

## GENERAL COMMISSIONERS (JURISDICTION AND PROCEDURE) REGULATIONS 1994

(SI 1994/1812 as amended by SI 1999/3293, SI 2002/2976, SI 2004/1363, SI 2005/340 and SI 2007/3612)

*Made on 6 July 1994 by the Lord Chancellor, in exercise of the powers conferred on him by s. 46A and 56B of the Taxes Management Act 1970. Operative from 1 September 1994.*

**Cross references** – SI 2002/2172, reg. 14(4): application of these regulations to determinations of working tax credit funding to be repaid by employers.

**Notes** – SI 2002/2976 amends reg. 2, inserts reg. 6A, and substitutes reg. 13 with effect in relation to proceedings commenced on or after 31 December 2002. For proceedings commenced before 31 December 2002 the previous text continues to have effect.

### ARRANGEMENT OF REGULATIONS

#### REGULATION

##### PART I – INTRODUCTORY

1. CITATION, COMMENCEMENT AND APPLICATION
2. INTERPRETATION

##### PART II – PREPARATION FOR A HEARING

3. LISTING AND NOTICE OF HEARING
- 3A. GENERAL POWER TO GIVE DIRECTIONS
- 3B. PRELIMINARY HEARING
4. SUMMONING OF WITNESSES
5. AGREEMENT OF DOCUMENTS
6. PROCEEDINGS TO BE HEARD TOGETHER OR IN SUCCESSION
- 6A. LEAD CASES
7. JOINING OF ADDITIONAL PARTIES
8. POSTPONEMENTS AND ADJOURNMENTS
9. EXPERT EVIDENCE

##### PART III – HEARING AND DETERMINATION OF PROCEEDINGS

10. POWER OF TRIBUNAL TO OBTAIN INFORMATION
11. CONSTITUTION AND SITTINGS OF TRIBUNAL
12. REPRESENTATION AT HEARING
13. HEARINGS IN PUBLIC
14. FAILURE OF PARTIES TO ATTEND HEARING
15. PROCEDURE AND EVIDENCE AT HEARING
16. DECISIONS OF TRIBUNAL
17. REVIEW OF TRIBUNAL'S FINAL DETERMINATION

##### PART IV – SPECIAL PROCEDURE

18. PROCEEDINGS RELATING TO TAX ON CHARGEABLE GAINS
19. REFERENCES OF QUESTIONS TO OTHER TRIBUNALS
20. CASE STATED PROCEDURE
21. CONSIDERATION OF DRAFT CASE
22. PREPARATION AND SUBMISSION OF FINAL CASE
23. CASE STATED PROCEDURE – SCOTLAND AND NORTHERN IRELAND

##### PART V – MISCELLANEOUS

24. IRREGULARITIES
- 24A. PENALTY FOR FAILURE TO COMPLY WITH DIRECTION
25. NOTICES
26. SERVICE
27. SUBSTITUTED SERVICE

## PART I – INTRODUCTORY

### CITATION, COMMENCEMENT AND APPLICATION

**1(1)** These Regulations may be cited as the General Commissioners (Jurisdiction and Procedure) Regulations 1994 and shall come into force on 1st September 1994.

**1(2)** These Regulations do not apply in relation to—

- (a) any proceedings in respect of which notice of the place, date and time of the hearing was given or, in the case of more than one such notice, first given by the Clerk prior to 1st September 1994, and in respect of which an election is made by any party to the proceedings, by notice served on the Clerk, that these Regulations shall not apply, or
- (b) any proceedings under section 100C of the Taxes Management Act 1970 in respect of which a summons was issued prior to 1st September 1994 by the General Commissioners to the defendant (or, in Scotland, the defender) to appear before them at a time and place stated in the summons.

**1(3)** Where these Regulations apply in relation to any proceedings in respect of which notice of the place, date and time of the hearing was given or, as the case may be, first given by the Clerk prior to 1st September 1994, anything done in relation to those proceedings prior to that date which, if the proceedings had been brought before the General Commissioners on or after that date, could have been done pursuant to these Regulations, shall have effect as if done pursuant to these Regulations.

**1(4)** An election under paragraph (2)(a) above shall be made prior to the time of commencement of the hearing of the proceedings in question or, in the case of a hearing which commenced before 1st September 1994 but which was adjourned, prior to the time of commencement of the first continuation of the hearing on or after that date, and shall be irrevocable.

### INTERPRETATION

**2** In these Regulations unless the context otherwise requires—

“**the Board**” means the Commissioners of Inland Revenue;

“**the Clerk**”, in relation to any proceedings, means the Clerk to the General Commissioners;

“**division**” shall be construed in accordance with section 2(1) of the Management Act 1970;

“**final determination**” means the decision finally determining any proceedings before a Tribunal;

“**General Commissioners**” shall be construed in accordance with section 2(1) of the Management Act, and

“**the General Commissioners**”, in relation to any proceedings, means the General Commissioners for a division before whom the proceedings are brought (and references to a General Commissioner are to be read accordingly);

“**inspector**” means an inspector of taxes and in relation to stamp duty land tax means any officer of the Board;

“**the Management Act**” means the Taxes Management Act 1970;

“**party**” means a party to any proceedings, and for the purposes of these Regulations—

- (a) where the proceedings relate to an assessment, decision or determination made by the Board, the Board and any inspector or other officer of the Board for the time being concerned with the proceedings shall together constitute a party to those proceedings;
- (b) where the proceedings relate to an assessment, decision or determination made by an inspector or other officer of the Board, that person and any other inspector or other officer of the Board for the time being concerned with the proceedings shall together constitute a party to those proceedings;

and references to

“**the Revenue**” are references to a party within paragraph (a) or, as the case may be, paragraph (b) above;

“**proceedings**” means—

- (a) any appeal to the General Commissioners under the Taxes Acts;
- (b) any proceedings before the General Commissioners which under the Taxes Acts are to be heard and determined in the same way as such an appeal;

- (c) any proceedings before the General Commissioners which relate to a penalty and are not within paragraph (a) or paragraph (b) above;
- (d) any appeal to the General Commissioners under Part II of the Transfer Act or Part III of the Transfer Order;
- (e) [Omitted by SI 2007/3612, reg. 4(2)];
- (f) any appeal to the General Commissioners under the enactments relating to stamp duty land tax;
- (g) any proceedings before the General Commissioners which under any enactments relating to stamp duty land tax are to be heard and determined in the same way as such an appeal or any other proceedings to the General Commissioners under the enactments relating to stamp duty land tax;
- (h) any appeal to the General Commissioners under regulations made under section 13 of the Child Trust Funds Act 2004 or any appeal to the General Commissioners under section 22 of that Act;

“**proceedings in Northern Ireland**” means any proceedings (as defined in this regulation) which fall within the meaning of that expression as defined in section 58(3) of the Management Act;

“**proceedings in Scotland**” means any proceedings (as defined in this regulation) which fall to be determined by reference to the law of Scotland;

“**the enactments relating to stamp duty land tax**” means Part 4 of the Finance Act 2003 and any regulations made under that Part;

“**Special Commissioners**” shall be construed in accordance with section 4(1) of the Management Act;

“**the Taxes Acts**” has the meaning given by section 118(1) of the Management Act;

“**the Transfer Act**” means the Social Security Contributions (Transfer of Functions, etc.) Act 1999;

“**the Transfer Order**” means the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999;

“**Tribunal**”, in relation to any proceedings, means, subject to regulation 11(3), two or more, but not more than five, General Commissioners for a division before whom the proceedings are brought;

**History** – Definition of “the enactments relating to stamp duty land tax” inserted by SI 2004/1363, reg. 23(2), with effect from 11 June 2004.

In reg. 2, in the definition of “inspector” the words “and in relation to stamp duty land tax means any officer of the Board” inserted by SI 2004/1363, reg. 23(2), with effect from 11 June 2004.

In the definition of “proceedings”, para. (h) inserted by SI 2005/340, reg. 2, with effect from 14 March 2005.

In the definition of “proceedings”, para. (f) and (g) inserted by SI 2004/1363, reg. 23(2), with effect from 11 June 2004.

The entry at (e) relating to appeal to General Commissioners, omitted by SI 2007/3612, reg. 4(2), with effect from 28 January 2008.

In reg. 2, in the definition of “proceedings” (d) and (e) inserted by SI 2002/2976, reg. 8(a) with effect in relation to proceedings commenced on or after 31 December 2002. For proceedings commenced before 31 December 2002 the previous text continues to have effect.

Definitions of “the Transfer Act”, “the Transfer Order” and “the Working Tax Regulations” inserted by SI 2002/2976, reg. 8 with effect in relation to proceedings commenced on or after 31 December 2002. For proceedings commenced before 31 December 2002 the previous text continues to have effect.

Definition of “the Working Tax Regulations” omitted by SI 2007/3612, reg. 4(2), with effect from 28 January 2008.

## 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, any party to proceedings which are to be heard by the General Commissioners may serve notice on the Clerk that he wishes a date for the hearing to be fixed.

**3(2)** On receipt of a notice under paragraph (1) above the Clerk shall send notice to each party of the place, date and time of the hearing.

**3(3)** Unless the parties otherwise agree or a 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

**3A(1)** A General Commissioner, before the hearing of any proceedings, and a Tribunal, at any time, may give directions to—

- (a) enable the parties to prepare for a hearing;
- (b) assist the Tribunal to determine the issues; or
- (c) ensure the just, expeditious and economical determination of the proceedings.

**3A(2)** Directions may be given on the initiative of a Tribunal or a General Commissioner or on the application of a party.

**3A(3)** An application by a party for directions, unless made during a hearing, must be made in writing to the Clerk.

**3A(4)** Unless the application is accompanied by the written consent of all parties, the Clerk must serve the application on any other party who might be affected by the directions, and that party must be given an opportunity to oppose the application.

**3A(5)** A party opposing an application must do so by notice in writing to the Clerk and any other party.

**3A(6)** A party opposing an application must do so by notice in writing to the Clerk and any other party.

**History** – Reg. 3A inserted by SI 2007/3612, reg. 5, with effect from 28 January 2008.

## PRELIMINARY HEARING

**3B(1)** A General Commissioner may, on the application of a party or on the General Commissioner's own initiative, hold a preliminary hearing to—

- (a) secure the just, expeditious and economical conduct of the proceedings;
- (b) ensure that the parties make all such admissions and agreements as ought reasonably to be made; and
- (c) determine any preliminary question of fact or law which appears to be in issue.

**3B(2)** The Clerk shall give the parties not less than 14 days' notice of the preliminary hearing, unless—

- (a) the parties consent to shorter notice; or
- (b) the General Commissioner thinks it is in the interests of justice for the notice to be shorter.

**3B(3)** If the determination of the preliminary question substantially disposes of the proceedings, the Tribunal may, after hearing any representations from the parties,—

- (a) treat the preliminary hearing as the substantive hearing; and
- (b) make such order by way of disposing of the proceedings as necessary.

**History** – Reg. 3B inserted by SI 2007/3612, reg. 5, with effect from 28 January 2008.

## SUMMONING OF WITNESSES

**4(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 General 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.

**4(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 General 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.

**4(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(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.

**4(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.

**4(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 each service.

**4(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.

**4(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.

**4(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 or paragraph 26 of Schedule 13 to the Finance Act 2003 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, or paragraphs 26 and 27 of Schedule 13 to the Finance Act 2003, he would not be obliged to deliver or make available that document in response to a notice under section 20(3) or (8A) of that Act or paragraphs 6 to 13 of Schedule 13 to the Finance Act 2003.

**4(10)** Where, in the case of any document, a person could under section 20B(14) of that Act or paragraph 27(3) of Schedule 13 to the Finance Act 2003 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.

**4(11)** On the application, by notice served on the Clerk, of a person on whom a witness summons has been served, a General 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.

**4(12)** Subject to paragraphs (6) to (11) above, if a person on whom a witness summons is served—

- (a) fails to attend in obedience to the summons, or
- (b) attends, but refuses to be sworn or to affirm, or
- (c) refuses to answer any lawful question, or
- (d) refuses to produce any document which he has been required by the summons to produce, the Tribunal hearing the proceedings may summarily determine a penalty against him not exceeding £1,000.

**4(13)** Any penalty determined by a Tribunal under paragraph (12) above shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

**4(14)** 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.

**History** – Reg. 4(9) substituted by SI 2004/1363, reg. 23(3), with effect from 11 June 2004. Reg. 4(9) read as follows:

“**4(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 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) of that Act.”.

In reg. 4(10) the words "or paragraph 27(3) of Schedule 13 to the Finance Act 2003" inserted by SI 2004/1363, reg. 23(4), with effect from 11 June 2004.

#### AGREEMENT OF DOCUMENTS

**5** 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

**6(1)** Where two or more proceedings have been brought before, but have not yet been heard by, the General Commissioners for one or more divisions and it appears to two or more of the General Commissioners for one of those divisions—

- (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,

those Commissioners may, of their own motion or on an 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 within their division.

**6(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.

**6(3)** On the giving of a direction under paragraph (1) above, the Clerk to the General Commissioners by whom the direction is given shall send notice of the date and terms of the direction to all the parties to the proceedings and, except where all the proceedings have been brought before the General Commissioners for the same division, to the Clerk to the other division or, if more than one, each other division of General Commissioners concerned.

#### LEAD CASES

**6A(1)** Where—

- (a) one or more proceedings under Part II of the Transfer Act or Part III of the Transfer Order have been brought before, but have not yet been heard, by General Commissioners for one or more divisions, and
- (b) those proceedings give rise to common or related issues of fact or law ("**same issues proceedings**")

the General Commissioners or each of the General Commissioners for each division as the case may be, shall arrange for transfer of those proceedings to the Special Commissioners.

**6A(2)** Before transferring any same issues proceedings the appropriate General Commissioners shall give all the parties to the proceedings in question an opportunity to make representations.

**6A(3)** For the purpose of this regulation "**proceedings**" shall for the avoidance of doubt, include more than one appeal against the same decision to the General Commissioners.

**History** – Reg. 6A inserted by SI 2002/2976, reg. 9 with effect in relation to proceedings commenced on or after 31 December 2002. For proceedings commenced before 31 December 2002 the previous text continues to have effect.

#### JOINING OF ADDITIONAL PARTIES

**7(1)** If it appears to a Tribunal, 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, the Tribunal may order such person to be joined as a party in the proceedings and may give such directions for giving effect to, or in connection with, the order as it thinks fit.

**7(2)** Where pursuant to an order 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 stamp duty land tax or in which he otherwise has an interest, he shall not be entitled, unless all the other parties consent, to be present at the hearing of the proceedings except during such part of the hearing as relates to that question, and a Tribunal shall, if necessary, hear any such question separately from the rest of the proceedings.

**7(3)** On the application of a person who has been joined as a party in the circumstances specified in paragraph (2) above, a Tribunal may, if it is satisfied that it would be to the convenience of the parties to do so, transfer the proceedings to the General Commissioners for the division in which the applicant ordinarily resided at the date of the application, or to the Special Commissioners.

**History** – In reg. 7(2) the words “or stamp duty land tax” inserted by SI 2004/1363, reg. 23(5), with effect from 11 June 2004.

#### POSTPONEMENTS AND ADJOURNMENTS

**8(1)** A Tribunal 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.

**8(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.

**8(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.

**8(4)** When any hearing is adjourned in order that further information or evidence may be obtained, the Tribunal hearing the proceedings may give directions regarding the disclosure of such information or evidence to the parties prior to the resumption of the hearing.

#### EXPERT EVIDENCE

**9(1)** Unless a Tribunal 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 Tribunal 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.

**9(2)** An application under this paragraph—

- (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 Tribunal 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.

**9(3)** On an application under paragraph (2) above, unless it considers that there are special reasons for not doing so, the tribunal 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 it may specify.

**9(4)** This regulation shall not apply to proceedings in Scotland.

## 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 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 any other party (“inspecting party”), 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.

**10(2)** Any inspecting party may at all reasonable times inspect and take copies of, or extracts from, any particulars delivered under paragraph (1)(a) above, and the Tribunal who issued the notice, or any inspecting party may take copies of, or extracts from, any books, accounts or other documents made available for inspection under paragraph (1)(b) above.

**10(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).

**10(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.

**History** – In reg. 10(1) the words “, other than the Revenue,” omitted following “party”, by SI 2004/1363, reg. 23(6), with effect from 11 June 2004.

In reg. 10(1)(b) the words “any other party (“inspecting party”)” substituted for “an officer of the Board” by SI 2004/1363, reg. 23(6), with effect from 11 June 2004.

In reg. 10(2) the words “inspecting party” substituted for “officer of the Board”, and the words “who issued the notice,” inserted by SI 2004/1363, reg. 23(7), with effect from 11 June 2004.

**Other material** – Tax Bulletin TB12/94-5: penalty for compliance may be issued under reg. 10(3) in continuing proceedings where precept issued under TMA 1970, s. 51 prior to 1 September 1994.

#### 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.

**11(2)** The General Commissioners comprising a Tribunal shall decide which one of them shall preside at the hearing of proceedings before them.

**11(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 IN PUBLIC

**13(1)** Subject to the following paragraphs of this regulation, hearings before a Tribunal shall be in public.

**13(2)** A Tribunal may direct that all or part of a hearing shall be in private—

- (a) upon the application of all the parties by notice to the Clerk;
- (b) upon the application of any party by notice to the Clerk;
- (c) of its own motion,

if in each case, a Tribunal is satisfied that a hearing in private is necessary—

- (i) in the interests of morals, public order, national security, juveniles or for the protection of the private life of the party; or
- (ii) if it considers that publicity would prejudice the interests of justice.

**13(3)** Before determining an application under paragraph (2)(b) or giving a direction under (2)(c) a Tribunal shall give all other parties an opportunity to make representations.

**13(4)** Before giving a direction under paragraph (2) that the entire hearing be in private, a Tribunal shall consider whether only part of the hearing should be heard in private.

**13(5)** The following persons shall be entitled to be present at the hearing of any proceedings before a Tribunal notwithstanding that the hearing or part of the hearing takes place in private, and those referred to in sub-paragraphs (b) to (e) only may remain present during the deliberations of the Tribunal but shall take no part in those deliberations—

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

**13(6)** A Tribunal may exclude from the whole or part of a hearing any person whose conduct, in the opinion of a Tribunal, has disrupted or is likely to disrupt the hearing.

**13(7)** 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.

**13(8)** Where all or part of a hearing is held or is to be held in private, a Tribunal may direct that information about the whole or part of the proceedings (including information that might help to identify any person) before a Tribunal shall not be made public.

**13(9)** For the purposes of paragraph (2)(i) “party” shall not include the Revenue.

**History** – Reg. 13 substituted by SI 2002/2976, reg. 10 with effect in relation to proceedings commenced on or after 31 December 2002. For proceedings commenced before 31 December 2002 the previous text continues to have effect as below:

“HEARINGS TO BE IN PRIVATE

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

**13(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.

**13(3)** A Tribunal, with the consent of the parties, may permit any other person to attend the hearing of any proceedings before it.

**13(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.

**14(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.

**15(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.

**15(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.

**15(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.

**15(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.

**15(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.

**15(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.

**16(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.

**16(3)** The Clerk shall send to each party a notice setting out the final determination recorded under paragraph (2) above.

**16(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.

**16(5)** Every notice sent to the parties under paragraph (3) above, other than a notice setting out a final determination made in accordance with regulation 19(2)(b), shall be accompanied by a notification of the provisions as appropriate of—

- (a) the Management Act,
- (aa) Part 4 of the Finance Act 2003 and any regulations made under that Part,
- (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.

**History** – In reg. 16(5) the words “as appropriate” inserted by SI 2004/1363, reg. 23(8), with effect from 11 June 2004.  
 In reg. 16(5) (a) the word “or” inserted by SI 2004/1363, reg. 23(8), with effect from 11 June 2004.  
 In reg. 16(5) (aa) inserted by SI 2004/1363, reg. 23(8), with effect from 11 June 2004.  
 In reg. 16(5) words “, other than . . . regulation 19(2)(b),” inserted by SI 1999/3293, reg. 3, operative from 1 January 2000.

#### 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.

**17(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.

**17(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).

**17(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.

**17(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.

## PART IV – SPECIAL PROCEDURE

### PROCEEDINGS RELATING TO TAX ON CHARGEABLE GAINS

**18(1)** Where the market value of an asset on a particular date or the apportionment of an amount or value is a material question in any proceedings relating to tax on chargeable gains, the Tribunal hearing the proceedings shall, if so required by any party, record in its final determination that market value or apportionment.

**18(2)** The final determination on an appeal of the market value of an asset on a particular date or of the apportionment of any amount or value may be proved in any proceedings relating to tax on chargeable gains by a certificate stating the material particulars signed by—

- (a) an inspector where the appeal was settled by agreement, or
- (b) the Clerk where the General Commissioners determined the appeal, or
- (c) the clerk or registrar of another tribunal where the material question was determined by that other tribunal in accordance with section 46D or 47B of the Management Act,

and a document purporting to be such a certificate may be received in evidence in any such proceedings without further proof.

**18(3)** In this regulation the expression “**final determination on an appeal**” shall be construed in accordance with regulation 11(2) of the Capital Gains Tax Regulations 1967, and the expression “**material question in any proceedings**” shall be construed in accordance with regulation 15(a) of those Regulations.

**History** – In reg. 18(2)(c), “46D” was substituted by SI 1999/3293, reg. 4, operative from 1 January 2000.

### REFERENCES OF QUESTIONS TO OTHER TRIBUNALS

**19(1)** A question in an appeal which is required to be determined in accordance with section 46B, 46C, 46D or 47B of the Management Act or regulations 6 or 19 of the Stamp Duty Land Tax (Appeals) Regulations 2004 shall be referred to the appropriate tribunal by the Tribunal before whom the appeal is brought or, if the hearing of the appeal has not begun, by an inspector or other officer of the Board.

**19(2)** Where any question in an appeal has been referred to another tribunal in accordance with paragraph (1) above, the Tribunal before whom the appeal is brought—

- (a) shall make a final determination of the remaining question or questions in the appeal, and shall at the request of any party state a case thereon under regulation 22, without awaiting the determination of the question referred to the other tribunal, and
- (b) shall make a final determination of the appeal (in accordance with regulation 16) once all the questions in the appeal have been finally determined.

**19(3)** Where—

- (a) a question in an appeal has been referred to the Special Commissioners in accordance with paragraph (1) above, and
- (b) that question is the sole question in dispute in the appeal,

the proceedings shall be transferred to the Special Commissioners by the Tribunal before whom the appeal is brought or, if the hearing of the appeal has not yet begun, shall be brought before the Special Commissioners by an inspector or other officer of the Board.

**19(4)** The reference in paragraph (2)(b) above to all questions in the appeal having been finally determined is a reference to a time when no further appeals in relation to those questions, whether by way of case stated under these Regulations or under any other enactment, are pending.

**History** – In reg. 19(1) the words “or regulations 6 or 19 of the Stamp Duty Land Tax (Appeals) Regulations 2004” inserted by SI 2004/1363, reg. 23(9), with effect from 11 June 2004.  
Reg. 19 was substituted by SI 1999/3293, reg. 5, operative from 1 January 2000.

## CASE STATED PROCEDURE

**20(1)** Within thirty days after the final determination of any proceedings falling within paragraph (a), (b), (f) or (g) of the definition of “proceedings” in regulation 2 is made by a Tribunal, other than a final determination to which regulation 19(2)(b) refers, or, as the case may be, within thirty days after a decision varying such a final determination or substituting for it a new final determination is made by a Tribunal under regulation 17, any party to the proceedings, if dissatisfied with the determination or decision as being erroneous in point of law, may by notice served on the Clerk require the Tribunal to state and sign a case for the opinion of the High Court.

**20(2)** A case stated pursuant to a requirement under paragraph (1) above shall set forth the facts and the final determination of the Tribunal.

**20(3)** After a party has required a case to be stated under paragraph (1) above, the Tribunal may by notice served on him require him within a period of time stated in the notice, not being less than twenty eight days, to identify the question of law on which he requires the case to be stated.

**20(4)** If a party fails to comply with a notice served under paragraph (3) above, or if the Tribunal is not satisfied that the question identified is a question of law, or until the fee specified in section 56(3) of the Management Act has been paid, the Tribunal may refuse to state a case.

**20(5)** Where a final determination of a Tribunal is set aside or varied under regulation 17, a requirement for a case to be stated in respect of that determination shall cease to be valid.

**History** – In reg. 20(1) the words “(a), (b), (f) or (g)” substituted for the words“(a) or (b)” by SI 2005/340, reg. 2, with effect from 14 March 2005.

In reg. 20(1) words “, other than a final determination to which regulation 19(2)(b) refers,” inserted by SI 1999/3293, reg. 6(a), operative from 1 January 2000.

In reg. 20(3) words “within a period of time stated in the notice, not being less than twenty eight days,” substituted by SI 1999/3293 reg. 6(b), operative from 1 January 2000.

## CONSIDERATION OF DRAFT CASE

**21(1)** Within fifty six days after the receipt of a notice served under regulation 20(1) requiring a case to be stated or, if a notice is served under regulation 20(3), within fifty six days after the day on which a question of law is identified to the satisfaction of the Tribunal, the Clerk shall send a draft of the case to the party who required the case to be stated and to the other party or parties.

**21(2)** Within fifty six days after the draft case is sent to the parties under paragraph (1) above, any party may make representations on the draft to the Clerk in writing and shall at the same time send a copy of any representations so made to the other party or parties.

**21(3)** Within twenty eight days after the latest date on which representations may be made under paragraph (2) above, any party may make further representations on the draft to the Clerk in writing in response to any representations made under paragraph (2) above, and shall at the same time send a copy of such further representations to the other party or parties.

**21(4)** A failure by the Clerk to send a draft case within the time specified in paragraph (1) above, or a failure by a party to make representations within the time specified in paragraph (2) or (3) above, or to send a copy of representations under either of those paragraphs to the other party or parties, shall not affect the validity of the case after it has been stated and signed pursuant to regulation 22, or of any subsequent proceedings in relation to the case.

**21(5)** Where a party fails to send a copy of any representations to another party in accordance with paragraph (2) or (3) above, that other party may apply to the Clerk for a copy of the representations.

## PREPARATION AND SUBMISSION OF FINAL CASE

**22(1)** Subject to paragraph (2) below, as soon as may be after the latest date on which representations may be made under regulation 21, the Tribunal whose decision is questioned, after taking into account any representations made under that regulation, shall state and sign the case.

**22(2)** If a member of the Tribunal has died or ceased to be a General Commissioner, then the case shall be stated and signed by the continuing Commissioner or Commissioners or, if there is no continuing Commissioner, by the Clerk.

**22(3)** After the case has been stated and signed the Clerk shall send it to the party who required it to be stated, and shall notify the other party or parties that the case has been sent to that party.

**22(4)** The party requiring the case shall—

(a) transmit the case to the High Court within thirty days of receiving it, and

- (b) at or before the time when he transmits the case to the High Court, send notice of the fact that the case has been stated on his application, together with a copy of the case, to the other party or parties.

#### CASE STATED PROCEDURE – SCOTLAND AND NORTHERN IRELAND

**23(1)** In relation to proceedings in Scotland, references in regulations 20(1) and 22(4) to the High Court shall be taken as references to the Court of Session as the Court of Exchequer.

**23(2)** In relation to proceedings in Northern Ireland—

- (a) the reference in regulation 20(1) to the High Court shall be taken as a reference to the Court of Appeal in Northern Ireland;
- (b) the procedure relating to the transmission of a case stated under regulation 22 to the Court of Appeal in Northern Ireland shall be that for the time being in force in Northern Ireland as respects cases stated by a county court in exercise of its general jurisdiction, and regulation 22(4) shall not apply.

## PART V – MISCELLANEOUS

### IRREGULARITIES

**24(1)** Any irregularity resulting from any failure to comply with any provision of these Regulations or with any direction given by a Tribunal before the Tribunal has reached its final determination shall not of itself render the proceedings void.

**24(2)** Where any such irregularity comes to the attention of a Tribunal, the Tribunal before reaching its final determination may, and if it considers that any person may have been prejudiced by that irregularity shall, give such directions as it thinks just to cure or waive the irregularity.

**24(3)** Clerical mistakes in any document recording a direction or a decision of a Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the General Commissioner presiding at the hearing or any other of the General Commissioners comprising the Tribunal, or by the Clerk if all the General Commissioners comprising the Tribunal have died or ceased to be General Commissioners, by certificate under his hand.

### PENALTY FOR FAILURE TO COMPLY WITH DIRECTION

**24A(1)** The Tribunal may impose a penalty against a party not exceeding £10,000 where the party fails to comply with any direction of a General Commissioner or Tribunal.

**24A(2)** Paragraph (1) does not apply to notices served under regulation 10.

**24A(3)** Where the Tribunal propose to impose a penalty against a party, it must allow that party an opportunity to make representations in writing before it imposes any penalty.

**24A(4)** Any penalty determined by the Tribunal under these Rules shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

**History** – Reg. 24A inserted by SI 2007/3612, reg. 6, with effect from 28 January 2008, in relation to proceedings commenced on or after that date.

### NOTICES

**25** Every notice required by these Regulations shall be in writing unless a Tribunal authorises it to be given orally.

### SERVICE

**26(1)** Any notice or other document (other than a summons under regulation 4) required or authorised by these Regulations to be sent or delivered to, or served on, any person shall be duly sent or delivered to, or served on, that person—

- (a) if it is sent to him at his proper address by post; or
- (b) if it is sent to him at that address by facsimile transmission or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form; or
- (c) if it is delivered to him or left at his proper address.

**26(2)** Any such document may—

- (a) in the case of a body corporate, be sent or delivered to, or left with, the secretary or clerk of that body;

- (b) in the case of a foreign body corporate, be sent or delivered to, or left with, the person authorised to accept service of process on it;
- (c) in the case of a partnership, be sent or delivered to, or left with, any partner;
- (d) in the case of an unincorporated association other than a partnership, be sent or delivered to, or left with, any member of the governing body of the association.

**26(3)** For the purposes of this regulation, a person's proper address is—

- (a) in the case of the secretary or clerk of a body corporate registered in the United Kingdom, the address of the registered or principal office of that body corporate;
- (b) in the case of the person authorised to accept service of process on a foreign body corporate, the address of the principal office or place of business of that body corporate in the United Kingdom;
- (c) in the case of the General Commissioners for a division or their Clerk, the address of the Clerk;
- (d) in the case of any other person, the usual or last known address of that person.

#### SUBSTITUTED SERVICE

**27** If any person to or on whom any notice or other document (other than a summons under regulation 4) is required to be sent, delivered or served for the purposes of these Regulations cannot be found or has died and has no known representative, or is out of the United Kingdom, or if for any other reason service on him cannot be readily effected, a Tribunal may dispense with the requirement that the notice or other document be sent or delivered to, or served on him or may make an order for substituted service on such other person or in such other form (whether by advertisement in a newspaper or otherwise) as the Tribunal may think fit.