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STATUTORY INSTRUMENTS

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**1994 No. 1812**

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

**PART III**

**HEARING AND DETERMINATION OF PROCEEDINGS**

**Power of Tribunal to obtain information**

**10.**—(1) A Tribunal hearing any proceedings may at any time before the final determination of those proceedings serve notice on any party, other than the Revenue, directing him within the time specified in the notice—

- (a) to deliver to it such particulars as it may require for the purpose of determining any of the issues in the proceedings, and
- (b) to make available for inspection by it, or by an officer of the Board, all such books, accounts or other documents in his possession or power as may be specified or described in the notice, being books, accounts or other documents which, in the opinion of the Tribunal, contain or may contain information relevant 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 Tribunal 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.

(3) If any person fails to comply with a notice served under this regulation, the Tribunal may summarily determine a penalty against him not exceeding £300 and, if the failure continues after the determination of such penalty, a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty was determined (but excluding any day for which a further penalty has already been determined).

(4) Any penalty determined by the Tribunal under paragraph (3) above shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

**Constitution and sittings of Tribunal**

**11.**—(1) A Tribunal hearing any proceedings shall, where possible, comprise at least three General Commissioners but the validity of any proceedings before a Tribunal shall not be challenged where the Tribunal in question is comprised of two General Commissioners.

(2) The General Commissioners comprising a Tribunal shall decide which one of them shall preside at the hearing of proceedings before them.

(3) Proceedings before any Tribunal may be continued by any one or more of the General Commissioners comprising that Tribunal if all the parties give their consent.

### **Representation at hearing**

12. 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 to be in private**

13.—(1) Subject to paragraphs (2) and (3) below, any proceedings before a Tribunal shall be heard in private.

(2) The following persons shall be entitled to be present at the hearing of any proceedings before a Tribunal and may remain present during the deliberations of the Tribunal but shall take no part in those deliberations—

- (a) the Clerk and any of the staff of the General Commissioners;
- (b) a member of the Council on Tribunals or the Scottish Committee of that Council in the capacity of member;
- (c) any of the Special Commissioners;
- (d) a member of the Judicial Studies Board or one of its committees in the capacity of member.

(3) A Tribunal, with the consent of the parties, may permit any other person to attend the hearing of any proceedings before it.

(4) For the purposes of paragraph (1) above, proceedings which are heard at the same time as other proceedings and by the same Tribunal pursuant to a direction under regulation 6(1) shall be taken to be heard in private.

### **Failure of parties to attend hearing**

14.—(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**

15.—(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 affidavit or a 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**

**16.**—(1) Any decision of a Tribunal shall be made by the votes of the majority of the General Commissioners comprising that Tribunal and, in the event of an equality of votes, the General Commissioner presiding at the hearing shall be entitled to a second or casting vote.

(2) 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 in a document which shall be signed and dated by the Tribunal.

(3) The Clerk shall send to each party a notice setting out the final determination recorded under paragraph (2) above.

(4) 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 the notice is sent to the parties under paragraph (3) above.

(5) Every notice sent to the parties under paragraph (3) above 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 General Commissioners and of the time within which, and the manner in which, such appeals shall be made.

### **Review of Tribunal's final determination**

**17.**—(1) If, on the application of a party or of its own motion, a Tribunal is satisfied that—

- (a) 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 General 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 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 notice setting out the final determination was sent to the parties under regulation 16(3), 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 final determination, it shall serve notice of that proposal on the parties not later than fourteen days after the date on which notice setting out the final determination was sent to the parties under regulation 16(3).

(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 another Tribunal; and if, having reviewed the final determination, the Tribunal sets aside that determination, it shall substitute such determination as it thinks fit or order a rehearing before either the same or a differently constituted Tribunal.

(5) Regulation 16 shall apply to a decision by a Tribunal varying a final determination or substituting a new final determination, as it applies to a final determination.