tax by regulation 20 of, and Part I of the Schedule to, the Stamp Duty Reserve Tax Regulations 1986 (S.I.1986/1711, amended by S.I. 1993/3110).

(2) 1984 c. 51. By section 100(1) and (2) of the Finance Act 1986 (c. 41), on and after 25th July 1986 the Capital Transfer Tax Act 1984 may be cited as the Inheritance Tax Act 1984, and any reference in that Act to capital transfer tax is to have effect as a reference to inheritance tax, except where the reference relates to a liability arising before 25th July 1986.

consider the objection and, if the application is not one in respect of which the parties are entitled to be heard under these Regulations, shall if he considers it necessary for the determination of the application, give the parties an opportunity to be heard.

Summoning of witnesses

5.—(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 Special 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 Special 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.

(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(3) 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)(3) of that Act.

(10)

Where, in the case of any document, a person could under section 20B(14) 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 Special 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) 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

6. 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

7.—(1) Where two or more proceedings have been brought before, but have not yet been heard by, the Special Commissioners or have been brought before, but have not yet been heard by, the Special Commissioners and any General Commissioners and it appears to the Presiding Special Commissioner—

- (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,

(3) 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.

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the Presiding Special Commissioner may, of his own motion or on 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.

(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 shall send notice of the date and terms of the direction to all the parties to the proceedings and, where one or more of the proceedings in question was pending before the General Commissioners, to the Clerk to the division or, as the case may be, each division of General Commissioners concerned.

(4) References in this regulation to proceedings pending before the General Commissioners are references to proceedings in relation to which the General Commissioners (Jurisdiction and Procedure) Regulations 1994(4) apply.

Joining of additional parties

8.—(1) If it appears to a Special Commissioner, 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, he may direct that such person be joined as a party in the proceedings and may give such further directions for giving effect to, or in connection with, the direction as he thinks fit.

(2) Where—

- (a) pursuant to a direction 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, and
- (b) pursuant to an application under regulation 15(2) by another party the hearing or, as the case may be, part of the hearing of the proceedings is to take place in private,

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

(3) Subject to paragraph (4) below, on the application of a person who has been joined as a party in the circumstances specified in paragraph (2) above, a Special Commissioner may, if he is satisfied that it would be to the convenience of the parties to do so, direct that the proceedings be transferred to the General Commissioners for the division in which the applicant ordinarily resided at the date of the application.

(4) No application may be made under paragraph (3) above in any case where the proceedings in question under any enactment lie only to the Special Commissioners and not to the General Commissioners.

Preliminary hearing

9.—(1) Where it appears to a Special Commissioner that any proceedings would be facilitated by holding a preliminary hearing, he may, on the application of a party or of his own motion, give directions for such a hearing to be held.

(2) The Clerk shall give to the parties not less than fourteen days notice, or such shorter notice as the parties agree or the Special Commissioner sees fit to impose, of the time and place of the preliminary hearing.

(3) On a preliminary hearing the Special Commissioner—

- (a) shall give all such directions as appear necessary or desirable so as to enable the proceedings to be disposed of expeditiously, effectively and fairly;
- (b) may, if the parties so agree, determine the proceedings without any further hearing.

Power of Special Commissioners to obtain information

10.—(1) A Special Commissioner on a preliminary hearing of any proceedings, or a Tribunal in the course of the hearing of any proceedings, may serve notice on any party, other than the Revenue, directing that party within the time specified in the notice—

- (a) to deliver to him or, as the case may be, the Tribunal such particulars as he or the Tribunal may consider are required for the purposes of determining any of the issues in the proceedings, and
- (b) to make available for inspection by him or the Tribunal, or by an officer of the Board, all such books, accounts or other documents in the party's possession or power as may be specified or described in the notice, being books, accounts or other documents which, in the opinion of the Special Commissioner or Tribunal issuing the notice, contain or may contain information relating 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 Special Commissioner or Tribunal who issued the notice, 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.

Postponements and Adjournments

11.—(1) A Special Commissioner 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, a Tribunal may give directions regarding the disclosure of such information or evidence to the parties prior to the resumption of the hearing.

Expert evidence

12.—(1) Unless a Special Commissioner 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 Special Commissioner 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—

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- (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 Special Commissioner 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 he considers that there are special reasons for not doing so, the Special Commissioner 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 he may specify.
- (4) This regulation shall not apply to proceedings in Scotland.