

2005 No. 152

PENSIONS

**The Pensions Appeal Tribunals (Scotland) (Amendment) Rules
2005**

<i>Made</i> - - - -	<i>15th March 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>16th March 2005</i>
<i>Coming into force</i> - -	<i>6th April 2005</i>

The Lord President of the Court of Session, in exercise of the powers conferred on him by paragraph 5 of the Schedule to, and read along with section 13 of, the Pensions Appeal Tribunals Act 1943(a), and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(b), hereby makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Pensions Appeal Tribunals (Scotland) (Amendment) Rules 2005 and shall come into force on 6th April 2005.

(2) A reference in these Rules to any rule by number alone means the rule so numbered in the Pensions Appeal Tribunals (Scotland) Rules 1981(c).

Transitional provisions

2.—(1) These Rules apply to appeals to the Pensions Appeal Tribunal where the decision disposing of the appeal is made on or after the date on which these Rules come into force.

(2) For all other purposes, the Pensions Appeal Tribunals (Scotland) Rules 1981 shall have effect as if these Rules had not been made.

Amendment of the Pensions Appeal Tribunals (Scotland) Rules 1981

3. In rule 2(1)—

(a) after sub-paragraph (d) insert—

“(da) “chairman” means the person who is the chairman of, or who constitutes, the tribunal hearing the appeal;

(db) “decision notice” means the record of the decision of the tribunal prepared in accordance with rule 18(1)(a);”;

(b) omit sub-paragraph (k);

(a) 1943 c.39; paragraph 5 of the Schedule was amended by the Administration of Justice Act 1977 (c.38), Schedule 5, part II, and by the Social Security Act 1980 (c.30), section 16(6) and is to be read with the Scotland Act 1998 (c.46), section 118(3); section 13 was amended by the Courts and Legal Services Act 1990 (c.41), Schedule 20.

(b) 1992 c.53.

(c) S.I. 1981/500, amended by S.I. 1986/373, 1998/1225 and S.S.I. 2001/410.

(c) after sub-paragraph (kk) insert—

“(kl) “statement of reasons” means the record of the reasons for the tribunal’s decision prepared in accordance with rule 18(1)(b);”.

4. After rule 2(1) insert—

“(1A) For the purposes of these Rules, a Commissioner is to be known as a “Pensions Appeal Commissioner” when dealing with applications or appeals under the Act.

(1B) Unless the context otherwise requires, where the Secretary of State has made provision under section 1(3) of the Armed Forces (Pension and Compensation) Act 2004(a) for an armed and reserve forces compensation scheme to be administered by another person, a reference in these Rules to the Secretary of State shall be construed as if it were a reference to that other person.”.

5. Rule 16, for “the Court of Session” substitute “a Commissioner”.

6. For rule 18 substitute—

“Decisions of the tribunal

18.—(1) The chairman shall record—

- (a) a summary of every decision of the tribunal; and
- (b) a statement of the reasons for the tribunal’s decision.

(2) The decision notice and statement for reasons specified in paragraph (1) shall be in such written form as shall have been approved by the President and shall be signed by the chairman.

(3) As soon as reasonably practicable after an appeal has been decided by a tribunal, a copy of the decision notice shall, and a copy of the statement of reasons may, be sent or given to each party to the proceedings, who shall also be informed of—

- (a) where applicable, his right to make an application under paragraph (4); and
- (b) the conditions governing appeals to a Commissioner.

(4) If a party to the proceedings has not been sent or given a copy of the statement of reasons in accordance with paragraph (3), he may apply in writing to the Pensions Appeal Office for a copy within six weeks of the date on which the decision notice was sent or given to him.

(5) Following an application under paragraph (4), the statement of reasons shall be sent to each party to the proceedings as soon as may be practicable.”.

7. For rule 19 substitute—

“Record of tribunal decisions

19.—(1) As soon as may be practicable after an appeal has been decided, the chairman of the tribunal shall make a record of the proceedings (“record of proceedings”) in such written form as shall have been approved by the President, sufficient to indicate—

- (a) any question of law raised at the hearing;
- (b) the evidence which was adduced at the hearing; and
- (c) any determination of the tribunal on such questions of law or evidence.

(2) The record of proceedings shall be preserved by the clerk to the tribunal until the period under rule 24(5) for making a late application for leave to appeal against the decision has expired.

(a) 2004 c.32.

(3) Within the period specified in paragraph (2), either party may apply to the Pensions Appeal Office in writing for a copy of the record of proceedings.

(4) Following an application under paragraph (3), a copy of the record of proceedings shall be sent to the applicant as soon as may be practicable.”.

8. For rule 24 substitute—

“Appeal to a Pensions Appeal Commissioner

24.—(1) An application for leave to appeal to a Commissioner from a decision of the tribunal on an entitlement appeal or a specified decision shall—

- (a) be sent to the Pensions Appeal Office within six weeks of the date the written statement of the reasons for the decision was sent or given to the applicant;
- (b) be in writing and signed by the applicant or, where he has provided written authority to a representative to make the application on his behalf, by that representative;
- (c) contain particulars of the grounds on which the applicant intends to rely;
- (d) contain sufficient particulars of the decision of the tribunal to enable the decision to be identified; and
- (e) if the application is made late, contain the grounds for seeking late acceptance.

(2) Where an application for leave to appeal to a Commissioner is made by the Secretary of State, the Pensions Appeal Office shall, as soon as may be practicable, send a copy of the application to the other party to the proceedings.

(3) Any party who is sent a copy of an application for leave to appeal in accordance with paragraph (2) may make representations in writing within one month of the date the application is sent.

(4) A person determining an application for leave to appeal to a Commissioner shall take into account any representations received in accordance with paragraph (3) and shall record his determination in writing and send a copy to each party to the proceedings.

(5) Where an applicant has not applied for leave to appeal within six weeks in accordance with paragraph (1), but makes an application within one year beginning on the day the six weeks ends, the late application may be accepted for special reasons.”.

9. Omit rules 27 and 28.

10. In rule 30(1), for “the Court of Session” substitute “a Commissioner”.

11. In rule 31—

- (a) at the beginning insert “(1) Subject to rule 24(5),”;
- (b) after paragraph (1) insert—
 - “(2) Circumstances where the justice of the case may require an extension of time include—
 - (a) the applicant or appellant, or a partner or dependant of the applicant or appellant, has died or suffered serious illness;
 - (b) the applicant or appellant is not resident in the United Kingdom; or
 - (c) normal postal services have been disrupted.”.

Cullen of Whitekirk
Lord President

Edinburgh

15th March 2005

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Pensions Appeal Tribunals (Scotland) Rules 1981 (“the 1981 Rules”) (S.I. 1981/500) to provide for a new route of appeal from the Pensions Appeal Tribunal to the Social Security Commissioners, who for these purposes are to be known as Pensions Appeal Commissioners.

Rules 3 and 4 provide for new definitions consequential on the amendments to the 1981 Rules.

Rules 5 and 10 make consequential amendments.

Rule 6 provides for a notice of the decision to be sent to the parties by the Pensions Appeal Tribunal and for applications for a statement of reasons for the decision.

Rule 7 provides a new procedure for recording and preserving decisions of the Pensions Appeal Tribunal.

Rule 8 provides the procedure for dealing with applications for leave.

Rule 9 revokes expenses provisions relevant to the previous route of appeal.

Rule 11 prescribes circumstances where an extension of a time limit under the 1981 Rules may be granted.

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