

1987 No. 1336 (S.95)

BANKS AND BANKING

**The Banking Appeal Tribunal (Scottish Appeals)
Regulations 1987**

Made - - - - - *27th July 1987*

Laid before Parliament *7th August 1987*

Coming into force *1st October 1987*

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement.
2. Interpretation.
3. Application of Regulations.
4. Time for and manner of bringing appeals.
5. Notice of appeal.
6. Establishment of the Tribunal.
7. Respondent.
8. Grounds of appeal.
9. Supply of documents by the Bank.
10. Preliminary hearing.
11. Interim relief.
12. Amendment of grounds of appeal.
13. Evidence and procedure.
14. Membership of the Tribunal.
15. Procedure after hearing.
16. Withdrawal of appeal.
17. Expenses.
18. Time and miscellaneous powers.
19. Tribunal's power to determine its own procedure.
20. Service of notices etc.
21. Irregularities.
22. Consolidation of appeals.

The Lord Advocate, in exercise of the powers conferred upon him by section 30(3) and (4) of the Banking Act 1987(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals, which has consulted with its Scottish Committee, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Banking Appeal Tribunal (Scottish Appeals) Regulations 1987.

(2) These Regulations shall come into force on 1st October 1987.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Banking Act 1987;

“appeal” means an appeal to which these Regulations apply in accordance with regulation 3;

“appellant” means a person who under the Act is entitled to appeal or has appealed, as the case may be, to the Tribunal against a decision of the Bank or against a finding on which such a decision is based;

“the Bank” means the Bank of England;

“the chairman” means the chairman of the Tribunal appointed in accordance with section 28 of the Act;

“preliminary hearing” means the hearing held pursuant to regulation 10;

“the secretary” means the person appointed by the Treasury to act as secretary to the Tribunal.

(2) Unless the context otherwise requires any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

Application of Regulations

3. These Regulations apply to appeals under Part I of the Act, where the institution concerned (a) is a company registered in Scotland or (b) has its principal or prospective principal place of business in the United Kingdom in Scotland.

Time for and manner of bringing appeals

4. An appeal shall be brought by sending a notice of appeal to the secretary to the Banking Appeal Tribunal (Scottish Appeals), c/o Her Majesty's Treasury, Treasury Chambers, Parliament Street, London SW1P 3AG not later than—

(a) in the case of an appeal against the decision of the Bank (or any finding relating thereto) to revoke authorisation, 10 days, or

(b) in any other case, 28 days,

from the date on which the Bank serves notice in writing on the appellant of its decision.

Notice of appeal

5.—(1) The notice of appeal shall be signed by or on behalf of the appellant and shall contain the following particulars:—

(a) the appellant's name;

(b) his address or, where the appellant is an institution, the address of its registered or principal office in the United Kingdom;

(c) the address within the United Kingdom to which applications, notices and other documents in connection with the appeal should be sent to the appellant, if different from the address referred to in sub-paragraph (b);

(a) 1987 c.22.

- (d) the name and address of any person appointed by the appellant to represent him or it in connection with the appeal;
- (e) a statement of the decision or finding of the Bank against which the appeal is made.

(2) The appellant shall, upon sending notice of appeal to the secretary send forthwith a copy of the notice to the Bank, to any person to whom a copy of the notice of refusal, revocation, restriction or direction was sent under section 10(5), 13(7) or 20(3) of the Act and, in the case of an appeal under section 27(2) of the Act, to the institution concerned.

Establishment of the Tribunal

6. On receipt of a notice of appeal the secretary shall forthwith request the Lord Chancellor, in consultation with the Lord Advocate, and the Chancellor of the Exchequer to appoint respectively the Chairman and other members of the Tribunal to hear the appeal.

Respondent

7. On every appeal the Bank shall be the respondent.

Grounds of appeal

8.—(1) The appellant shall send to the secretary a notice setting out the grounds of appeal, which in the case of an appeal under section 27 (other than an appeal under section 27(2)(a)) shall contain sufficient particulars to show why the appellant considers the decision appealed against was unlawful or was not justified by the evidence on which it was based or in the case of an appeal under section 27(2)(a) shall contain sufficient particulars to show why the appellant considers the finding appealed against was not justified by the evidence on which it was based—

- (a) within 28 days from the date on which the Bank served notice in writing on the appellant of its decision, in the case of an appeal against the decision of the Bank (or any finding related thereto) to revoke authorisation, and
- (b) within 14 days of serving the notice of appeal, in any other case.

(2) The appellant shall upon sending the notice of grounds of appeal referred to in paragraph (1), send a copy of the notice to the persons to whom a copy of the notice of appeal was sent pursuant to regulation 5(2).

(3) In the case of an appeal under section 27(1) of the Act the appellant may omit any information from the notice of grounds of appeal referred to in paragraph (1) on the ground that it is confidential or commercially sensitive, in which event it shall include such information in a notice of supplementary grounds of appeal, which it shall send to the secretary and the Bank, with an explanation in writing of the reasons for the omission, at the same time as it sends the notice of grounds of appeal under paragraph (1).

Supply of documents by the Bank

9.—(1) Within 14 days of receiving the copy of the notice of appeal under regulation 5, the Bank shall send to the secretary four copies of the documents listed in the Schedule to these Regulations and shall send to the appellant and, in the case of an appeal under section 27(2) of the Act, to the institution concerned, a list of those documents together with a copy of any of those documents which the Bank has not already supplied to the appellant or, in the case of an appeal under section 27(2) of the Act, to the institution concerned (as the case may be).

(2) Where the Bank—

- (a) gave a copy of a notice to a person under section 10(3) of the Act, or gave a notice to a person under section 10(5) of the Act, and under section 10(7) of the Act omitted any matter which did not relate to him, or
- (b) gave a copy of a notice to a person under section 13(4) of the Act, or gave a notice to a person under section 13(7) of the Act, and under section 13(12) of the Act omitted any matter which did not relate to him, or
- (c) gave a copy of a notice to a person under section 20(3) of the Act and under section 20(5) of the Act omitted any matter which did not relate to him,

the Bank may omit that matter from any copy of that document supplied to that person under paragraph (1).

Preliminary hearing

10.—(1) Subject to paragraph (2) the secretary shall send to the appellant, the Bank and, in the case of an appeal under section 27(2) of the Act, to the institution concerned, a notice informing them of the time and place of the preliminary hearing which, unless the appellant and the Bank otherwise agree, shall be—

- (i) not earlier than 21 days and not later than 35 days after the date of receipt by the secretary of the notice of appeal; and
- (ii) not earlier than 5 days after the date on which the notice is sent.

(2) There shall be no preliminary hearing of an appeal under section 29(3) of the Act unless the chairman otherwise directs.

(3) The preliminary hearing shall be in private and shall be heard by the chairman.

(4) The appellant and the Bank and, in the case of an appeal under section 27(2) of the Act, the institution concerned may appear at the preliminary hearing and may be represented by counsel or solicitor or by any other person.

(5) The chairman shall give such directions as he considers necessary or desirable for the conduct of the appeal and shall fix the time and place of the hearing at the preliminary hearing or, if there is no preliminary hearing, by notice to the parties and, in the case of an appeal under section 27(2) of the Act, to the institution concerned.

(6) Without prejudice to the generality of paragraph (5) and subject to regulation 22(2), the chairman shall consider whether any matters contained in a notice of supplementary grounds of appeal submitted under regulation 8(3) should be disclosed to any other person and may direct accordingly.

(7) Notwithstanding that the preliminary hearing shall be in private, the other members of the Tribunal may attend and a member of the Council on Tribunals or its Scottish Committee may attend in his capacity as such.

Interim relief

11.—(1) On an application under section 27(5) of the Act for the suspension of the operation of any restriction or direction or any variation of a restriction or direction which is the subject of an appeal, the Tribunal may determine it on the basis of written representations if the parties and, in the case of an appeal under section 27(2) of the Act, the institution concerned so agree in writing or may direct the parties and, in the case of an appeal under section 27(2) of the Act, the institution concerned to appear before it.

(2) The Tribunal shall notify its determination and the reasons for it to the Bank and to the party who made the application for interim relief and may do so to any other party to the appeal or to any person to whom notice of the appeal has been given under regulation 5(2).

Amendment of grounds of appeal

12.—(1) An appellant may amend a notice of grounds of appeal or supplementary grounds of appeal at any time before the preliminary hearing and shall forthwith notify the Bank and the secretary in writing of the amendment.

(2) An appellant may amend a notice of grounds of appeal or supplementary grounds of appeal in the course of the preliminary hearing with the leave of the chairman or at any time thereafter with the leave of the Tribunal.

(3) The chairman or the Tribunal shall not give such leave unless he or it has afforded the Bank an opportunity of making representations on the proposed amendment.

(4) Leave may be granted on such terms (if any), including terms as to expenses, as the chairman or the Tribunal (as the case may be) thinks fit.

(5) Where a notice of grounds of appeal is amended the appellant shall forthwith notify any person to whom a copy of the notice was sent pursuant to regulation 8(2) and where a notice of supplementary grounds of appeal is amended the chairman shall consider whether any matters contained therein should be disclosed to any other person and may direct accordingly.

Evidence and procedure

13.—(1) For the purposes of the appeal the chairman may, on the application of a party to the appeal or on his own motion, by direction given at the preliminary hearing or by notice in writing require the appellant, the Bank or any other person, at a time and place stated in the notice, to attend and give evidence or produce any document in that person's custody or under his control which relates to any matter in question at the hearing; provided that—

- (a) no person other than the appellant or the Bank shall be required, in obedience to such direction or notice, to attend and give evidence or to produce any such document unless the necessary expenses of his attendance are paid or tendered to him; and
- (b) no person shall be compelled to give any evidence or produce any document which he could not be compelled to give or produce if the hearing were a proceeding in a court of law in Scotland; and
- (c) in exercising the power conferred by this paragraph the chairman shall take into account, in particular, the need to protect commercially sensitive information relating to a person that is not a party to the appeal.

(2) Except where the chairman otherwise directs, a witness shall not be obliged to attend and give evidence or produce any document in obedience to a direction or notice issued by the chairman unless that direction or notice has been served on him not less than 5 days before the day appointed for the hearing.

(3) The chairman may set aside any direction or notice under this regulation on the application of the person to whom the direction or notice was addressed but shall not do so without first notifying any person who applied for the direction or notice and considering any representations made by that person.

(4) The secretary shall supply a copy of any document obtained under this regulation to any party to the appeal if that party does not already have a copy of the document and it shall be a condition of such supply that the information so supplied shall be used only for the purposes of the appeal.

(5) The hearing shall be in private unless, at a preliminary hearing or at any other time, the chairman directs that the hearing or any part of it shall be in public, but nothing in this paragraph shall prevent a member of the Council on Tribunals or its Scottish Committee from attending the hearing, and (with the consent of the parties to the appeal) any deliberations of the Tribunal, in his capacity as such.

(6) The appellant and the Bank may appear at the hearing and may be represented by counsel or solicitor or by any other person.

(7) At the hearing the appellant and the Bank shall each be entitled to make an opening statement, to call witnesses to give evidence, to cross examine witnesses called by the other party and to make a final statement.

(8) In the case of an appeal under section 27(2) of the Act, the institution concerned shall be entitled to be heard, notwithstanding that the hearing is in private, and may be represented by counsel or solicitor or by any other person.

(9) The Tribunal may require any witness to give evidence on oath or affirmation which may be administered for that purpose by the chairman.

(10) Subject to paragraph (1), evidence may be admitted by the Tribunal whether or not it would be admissible in a court of law.

(11) If the appellant or the Bank or, in the case of an appeal under section 27(2) of the Act, the institution concerned shall fail to appear or be represented at the time and place fixed for the hearing, the Tribunal may proceed with the hearing or adjourn it to a later date; and if it proceeds with the hearing, it shall take into consideration any written representations which may have been submitted by either party and, in the case of an appeal under section 27(2) of the Act, the institution concerned whether in accordance with any provision contained in these Regulations or otherwise.

(12) The Tribunal may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

Membership of the Tribunal

14. Notwithstanding the provisions of regulation 6, an appeal may with the consent of the parties continue to be heard in the absence of any one member of the Tribunal other than the chairman, and in that event the Tribunal shall be deemed to be properly constituted.

Procedure after hearing

15.—(1) The Tribunal shall after the close of the hearing notify its determination and its reasons therefor in accordance with section 29(7) and (8) of the Act (which provide for the giving of notice of a Tribunal's determination, together with a statement of its reasons, to the appellant and to the Bank and, in the case of an appeal under section 27(2) of the Act, for the giving of notice of the Tribunal's determination to the institution concerned).

(2) The Tribunal may, after hearing representations from the parties, make arrangements for the publication of its determination and its reasons therefor but in doing so shall have regard to the desirability of safeguarding commercially sensitive information or information given to the appellant or the Bank in confidence and the interests of depositors and potential depositors and for that purpose may make any necessary amendments to the text of the decision to conceal the identity of the appellant or the source of any such information.

Withdrawal of appeal

16.—(1) The appellant may withdraw the appeal at any time before the hearing by giving notice in writing to the Bank and to the secretary.

(2) The appellant may at the hearing give notice to the Tribunal that he or it desires to withdraw the appeal and thereupon the Tribunal shall bring the hearing to a close.

(3) The Bank may at any time withdraw its opposition to an appeal by giving notice to the appellant and the Tribunal.

(4) If an appeal is withdrawn, it shall be deemed to be dismissed and the Tribunal shall accordingly formally notify the persons whom it would have notified under regulation 15(1) if it had determined the appeal.

(5) Where an appeal is withdrawn, or the Bank withdraws its opposition to an appeal, the Tribunal may give such directions as it thinks fit for the payment of expenses by any party to the appeal.

Expenses

17.—(1) Any expenses directed to be paid under section 30(1) of the Act (which provides that the Tribunal may give such directions as it thinks fit for the payment of expenses by any party to the appeal) and required to be taxed shall be taxed by the Auditor of the Court of Session.

(2) The certificate of such expenses taxed in accordance with paragraph (1) may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued from the Books of Council and Session.

Time and miscellaneous powers

18.—(1) Where the time prescribed by or under these Regulations for doing any act expires on a Saturday, Sunday or public holiday and by reason thereof the act cannot be done on that day, the act shall be in time if done on the next working day.

(2) The periods referred to in regulations 8, 9 and 10 may be extended by the chairman on such terms (if any) as the chairman after consulting the parties thinks fit and any application for such extension may be granted although it is not made until after the expiration of the period.

(3) The chairman may, after consulting the parties—

- (a) postpone the date fixed for the hearing of an appeal; or
- (b) alter the place appointed for any hearing;

and, if he exercises either of the above powers, the secretary shall notify each party, any witnesses concerned and, in the case of an appeal under section 27(2) of the Act, the institution concerned of the revised arrangements.

Tribunal's power to determine its own procedure

19. Subject to the provisions of the Act and of these Regulations, the Tribunal shall have power to determine its own procedure.

Service of notices etc.

20.—(1) Any notice or other document to be sent, served or given to any person for the purposes of the appeal may be delivered or may be sent by first class recorded delivery service or registered letter—

- (a) in the case of a document directed to the Tribunal, to the address set out in regulation 4;
- (b) in the case of a document directed to the appellant or his representative, to the address provided in the notice of appeal in accordance with regulation 5 or such other address as may subsequently be notified to the Tribunal and the Bank;
- (c) in the case of a document directed to the Bank, to the Head of Banking Supervision, Bank of England, Threadneedle Street, London EC2R 8AH;
- (d) in any other case, to the last known address of the person to whom the document is directed;

and documents falling within (b) or (d) above, if sent, served or given to the authorised representative of any person, shall be deemed to be sent, served or given to that person.

(2) Any such notice or other document may be sent, served or given by telex or other similar means which produce a document containing the text of the communication.

Irregularities

21.—(1) Any irregularity resulting from failure to comply with any provision of these Regulations before the Tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Tribunal before it has reached its decision, the Tribunal may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before reaching its decision to cure the irregularity.

(3) Clerical mistakes in any document recording a decision of the chairman or Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the chairman by certificate under his hand.

Consolidation of appeals

22.—(1) Where in making its decision the Bank made a finding that a person is not a fit and proper person to hold or, as the case may be, to remain in an office in the institution or imposed a requirement that he be removed from an office in the institution and both the institution and the person concerned appeal against the decision, the chairman may, at the preliminary hearing or at some other time, direct that the appeals shall be consolidated provided that the chairman shall not make such a direction without giving all parties concerned an opportunity to show cause why such a direction should not be made.

(2) If the chairman directs that the appeals shall be consolidated the secretary shall send to the person concerned a copy of any notice of supplementary grounds of appeal submitted by the institution under regulation 8(3) unless all of the matters contained in the notice have been disclosed to the person concerned under regulations 10(6) or 12(5) or unless the institution when showing cause why such a direction should not be made under paragraph (1) represented that it did not wish the notice of supplementary grounds of appeal to be disclosed to the person concerned and the person concerned consented to the notice not being disclosed to him.

Lord Advocate's Chambers
27th July 1987

Cameron of Lochbroom
Lord Advocate

DOCUMENTS TO BE SENT TO THE TRIBUNAL BY THE BANK

1. In the case of an appeal against a decision of the Bank (or any finding relating thereto) to refuse to grant authorisation—
 - (a) a copy of the application for authorisation submitted under section 8 of the Act, together with a copy of the statement required by section 8(2)(b)(i) thereof to accompany the application and copies of any information and documents required by the Bank under section 8(2)(b)(ii) thereof,
 - (b) a copy of any information and documents submitted under section 8(3) thereof,
 - (c) a copy of any report provided under section 8(5) thereof,
 - (d) a copy of any notice served by the Bank under section 10(2) or 10(3) thereof,
 - (e) a copy of any written representations made in accordance with section 10(4) thereof, and
 - (f) a copy of any notice served under section 10(5) thereof.
 2. In the case of an appeal against a decision of the Bank (or any finding relating thereto) to revoke an authorisation, to restrict an authorisation or to vary the restrictions imposed on an authorisation—
 - (a) a copy of any notice served under section 13(1) or 13(4) of the Act,
 - (b) a copy of any written representations made in accordance with section 13(5) thereof,
 - (c) a copy of any notice served under section 13(7) thereof, and
 - (d) a copy of any written representations made in accordance with section 13(9) thereof.
 3. In the case of an appeal against a decision of the Bank to give a direction—
 - (a) a copy of any notice served under section 20(1) or 20(3) of the Act,
 - (b) a copy of any written representations made in accordance with section 20(4) thereof, and
 - (c) a copy of any notice served under section 20(2)(b) thereof.
 4. In the case of an appeal against a decision of the Bank to object to a person who wishes to become a shareholder controller or indirect controller of any description of an authorised institution—
 - (a) a copy of any notice served under section 21(1), 21(3), 22(1) and (2) or 22(6) of the Act, together with a copy of any information and documents required by a notice under section 21(3) thereof, and
 - (b) a copy of any written representations made under section 22(3) of the Act.
 5. In the case of an appeal against a decision of the Bank to object to an existing shareholder controller of an authorised institution—
 - (a) a copy of the notices served under section 24(1) and (2) of the Act, and
 - (b) a copy of any written representations made under section 24(3) of the Act.
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to Scottish appeals under Part I of the Banking Act 1987 against decisions of the Bank of England to refuse to grant authorisation; to revoke authorisation; to impose restrictions or give directions, or as to the restrictions imposed or directions given; or that a person should not become or should cease to be a director, controller or manager of an authorised institution. Provision is made as to the time and manner in which appeals are to be brought, the evidence and procedure at the hearing, the procedure after the hearing, the payment of expenses and other miscellaneous matters connected with these appeals.

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