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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 452**

**The Lands Tribunal for Scotland Rules 2003**

**PART V**

**GENERAL**

*Method of making Application*

**13.** 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, except where otherwise provided by section 93 of the Act of 2003 (Notification of application), 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, setting a date by which representations to it as respects the application may be made. 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 1.

*Procedure*

**14.** Subject to the provisions of these Rules and to any direction given by the President the Tribunal may regulate its procedure as it thinks fit.

*Sittings of Tribunal*

**15.—(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 held in private if the parties to the reference so request.

*Representation*

**16.** 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*

**17.** The Tribunal may administer oaths to witnesses in due form.

*Default of Appearance*

**18.** If, after notice of a hearing has been given to a party in accordance with rule 15(1), that party or that party’s representative fails to appear at the hearing, the Tribunal may dispose of the application in the absence of that party or that party’s 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 7 days of due intimation 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*

**19.** Evidence before the Tribunal may be given orally or 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*

**20.—(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 that party’s 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 it, such a 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;
- (d) require the attendance of any person as a witness; and
- (e) 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 that person resides unless the necessary expenses are paid or tendered to that person by the party at whose instance 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 that person 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 paragraph (1)(c) or (d) or (2) shall contain a reference to the provisions of section 3(12)(c) of the Act of 1949<sup>(1)</sup>, (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 level 3 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment).

#### *Provision for other Parties*

**21.** Subject to the provisions of these Rules and, in respect of applications under section 90(1) or 91(1) of the Act of 2003, to section 95 of that Act (Persons entitled to make representations) 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*

**22.** 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*

- 23.** 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*

**24.—**(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, the President 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 the President 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*

**25.** 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's ordinary address or to the address specified by that person 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*

**26.** 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 Act of 1949 as enacted by paragraph

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(1) Section 3 was amended by section 50(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35).

3(2) of Schedule 33 to the Local Government, Planning and Land Act 1980<sup>(2)</sup> applies) may dispose of any application before it without a hearing.

#### *Decision of Tribunal*

**27.**—(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.

(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, it has given notice of its intention to make it to all those who were parties to the proceedings.

(5) When a correction is made under paragraph (4), 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*

**28.**—(1) For the purposes of determining applications under Part 9 of the Act of 2003, expenses shall be determined in accordance with sections 97(4), 99(3) and 103 of that Act. In all other cases except those 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 the expenses as in its discretion it thinks fit.

(2) The Tribunal may order that a party shall pay to another party either a specific sum in respect of the expenses incurred by that other party or such proportion of those 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 IV 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*

**29.**—(1) The fees specified in the Schedule to the Lands Tribunal for Scotland (Amendment) (Fees) Rules 1996<sup>(3)</sup> shall be payable to the Tribunal in respect of the matters mentioned in that Schedule. The Tribunal may waive the whole or part of the fees payable by a party where it considers

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(2) 1980 c. 65.

(3) S.I.1996/519

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 any right to recover the amount of the fee from any other party by virtue of any order as to expenses).

#### *Revocation and saving*

**30.**—(1) Subject to paragraph (2) below the rules specified in Schedule 3 are hereby revoked as from 28<sup>th</sup> November 2004.

(2) Part VI of the Lands Tribunal for Scotland Rules 1971<sup>(4)</sup> shall continue to apply in respect of appeals and references under Parts IV, V and VA of those Rules.

#### *Transitional Provisions*

**31.** Where before the date on which Part 9 of the Act of 2003 comes into operation, proceedings have been commenced under section 1 of the Conveyancing and Feudal Reform (Scotland) Act 1970 then—

- (a) where the hearing has not begun at that date, anything done for the purpose of determining any 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 at that date, unless the parties agree otherwise, the hearing shall proceed in accordance with the procedure in force immediately before the coming into operation of the said Part.

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<sup>(4)</sup> S.I. 1971/218.