

LANDS TRIBUNAL FOR SCOTLAND RULES 1971 (as amended)

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LANDS TRIBUNAL FOR SCOTLAND RULES 1971
(as amended)

In exercise of the powers conferred upon me by section 3 of the Lands Tribunal Act 1949 (a) as amended by section 50 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (b), and of all other powers enabling me in that behalf, and after consultation with the Council on Tribunals, and with the approval of the Treasury in regard to the fees prescribed by these rules in respect of proceedings before the Tribunal, I hereby make the following rules: -

PRELIMINARY

Citation and commencement

1. These rules may be cited as the Lands Tribunal for Scotland Rules 1971 and shall come into operation on 1 March 1971.

Interpretation

2. (1) In these rules, unless the context otherwise requires –
 - "the Act of 1949" means the Lands Tribunal Act 1949;
 - "the Act of 1963" means the Land Compensation (Scotland) Act 1963 (c);
 - "the Act of 1970" means the Conveyancing and Feudal Reform (Scotland) Act 1970;
 - (a) 1949 c.42
 - (b) 1970 c.35
 - (c) 1963 c.51
 - "benefited proprietor", "burdened proprietor", "interest in land", and "land obligation" have the meanings assigned to them by section 2(6) of the Act of 1970;
 - "cumulo feuduty" and "feu" have the meanings assigned to them by section 3(2) of the Act of 1970;
 - "General Commissioners" have the same meaning as in the Taxes Management Act 1970 (d);
 - "notice of allocation", "proprietor", and "superior" have the meanings assigned to them by section 5(7) of the Act of 1970;

“the President” means the President of the Lands Tribunal for Scotland, or the member appointed under the provisions of the Act of 1949 to act for the time being as deputy for the President;

“Special Commissioners” have the same meaning as in the Taxes Management Act 1970;

“the Tribunal” means the Lands Tribunal for Scotland.

- (2) A form referred to by number means the form so numbered in Schedule 1 to these rules.
- (3) In these rules any reference to any enactment shall be construed as a reference to that enactment as amended by or under any other enactment.
- (4) The Interpretation Act 1889 (e) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

(d) 1970 c.9

(e) 1889 c.63

1978 s25 (2)

PART I

APPLICATIONS UNDER SECTION 1 OF THE CONVEYANCING AND FEUDAL REFORM (SCOTLAND) ACT 1970

Method of making Application

3. Any burdened proprietor who wishes to make an application under section 1 of the Act of 1970 (variation and discharge of land obligations) shall send to the Tribunal an application in or as nearly as may be in accordance with Form 1.

Giving of Notices

4. (1) On receipt of an application the Tribunal shall -

- (a) give notice thereof in writing to the persons who appear to it to be either benefited or burdened proprietors having an interest in the subject of the application.

Provided that if the Tribunal is satisfied that any such proprietor cannot by reasonable inquiry be identified or found notice may be given by advertisement or by such other method as the Tribunal thinks fit; and

- (b) give notice in writing or by advertisement or by such other method as the Tribunal thinks fit to any other persons whom it considers should receive notice.
- (2) The notice shall require those benefited and burdened proprietors who wish to oppose or to make representations in relation to the application to send intimation thereof in writing to the Tribunal and to the applicant within such time, not being less than 14 days from the date of the notice, as may be specified. Such intimation shall contain a concise statement of the facts and contentions on which it is intended to rely. The Tribunal shall send copies of any such intimations to those other persons whom at that stage it considers should receive a copy.
- (3) The notice shall also intimate that subject to the Tribunal's discretion other persons to whom notice has been given under paragraph (1) of this rule may be heard in relation to the application.

Provisions as to orders

5. (1) Subject to the provisions of paragraphs (2) and (3) of this rule, an order made by the Tribunal varying or discharging a land obligation shall take effect on the occurrence of whichever of the following events last occurs after the Tribunal has made the order, that is to say –
 - (a) the expiry of a period of twenty-one days after the date when the order was made by the Tribunal;
 - (b) the disposal by the Court of Session of a case stated by the Tribunal on appeal to that Court or, if there is an appeal to the House of Lords, the disposal of the case by the House of Lords;
 - (c) the abandonment or other termination of the proceedings on a case so stated without a decision having been given;

- (d) the abandonment or other termination of an appeal against the decision of the Court of Session on a case so stated or the expiry of the time for bringing any such appeal without it having been brought; or
- (e) the variation by the Tribunal of the order in compliance with any directions given by the Court of Session or the House of Lords in proceedings relating to such a case;

Provided, that where the application is unopposed or all persons who have opposed or made representations in respect of the application have informed the Tribunal that they consent to the order taking effect immediately, and it is so certified in the order, such order shall take effect on the date on which it is made by the Tribunal.

- (2) Where a land obligation is varied or discharged subject to the payment of any compensation awarded by the Tribunal, the order of the Tribunal shall not, so far as it affects such variation or discharge, take effect until the Tribunal has endorsed the order to the effect either that the compensation has been paid or that all persons to whom any compensation has been awarded but who have not received payment of it have agreed to the order taking effect.
- (3) The Tribunal may direct that the compensation shall be paid or satisfied within a specified time and that, unless it is so paid or satisfied, the order shall be void on the expiration of the time so specified.

PART II

APPLICATIONS UNDER SECTION 4 OF THE CONVEYANCING AND FEUDAL REFORM (SCOTLAND) ACT 1970

Method of making Application

- 6. A superior who wishes to make an application under section 4 of the Act of 1970 (applications to Tribunal regarding allocation of feuduties) shall, within 28 days of the receipt by him of the notice of allocation, send to the Tribunal an application in or as nearly as may be in accordance with Form 2 and he shall enclose with his application a copy of the notice of allocation.

Giving of Notices

- 7. (1) On receipt of an application the Tribunal shall -
 - (a) give notice thereof in writing to the persons who appear to it to be proprietors of parts of the feu in respect of which the cumulo feuduty is exigible; and
 - (b) give notice in writing or by advertisement or by such other method as the Tribunal thinks fit to any other persons whom it considers should receive notice.

- (2) The notice shall contain a statement of the Tribunal's intention to allocate the cumulo feuduty on each part of the feu which is held by a separate proprietor and shall require those proprietors of parts of the feu and other persons having an interest who wish to make representations to send intimation thereof in writing to the Tribunal within such time, not being less than 14 days from the date of the notice, as may be specified. Any written statement of such representations must be sent to the Tribunal and to the applicant within the said time. The Tribunal shall send copies of any such written statements to those persons to whom written notice has been given under paragraph (1) of this rule.

Decision of Tribunal

8. Without prejudice to the provisions of rule 32 the Tribunal shall send a copy of its decision to those persons to whom written notice has been given under rule 7(1) and to the superior.

Ground Annuals

9. In accordance with section 6 of the Act of 1970 the provisions of rules 6, 7 and 8 shall apply in relation to a ground annual as they apply in relation to a feuduty.

PART III

DETERMINATION OF QUESTIONS OF DISPUTED COMPENSATION

General

10. Subject to the provisions of Part II of the Act of 1963 and of Part VI of these rules the procedure regulating the determination of questions of disputed compensation shall be as set out in this Part of these rules.

Method of making Application

11. (1) Proceedings for the determination of any question or dispute to which this Part of these rules applies may be instituted by any party who requires to have the question or dispute determined sending to the Tribunal an application in or as nearly as may be in accordance with Form 3 and the Tribunal shall send copies of such application to the other parties to the question or dispute and to any other persons whom it considers should receive a copy.
- (2) There shall be sent with the application -
 - (a) if the compensation is payable on the compulsory acquisition of land, a copy of the notice to treat (if such notice has been served) and of any notice of claim and any amendment thereof delivered to the acquiring authority in pursuance of section 5 of the Act of 1963; or

- (b) in any other case, a copy of the order, direction, notice, decision, authorisation or other document which is evidence of the proceedings giving rise to compensation.
- (3) An application shall not be made before the expiry of 30 days from the date of service or constructive service of notice to treat or (where no notice to treat is served or is deemed to be served) of notice of claim.

PART IV

APPEALS AGAINST DETERMINATIONS BY COMMISSIONERS OF INLAND REVENUE UNDER THE FINANCE (1909-10) ACT 1910

Notice of appeal

12. Any person who wishes to appeal against any determination by the Commissioners of Inland Revenue in respect of which, but for the provisions of the Act of 1949, there would be a right of appeal to one of the panel of referees appointed under Part I of the Finance (1909-10) Act (a) may institute proceedings by sending to the Tribunal in duplicate a notice of appeal. In the case of an appeal against a decision of the Commissioners under section 60 of that Act, the notice shall be in or as nearly as may be in accordance with Form 4.

Time for giving notice

13. A notice of appeal under rule 12 shall not be valid unless it is sent to the Tribunal within 30 days from the date on which notice of the determination was served upon the appellant, or within such other time as may be prescribed by the enactment by virtue of which an appeal against the determination lies to the Tribunal.

Giving of Notices

14. (1) On receipt of a notice of appeal, the Tribunal shall forthwith send the duplicate notice to the Commissioners of Inland Revenue.
- (2) On receipt of the duplicate notice of appeal the Commissioners of Inland Revenue shall forthwith send to the Tribunal a copy of the determination referred to therein.
- (a) 1910 c.8

Appearance by persons other than appellants

15. In any proceedings under this Part of the rules the Tribunal shall on the application of any person who appears to it to be interested in the land in respect of which the appeal was made or to be otherwise interested in the matter of the appeal allow him to make written representations, copies of which shall be sent by him to the other parties to the proceedings within such time as may be specified, and the Tribunal shall allow him to be heard in relation to the proceedings.

PART V

REFERENCES UNDER THE TAXES MANAGEMENT ACT 1970 AND THE DEVELOPMENT LAND TAX ACT 1976

General

16. The provisions of this Part and of Part VI of these Rules shall apply for the determination of a question referred to the Tribunal under subsection (1) of section 47 of the Taxes Management Act 1970 (a) as read with subsection (2) of that section or under section 47A of that Act as enacted by paragraph 13 of Schedule 8 to the Development Land Tax Act 1976 (b) or for the determination of any question to which subparagraph (6) of paragraph 8 of Schedule 7 to the said Act of 1976 applies.

Making of References

17. (1) Where the reference is for the determination of a question to be referred to the Tribunal -
- (a) under subsection (1) of section 47 aforesaid it shall be made by General Commissioners, Special Commissioners or an Inspector of Taxes;
 - (a) 1970 c.9
 - (b) 1976 c.24
 - (b) under section 47A aforesaid it shall be made by Special Commissioners, an Inspector of Taxes or by another officer of the Commissioners of Inland Revenue authorised in that behalf.
- (2) Where the question to be determined is one to which sub-paragraph (6) of paragraph 8 aforesaid applies, proceedings may be begun by the making of a reference by any of the persons mentioned in that paragraph.

Giving of Notices

18. A reference to which the provisions of the last preceding Rule apply shall be made by notice in or as nearly as may be in accordance with Form 5 and the person giving the notice shall supply the Tribunal with such number of copies as will enable the Tribunal to supply a copy to each of the other parties to the proceedings and the Tribunal shall forthwith send a copy to each of those parties.

PART VA

APPEALS UNDER THE FINANCE ACT 1975

General

- 18A. The provisions of this Part and of Part VI of these Rules shall apply in an appeal to the Tribunal under sub-paragraph (4) of paragraph 7 of Schedule 4 to the Finance Act 1975(c).

Transmission of Appeals

18B. Where the Commissioners of Inland Revenue receive a notice of appeal under subparagraph (1) of paragraph 7 of the said Schedule for the disposal of which a question as to the value of land requires to be determined they may at any time after receiving the notice, and shall, upon being requested in writing by the appellant so to do, transmit the notice of appeal to the Tribunal and shall at the same time furnish the Tribunal with a copy of the notice of the determination appealed against.

(c) 1975 c.7

PART VB

REFERENCES UNDER SECTION 184 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972

General

18C. The provisions of this Part and of Part VI of these Rules shall apply to a reference to the Tribunal under section 184 of the Town and Country Planning (Scotland) Act 1972 (a).

Making of References

18D. Where in accordance with section 183 of the said Act of 1972 the appropriate authority have served on a claimant a counter-notice objecting to a blight notice served on them by the claimant and the claimant requires that the objection be referred to the Tribunal in terms of section 184(1) of the said Act of 1972 then the claimant shall at any time before the end of the period of two months beginning with the date of service of the counter-notice send or deliver to the Tribunal a notice of reference in or as nearly as may be in accordance with Form 6 and he shall enclose with the notice of reference a copy of the blight notice and of the counter-notice and the Tribunal shall forthwith send a copy of the notice of reference to the appropriate authority.

Interpretation of this Part

In this part the expressions "claimant", "objection", "counter-notice" and "appropriate authority" have the same meanings as in the said Act of 1972.

(a) 1972 c.52

PART VC

REFERENCES UNDER SECTION 1 (3A) OF THE LANDS TRIBUNAL ACT 1949

General

18G. The provisions of this Part and of Part VI of these rules shall apply to the determination of any appeal or complaint referred to the Tribunal by a valuation appeal committee under section 1 (3A) of the Act of 1949(a).

Making of references

18G. An appeal or complaint may be referred to the Tribunal by a valuation appeal committee sending to the Tribunal a notice of reference in or as nearly as may be in accordance with Form 7 together with a copy of the appeal or complaint lodged in accordance with regulation 3 of the Valuation Appeal Committee Procedure (Scotland) Regulations 1984 (b) and copies of any application and written representations made in accordance with regulation 4 of those regulations.

Determination declined

18H. If the Tribunal declines to proceed to determine any appeal or complaint in terms of section 1 (3B) of the Act of 1949, it shall give notice of its decision with reasons to all parties having an interest in the appeal or complaint and shall retransmit the appeal or complaint to the valuation appeal committee.

Interpretation of this Part

18I. In this Part “valuation appeal committee” means any committee constituted under section 4 of the Local Government (Scotland) Act 1975 (c).

- (a) 1949 c.42; s.1 (3A) to (3E) Inserted by s.12 of the Rating Valuation (Amendment) (Scotland) Act 1984 (c 31)
- (b) SI 1984/1506
- (c) 1975 c.30

PART VI

GENERAL

Method of making Application

19. Except where these rules otherwise provide any question which is to be determined by or referred to the Tribunal shall be brought before it by way of written application and a copy of the application shall be sent by the Tribunal to each of the other parties to the proceedings and to such other persons whom it considers should receive a copy. In a case in which the Tribunal is acting as arbiter under a reference by consent the notice of reference shall be in or as nearly as may be in accordance with Form 3.

Procedure

20. Subject to the provisions of these rules and to any direction given by the President the Tribunal may -

- (a) regulate its procedure as it thinks fit; and
- (b) amend in such way as it thinks fit any of the forms in Schedule 1 to these rules.

Sittings of Tribunal

21. (1) Sittings of the Tribunal shall be on such dates and at such times and places as the President may from time to time determine and, not less than 21 days or such shorter period as the parties agree to before the date of a hearing, the Tribunal shall -
- (a) give notice in writing to the parties to the proceedings and
 - (b) give notice by such method as it may determine (whether by way of advertisement or otherwise) to any other persons whom it considers have an interest in the proceedings of the date, time and place of the hearing.
- (2) The Tribunal shall sit in public except that when it is acting as arbiter under a reference by consent the proceedings shall be heard in private if the parties to the reference so request.

Representation

22. In any proceedings before the Tribunal any party to the proceedings may appear and may be heard in person or be represented by counsel or solicitor or, with the leave of the Tribunal, by any other person.

Administration of Oaths

23. The Tribunal may administer oaths to witnesses in due form.

Default of Appearance

24. If, after due notice of a hearing has been given to a party, that party or his representative fails to appear at the hearing, the Tribunal may dispose of the application in the absence of that party or his representative or may adjourn the hearing:

Provided that where the Tribunal has so disposed of the application, the Tribunal, on an application made by that party within seven days of the disposal, may if it is satisfied that there was sufficient reason for such absence, set aside its decision on such terms as to expenses or otherwise as it thinks fit.

Evidence

- 24A. Evidence before the Tribunal may be given orally or, if the parties to the proceedings consent or the Tribunal so orders, by affidavit, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent for examination and cross-examination.

Power to require further particulars and attendance of witnesses and to order recovery of documents

25. (1) The Tribunal may on the motion of any party to the proceedings or ex proprio motu by notice in writing
- (a) require a party to furnish in writing further particulars of his case;

- (b) order a record to be made up;
- (c) grant to a party such commission and diligence for the recovery of documents, or provide such other means of recovery thereof, as could be granted or provided by the Court of Session in a cause before them, such recovery being effected, where a commission and diligence has been granted, by execution thereof or in that or any other case in any manner in which recovery could be provided for by the Court of Session in such a cause; and
- (d) require the attendance of any person as a witness or require the production of any document relating to the question to be determined;

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:

Provided that -

- (i) No person shall be required in obedience to such a requirement to attend at any place which is more than 10 miles from the place where he resides unless the necessary expenses are paid or tendered to him by the party at whose instance his attendance has been required or by the Tribunal as the case may be; and
 - (ii) nothing in this provision shall empower the Tribunal to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the proceedings were proceedings in a Court of Law.
- (2) The Tribunal may also by notice in writing order any party who intends, at a proof or hearing,
- (a) to use or put in evidence any documents, or
 - (b) to rely for valuation purposes on properties comparable to those to which the proceedings relate
- to produce the documents, or, as the case may be, to supply, in such form as may be required by the Tribunal, a list of the properties, on such date before the proof or the hearing as the Tribunal may specify.
- (3) Any notice given under head (c) or head (d) of paragraph (1) or under paragraph (2) of this Rule shall contain a reference to the provisions of section 3 (12) (c) of the Act of 1949 (a) (by which any person who, without reasonable excuse, fails to comply with any such notice shall be liable on summary conviction to a fine not exceeding £30 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.)

Provision for other Parties

26. Subject to the provisions of these rules the Tribunal, on the application of any person who appears to it to have an interest in the proceedings, may allow that person to become a party to the proceedings.

Withdrawal of Party

27. The Tribunal may, on such terms as to expenses or otherwise as it thinks fit, consent to any party withdrawing from the proceedings.

Extension of Time and Adjournment of Hearing

28. The Tribunal may on such terms as to expenses or otherwise as it thinks fit
- (a) extend any time appointed by, or specified by it in terms of these rules notwithstanding that that time may have expired;
 - (b) postpone, or adjourn, any hearing.

Assessors

29. (1) If it appears to the President that any case before the Tribunal calls for special knowledge and that it would be desirable for the Tribunal to sit with an Assessor or Assessors, he may direct that the Tribunal shall hear the case with the aid of such Assessor or Assessors as the President may, after consulting such persons, if any, as he may think fit, appoint.
- (2) The remuneration to be paid to any Assessor appointed under this rule shall be such as the President may, with the approval of the Treasury determine.

Notices

30. Any notice or other document required or authorised to be given to any person for the purpose of these rules shall be deemed to have been duly given if sent by post by means of the recorded delivery service or registered post or delivered to that person at his ordinary address or to the address specified by him for intimation under these rules:

Provided that, when difficulty is experienced in effecting such intimation for any reason, the Tribunal, on being satisfied that all practicable steps have been taken in an effort to intimate, may dispense with intimation upon such person or may take such other steps as it thinks fit.

Power to Dispose of Case Without a Hearing

31. Notwithstanding the provisions of these rules the Tribunal, with the consent of all parties whom it considers to have an interest in the application (including any application relating to a disputed claim for compensation to which section 3 (6B) of the 1949 Act as enacted by paragraph 3 (1) of Schedule 10 to the Community Land Act 1975 (b) applies), may dispose of any application before it without a hearing.

Decision of Tribunal

32. (1) The decision of the Tribunal in any proceedings shall be given in writing, and shall include a statement of the Tribunal's reasons for its decision.

Provided that a decision given on an application under section 4 of the Act of 1970 shall include a statement of the Tribunal's reasons for giving the decision only if a party to the proceedings requests that the Tribunal should do so.

- (2) Where an amount awarded or value determined by the Tribunal is dependent upon the decision of the Tribunal on a question of law which is in dispute in the proceedings, the Tribunal shall ascertain, and shall state in its decision the alternative amount or value (if any) which it would have awarded or determined if it had decided otherwise on the question of law.
- (3) The Tribunal shall send a copy of the decision to all parties to the proceedings.

- (4) An accidental or arithmetical error in any decision of the Tribunal may be corrected by the Tribunal if, before making the correction, they have given notice of their intention to make it to all those who were parties to the proceedings.
- (5) When a correction is made under the last foregoing paragraph, or for the purpose of giving effect to any decision of the Court of Session in a case stated for their opinion, the Tribunal shall give notice that it has been made to all the parties to the proceedings by sending to each of them a copy of the decision as corrected.

Expenses

33. (1) Except in cases to which the provisions of section 11 of the Act of 1963 apply or proceedings referred to in paragraph (6) of this rule the Tribunal shall deal in such manner with expenses as in its discretion it thinks fit.
- (2) The Tribunal may order that party shall pay to another party either a specific sum in respect of the expenses incurred by that other party or such proportion of these expenses as the Tribunal thinks fit.
- (3) In default of agreement between the parties as to the amount of the expenses, the expenses shall be taxed, in the discretion of the Tribunal, either by the Auditor of the Court of Session according to the fees payable in the Court of Session or by the Auditor of the Sheriff Court specified by the Tribunal according to the Sheriff Court Table of Fees.
- (4) Counsel's fees and the fees for instruction of Counsel shall be allowed as an item of a party's expenses only where the Tribunal has sanctioned the employment of Counsel.
- (5) Additional expenses at such rate as the Auditor taxing the expenses considers fair and reasonable shall be allowed for the employment of expert witnesses only where the Tribunal has certified the employment of such expert witnesses.
- (6) In proceedings under part VC of these rules the Tribunal shall not have power to order payment of expenses and the foregoing provisions of this rule shall not apply.

Fees

34. (1) The fees specified in Schedule 2 to these rules shall be payable to the Tribunal in respect of the matters mentioned in the said Schedule:

Provided that the Tribunal may waive the whole or part of the fees payable by a party where it considers that the financial circumstances of the party are such that undue hardship would be caused by payment of the said fees.
- (2) The hearing fee shall, unless the Tribunal otherwise directs, be payable by the party by whom the proceedings were instituted (without prejudice to his right to recover the amount of the fee from any other party by virtue of any order as to expenses).

Transitional provisions

35. Where, before the date on which sections 1 to 4 of the Act of 1949 come into operation in Scotland, proceedings have been commenced for the determination of any question, dispute or other matter which, by virtue of the coming into operation in Scotland of the said sections, is required to be referred to and determined by the Tribunal then
- (a) where the hearing has not begun at that date, anything done for the purpose of determining such question, dispute or other matter shall be treated, so far as practicable, as if it had been done for the purpose of an application under these rules and shall be dealt with by the Tribunal in accordance with the provisions of these rules; and
 - (b) where the hearing has begun the hearing, unless the parties agree otherwise, shall proceed in accordance With the procedure in force immediately before the coming into operation in Scotland of the said sections.

Revocations

36. (1) The rules specified in Schedule 3 to these rules are hereby revoked as from the date when sections 1 to 4 of the Act of 1949 come into operation in Scotland.
- (2) Section 38 of the Interpretation Act 1889 shall apply as if these rules were an Act of Parliament and as if the rules revoked by these rules were Acts of Parliament repealed by an Act of Parliament.

Gordon Campbell
One of Her Majesty's Principal
Secretaries of State

St Andrew's House
Edinburgh

4 February 1971

We approve the fees prescribed by these rules in respect of proceedings before the Lands Tribunal for Scotland.

Bernard Weatherill,
Walter Clegg
Two of the Lords Commissioners
of Her Majesty's Treasury.

8 February 1971