

# **TAX AND DUTY APPEALS MANUAL**

## **Appeals made after 21 March 2016**

This Tax and Duty Appeals Manual will replace the Manual contained in the Part 40 (Appeals) section of the 'Income Tax Capital Gains Tax Corporation Tax' TDM. It applies in relation to appeals made on or after 21 March 2016, the date on which the Finance (Tax Appeals) Act 2015 (Appeals Act) came into operation and the new Tax Appeals Commission (TAC) was established.

This new manual will be populated incrementally as the new appeals process settles down. Initial material will cover what is currently known about the new process, the treatment of appeals that are already in train and the immediate implications for Revenue staff. Further material will be included following the establishment of the TAC and its publication of its 'Rules of Procedure'.

Relevant material from the existing Tax and Duty Appeals Manual (Part 40 TCA 1997) that has not been made redundant by the changes made to the appeals process will be incorporated into the new manual. This existing manual will continue to be relevant in relation to some appeals that were at various stages of the appeal process on 21 March 2016.

## **1. Reform of tax and duty appeals process**

### **1.1 Background to reform**

The Minister for Finance announced a public consultation on the reform of the tax appeals process in his 2013 Budget Speech. Submissions to the consultation were made in January 2014 by various stakeholders such as the ITI, CCABI, Law Society and Revenue. These consultations were not published by the Department of Finance but Revenue published its submission on its website.

### **1.2 Finance (Tax Appeals) Act 2015**

The outcome of the consultation process was the enactment of the Finance (Tax Appeals) Act 2015 (Appeals Act) which came into operation on 21 March 2016. The first part of the Appeals Act establishes the new Tax Appeals Commission (TAC) and deals with such matters as the appointment of Appeal Commissioners and their functions and independence. The Act inserts a new Part 40A into the Taxes Consolidation Act 1997 that deals with the appeals process itself. The Act also makes a significant number of amendments to the various tax and duty Acts to standardise the appeal provisions across the various Acts and to correct any anomalies that were identified.

### **1.3 Main changes to the appeals process**

A fundamental change to the appeals process is the requirement that all appeals (other than customs duties and VRT 'first-stage' appeals) are to be made directly to the TAC and not to Revenue in the first instance. The Appeal Commissioners will have sole responsibility for accepting or refusing appeals. This change strengthens the independence of the TAC from Revenue. Another significant change is the ending of an appellant's right to a rehearing before a Circuit Court Judge. The procedure for appealing to the High Court on a point of law has been revised; the statement of the case for the High Court ('case stated') must now be prepared by the Appeal Commissioners themselves (instead of by agreement between the parties to the appeal) within a strict time limit of three months. To improve the transparency of the appeals process, the Appeal Commissioners are required to publish anonymised versions of all of their determinations. A transparency measure that was considered but not introduced was to have all hearings in public; instead, the new legislation provides for a default of public hearings but allows the appellant a private hearing on request.

### **1.4 Revised statutory basis for appeals**

A new Part 40A in the TCA 1997 contains all of the provisions relating to the appeals process itself and includes such matters as the making of an appeal, documentation to be submitted to the TAC, adjudication and hearing procedures, determination of appeals, publication of determinations and appeals to the High Court.

The right of appeal is now contained in the provisions dealing with the particular matter that can be appealed and is no longer linked to an appeal against an income tax assessment. Wording along the lines of “*as if the appeal were an appeal against an assessment to income tax and the provisions of the Income Tax Acts relating to ....shall with the necessary modifications apply accordingly*” has been removed and each right of appeal now operates on a standalone basis. Once there is a right of appeal, the provisions of Part 40A TCA 1997 automatically apply in a generic way to appeals for all taxes and duties.

The wording of the right of appeal has been standardised across all of the taxes and duties and is now “*A person aggrieved by an assessment (determination/decision/action etc.) may appeal the assessment to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that assessment.*”. Section 949I TCA 1997 provides for the submission of a ‘Notice of Appeal’, containing specified information, to the TAC. With a very small number of exceptions, the time allowed for making an appeal has been standardised at 30 days after the notification of the assessment (determination/decision/action etc.)

## **2. Short-term implications for Revenue**

On 21 March 2016 the Finance (Tax Appeals) Act 2015 came into operation and the new Tax Appeals Commission (TAC) was established. This section of the Appeals Manual provides a brief overview, insofar as this is known at this stage, of the short-term implications for Revenue.

### **2.1 TAC ‘rules of procedure’**

Following its establishment on 21 March 2016, the TAC published its ‘rules of procedure’ on its website [www.taxappeals.ie](http://www.taxappeals.ie). This covers such matters as how appeals are to be made, what documentation will have to be submitted to the TAC, how the TAC will adjudicate on disputed matters, the time limits that will be allowed for various steps in the process etc. The Appeals Manual will be updated as the new process becomes established and as the implications for Revenue’s management of its appeals are considered. In the meantime, a flowchart in Appendix 1 summarises how the new appeals process is broadly expected to operate based on the provisions in the Appeals Act.

### **2.2 Appeals made from 21 March 2016**

Appeals made from 21 March 2016 should be made directly to the TAC and not through Revenue. Section 3 below contains details of how this new procedure will operate in practice.

### **2.3 Transitional arrangements for existing appeals**

On 21 March 2016 when the Appeals Act came into operation Revenue was still dealing with appeals that were made before this date but that had not yet been referred to the Appeal Commissioners with a request for a hearing date. Section 5 below contains details of how these appeals are to be treated. In addition, section 4 below contains details of the treatment that will apply to those appeals that were already being dealt with by the Appeal Commissioners on 21 March 2016 but that may be subject to revised procedures after this date.

### **2.4 Settlement by agreement with Revenue**

The fact that appeals are to be made directly to the TAC in the first instance and that the TAC will have full control over the listing of appeals does not preclude the continuation of settlement discussions between Revenue and appellants after an appeal has been made. Where such discussions result in an agreement the case worker is to notify the TAC immediately.



## 2.5 Issuing of AH1's

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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## 2.6 Appeals wording on existing Revenue notices, leaflets, manuals etc.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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## 2.7 Appeals Dashboards

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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### 3. New Appeals received from 21 March 2016

#### 3.1 Appeals submitted to TAC from 21 March 2016

From 21 March 2016, appellants should submit their appeals directly to the TAC and not to Revenue. The TAC will then refer a copy of the 'Notice of Appeal' (available at [www.taxappeals.ie](http://www.taxappeals.ie)) together with whatever Revenue notification (containing the appealable matter) was issued to the appellant, to Revenue for confirmation that the particular appeal is a valid appeal.

#### 3.2 Channels of communication between TAC and Revenue

The following material is either exempt from or not required to be published under the Freedom of Information Act 1997.

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#### 3.3 What is a valid appeal?

An appeal is a valid appeal<sup>1</sup> if-

- It is made in relation to an 'appealable matter', i.e. a matter in respect of which an appellant has a statutory right of appeal. This will usually be apparent from the notification containing the appealable matter (such as a notice of assessment) that Revenue issued to the appellant,
- Any statutory conditions that are required to be met before an appeal can be made have been met:
  - where the appeal is against an assessment made by Revenue, a return must have been made in respect of the particular year of assessment and the self-assessed liability must have been paid together with any interest due on that amount,
  - in the case of a 'late' appeal,<sup>2</sup> any enforcement action that has been commenced must be completed, and
  - in the case of an appeal that is more than 12 months late, a return must have been made in respect of the particular year of assessment and the tax chargeable on foot of the disputed assessment must have been paid together with any interest due on that amount.

<sup>1</sup> Section 949J TCA 1997

<sup>2</sup> Section 949O TCA 1997

### 3.4 Steps to be taken by a case worker

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### 3.5 Appeals submitted to Revenue on or after 21 March 2016

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A more recent version of this manual is available.

## 4. Transition of existing appeals to the new appeals process

The transitional provisions are contained in Part 3 of the Appeals Act and cover such matters as appeals refused by Revenue, appellants who will retain the right to a Circuit Court rehearing and how appeals that were being dealt with by the retired Appeal Commissioners are to be progressed by the new Appeal Commissioners. The issue of 'settlement' letters to existing appellants whose appeal is still with Revenue on 21 March 2016 is dealt with separately in section 5.

### 4.1 Corresponding stage in new process

The general rule for the transition of existing appeals (made before 21 March 2016) to the new appeals process is that such appeals are to move to the stage in the new process that corresponds most closely to the stage that the appeal had reached in the old process<sup>3</sup>. For example, appeals that have been accepted by Revenue will not have to go through the process (described in section 3.4) of being confirmed as valid appeals. An appeal that has been referred to the TAC but that has not yet been listed for a hearing will be subject to the TAC's new Rules of Procedure.

### 4.2 Circuit Court

Under the old appeals process, an appellant who was dissatisfied with a determination of the Appeal Commissioners could request a full rehearing of the appeal by a Circuit Court Judge (CCJ). This CCJ rehearing will not be available under the new appeals process. However, the right to such a rehearing will be retained by those appellants whose hearing before the Appeal Commissioners had begun or had been completed before 21 March 2016. Where such a hearing has not begun, an appellant will be restricted to an appeal to the High Court on a point of law<sup>4</sup>.

#### 4.2.1 Examples

**4.2.1.1** The Appeal Commissioners listed an appeal for a hearing on 24 March 2016, having notified the parties of this on 6 January 2016. If the appellant loses the appeal, he or she will not have a right to a CCJ rehearing as the hearing does not actually begin until after 21 March 2016.

**4.2.1.2** A hearing before the Appeal Commissioners began on 18 March 2016. The hearing continues for 5 working days and a determination is given against the appellant on 24 March 2016. The appellant retains the right to a CCJ rehearing as the hearing before the Appeal Commissioners began before 21 March 2016.

**4.2.1.3** A hearing before the Appeal Commissioners began on 10 February 2016 but was then adjourned and listed for resumption on 20 April 2016. If the appellant loses the appeal, he or she will retain the right to a CCJ rehearing.

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<sup>3</sup> Section 27(2) Appeals Act

<sup>4</sup> Section 27(4) Appeals Act

**4.2.1.4** The Appeal Commissioners made a determination against an appellant on 23 June 2015. The appellant appealed against this determination and is waiting for the appeal to be reheard by a CCJ. This rehearing will proceed as usual under the old appeals process.

### **4.3 Retirement of Appeal Commissioners**

#### **4.3.1 Uncompleted appeals**

The Appeals Act provides for the situation where a previous Appeal Commissioner has retired without completing the hearing of an appeal or without making a determination in an appeal that was heard by him. In this situation, a new Appeal Commissioner is to either rehear the appeal, disregarding the previous hearing or part-hearing, or proceed to adjudicate and determine the appeal without a rehearing.<sup>5</sup>

##### **4.3.1.1 Example**

A hearing that began on 10 December 2015 was adjourned and is set to resume in April 2016. As the hearing began before 21 March 2016 and the Appeal Commissioner who began hearing the appeal has since retired, a new Appeal Commissioner may decide to rehear the case in full or to adjudicate and determine the disputed matter, possibly based on submissions received from both parties (Revenue and appellant) and a transcript of the uncompleted hearing.

#### **4.3.2 Appeals to the High Court**

Appeals to the High Court against a determination of the Appeal Commissioners are made by stating a case for the opinion of the High Court on a point of law (known as a 'case stated'). Under the old appeals process, the 'case stated' was drafted by both parties and agreed between them before being submitted to the Appeal Commissioners for sign off. On 21 March 2016, there will have been 'cases stated' that won't have been agreed between the parties and that can't be signed off by the now retired Appeal Commissioner who determined the appeal.

In this situation, the parties to the appeal will be asked to indicate to the TAC, within a specified time period, whether they wish to have the appeal reheard by a new Appeal Commissioner or to have the case stated completed. Both of the parties must opt for a rehearing for this to happen. For example, if only Revenue opts for a rehearing, the case stated is to be completed by a new Appeal Commissioner.<sup>6</sup>

Where the parties are still attempting to agree the terms of the 'case stated' between them, as soon as practicable after 21 March 2016, the TAC may give them some additional time to do this. If the parties do not comply with this direction, a new Appeal Commissioner is to complete the 'case stated'. A new Appeal Commissioner also has the discretion to amend a 'case stated' that has been submitted by the parties.<sup>7</sup>

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<sup>5</sup> Section 28 Appeals Act

<sup>6</sup> Section 29 Appeals Act

<sup>7</sup> Section 30 Appeals Act

Following the completion of a ‘case stated’ by a new Appeal Commissioner in these circumstances, the High Court has discretion to order the appeal to be reheard where it forms the view that justice would not be served by its dealing with the ‘case stated’.<sup>8</sup>

#### **4.3.2.1 Example**

An appeal was determined by a now retired Appeal Commissioner in favour of Revenue on 1 October 2015. The appellant appealed the determination to the High Court by way of a ‘case stated’ but this was not completed by 21 March 2016. In response to a request from the TAC, the appellant indicates that she wants a new Appeal Commissioner to rehear the appeal while Revenue indicates that it wants to proceed with the ‘case stated’. As both parties do not opt for a rehearing, a new Appeal Commissioner will complete the ‘case stated’. The TAC gives the parties an additional six weeks to agree the terms of the ‘case stated’ with each other. At the end of the six weeks the parties do not manage to reach agreement. The new Appeal Commissioner completes the ‘case stated’ and the High Court then makes its decision on the point of law submitted to it.

#### **4.4. Appeals refused by Revenue before 21 March 2016**

Up to 21 March 2016, Revenue could refuse to accept an appeal where it considered that the appellant was not entitled to make the appeal or where the appeal was late for reasons other than absence, sickness or other reasonable cause. Revenue also had to be satisfied that, in the case of a late appeal, the appellant made the appeal as soon as practicable after the reason for the delay had ceased. In the case of appeals that were more than 12 months late, Revenue could also refuse to accept an appeal where not enough information was provided by the appellant to enable the appeal to be settled and where the tax assessed by Revenue had not been paid.

Appellants could appeal to the Appeal Commissioners against Revenue’s refusal to accept their appeal within 15 days of the date of the notice of refusal. This will not be a feature of the new appeals process because appeals will be made directly to the TAC who will make all decisions about whether or not to accept an appeal. However, Revenue may have refused to accept an appeal at some point during the 15 days preceding 21 March 2016. In this situation, an appellant may appeal such a refusal to the TAC.<sup>9</sup>

Any appeal that is not refused by Revenue before 21 March 2016 is deemed to be accepted by the TAC. The TAC may decide to refuse to accept the appeal at a later date.

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<sup>8</sup> Section 29(9) Appeals Act

<sup>9</sup> Sections 25 and 26 Appeals Act



#### **4.4.1 Examples**

**4.4.1.1** Revenue refuses to accept an appeal on 18 March 2016. As this is before 21 March 2016, the appellant may appeal the refusal to the TAC up to 1 April 2016.

**4.4.1.2** Revenue received a late appeal on 15 March 2016 but intends to refuse it as the appellant does not satisfy the conditions for a late appeal. However, the notice of refusal does not issue by 21 March 2016. The appeal is deemed to be accepted but this is subject to the TAC deciding at a later stage that the appeal is not a valid appeal and should not be accepted.



## 5. Issue of 'settlement letters' to appellants

### 5.1 Settlement of open appeals by agreement with appellants

On 21 March 2016 when the Appeals Act came into operation Revenue was still dealing with appeals that were made before this date but that had not yet been referred to the Appeal Commissioners with a request for a hearing date (referred to as unsettled appeals). The Appeals Act (section 31) provides for this situation. Revenue has a statutory obligation under Section 31 of the Appeals Act to refer such appeals to the TAC as soon as practicable after 21 March 2016. However, before doing so, Revenue is required to notify the appellant of this statutory requirement and to request that the appellant indicates whether he or she wishes to settle the appeal by agreement with Revenue or to have the appeal referred to the TAC for hearing. Where the appellant indicates a wish to settle the appeal by agreement but agreement is not then reached, Revenue is also required to refer the appeal to the TAC.

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### 5.4 Revenue assessment/decision not to be upheld

There is an exception to the requirement to issue a settlement letter in the case of an appeal where, following a review of the particular assessment, decision, determination or action that gave rise to the appeal, Revenue forms the view that the assessment etc. should not be upheld.

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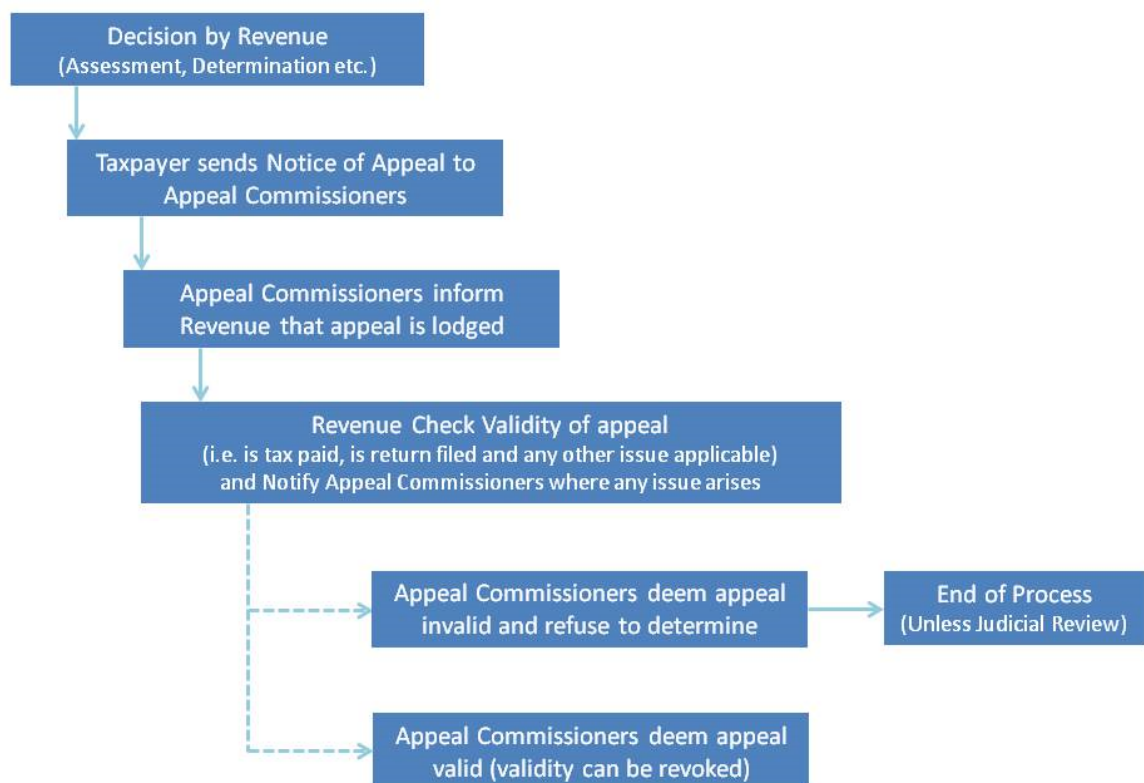
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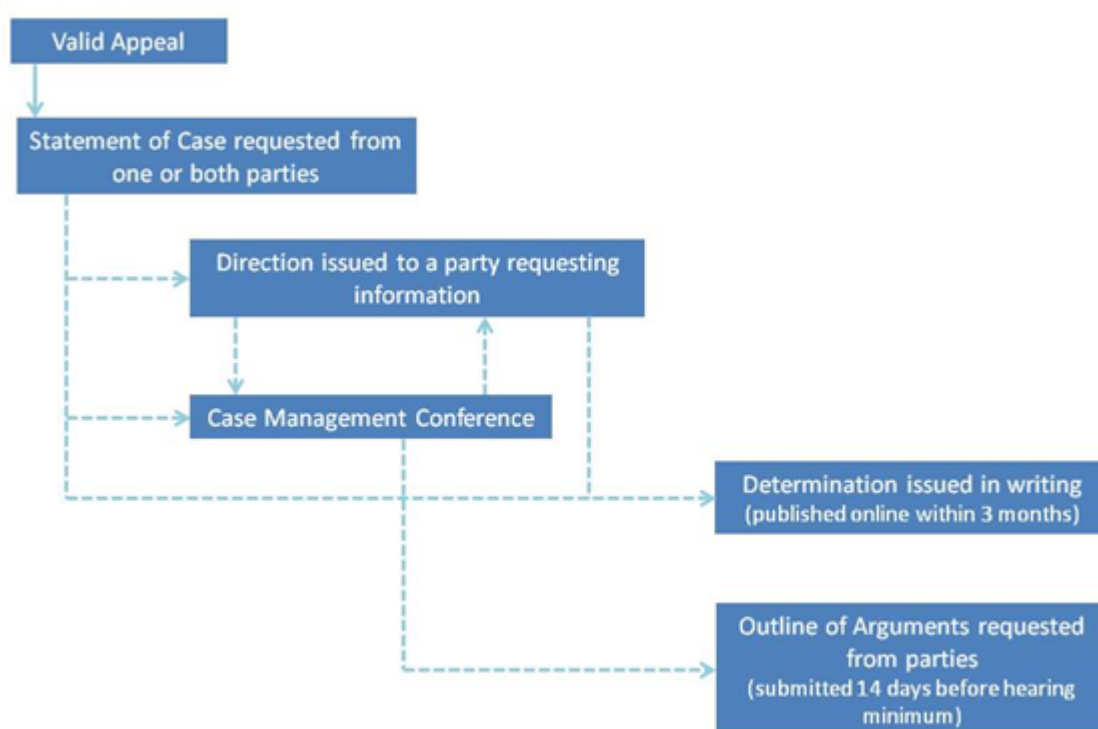
### 5.5 Template settlement letter

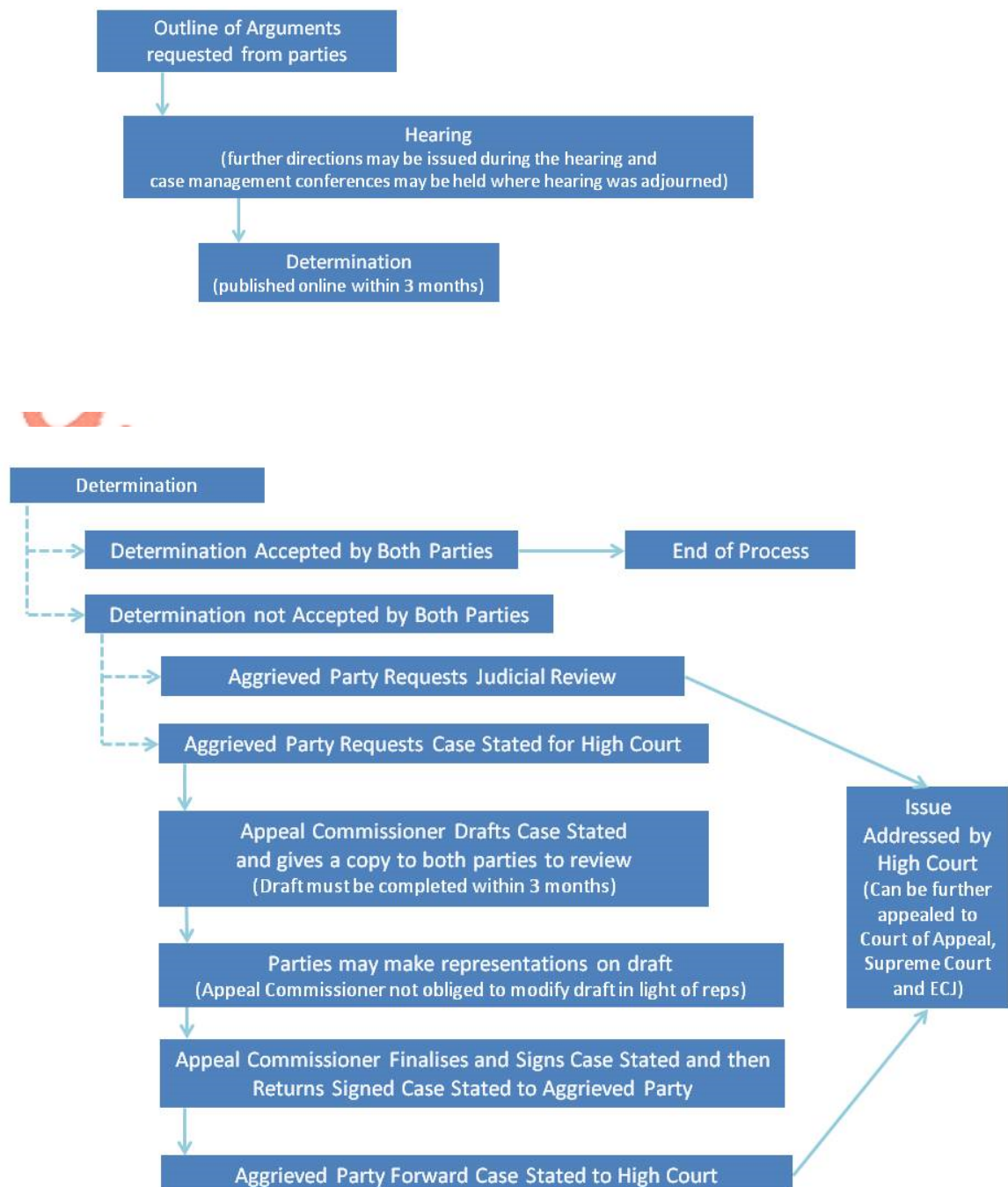
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## APPENDIX 1







**APPENDIX 2****Instructions on use of ‘MyEnquiries’**

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[...]