



Friendly Societies Act 1992

1992 CHAPTER 40

PART V

REGULATION OF FRIENDLY SOCIETIES' BUSINESS

Appeals

58 Rights of appeal

- (1) A friendly society which is aggrieved by a decision of the Commission—
 - (a) to refuse to grant authorisation under section 32 above,
 - (b) to impose conditions, or as to the conditions imposed, under section 34 or 36 above,
 - (c) to withdraw authorisation under section 40 or 41 above,
 - (d) to give a direction under section 51 above; or
 - (e) to give a direction to the society, or as to the steps specified in a direction, under section 54 or 55 above,may appeal against the decision to a tribunal constituted in accordance with section 59 below.
- (2) Any person in relation to whom the Commission, in deciding to refuse to grant authorisation, to impose conditions or to withdraw authorisation—
 - (a) makes a determination that he is not a fit and proper person to hold or, as the case may be, to remain in an office in the society in question, or
 - (b) imposes a requirement that he be removed from an office in the society,may appeal against the decision so far as it relates to that determination or requirement.
- (3) The withdrawal of a society's authorisation shall not have effect—
 - (a) until the end of the period within which an appeal can be brought against the Commission's decision to withdraw that authorisation; and
 - (b) if such an appeal is brought, until it is determined or withdrawn.

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- (4) Where the Commission decides to refuse to grant authorisation to a society on an application made in pursuance of a direction under section 39 above, the society's authorisation shall not expire under subsection (5) of that section—
 - (a) until the end of the period within which an appeal can be brought against the decision not to grant authorisation; and
 - (b) if such an appeal is brought, until it is determined or withdrawn.
- (5) A direction under section 51, 54 or 55 above shall not have any effect until—
 - (a) the end of the period within which an appeal can be brought against the Commission's decision to give the direction or as to any steps specified in the direction; and
 - (b) if such an appeal is brought, until it is determined or withdrawn.
- (6) Subject to any order of the tribunal made under section 59(6) below, an appeal under subsection (1)(b) or (2) above shall not affect the operation, pending the determination of the appeal, of any condition which is the subject of the appeal.
- (7) Subject to subsection (8) below, no determination of an appeal brought by any person under subsection (2) above shall affect any decision of the Commission on the ground of (or on grounds including) the determination made in relation to that person or, as the case may be, the failure of the society to comply with the requirement imposed in relation to that person.
- (8) The tribunal may revoke a decision of the Commission to impose a condition which is the subject of an appeal under subsection (2) above in so far as it seeks to prevent the person making the appeal from holding, or continuing to hold, office in the society.

59 Determination of appeals

- (1) Where an appeal is brought under section 58 above, a tribunal to determine the appeal shall be constituted in accordance with subsection (2) below.
- (2) The tribunal shall consist of—
 - (a) a chairman appointed by the Lord Chancellor or, where the society concerned has its registered office in Scotland, by the Lord Chancellor in consultation with the Lord Advocate; and
 - (b) two other members appointed by the Treasury.
- (3) The chairman shall be a person who—
 - (a) has a seven year general qualification, within the meaning of the Courts and Legal Services Act 1990;
 - (b) is an advocate or solicitor in Scotland of at least seven years' standing; or
 - (c) is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years' standing;

and the other two members shall be persons appearing to the Treasury to have experience of accountancy, the business of insurance or the business of friendly societies.
- (4) Subject to subsection (5) below, on any appeal against a decision of the Commission the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

- (5) In the case of an appeal against a decision to give a direction under section 54 or 55 above—
- (a) the tribunal shall, on the evidence adduced before it, reconsider the decision to give the direction and the steps specified in the direction (according to the extent of the appeal);
 - (b) if the tribunal determines that such a direction should not be given, it shall reverse the decision; and
 - (c) if the tribunal determines that those steps should not be so specified, it may give the Commission such guidance as it thinks fit as to what the appropriate steps might be.
- (6) The tribunal may, on the application of the friendly society concerned, order that the operation of any condition which is the subject of an appeal by the society be suspended pending the determination of the appeal.
- (7) The tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except by directing the Commission—
- (a) in the case of an appeal against a decision to refuse to grant authorisation, to determine conditions to which the grant of authorisation is to be subject;
 - (b) in the case of an appeal against the imposition of conditions or as to the conditions imposed by the decision, to determine conditions or different conditions subject to which the authorisation is to be granted or is to continue, as the case may be;
 - (c) in the case of an appeal against a decision to withdraw authorisation, to determine conditions or different conditions subject to which the authorisation is to continue in force, as the case may be;
 - (d) in the case of an appeal against a decision as to the steps specified in a direction under section 54 or 55 above, to determine, having taken account of any guidance given under subsection (5) above, the steps which are to be so specified.
- (8) Where by virtue of subsection (7)(d) above the tribunal directs the Commission to determine the steps to be specified in the direction, the society may appeal against the steps so specified.
- (9) Where by virtue of subsection (7) above the tribunal directs the Commission to determine conditions or different conditions—
- (a) the Commission shall in accordance with section 34 or 36 above impose such conditions as it thinks fit; and
 - (b) paragraphs 7 and 8 of Schedule 13 to this Act shall apply subject to the modifications made by paragraph 9 of that Schedule;
- and the society may appeal to the tribunal against any condition so imposed.
- (10) On any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the conditions which are the subject of the appeal or may direct the Commission to determine different conditions; and where by virtue of this subsection the tribunal directs the Commission to determine different conditions, subsection (9) above shall apply as it applies where the tribunal gives such a direction by virtue of subsection (7) above.
- (11) Where the tribunal reverses a decision of the Commission to refuse to grant authorisation, it shall direct the Commission to grant it; and where the tribunal reverses

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a decision of the Commission to make the grant of authorisation subject to conditions, it shall direct the Commission to grant it unconditionally.

- (12) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Commission; and unless the tribunal has directed the Commission to determine conditions or, in any other case, the tribunal directs otherwise, the determination shall come into operation when the notice is given to the appellant.
- (13) The Treasury may out of money provided by Parliament pay to the persons appointed as members of a tribunal under this section such fees and allowances in respect of expenses as the Treasury may determine and any other expenses incurred for the purposes of this section.

60 Costs, procedure and evidence

- (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to an appeal.
- (2) On an appeal under section 58(2) above the friendly society in relation to which the determination was made, or upon which the requirement was imposed, shall be entitled to be heard.
- (3) The Treasury may make regulations with respect to appeals under section 58 above; and those regulations may in particular make provision—
 - (a) as to the period within which and the manner in which such appeals are to be brought;
 - (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private;
 - (c) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
 - (d) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court in England and Wales or Northern Ireland or, in Scotland, for granting to any person such recovery or inspection of documents as might be granted by the sheriff;
 - (e) for enabling an appellant to withdraw an appeal or the Commission to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
 - (f) for taxing or otherwise settling any costs or expenses directed to be paid by the tribunal and for the enforcement of any such direction;
 - (g) for enabling any functions in relation to an appeal to be discharged by the chairman of the tribunal; and
 - (h) as to any other matter connected with such appeals.
- (4) Regulations under this section with respect to appeals where the friendly society concerned has its registered office in Scotland shall be made by the Lord Advocate.
- (5) A person who, having been required in accordance with regulations under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (6) A person who intentionally alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

61 Further appeals on points of law

- (1) An appeal shall lie to the High Court at the instance of the friendly society or other person concerned or of the Commission on any question of law arising from any decision of a tribunal under section 59 above; and if the court is of the opinion that the decision was erroneous in law, it shall remit the matter to the tribunal for re-hearing and determination by it.
- (2) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, references to the High Court shall be construed as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.
- (3) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (1) above except with the leave of that court or of the court or judge from whose decision the appeal is brought.
- (4) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.