

SCHEDULE 4

Regulation 11(6)(a)

THE EMPLOYMENT TRIBUNALS (LEVY  
APPEALS) RULES OF PROCEDURE (SCOTLAND)  
*for use only in proceedings on levy appeals*

**Notice of appeal**

1. An appeal against an assessment to a levy shall be instituted by the appellant sending to the Board in duplicate a notice of appeal which shall be substantially in accordance with Form 1, and shall set out the grounds of the appeal.

**Action upon receipt of appeal**

2.—(1) Subject to provisions of rules 3 and 4, the Board shall, within 21 days of receiving the notice of appeal, send to the Secretary—

- (a) one copy of the notice of appeal;
- (b) a copy of the assessment notice and of any notice by the Board allowing further time for appealing;
- (c) a notice giving the Board's address for service under these rules where that address is different from the address specified in the assessment notice as the address for service of a notice of appeal; and
- (d) any representations in writing relating to the appeal that the Board may then desire to submit to the tribunal.

(2) Failure to comply with any provision of this rule or rule 3 shall not render the appeal or anything done in pursuance thereof invalid.

**Further particulars of appeal**

3.—(1) Subject to rule 4, this rule applies in a case where the Board upon receiving the notice of appeal requires further particulars of the grounds on which the appellant intends to rely and of any facts and contentions relevant thereto.

(2) The Board shall within 21 days of receiving the said notice of appeal send to the appellant a notice specifying the further particulars required by the Board.

(3) The appellant shall within 21 days of receiving the said notice, or within such further period as the Board may allow, send to the Board in duplicate such further particulars.

(4) Subject to the provisions of paragraph (5), the Board shall, within 21 days of receiving such further particulars, send to the Secretary—

- (a) the documents specified in rule 2;
- (b) a copy of the notice requiring the further particulars; and
- (c) such further particulars, and any representations in writing with respect thereto that the Board may then desire to submit to the tribunal.

(5) If such further particulars are not received by the Board in due time, the documents mentioned in sub-paragraphs (a) and (b) of paragraph (4) shall be sent by the Board to the Secretary—

- (a) within fifty days of the receipt of the notice of appeal by the Board; or
- (b) if the Board has allowed a further period of time for delivery of further particulars under paragraph (3), within seven days of the end of that period.

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### **Withdrawal of appeal or assessment**

4.—(1) The appellant may withdraw the notice of appeal by notice given to the Board at any time before the entry of the appeal in the Register under rule 5(a) and in that event no further action shall be taken in relation to the appeal.

(2) Where an assessment is withdrawn by the Board, no further action shall be taken in relation to the appeal.

### **Entry of appeal**

5. Upon receiving from the Board the relevant documents in accordance with rule 2(1), 3(4) or 3(5) the Secretary shall as soon as practicable—

- (a) enter the following details of the appeal in the Register, namely—
  - (i) the case number;
  - (ii) the date the Secretary received the relevant documents;
  - (iii) the name and address of the appellant;
  - (iv) the name and address of the Board;
  - (v) the Regional Office of the Employment Tribunals dealing with the appeal; and
  - (vi) the fact that the appeal is an appeal by a person assessed to levy imposed under a levy order made under section 12 of the 1982 Act;
- (b) give notice to the appellant and to the Board of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the appeal) and of the address to which notices and other communications to the Secretary shall be sent;
- (c) give notice to the appellant of the Board's address for service under these rules; and
- (d) send to the appellant a copy of any representations in writing that the Board has submitted to the tribunal under rule 2 or rule 3.

### **Direction for further particulars**

6.—(1) In any case in which an appellant has not sent to the Board further particulars in accordance with a notice sent by the Board under rule 3 the tribunal may, on the application of the Board (which may be sent to the Secretary with the documents referred to in rule 3(5)), by notice direct the appellant to supply such further particulars of the grounds on which he intends to rely and of any facts and contentions relevant thereto as may be specified in the notice, and the appellant shall send such particulars in duplicate to the Secretary within such time as the tribunal shall direct.

(2) Upon receipt of further particulars from the appellant the Secretary shall send a copy thereof to the Board.

(3) If the appellant makes default in complying with a direction made by the tribunal under this rule the tribunal may on the application of the Board dismiss the appeal or give such other directions as may seem proper.

(4) The tribunal may at any time by notice direct the Board to furnish any particulars relating to the assessment which appear to be requisite for the decision of the appeal, and thereupon the Board shall send the particulars to the Secretary and to the appellant.

### **Attendance of witnesses and recovery of documents**

7.—(1) On the application of the appellant or the Board made either by notice to the Secretary or at the hearing the tribunal may—

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- (a) require one party to grant to the other party such recovery or inspection of documents as might be ordered by a sheriff; or
- (b) require any person (including a party) to attend as a witness and to give evidence or to produce any documents in his possession or power which relate to the appeal;

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

(2) A party on whom a requirement has been imposed under paragraph (1)(a) of this rule or a person on whom a requirement has been imposed under paragraph (1)(b) may, if such requirement was made upon an ex parte application, apply to the tribunal to vary or set aside the requirement, and notice of such an application shall be given to the party upon whose application the requirement was made.

(3) No application to vary or set aside a requirement as aforesaid shall be entertained by the tribunal in a case where a time has been appointed in relation to the requirement unless the application is made before the time or, as the case may be, the expiration of time so appointed.

(4) Every document containing a requirement under paragraph (1) shall contain a reference to the fact that, under section 7(4) of the 1996 Act, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

### **Time and place of hearing of appeal**

8. The President or a Regional Chairman shall fix the date, time and place of the hearing of an appeal, and the Secretary shall, not less than 14 days before the date so fixed, send to the appellant and to the Board a notice substantially in accordance with Form 2.

### **The hearing**

9.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with section 4(1) and (2) of the 1996 Act.

(2) Subject to paragraph (3), any hearing of or in connection with an appeal shall take place in public.

(3) A tribunal may sit in private—

- (a) for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—
  - (i) information which he could not disclose without contravening a prohibition imposed by or by virtue of any enactment,
  - (ii) any information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
  - (iii) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of the 1992 Act, cause substantial injury to any undertaking of his or in which he works; or
- (b) if it considers it expedient in the interests of national security.

(4) A member of the Council on Tribunals or of its Scottish Committee shall be entitled to attend any hearing taking place in private in his capacity as member.

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### **Procedure at hearing**

**10.**—(1) At the hearing of an appeal the appellant and the Board shall be entitled to make opening statements, to call witnesses, to cross-examine any witnesses called by the other party and address the tribunal.

(2) The appellant may if he so desires give evidence on his own behalf.

(3) If the appellant or the Board or both of them shall fail to appear or to be represented at the time and place fixed for a hearing the tribunal may dispose of the appeal or application in the absence of such party or parties or may adjourn the hearing to a later date; provided that before disposing of an appeal in the absence of either or both parties the tribunal shall consider any representations submitted by such party or parties under these rules.

(4) The tribunal may require any witnesses to give evidence on oath or affirmation in due form.

### **Devolution issues**

**11.**—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform the relevant authority thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time—

(a) send a copy of the notice to the parties to the proceedings; and

(b) send the relevant authority a copy of the notice of appeal.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

### **Decision of tribunal**

**12.**—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) The clerk shall transmit the document signed by the chairman to the Secretary who shall enter it in the Register, and shall send a copy of the entry to the appellant and the Board.

(4) The reasons for the decision shall be omitted from the Register in any case in which—

(a) evidence has been heard in private and the tribunal so directs, or

(b) the tribunal on the application of the appellant so directs on the ground that disclosure will be contrary to the interests of the appellant.

(5) The chairman of the tribunal shall have power by certificate to correct in the document recording the tribunal's decision clerical mistakes or errors arising therein from any accidental slip or omission.

(6) The clerk shall send a copy of any document so corrected and the certificate of the chairman to the Secretary who shall thereupon make such correction as may be necessary in the Register and shall send a copy of the corrected entry or the corrected reasons, as the case may be, to the appellant and the Board.

### **Expenses**

**13.**—(1) The decision of the tribunal may include—

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- (a) an order that the Board shall pay to the appellant or that the appellant shall pay to the Board either a specified sum in respect of the expenses incurred by the appellant or the Board, as the case may be, or, in default of agreement, the taxed amount of those expenses;
- (b) an order that the Board or the appellant shall pay to the Secretary of State the whole, or any part of, any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under section 5(2) or (3) of the 1996 Act to any person, for the purposes of, or in connection with, his attendance at the tribunal.

(2) Any expenses required by an order under this rule to be taxed may be taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order, and thereafter the tribunal may issue an order for payment of the amount as taxed.

### **Miscellaneous powers**

**14.**—(1) The tribunal may if it thinks fit—

- (a) extend the time appointed by these rules for doing any act notwithstanding that the time appointed may have expired;
- (b) before granting an application referred to in rule 6(1), 6(3), 7(1) or 15, require the party making the application to give notice thereof to the other party;
- (c) postpone the day or time fixed for, or adjourn the hearing of, any appeal or application;
- (d) if at any time after the entry of the appeal in the Register the appellant gives notice of the abandonment of his appeal to the Secretary and to the Board, or the Board gives notice that the appeal is not contested to the Secretary and to the appellant, dismiss or allow the appeal, as the case may be, and thereupon rule 13 shall apply;
- (e) if the appellant and the Board agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(2) A notice under paragraph (1)(b) shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified by the tribunal for the purposes of the application.

(3) Subject to the provisions of these rules the tribunal may regulate its own procedure.

(4) Any act required or authorised by these rules to be done by a tribunal may be done by a chairman except—

- (a) the hearing of an appeal under rule 9; and
- (b) an act required or authorised to be so done by rule 10 or 12 which the rule implies is to be done by the tribunal which is hearing or heard the appeal.

(5) Any functions of the Secretary other than those mentioned in rules 5 and 12 may be performed by an Assistant Secretary.

### **Applications**

**15.**—(1) An application to the tribunal for an extension of the time appointed by these rules for doing any act may be made by the appellant or the Board either before or (subject to rule 7(3)) after the expiration of the time so appointed.

(2) The appellant or the Board may at any time apply to the tribunal for directions on any matter arising in connection with the appeal.

(3) An application made under the foregoing provisions of these rules or to the tribunal for an extension of the time for appealing against an assessment to a levy shall be made by sending to the Secretary in duplicate a notice of application which shall state the title of the appeal, or the number

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of the assessment in the case where an appeal has not been entered in the Register, and shall set out the grounds of the application.

(4) The Secretary shall give notice to the appellant and to the Board of any extension of time granted by the tribunal or of any directions given by the tribunal in pursuance of these rules.

#### **Notices, etc**

**16.**—(1) Any notice given under these rules shall be in writing, and all notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post, by means of the recorded delivery service or delivered to or at—

- (a) in the case of a notice of appeal, the Board’s address for service specified in the assessment notice;
- (b) in the case of a notice or document directed to the Advocate General for Scotland pursuant to rule 11, the Office of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ;
- (c) in the case of a notice or document directed to the Lord Advocate pursuant to rule 11, the Legal Secretariat to the Lord Advocate, 25 Chambers Street, Edinburgh, EH1 1LA;
- (d) in the case of any other document directed to the Board, the Board’s address for service;
- (e) in the case of a document (other than a notice of appeal) directed to the Secretary, the Office of the Tribunals or such other office as may be notified by the Secretary to the appellant and to the Board under rule 5(b) or paragraph (3);
- (f) in the case of a document directed to the appellant, his address for service specified in a notice given under these rules or, failing such a notice or if a notice sent to such an address has been returned, his last known address or place of business in the United Kingdom, or if the appellant is a corporation, such address or place of business or its registered or principal office;

and if sent or given to the authorised representative of the appellant or the Board shall be deemed to have been sent or given to the appellant or the Board as the case may be.

(2) The appellant or the Board may at any time by notice to the Secretary and to the other party change his address for service under these rules.

(3) The Secretary shall give notice to the appellant and the Board of any change in an address of which notice has been given to the parties under rule 5(b).

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**APPENDIX**  
**FORM 1 INDUSTRIAL TRAINING ACT 1982 NOTICE OF APPEAL AGAINST AN ASSESSMENT**

TO

\*INDUSTRIAL TRAINING BOARD

.....  
.....[ ]  
.....  
.....

AND TO

The Secretary of the Tribunals (Scotland)

I/We + ..... of  
.....#  
hereby give notice that I/we + appeal to an employment tribunal under the Industrial Training Act 1982, section 12, against the assessment to the levy made by the above-mentioned industry training board on ..... 20.....  
being the assessment numbered .....

**Grounds of appeal**

The grounds of my/our + appeal are as follows:

**Address for service**

All communications regarding the appeal should be addressed to me/us + at .....  
.....#  
to my/our + Solicitor(s)/Agent(s) ~ ,  
..... at  
.....#

Date ..... 20.....  
Signed .....

- \* Insert name of the Board.
- [ ] Insert the address of the Board.
- + Delete if inappropriate.
- # Insert address applicable.
- ~ If the notice is signed on behalf of the appellant, the signatory must state in what capacity or what authority he signs.

**FORM 2 INDUSTRIAL TRAINING ACT 1982 NOTICE OF HEARING**

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Case No ..... Central/\*Regional Office of the Employment  
Tribunals (Scotland),  
Tribunal  
.....  
.....

NOTICE IS HEREBY GIVEN that the appeal of .....  
..... against the  
assessment made to the levy by the

.....  
Industry Training Board and numbered  
.....  
will be heard by an employment tribunal at .....  
on the ..... day of ..... at  
..... o'clock in the .....  
noon, or as soon as may be thereafter.

Unless the appellant receives from me a communication to the contrary, he should in his own interest appear at the hearing with his witnesses at the above time and place.

The appellant is entitled to be represented by counsel or solicitor or by another person.

If for any reason the appellant does not propose, or is unable, to appear at the hearing either in person or by representative, the appellant should immediately inform me in writing at the address mentioned at the head of this notice, stating the case number of the appeal and the reasons for the inability to attend or to be represented.

The appellant and the Board are entitled to submit representations in writing for consideration of the tribunal at the hearing of the appeal. Any such representations must be received by the Secretary of the Employment Tribunals (Scotland) at the address mentioned at the head of this notice on or before [date] and a copy must be sent at the same time to the other party. If either or both parties fail to attend the hearing, the tribunal may dispose of the appeal in their absence, but in such case the tribunal will consider any representations so submitted.

Dated ..... 20.....  
Signed .....  
\*Secretary/\*Assistant Secretary

To the Appellant .....  
And  
To ..... Industry  
Training Board.