
STATUTORY INSTRUMENTS

1994 No. 1811

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

PART III

HEARING AND DETERMINATION OF PROCEEDINGS

Constitution and sittings of Tribunal

- 13.**—(1) Any one, two or three of the Special Commissioners shall constitute a Tribunal.
- (2) Where any proceedings are before a Tribunal which comprises two or three Special Commissioners—
- (a) if the Presiding Special Commissioner is one of them, he shall preside at the hearing unless he otherwise directs and, if he is not, one of them shall be nominated by him to preside;
 - (b) the proceedings may be continued by any one or more of them if all the parties give their consent and unless the Presiding Special Commissioner otherwise directs.

Representation at hearing

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

Hearings in public or in private

- 15.**—(1) Subject to paragraph (2) below, hearings before a Tribunal shall be in public.
- (2) Any party to proceedings may, by notice to the Clerk, apply for the hearing, or any part of the hearing, to take place in private; and where such application is made, the hearing or, as the case may be, the part of the hearing which is the subject of the application, shall take place in private—
- (a) if the application is made by a party other than the Revenue, or
 - (b) if the application is made by the Revenue and a Special Commissioner so directs.
- (3) The following persons shall be entitled to the present at the hearing of any proceedings before a Tribunal notwithstanding that the hearing or part of the hearing takes place in private, and may remain present during the deliberations of the Tribunal but shall take no part in those deliberations—

- (a) the Presiding Special Commissioner or any of the Special Commissioners notwithstanding that they do not constitute the Tribunal or part of the Tribunal for the purpose of the hearing;
 - (b) the clerk and any of the staff of the Special Commissioners;
 - (c) a member of the Council on Tribunals or of the Scottish Committee of that Council in the capacity of member;
 - (d) a member of the Judicial Studies Board or one of its committees in the capacity of member.
- (4) A Tribunal, with the consent of the parties, may permit any other person to be present at the hearing of proceedings before it which is to take place, or part of which is to take place, in private.

Failure of parties to attend hearing

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

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

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

Procedure and evidence at hearing

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

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

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

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

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

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

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

(6) The Tribunal may receive evidence of any fact which appears to the Tribunal to be relevant to the subject matter of the proceedings notwithstanding that such evidence would be inadmissible

in proceedings before a court of law in that part of the United Kingdom by reference to the law of which the proceedings before the Tribunal are to be determined,

but, save in cases where claims for privilege are allowed (including, in proceedings in Scotland, claims for protection from disclosure by virtue of any rule of law relating to the confidentiality of communications), it shall not refuse to admit any evidence which would be admissible in such proceedings.

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

Decisions of Tribunal

18.—(1) Where proceedings are before a Tribunal which comprises two or three Special Commissioners, any decision of the Tribunal shall be made by the votes of the Special Commissioners comprising that Tribunal.

(2) Where proceedings are before a Tribunal which comprises two Special Commissioners, in the event of an equality of votes, the Special Commissioner presiding at the hearing shall be entitled to a second or casting vote.

(3) Where proceedings are before a Tribunal which comprises three Special Commissioners, any decision or direction of the tribunal shall be made by the votes of the majority of the Special Commissioners comprising that Tribunal.

(4) The final determination may be given orally by a Tribunal at the end of the hearing or may be reserved and in either event shall be recorded forthwith in a document which, subject to paragraph (7) below, shall contain a statement of the facts found by the Tribunal and the reasons for the determination and shall be signed and dated by the Tribunal.

(5) A Tribunal may, after reserving the final determination—

- (a) give a written decision in principle on one or more issues arising in the proceedings, and
- (b) adjourn the making of the final determination until after its decision in principle has been issued and such further questions arising from that decision have been agreed by the parties or, failing agreement, decided by the Tribunal after having heard the parties.

(6) A decision in principle given under paragraph (5)(a) above shall contain, in relation to the matters covered by the decision—

- (a) a statement of the facts found by the Tribunal, and
- (b) the reasons for the decision.

(7) In any case where a decision in principle has been given under paragraph (5)(a) above, the document recording the final determination need not contain a statement of the facts and reasons referred to in paragraph (4) above except in so far as is necessary in order to explain the final determination of the Tribunal on matters not covered in the decision in principle.

(8) The Clerk shall send a copy of the document recording a decision in principle, and a copy of the document recording the final determination, to each party.

(9) Except where the final determination is given at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the parties under paragraph (8) above.

(10) Every copy of the document recording the final determination sent to the parties under this regulation shall be accompanied by a notification of the provisions of—

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

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

Review of Tribunal's decision in principle or final determination

- 19.**—(1) If, on the application of a party or of its own motion, a Tribunal is satisfied that—
- (a) a decision in principle or the final determination was wrongly made as a result of an administrative error on the part of the Clerk or any of the staff of the Special Commissioners or a party, or
 - (b) a party, who was entitled to be heard at a hearing but failed to appear or to be represented, had good and sufficient reason for failing to appear or to be represented, or
 - (c) accounts or other information relevant to a party's case had been sent to the Clerk or to the appropriate inspector or other officer of the Board prior to the hearing of the proceedings but had not been received by the Tribunal until after the hearing,

the Tribunal may review and set aside or vary the decision in principle or final determination (or both the decision in principle and the final determination).

(2) An application for the purposes of paragraph (1) above shall be made to the Tribunal not later than fourteen days after the date on which a copy of the document recording the decision in principle or, as the case may be, the final determination was sent to the parties under regulation 18(8), or by such later time as the Tribunal may allow, and shall be in writing stating the grounds in full.

(3) Where the Tribunal proposes to review of its own motion the decision in principle or final determination, it shall serve notice of that proposal on the parties not later than fourteen days after the date on which a copy of the document recording the decision in principle or, as the case may be, the final determination was sent to the parties under regulation 18(8).

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

(5) Regulation 18 shall apply to a decision by a Tribunal varying a decision in principle or final determination, or substituting a new decision in principle or final determination, as it applies to a decision in principle or final determination.

Publication of decisions in principle or final determinations

20.—(1) The Presiding Special Commissioner may make arrangements for the publication of reports of such of the decisions in principle and final determinations given by Tribunals as he considers appropriate.

(2) Where the Presiding Special Commissioner considers it appropriate to publish a report of a decision in principle or final determination pursuant to paragraph (1) above, and that decision or determination relates to proceedings the whole or part of which were heard in private in accordance with regulation 15(2), he shall ensure that the report is in a form which so far as possible prevents the identification of any person whose affairs are dealt with in the decision or determination.

Orders for costs

21.—(1) Subject to paragraph (2) below, a Tribunal may make an order awarding the costs of, or incidental to, the hearing of any proceedings by it against any party to those proceedings (including

a party who has withdrawn his appeal or application) if it is of the opinion that the party has acted wholly unreasonably in connection with the hearing in question.

(2) No order shall be made under paragraph (1) above against a party without first giving that party an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) above may require the party against whom it is made to pay to the other party or parties the whole or part of the costs incurred by the other party or parties of, or incidental to, the hearing of the proceedings, such costs to be taxed if not otherwise agreed.

(4) Any costs required to be taxed pursuant to an order under this regulation shall be taxed in the county court according to such of the scales prescribed by rules of court for proceedings in the county court as may be directed by the order or, in the absence of any such direction, by the county court.

(5) In the application of this regulation to proceedings in Scotland—

- (a) any reference to costs shall be construed as a reference to expenses;
- (b) in paragraph (4) above, for the references to the county court there shall be substituted references to the sheriff court and for the reference to proceedings there shall be substituted a reference to civil proceedings.

(6) In the application of this regulation to proceedings in Northern Ireland, for paragraphs (3) and (4) above there shall be substituted—

“(3) An order under paragraph (1) above may require the party against whom it is made to pay to the other party or parties the whole or part of the costs incurred by that other party or parties of, or incidental to, the hearing of the proceedings, such costs to be taxed in the county court if not determined by the Tribunal or otherwise agreed.

(4) Any costs which may be determined by the Tribunal under paragraph (3) above shall be determined by reference to the scales prescribed by rules of court for proceedings in the county court and any costs required to be taxed pursuant to an order under this regulation shall be taxed in the same manner as costs in equity suits or proceedings in the county court.”.