

SCHEDULE 3

[Regulation 8(4)]

RULES OF PROCEDURE APPLICABLE TO APPEALS UNDER LEVY ORDERS

Notice of appeal

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

Action upon receipt of appeal

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

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

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

Further particulars of appeal

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

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

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

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

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

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

- (a) the fiftieth day after the receipt of the notice of appeal by the Board; or
- (b) if the Board has allowed a further period of time for delivery of further particulars under paragraph (3), the seventh day after the expiration of that period.

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Withdrawal of appeal or assessment

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

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

Entry of appeal

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

- (a) enter particulars of the appeal in the Register;
- (b) give notice to the appellant and to the Board of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the appeal) and of the address to which notices and other communications to the Secretary shall be sent;
- (c) give notice to the appellant of the Board's address for service under these rules; and
- (d) send to the appellant a copy of any representations in writing that the Board has submitted to the tribunal under rule 2 or rule 3.

Directions for further particulars

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

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

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

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

Attendance of witnesses and recovery of documents

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

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

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

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

and notice of such an application shall be given to the party upon whose application the requirement was made.

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

(4) Every document containing a requirement under paragraph (1) shall contain a reference to the fact that, under paragraph 1(7) of Schedule 9 to the 1978 Act, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

Time and place of hearing of appeal

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

The hearing

9.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with section 128(2A), (2B) and (2C), or section 128(6), of the 1978 Act.

(2) Any hearing of or in connection with an appeal shall take place in public except where a Minister of the Crown has directed a tribunal to sit in private on grounds of national security in accordance with paragraph 1(4A) of Schedule 9 to the 1978 Act.

(3) Notwithstanding paragraph (2), a tribunal may sit in private for the purpose of—

- (a) hearing evidence which in the opinion of the tribunal relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public; or
- (b) hearing evidence from any person which in the opinion of the tribunal is likely to consist of—
 - (i) information which he could not disclose without contravening a prohibition imposed by or under any enactment, or
 - (ii) any information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
 - (iii) information the disclosure of which would cause substantial injury to any undertaking of his or any undertaking in which he works for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 244(1) of the 1992 Act.

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

Procedure at hearing

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

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

(3) If the appellant or the Board or both of them shall fail to appear or to be represented at the time and place fixed for a hearing the tribunal may dispose of the appeal or application in the absence

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of such party or parties or may adjourn the hearing to a later date: provided that before disposing of an appeal in the absence of either or both parties the tribunal shall consider any representations submitted by such party or parties under these rules.

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

Decision of tribunal

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

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

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

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

- (a) a Minister of the Crown has directed the tribunal, in accordance with paragraph 1(4A) of Schedule 9 to the 1978 Act, to sit in private on grounds of national security,
- (b) evidence has been heard in private and the tribunal so directs, or
- (c) the tribunal on the application of the appellant so directs on the ground that disclosure will be contrary to the interests of the appellant.

and in that event a specification of the reasons shall be sent to the appellant and the Board, and to any appellate court in any proceedings relating to the decision, together with the copy of the entry.

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

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

Expenses

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

- (a) an order that the Board shall pay to the appellant or that the appellant shall pay to the Board either a specified sum in respect of the expenses incurred by the appellant or the Board, as the case may be, or, in default of agreement, the taxed amount of those expenses;
- (b) an order that the Board or the appellant shall pay to the Secretary of State the whole, or any part of, any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under paragraph 10 of Schedule 9 to the 1978 Act to any person, for the purposes of, or in connection with, his attendance at the tribunal.

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

Miscellaneous powers

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

- (a) extend the time appointed by these rules for doing any act notwithstanding that the time appointed may have expired;

- (b) before granting an application referred to in rule 6(1), 6(3), 7(1) or 14, require the party making the application to give notice thereof to the other party;
 - (c) postpone the day or time fixed for, or adjourn the hearing of, any appeal or application;
 - (d) if at any time after the entry of the appeal in the Register the appellant gives notice of the abandonment of his appeal to the Secretary and to the Board, or the Board gives notice that the appeal is not contested to the Secretary and to the appellant, dismiss or allow the appeal, as the case may be, and thereupon rule 12 shall apply;
 - (e) if the appellant and the Board agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.
- (2) A notice under paragraph (1) (b) shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified by the tribunal for the purposes of the application.
- (3) Subject to the provisions of these rules the tribunal may regulate its own procedure.
- (4) Any act required or authorised by these rules to be done by a tribunal may be done by a chairman except—
- (a) the hearing of an appeal under rule 9; and
 - (b) an act required or authorised to be so done by rule 10 or 11 which the rule implies is to be done by the tribunal which is hearing or heard the appeal.
- (5) Any functions of the Secretary other than those mentioned in rules 5 and 11 may be performed by an Assistant Secretary.

Applications

- 14.**—(1) An application to the tribunal for an extension of the time appointed by these rules for doing any act may be made by the appellant or the Board either before or (subject to rule 7(3)) after the expiration of the time so appointed.
- (2) The appellant or the Board may at any time apply to the tribunal for directions on any matter arising in connection with an appeal.
- (3) An application made under the foregoing provisions of these rules or to the tribunal for an extension of the time for appealing against an assessment to a levy shall be made by sending to the Secretary in duplicate a notice of application which shall state the time of the appeal, or the number of the assessment in the case where an appeal has not been entered in the Register, and shall set out the grounds of the application.
- (4) The Secretary shall give notice to the appellant and to the Board of any extension of time granted by the tribunal or of any directions given by the tribunal in pursuance of these rules.

Notices, etc.

- 15.**—(1) Any notice given under these rules shall be in writing, and all notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post by means of the recorded delivery service or delivered to or at—
- (a) in the case of a notice of appeal, the Board's address for service specified in the assessment notice;
 - (b) in the case of any other document directed to the Board, the Board's address for service;
 - (c) in the case of a document (other than a notice of appeal) directed to the Secretary, the Office of the Tribunals or such other office as may be notified by the Secretary to the appellant and to the Board under rule 5 (b) or paragraph (3);

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- (d) in the case of a document directed to the appellant, his address for service specified in a notice given under these rules or, failing such a notice or if a notice sent to such an address has been returned, his last known address or place of business in the United Kingdom, or if the appellant is a corporation, such address or place of business or its registered or principal office;

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

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

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

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APPENDIX

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

TO

***INDUSTRY TRAINING BOARD**

.....
.....

AND TO

The Secretary of the Tribunals (Scotland)

I/We¹ of
hereby give notice that I/we¹ appeal to an industrial tribunal under the Industrial Training Act 1982, section 12, against the assessment to the levy made by the above-mentioned industry training board on19..... being the assessment numbered

Grounds of Appeal

The grounds of my/our² appeal are as follows:

Address for Service

All communications regarding the appeal should be addressed to me/us³ at
.....
to my/our² Solicitor(s)/Agent(s)⁴, Mr./Messrs.⁵
..... at

Date19.....

Signed

* Insert name of the Board.

| | Insert the address of the Board.

¹ Delete if inapplicable.

§ Insert address applicable.

² If the notice is signed on behalf of the appellant, the signatory must state in what capacity or what authority he signs.

FORM 2 INDUSTRIAL TRAINING ACT 1982 NOTICE OF HEARING

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Case No

*Central/*Regional Office of
the Industrial Tribunals
(Scotland).

Tribunal

.....
.....

NOTICE IS HEREBY GIVEN that the appeal of
..... against the assessment to the levy made by the Industry
Training Board and numbered will be heard by an industrial tribunal at
..... on the
day of at o'clock in the noon, or as soon as may be thereafter.
Unless the appellant receives from me a communication to the contrary, he should in his own
interest appear at the hearing with his witnesses at the above time and place.

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

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

The appellant and the Board are entitled to submit representations in writing for consideration of
the tribunal at the hearing of the appeal. Any such representations must be sent to the Secretary of
the Industrial Tribunals (Scotland) at the address mentioned at the head of this notice not less than
seven days before the hearing, and a copy must be sent at the same time to the other party. If either
or both parties fail to attend the hearing, the tribunal may dispose of the appeal in their absence,
but in such case the tribunal will consider any representations so submitted.

Dated19.....

Signed
*Secretary/*Assistant Secretary

To the Appellant
and
To Industry Training Board.