Low Incomes Tax Reform Group
A voice for the unrepresented

Revenue Scotland and Tax Powers Act 2014
A Consultation on the Scottish Tax Tribunal Rules
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

1.1 LITRG welcomes the opportunity to respond to the Scottish Government's consultation document 'Revenue Scotland and Tax Powers Act 2014: A Consultation on the Scottish Tax Tribunal Rules'.

1.2 We note that the Scottish Government has adopted the approach of mirroring, as far as possible, the Tribunal Rules that apply in the UK.[1] We appreciate that given the potentially temporary status of the Scottish Tax Tribunals as established under the Revenue Scotland and Tax Powers Act 2014 (RSTPA 2014) it perhaps is logical to use the UK Rules as the basis for the Scottish Tax Tribunal Rules. In terms of the user of the Tribunals, this approach also has the merit of being simpler. Notwithstanding those points, we use this response to note where we think improvements could be made to the Tribunal Rules to ensure that the system is fair for the low-income and unrepresented taxpayer.

1.3 In our response we answer the specific question asked in the consultation document and also look at the two sets of draft Tribunal Rules in detail: The First-tier Tax Tribunal for Scotland Rules 2015 and The Upper Tax Tribunal for Scotland Rules 2015. Our comments below adopt the UK numbering of the draft Tribunal Rules in the consultation draft. We note

[1] The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules (SI 2009/273) and the Tribunal Procedure (Upper Tribunal) Rules (SI 2008/2698) (in both cases as amended).

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that because the draft Rules do not mirror exactly the UK Tribunal Rules there are some cross references within the Rules that require updating.

1.4 We think that in framing the Tribunal Rules there are some important principles to bear in mind. It is important that the Tax Tribunals are actually, and are perceived to be, independent from Revenue Scotland; the Tribunal system must be accessible to all; appellants must be fully advised of their appeal rights and be provided with adequate and neutral guidance on Tribunal procedures. Our comments are made with these principles in mind.

2 About Us

2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

2.2 LITRG works extensively with HM Revenue and Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Tribunal Rules

3.1 ***Q. 1: Do you agree with the Scottish Government's proposed approach in relation to the Scottish Tax Tribunal Rules?***

3.1.1 We reiterate our welcome of the requirement for the regulations to be consulted upon, and that this consultation is taking place. Overall, we welcome the approach that has been taken. We only make comments in this response on Rules where we have suggestions to make.

3.1.2 In both sets of Rules we are concerned about the way in which time limits are expressed. The appellant has to send items "so that they are received" by the First-tier or Upper Tax Tribunal by a specified date. This will place an impossible burden on appellants if, for example, there is a postal strike, or things simply get lost in the post. We note that the

Interpretation Act 1978, section 7 applies in Scotland, under which if something is sent by post, properly addressed and with postage pre-paid, it is deemed to be received "at the time at which the letter would be delivered in the ordinary course of post".[2] This places a sufficient burden on anyone seeking to rely on it, as a person generally has to show to the Tribunal's satisfaction that they did post the item at the time they say they did.[3] The additional burden imposed by the draft Tribunal Rules ("so that they are received") is therefore unnecessary.

3.1.3 The Rules are unbalanced as time runs against the appellant from when the respondent **sends** the document, while time does not run against the respondent until the document sent by the appellant is **received**. It is also not clear how the appellant is to know the precise date on which the respondent sends the document, although that date is crucial in determining when the appellant's time limit starts to run.

3.1.4 In both sets of Rules provision has been made in respect of the venues for hearings.[4] The provisions leave the time and place up to the President to determine. We trust that sufficient flexibility will be allowed to the parties to make alternative arrangements if those proposed are inconvenient, provided that the process is not delayed unfairly as a result. We recommend that there be provision for the appellant to specify at the outset where they would like their case to be heard; we hope that as far as possible those living in more remote locations will not be disadvantaged in terms of possible venues. In addition, we question whether 14 days is sufficient as a minimum period of notice, given that parties will have to make travel arrangements to appear at a hearing. We hope that the case management process will keep parties informed as to the likely date and location of the hearing, so that its confirmation will not be unexpected.

3.1.5 The Rules as drafted only appear to envisage hearings with appellants and respondents: they do not appear to cater for *ex parte* hearings. We think consideration needs to be given as to whether additional Rules are required for *ex parte* hearings.

3.1.6 As a general point, we think that effective case management is key, both in ensuring that special needs are catered for and that cases are heard efficiently and by the most appropriate panel. It should be noted that appeals can be biased against those unable to afford professional representation.[5] It is important therefore that case management does

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[2] http://www.legislation.gov.uk/ukpga/1978/30/section/7?view=extent

[3] Nowadays it would normally be sufficient to show proof of postage, but with more and more use being made of electronic delivery a copy of the sender's 'sent' folder would be equally acceptable.

[4] The First-tier Tax Tribunal for Scotland Rules 2015, Rule 18B; the Upper Tax Tribunal for Scotland Rules 2015, Rule 20C.

[5] The unrepresented appellant faces unfamiliar surroundings, as well as a complex and technical system in which their opponent is well-versed. In addition, they may be hampered by a lack of experience or skill in presenting a case.

not exacerbate this. Consideration could also be given to providing a facility for tax and accountancy professionals to provide assistance on a *pro bono* basis. This would be with the aim of making professional help available to those whose inability to afford assistance might have dissuaded them from pursuing a meritorious appeal.[6] Not only would this give unrepresented appellants access to expertise similar to that available to Revenue Scotland, it might provide an opportunity to resolve issues before a full hearing occurs; in addition it would provide reassurance to the Tribunal that the appellant's interests were being taken care of.

3.1.7 Expenses can be a barrier to accessing justice. Appellants of low or modest means will struggle to meet their own costs. The possibility of an adverse expenses award against them is a further disincentive to pursuit of their case. In the interests of justice, we favour an expenses-free environment at the First-tier Tribunal and an optional expenses regime at the Upper Tribunal. We think, however, that the 'no expenses' regime should be capable of being overridden for wholly unreasonable behaviour and that it must be made clear to potential appellants that the rule can also be applied to Revenue Scotland (not just the appellant). We suggest that the Tribunals are given discretion to award some or all of the expenses, rather than it just being an all or nothing option.

3.1.8 Equally, out-of-pocket expenses can be a barrier to accessing justice. We think that it would be helpful if the Tribunal were able to make a contribution towards an appellant's out-of-pocket expenses in attending a Tribunal hearing, such as travel, loss of income/earnings, child-minding, etc. This would ensure that low-income and unrepresented appellants are not prevented from accessing justice as a result of the cost of travel between their home and the nearest hearing centre.

4 Draft Tribunal Rules

4.1 *The First-tier Tax Tribunal for Scotland Rules 2015*

Rule 2 Overriding objective and parties' obligation to co-operate with the First-tier Tribunal

4.1.1 Overall, we welcome this Rule – particularly for the unrepresented party, it is important that the Tribunal process deals with them fairly in order to achieve the overriding objective of ensuring that justice is served.

4.1.2 We note however that Rule 2(1) is slightly different to the UK rule. The UK version reads "fairly and justly". The Rule as drafted reads "accessibly, fairly, quickly and effectively". We

[6] It is our understanding that a good proportion of tax and accountancy professionals carry out *pro bono* work at least occasionally. The proportion might increase if a formal structure were provided within which they could operate. We would not advocate the use of public funds to pay fees to such professionals carrying out *pro bono* work, but a modest outlay of public sums could establish a scheme, provide premises, equipment, administrative support and out-of-pocket expenses.

welcome the addition of "accessibly" and "effectively", but we think that the word "justly" should also be included.[7] We realise that "justly" may be regarded as implicit in the concept of fairness. We would argue, however, that "fairly" is a subjective concept, while "justly" is more objective and suited to a legal context. In connection with this, we note that Rule 8(3)(b) makes reference to the Tribunal being able to "deal with the proceedings fairly and justly". Presumably this rule is meant to replicate the objective set out at Rule 2? We think the two Rules should mirror each other for the sake of consistency and clarity. In addition, we question the inclusion of "quickly". We are concerned that a desire to deal with cases quickly could undermine the interests of justice. In any case, the time limits imposed under the rules should ensure that cases are dealt with as quickly as can be reasonably achieved, so the inclusion of the word "quickly" in Rule 2 is superfluous.

4.1.3 Rule 2(4)(a) indicates that parties have a responsibility to "help the First-tier Tribunal to further the overriding objective". We have previously commented on the UK Rules on this same point: we do not believe that this requirement is feasible or fair for unrepresented appellants. We recommend therefore that the Rule be amended to reflect more clearly the limited means of a low-income, unrepresented taxpayer to support the Tribunal in achieving its objective. We suggest adding "…so far as they are able" or similar to Rule 2(4)(a). Otherwise, unfairness could result from the appellant having to fulfil this requirement, for example, they might have to forgo a day's income, or incur additional costs which they cannot afford. In addition, it is imperative that every unrepresented appellant should receive good, plain English-language guidance to the Tribunal Rules and procedures, to enable them to fulfil their obligations. This guidance must be produced in hard copy, in addition to being available online.

Rule 5 Case management powers

4.1.4 We would encourage the First-tier Tax Tribunal to make maximum use of its powers under this rule so as to assist unrepresented appellants unfamiliar with the procedures. We think this should be explicit in the Rules, for example, we would prefer "shall" to "may" in Rule 5(1).

4.1.5 In order to gain the confidence of unrepresented appellants, it is essential that Tribunal processes are not only independent of the Revenue Scotland process, but are seen to be independent. So, for example, appellants should have free access to the Tribunal and its case management service at all times (except when they have opted for an internal review by Revenue Scotland and that review is in progress).

4.1.6 Rule 5(3) gives the Tribunal a wide discretion. We trust that the requirement in Rule 5(3)(i) for "a party to produce a bundle for a hearing" would not be imposed on an unrepresented

[7] We note also that the overriding objective in the Civil Procedure Rules uses "justly" rather than fairly. (Rule 1 Civil Procedure Rules: These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.)

appellant without providing them with the means to comply, for example the assistance of a court official or a *pro bono* representative.

Rule 6 Procedure for applying for and giving directions

4.1.7 In relation to Rule 6(4), we doubt whether there would ever be a good reason not to send written notice of directions. In view of this, it would be useful to have some indication of the type of circumstances in which the Tribunal might be expected to reach such a decision. We presume that this would only be in extremely rare cases?

Rule 7 Failure to comply with rules etc.

4.1.8 Rule 7(2) sets out what action the Tribunal may take if a party fails to comply with a requirement. We think that Rule 7(2) should include a qualification, to the effect that the Tribunal should take into account the circumstances of the party and any reason given for the failure to comply. In particular, we think that there is a need for leniency where the reason for the failure was that the party was unrepresented, or did not have the means to travel to attend or give evidence, etc. It may be that the intention is for such circumstances to be taken into account when evaluating what is "just". We would prefer the Rules to be explicit on this point.

Rule 8 Striking out a party's case

4.1.9 We do not think that the striking out provisions in Rule 8 are even-handed, particularly in respect of cases where the appellant is an unrepresented individual and the respondent is Revenue Scotland. In such a case, if the appellant fails to comply with a direction, etc. the proceedings are struck out; if the respondent fails to do so, however, it is merely barred from taking any further part in the proceedings and the Tribunal "need not consider any response or other submissions" that they make. To ensure that Revenue Scotland cannot ignore directions with impunity, we recommend that where the respondent fails to comply, it should not only be barred from taking any further part in the proceedings, but the Tribunal should be able to make a decision on the appeal in favour of the appellant.

4.1.10 We are concerned about the inclusion of the word "automatically" in Rule 8(1), as it gives no flexibility to the Tribunal to be lenient. Although striking out may be the correct course of action in a number of cases, this rule as drafted makes no allowance for exceptional circumstances, or where there is a reasonable excuse for failure to comply. We recommend that the wording is amended to allow more flexibility.

Rule 10 Orders for expenses

4.1.11 Rule 10(1)(b) refers to a party or their representative acting unreasonably in "bringing" proceedings. So far as this concerns unrepresented appellants, we have a concern that despite acting reasonably in the course of the proceedings they may leave themselves open to an order in respect of expenses. We think there needs to be a safeguard for low income, unrepresented appellants, who may not be able to engage the services of an adviser, and therefore may not have the means of recognising that their case is in fact hopeless (and their

decision to bring it unreasonable as a result). In addition, what is "reasonable" can be dependent on the individual circumstances of the appellant.

4.1.12 Rule 10(1)(c) implies that the appellant must take positive action to exclude themselves from the costs regime at the outset, if their case is a Complex case. If this is the case, it must be made very clear to appellants that doing nothing could result in an order for expenses. We recommend that a procedure for notifying them of this fact be written into the Rules. In addition, more detail should be given about the basis on which an order for expenses will be made in a Complex case. There needs to be recognition that just because a party is unrepresented or on a low income, it does not follow that issues raised by their appeal may not be "complex". We would welcome some judicial discretion over whether or not any particular Complex case should be subject to an order for expenses – the discretion should take into account the means of the appellant.

4.1.13 We welcome the inclusion of Rule 10(5)(b), as this gives some reassurance for appellants of limited means. We trust that the Tribunal will follow this rule and assess an appellant's ability to pay and also allow them an opportunity to make representations before making an order for expenses against them.

4.1.14 At Rule 10(7A) there is a typographic error, meaning that the deletion of "r" is required: "paid on account before the **r** expenses are assessed".

4.1.15 We are pleased to note that the definition of "wasted expenses" in Rule 10(8) does not appear to restrict itself to expenses incurred after the commencement of proceedings in the Tribunal. This should mean that the compensation provided by an order in respect of wasted expenses should be adequate, including where the respondent abandons proceedings or where the respondent's case proves to be frivolous or badly handled.

Rule 11 Representatives

4.1.16 We welcome Rule 11(5), which allows flexibility for unrepresented appellants to bring along support, for example, a McKenzie friend. We question, however, the inclusion of the word "quietly" in this paragraph, and would like to understand the rationale behind this.

Rule 12 Calculating time

4.1.17 Rule 12 is common to both sets of Rules and refers to section 1 of the Banking and Financial Dealings Act 1971 in defining 'working day'. As a general point, we recommend that where reference is made to a provision of a UK statute, the relevant words be re-stated in the Rules rather than effected by cross reference. This would avoid finding that the Rules are amended by some unrelated change to the UK Act, necessitating an amendment to the Rules. It also makes the Rules easier to read.

Rule 13 Sending and delivery of documents

4.1.18 We welcome the inclusion of Rule 13(4), which allows a recipient to request a hard copy in the event of an electronic communication being unacceptable. This will be of particular

assistance to a low-income appellant, who might otherwise incur the cost of printing out long submissions from the respondent.

Rule 15 Evidence and submissions

4.1.19 We think that problems may arise in connection with Rule 15(1)(c), since not all parties would be able to afford to appoint an expert. Consideration needs to be given as to what would happen in such a situation.

4.1.20 Rule 15(2)(b) deals with the exclusion of evidence in certain circumstances. We recommend the inclusion of additional wording along the lines of "unless there is a reasonable excuse for failing to meet the time limit allowed or for failing to comply in the manner directed", with a view to safeguarding the unrepresented appellant, who might inadvertently fail to comply exactly as directed or might take longer to comply.

Rule 18 Lead cases

4.1.21 We note that the lead cases procedure mirrors the UK equivalent Rules: the Rules are formulated in broad terms to cater for a wide range of circumstances. However this creates uncertainty as to how they will operate. In particular, there is no provision for appellants in related cases to participate in or even to have knowledge of the conduct of the lead case (beyond attending the hearing). We think that supplemental guidance on the conduct of the lead case procedure would be of great assistance to the tribunals and users, particularly where the appellants in the related cases are unconnected and represented by different advisers.

Rule 20 Notice of appeal to the First-tier Tribunal

4.1.22 Rule 20 sets out what a notice of appeal must include. In connection with this, we note that unrepresented appellants are likely to find it difficult to prepare their case, and may need assistance in preparing documents and statements. It is important that the requirements are not so onerous as to deter potential appellants from making an appeal in the first place. In addition, if an appellant does not manage to meet all the requirements, their appeal should not be invalidated – rather, we trust that they would be advised as to what they need to do to make their appeal valid.

Rule 23 Allocation of cases to categories

4.1.23 In respect of allocation of cases, we question whether four tracks are necessary and whether three might suffice – Paper, Standard and Complex. This would be with the caveat that cases allocated to the Paper track should have the option to apply for a hearing. This suggestion would allow Paper and Complex cases to be dealt with appropriately and 'everything else' would follow the Standard process.

4.1.24 It would be helpful to know the specific criteria that will be used to judge whether or not a case is Complex, that is, what will constitute the categories in Rule 23(4). Cases brought by low-income, unrepresented appellants can involve complex or important issues. It is

however in the interests of low-income, unrepresented appellants that proceedings are kept as simple as possible. It would be helpful therefore if the Tribunal will have discretion in respect of allocation of cases.

Rule 25 Respondent's statement of case and Rule 26 Further steps in a Default Paper case

4.1.25 There is a lack of balance in the time limits in connection with the procedure of cases. At Rule 25(1)(a), it indicates that a respondent has 42 days to deliver a statement of case in a Default Paper case, whereas the appellant has only 30 days to deliver a written reply, as set out in Rule 26(2).

4.1.26 We do not agree that the respondent, Revenue Scotland, should have the right to request an oral hearing, as proposed in Rule 25(3), without a countervailing measure in Rule 26 giving the appellant an overriding right to object. We do not consider that this would be unfair to the respondent, given the imbalance in power between Revenue Scotland and the unrepresented appellant, and Revenue Scotland's access to high quality representation at oral hearings. We think, however, that the Tribunal dealing with a Paper case should have the power to call for an oral hearing if the members are not satisfied that the paper pleadings provide the full details of the appellant's case.

Rule 31 Notice of hearings

4.1.27 We think that there should be additional provisions here requiring the Tribunal to assess any special needs of the parties prior to giving notice of the hearing time or venue. The case management process must take account of factors such as disability, lack of means to attend a hearing at a distant location, etc. in ensuring the hearing takes place at a suitable time and location.

Rule 32 Public and private hearings

4.1.28 At Rule 32(4)(ca), reference is made to the "Upper Tribunal". Presumably this should be the "First-tier Tribunal"?

Rule 35 Notice of decisions and reasons

4.1.29 We note the requirement to publish decisions. We think this is an important addition to the Rules and we strongly support its inclusion. This is also the case for Rule 40 of the Upper Tribunal Rules.

Rule 38 Setting aside a decision which disposes of proceedings

4.1.30 We think there should be an additional condition in Rule 38(2), such that the Tribunal may set aside a decision if a new issue of law emerges subsequently, which was not known to either party or to the Tribunal at the time of the hearing, and it is in the interests of justice

for the matter to be reconsidered in the light of the new issue of law.[8] If such a condition is added, it would also be necessary to make the 30-day deadline referred to in Rule 38(3) more flexible in appropriate cases.

4.2 ***The Upper Tax Tribunal for Scotland Rules 2015***

Rule 1 Interpretation

4.2.1 When defining a "respondent" for the purposes of these Rules, reference is made to appeals against decisions of the First-tier Tax Tribunal. No other courts or tribunals are mentioned. Consideration should be given as to whether in fact this definition needs to be widened – will it be possible to appeal to the Upper Tax Tribunal from any court or tribunal other than the First-tier Tax Tribunal?

Rule 2 Overriding objective and parties' obligation to co-operate with the Upper Tribunal

4.2.2 We refer to the points we make at paragraph 4.1.2 above, as these are also relevant to Rule 2(1) of the Upper Tribunal Rules.

Rule 8 Striking out a party's case

4.2.3 At Rule 8(7)(b) the word "from" needs to be inserted in the phrase "…as a reference to an application for the lifting of the bar on the respondent **from** taking further part…".

Rule 10 Orders for expenses

4.2.4 In the Upper Tribunal, we would prefer to see a full expenses regime, with provision for a party to apply to the Tribunal that it should be a "no expenses" hearing.

4.2.5 The Costs Review Group issued a 2011 Report to the Senior President of Tribunals, recommending that the 'Rees practice'[9] be formalised and that in non-complex cases a

[8] An example might be a case which was correctly decided in Scottish law, but later it emerges that Scottish law is in contravention of some supra-national jurisdiction to which Scotland is a signatory, such as EU law or human rights law.

[9] The 'Rees practice' (formulated by Peter Rees on 12 March 1980) set out the then UK government policy on reaching arrangements about costs with the revenue departments (the predecessor bodies to HMRC) in High Court cases where financial hardship is present or the point at issue is one of significant interest to taxpayers as a whole. In such circumstances, although the general rule is that the losing party bears the other side's costs, it may be appropriate for HMRC to consider waiving their costs or another arrangement particularly where HMRC are appealing an adverse decision. The current UK tribunal system came into operation on 1 April 2009. In a written ministerial statement on 30 March 2009, Stephen Timms (the then Financial Secretary to the Treasury), confirmed that HMRC will continue to apply the 'Rees practice' in tax cases determined by the Upper Tribunal (Hansard Col. WS60 http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90330-wms0001.htm)

taxpayer who is successful before the First-tier Tribunal should be able to opt for the continuance of the no-costs regime. We support both these recommendations.

4.2.6 The Upper Tribunal in the UK has a broad statutory discretion in respect of costs by virtue of section 29 of the Tribunals, Courts and Enforcement Act 2007. That discretion allows for the making of a protective costs order (see for example *HMRC v Patel*[10]). However, there is no equivalent provision in the RSTPA 2014. We recommend that such a discretion is provided for in the Upper Tribunal Rules.

4.2.7 In relation to the recommendation to give the taxpayer the ability to opt for the no-expenses regime in the Upper Tribunal, our particular concern is where the taxpayer has won at first instance and Revenue Scotland appeals to the Upper Tribunal. A taxpayer may be unable to be represented before the Upper Tribunal for fear of being liable for Revenue Scotland's expenses. We cannot see that it is in the interests of justice that any taxpayer who has won in a no-expenses regime (and who therefore must have, by definition, at least a good arguable case) should be prevented from defending himself for fear of the expenses of doing so. Therefore, we think there is a need for provision in the Upper Tax Tribunal Rules for a discretion in respect of expenses awards in cases won by appellants in the First-tier Tribunal and which have then been appealed by Revenue Scotland to the Upper Tribunal. Otherwise, there is a danger of taxpayers, and particularly unrepresented taxpayers, being unwittingly exposed to the expenses regime.

4.2.8 Provision could be made in the Upper Tribunal Rules, in cases where the issue is one that affects a wider class of taxpayers, for the Upper Tribunal to invite the tax professional bodies to submit representations on behalf of the taxpayer community in general. In the absence of the taxpayer being represented, it would, we suggest, be useful for taxpayers in general to have the option to have some input.

4.2.9 Rule 10(6)(b) refers to a "notice under rule 17(5)". There is no paragraph (5) in rule 17 of the Upper Tribunal Rules.

Rule 11 Representatives

4.2.10 Rule 11(5) refers to paragraph (8) of the same rule; there is no paragraph (8) in rule 11 of the Upper Tribunal Rules.

Rule 13 Sending and delivery of documents

4.2.11 In the UK Upper Tribunal Rules, there is a provision to the effect that if a party submits a document that is not written in English, they must also submit an English translation.[11] That provision has been omitted from the draft Upper Tribunal Rules. We would question the wisdom of this omission, since presumably the Scottish Tax Tribunals will have limited

[10] [2014] UKUT 484 (TCC) at paragraph 8.

[11] The Tribunal Procedure (Upper Tribunal) Rules (SI 2008/2698), Rule 13(6).

resources for obtaining translations, and it is not inconceivable that a document could be provided in a language other than English.

Rule 17 Withdrawal

4.2.12 At Rule 17(1) the word "to" needs to be inserted in the phrase "Subject **to** any provision…".

Rule 21 Application to the Upper Tribunal for permission to appeal a decision of the First-tier Tribunal

4.2.13 We think that consideration should be given as to whether or not the provisions in Rule 21 adequately cater for circumstances where the First-tier Tribunal has the power to and gives its decisions orally. We raise this issue in connection with time limits and the information or documents required to accompany an application under this rule.

4.2.14 Rule 21(6) refers to "the time required by paragraph (3)". Paragraph (3) of the draft Rule 21 does not include a time limit (although the UK equivalent does).

Rule 23 Notice of appeal to the Upper Tribunal

4.2.15 Rule 23(3) indicates that a "notice of appeal must include the information listed in rule 21(4)(a) to (e)". Rule 21 lists the relevant information at paragraph 3(a) to (f).

Rule 25 Appellant's reply

4.2.16 The phrase "subject to paragraph (2A)" needs to be removed from Rule 25(2), as paragraph (2A) of draft Rule 25 does not exist – in the UK Rules it refers to immigration cases.

Rule 34 Decision with or without a hearing

4.2.17 The phrase "and (3)" needs to be removed from Rule 34(1).

4.2.18 The reference to "paragraph (3)" needs to be removed from Rule 34(4). In addition, the references to rule 8(1)(b) and 8(2) need to be checked.

Rule 38 Hearings in a party's absence

4.2.19 We would prefer there to be an additional provision in Rule 38 to the effect that a party could notify the Upper Tribunal of an 11th-hour emergency preventing them from attending and request a deferral. Such a provision could adopt the wording "is not aware of any good reason for the failure to attend" as an additional option under Rule 38(a), creating a paragraph (a)(i) and (a)(ii).

Rule 43 Setting aside a decision which disposes of proceedings

4.2.20 The phrase "except where paragraph (4) applies" should be removed from Rule 43(3).

LITRG
7 January 2015