

## PENSIONS

### The Pensions Appeal Tribunals (Scotland) Rules 1981

The Lord President of the Court of Session, in exercise of the powers conferred on him by section 6(2B) of, and paragraph 5 of the Schedule to, and read along with section 13 of, the Pensions Appeal Tribunals Act 1943, and after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971, hereby makes the following Rules:—

#### Notes

#### 1. Citation and commencement

These Rules may be cited as the Pensions Appeal Tribunals (Scotland) Rules 1981 and shall come into operation on 27th April 1981.

#### 2.— Interpretation

(1) In these Rules, unless the context otherwise requires,

- (a) “the Act” means the Pensions Appeal Tribunals Act 1943 as amended by the Pensions Appeal Tribunals Act 1949 and by section 23 of the Chronically Sick and Disabled Persons Act 1970, and by section 2(3) of the Administration of Justice Act 1977, and by section 16 of the Social Security Act 1980;
- (b) “appeal” means an appeal which lies under section 1, 2, 3, 4, 5 or 5A of the Act;
- (c) “appellant” means the person by whom or on whose behalf the appeal is brought;
- (d) “assessment appeal” means an appeal brought under section 5 of the Act;
- (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);
- (dd) “the Deputy President” means such person as may be appointed by the Lord President of the Court of Session to be Deputy President of Pensions Appeal Tribunals for Scotland under paragraph 2B of the Schedule to the Act;
- (e) “designated person” means the person so defined in article 77(1)(b) and (2) of the Personal Injuries (Civilians) Scheme 1983
- (f) “entitlement appeal” means an appeal brought under section 1, 2, 3 or 4 of the Act;
- (g) “incapax” means a person who by reason of mental disorder within the meaning of the Mental Health (Scotland) Act 1960, is incapable of managing his own affairs;

(h) “notice of appeal” and “notice of hearing” mean notice in such form as the Lord President of the Court of Session may from time to time approve for the purposes of the rules (and different forms may be so approved for different purposes);

(i) “Pensions Appeal Office” means the office of the Pensions Appeal Tribunals for Scotland, 126 George Street, Edinburgh, EH2 4HH;

(j) “the President” means the person appointed by the Lord President of the Court of Session to be President of the Pensions Appeal Tribunals [ for Scotland under paragraph 2B of the Schedule to the Acts ; and, where a Deputy President has been appointed, references to the President shall be construed as including the Deputy President where he is authorised to carry out any function of the President under any provision of the Act or of these Rules;

(kk) “specified decision” has the meaning given in section 5A of the Act;

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

(l) “tribunal” means a Pensions Appeal Tribunal.

(1A) [...]<sup>14</sup>

(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 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.

### **3.— Persons by whom appeals may be brought**

(1) Subject to the provisions of this rule—

(a) an entitlement appeal shall be brought by the person in respect of whose claim the Secretary of State has given the decision against which the appeal lies;

(b) an assessment appeal shall be brought by the person in respect of whose claim the Secretary of State has made the interim assessment, final decision, or final assessment against which the appeal lies; and

(c) an appeal against a specified decision shall be brought by the person in respect of whom the Minister has made the decision.

(2) Where the person mentioned in paragraph (1) above has died, an appeal may be brought or carried on by the designated person in the circumstances set out in the Pensions Appeal Tribunals (Posthumous Appeals) Order 1980.

(3) Where an appeal is brought or carried on in accordance with paragraph (2) above, these Rules shall apply as if—

(a) references to the bringing or commencement of an appeal included the carrying on of an appeal; and

(b) references to the appellant included, as the case may be, a reference to the person in respect of whose claim the appeal was brought or the designated person.

(4) Where the person by whom an appeal may be brought is under the age of 16, or is prevented by mental or physical infirmity from acting on his own behalf, the appeal shall be brought by some other person acting for him.

(5) Where an appeal is brought by a person acting on behalf of another, that person may take all such steps and do all such things for the purposes of the appeal as an appellant is by these Rules required or authorised to take or do.

(6) An appeal on behalf of, or in respect of the estate of a minor or pupil or of an incapax may be brought, and an appeal in respect of the estate of a deceased person may be carried on by virtue of directions given by the President under rule 23(3), notwithstanding that no curator or tutor has been appointed or is acting or, as the case may be, that confirmation has not been issued in respect of the deceased's estate.

#### **4.— Method of appealing**

(1) An appeal to the tribunal must be commenced by a notice of appeal.

(2) The appellant must send the completed notice of appeal to the Pensions Appeal Office.

(3) The Pensions Appeal Office must send a copy of the notice to the Secretary of State as soon as reasonably practicable.

#### **5.— Statement of Case and answer**

(1) Subject to the provisions of rules 6, 9 and 22, the Secretary of State shall, on receipt by him of a notice of appeal, prepare a document (to be called a Statement of Case) containing the following information—

(a) the relevant facts relating to the appellant's case as known to the Secretary of State, including the relevant medical history of the appellant; and

(b) in the case of an entitlement appeal, the Secretary of State's reasons for making the decision against which the appeal is brought.

(1A) The Secretary of State must—

(a) send four copies of the Statement of Case to the Pensions Appeal Office within 6 months of the date of the notice of appeal; or

(b) if it would not be reasonably practicable to prepare a Statement of Case within 6 months of that date—

(i) notify the Pensions Appeal Office of that fact; and

(ii) send four copies of the Statement of Case to the Pensions Appeal Office as soon as reasonably practicable to do so.

(2) At the same time as sending the Statement of Case to the Pensions Appeal Office, the Secretary of State shall send two copies to the appellant and shall inform him that he may, if he so desires, submit an answer to the statement indicating—

(a) whether, and in what respects, the facts in the Statement of Case are disputed;

(b) any further facts which, in his opinion, are relevant to the appeal; and

(c) his reasons for thinking that the decision of the Secretary of State, or the interim assessment, final decision or final assessment, as the case may be, made by the Secretary of State, was wrong.

(3) Where the appellant submits an answer disputing any of the facts in the Statement of Case or putting forward further facts, he shall attach to his answer such documentary evidence in support of his case as is in his possession or as he can reasonably obtain.

(4) The appellant shall send his answer, and any documents submitted therewith, to the Secretary of State and the Pensions Appeal Office within 28 days from the date on which the Statement of Case was sent to him.

(5) The Secretary of State may, within 28 days of receiving the appellant's answer, comment in writing on the appellant's answer and, if he does so, the Secretary of State shall send a copy of his comments to the appellant.

(6) Where the appellant submits an answer, the Secretary of State must, within 28 days of receiving that answer, send four copies of the following documents to the Pensions Appeal Office—

(a) the appellant's answer;

(b) any documents submitted by the appellant; and

(c) any comments by the Secretary of State on the appellant's answer.

#### **5A— Review of appeal documents**

(1) After the documents mentioned in rule 5(6) are received at the Pensions Appeal Office or, where the appellant does not submit an answer, on expiry of the period within which such an answer may be submitted under rule 5(4)—

(a) the President, or a member of the tribunal who has been nominated for the purposes of this rule by the President may review the documents sent to the Pensions Appeal Office;

(b) if it appears to the reviewer—

(i) that it is necessary to obtain further information on any point or to require further evidence to be procured or produced, he may require that the information be obtained in such manner as he may direct or, as the case may be, that the appellant or the Secretary of State procure or produce that evidence; or

(ii) that a difficult medical or other technical question arises, he may take the opinion of a medical specialist or other technical expert in such manner as may appear to the reviewer to be convenient; and

(c) without prejudice to any application under rule 30, the reviewer may give such other directions as he thinks fit on any matter arising in connection with the appeal.

(2) When further information is obtained by virtue of sub-paragraph (b)(i) of paragraph (1) it shall, subject to any direction given by the President under rule 6, be communicated to the appellant and the Secretary of State, together with such statement as is mentioned in rule 14(2) except that the reference in 14(2) to a “further hearing” shall be construed, as regards the statement, as a reference to a hearing.

(3) When evidence is procured or produced by virtue of the said sub-paragraph (b)(i), that evidence shall, subject to any such direction, be communicated to the Pensions Appeal Office, together with the first such statement as is mentioned in rule 14(3) and a copy of the evidence shall be sent from that office to the Secretary of State or as the case may be to the appellant, together with the second such statement as is there mentioned, except that, as regards both statements, the references in 14(3) to a “further hearing” shall be construed as references to a hearing.

(4) Where the appellant fails to procure or produce evidence in compliance with a requirement under the said sub-paragraph (b)(i), and the reviewer is satisfied that the failure was due to the wilful default of the appellant, the case shall be placed on the deferred list.

(5) Where a question arising as is mentioned in sub-paragraph (b)(ii) of paragraph (1) is a medical question, the reviewer may arrange for the appellant to be examined by a medical specialist for a report on the appellant's condition.

(6) The reviewer shall direct a specialist, or other technical expert, providing an opinion by virtue of paragraph (1)(b)(ii), or a specialist providing a report by virtue of paragraph (5), to send it to the Pensions Appeal Office; and rule 15(3) shall apply as respects the sending of copies of the opinion or report, and of the terms of reference, from that office as it applies in relation to the sending of such copies as are mentioned in that rule, except that the reference in 15(3) to a “further hearing” shall be construed as a reference to a hearing and in the proviso—

(a) the references to the “chairman” and to the “tribunal” shall be construed as a references to the reviewer;

(b) the words “and, if the appellant was represented at the hearing,” shall be disregarded; and

(c) the reference to his representative shall be construed as a reference to any such representative if known to the tribunal.

## **6.— Disclosure of official documents and information**

(1) Where for the purposes of his appeal an appellant desires to have disclosed any document, or part of any document, which he has reason to believe is in the possession of a government

department, he may, at any time not later than six weeks after the Statement of Case was sent to him, apply to the President for the disclosures of the document or part, and, if the President considers that the document or part is likely to be relevant to any issue to be determined on the appeal, he may give a direction to the department concerned requiring its disclosure (if in the possession of the department) in such manner and upon such terms and conditions as the President may think fit;

Provided that directions given under this rule shall not require the disclosure of—

- (i) documents in the nature of departmental minutes or reports; or
- (ii) the name of any person in the service of Her Majesty who has given a report or medical certificate relating to the appellant or to the person in respect of whose death the appeal is brought.

For the purposes of this paragraph a certificate given by an officer of the government department concerned (being an officer authorised in that behalf by the Secretary of State or Minister in charge of the department) that a document or name is such a document or name as is described in sub-paragraph (i) or sub-paragraph (ii) shall be final and conclusive.

(2) On receipt of a direction given by the President under this rule, the Secretary of State or Minister in charge of the government department concerned, or any person authorised by him in that behalf, may certify to the President—

- (a) that it would be contrary to the public interest for the whole or part of the document to which the direction relates to be disclosed publicly; or
- (b) that the whole or part of the document ought not, for reasons of security, to be disclosed in any manner whatsoever; and where a certificate is given under sub-paragraph (a), the President shall give such directions to the tribunal as may be requisite for prohibiting or restricting the disclosure in public of the document, or part thereof, as the case may be, and where a certificate is given under sub-paragraph (b) the President shall direct the tribunal to consider whether the appellant's case will be prejudiced if the appeal proceeds without such disclosure, and, where the tribunal are of opinion that the appellant would be prejudiced if the appeal were to proceed without such disclosure, they shall adjourn the hearing of the appeal until such time as the necessity for non-disclosure on the ground of security no longer exists.

(3) At the hearing the appellant may apply to the tribunal for the disclosure of such a document as is mentioned in this rule, and, where it appears to the tribunal that the document is likely to be relevant to any issue to be determined on the appeal and that the appellant has reasonable excuse for having failed to make the application for disclosure to the President under paragraph (1) before the hearing, the tribunal may, unless the document is produced by the Secretary of State's representative adjourn the case for an application to the President to be made by the appellant.

(4) It shall be a sufficient compliance with a direction given for the disclosure of a document, or part of a document, under this rule, if there is produced a copy of the document or the part

thereof, certified as a true copy by an officer of the department concerned authorised in that behalf by the Secretary of State or Minister in charge of the department.

## **7. List of cases for hearing**

- (1) The Pensions Appeal Office must prepare a list of cases for hearing.
- (2) The Pensions Appeal Office must add a case to the list—
  - (a) if the appellant submits an answer, 28 days after receiving the answer; or
  - (b) in any other case, on expiry of the period within which the appellant may submit an answer.
- (3) Where the Pensions Appeal Tribunal considers that there is a good reason to do so, it may add a case to the list at an earlier time than that mentioned in paragraph (2).

## **8.— Date of hearing**

- (1) Not less than 10 clear days before the date fixed for the hearing, a notice of hearing [...] shall be sent from the Pensions Appeal Office to the appellant, and the Secretary of State shall be informed of the date so fixed.
- (2) If, at any time before the date fixed for the hearing, the appellant becomes aware of any circumstances which will prevent him from attending the tribunal on the date so fixed, he shall immediately notify the Pensions Appeal Office of his inability to appear, stating the reasons:

Provided that, where the appellant is prevented from attending by reason of circumstances arising within 24 hours of the time of the hearing, the appellant shall, in addition to notifying the Pensions Appeal Office, use his best endeavours to inform the clerk to the tribunal at the place where the appeal is to be heard of his inability to appear.

## **9.—Lapse of appeal**

- (1) If the decision being appealed is revised, the Secretary of State must send the revised decision to the Pensions Appeal Office at the same time as sending it to the appellant.
- (2) The appeal will lapse unless, within 42 days of the date of the revised decision, the appellant sends to the Pensions Appeal Office—
  - (a) representations in relation to the revised decision; or
  - (b) a statement that the appellant—
    - (i) is continuing with the appeal; and
    - (ii) has no additional representations to make.
- (3) Where the appellant takes a step mentioned in paragraph (2)—
  - (a) the Pensions Appeal Office must send a copy of the representations or statement to the Secretary of State as soon as reasonably practicable; and
  - (b) the appeal will continue as if brought in relation to the revised decision.

## **10. Appeal not prosecuted**

Subject to the provisions of rule 20, if the appellant fails to prosecute the appeal and does not satisfy the President that he had a sufficient reason for his failure to do so, the President may direct the case to be placed in the deferred list.

### **10A. Withdrawal**

- (1) The appellant may withdraw the appeal—
  - (a) by sending a notice of withdrawal to the Pensions Appeal Office; or
  - (b) orally at a hearing.
  
- (2) If the appellant withdraws the appeal—
  - (a) by notice; or
  - (b) at a hearing where the Secretary of State was not in attendance, the Pensions Appeal Office must inform the Secretary of State of the withdrawal.
  
- (3) The appellant may apply to the President for a direction that the appeal is to be restored to the list of cases for hearing.
  
- (4) The application must be made within 28 days of—
  - (a) the date on which the Pensions Appeal Office received the notice of withdrawal; or
  - (b) the date of the hearing at which the appeal was withdrawn.

## **11.— Representation of the appellant and the Secretary of State**

- (1) An appellant may conduct his case himself or may be represented by any person [...] whom he may appoint to assist him for the purpose.
  
- (2) The Secretary of State may be represented by any person whom he may appoint for the purpose.
  
- (3) It shall be the duty of the tribunal to assist any appellant who appears to them to be unable to make the best of his case.

## **12.— Evidence**

- (1) The appellant may give evidence in support of his appeal and the appellant and the Secretary of State may, subject to the provision of the next following paragraph, call a doctor or any other witness, and may produce at the hearing any further documentary evidence not already in the possession of the tribunal.
  
- (2) Where the appellant or the Secretary of State intends to call a doctor as a witness at the hearing, he shall, unless he has already notified the Pensions Appeal Office of his intention to call the witness, send notice of his intention to the Pensions Appeal Office not less than seven days before the date fixed for the hearing and the Pensions Appeal Office shall notify the



Secretary of State or, as the case may be, the appellant who shall then be entitled to call a doctor at the hearing without giving notice.

(3) The tribunal may require the appellant to furnish such evidence of his identity as they may think fit, and, where the appeal is brought by a person acting on behalf of the appellant, the tribunal may require him to satisfy them as to his qualifications for so acting.

(4) The tribunal may summon before it expert or other witnesses.

(5) The tribunal shall not refuse evidence tendered to them on the ground only that such evidence would be inadmissible in a court of law.

(6) Subject to rule 22 and to any direction given by the President under rule 6 or by the chairman under rule 15, every document tendered in evidence or considered by the tribunal for the purposes of the appeal shall be made available to the appellant or his representative (if any) and to the Secretary of State or his representative in such manner as the tribunal may direct.

### **13.— Procedure at hearing**

(1) At the hearing the tribunal shall give an opportunity to the appellant or his representative to address the tribunal and call witnesses and, if the appellant is not represented, the examination of the appellant's witnesses may, if the appellant so desires, be conducted by the chairman of the tribunal on behalf of the appellant. The representative of the Secretary of State may put questions to any witness called by or on behalf of the appellant.

(2) The tribunal shall give the representative of the Secretary of State an opportunity to address the tribunal and call witnesses. The appellant or his representative may put questions to any witness called by or on behalf of the Secretary of State.

### **14.— Adjournment for further information or evidence**

(1) Where during the hearing of an appeal it appears to the tribunal that it is necessary to obtain further information on any point, or that the appellant or the Secretary of State should be allowed or required to procure or produce further evidence, the appeal shall be adjourned for such further information to be obtained in such manner as the tribunal may direct or for the appellant or the Secretary of State to procure or produce such further evidence.

(2) Where the tribunal adjourns the hearing for further information to be obtained, the information, if and when obtained, shall, subject to any direction given by the President under rule 6, be communicated to the appellant and the Secretary of State, together with a statement that the appellant and the Secretary of State may comment thereon in writing if they so desire, or may address the tribunal thereon at a further hearing of the case.

(3) Where the hearing is adjourned for the appellant or the Secretary of State to procure or produce further written evidence, the evidence shall, subject to any directions given by the President under rule 6, be communicated to the Pensions Appeal Office, together with a statement indicating whether or not the appellant or the Secretary of State wishes to address the tribunal on the evidence at a further hearing of the case, and a copy of the evidence shall be sent from the Pensions Appeal Office to the Secretary of State, or, as the case may be, to

the appellant, together with a statement that the Secretary of State or, as the case may be, the appellant, may comment thereon in writing if he so desires, or may address the tribunal thereon at a further hearing of the case.

(4) Where the appellant or the Secretary of State informs the Pensions Appeal Office of his desire to address the tribunal on the further information, or on further written evidence, a notice of hearing shall be sent to the appellant and to the Secretary of State not less than 10 days before the date fixed for the case to be further heard.

(5) Where neither the appellant nor the Secretary of State wishes to address the tribunal on the further information or further written evidence, the tribunal may give their decision without a further hearing of the case after taking into consideration any comments in writing made by the appellant or by the Secretary of State on the further information or evidence.

(6) Where the hearing is adjourned for the appellant or the Secretary of State to procure or produce further oral evidence, a notice of hearing shall be sent to the appellant and to the Secretary of State not less than 10 days before the date fixed for the case to be further heard if a date for the further hearing was not fixed at the adjournment or the date then fixed has to be altered.

(7) Where the appellant fails to procure or produce further evidence which he has been required by the tribunal to procure or produce, and the tribunal is satisfied that the failure was due to the wilful default of the appellant, the case shall be placed on the deferred list.

#### **15.— Power of tribunal to take expert advice**

(1) Where in the case of any appeal the tribunal is of opinion that a difficult medical or other technical question arises, the tribunal may, before giving their decision, take the opinion of a medical specialist or other technical expert in such manner as may appear to them to be convenient.

(2) Where the question is a medical question, the tribunal may arrange for the appellant to be examined by a medical specialist for a report on his condition.

(3) The tribunal shall direct the specialist or other technical expert to send his opinion or report to the Pensions Appeal Office, and copies thereof and of the terms of reference to the specialist or technical expert shall be sent from the Pensions Appeal Office to the appellant and to the Secretary of State together with a statement that the appellant or the Secretary of State may comment on the opinion or report in writing, if he so desires, or may address the tribunal thereon at a further hearing of the case:

Provided that where it appears to the chairman that it would not be in the best interests of the appellant for the opinion or report of a medical specialist to be communicated to him, the chairman may direct that, instead of being sent to the appellant, the opinion or report shall be sent to the appellant's medical adviser (if known to the tribunal) and, if the appellant was represented at the hearing, to his representative.

(4) Where the Pensions Appeal Office is notified by, or on behalf of, the appellant or the Secretary of State that a further hearing is desired on the opinion or report, a notice of hearing

shall be sent to the appellant and to the Secretary of State not less than 10 days before the date fixed for the case to be further heard.

(5) Where neither the appellant nor the Secretary of State desires to address the tribunal further, the tribunal may give their decision without a further hearing of the case, after taking into consideration any comments in writing made by the appellant or by the Secretary of State on the opinion or report.

## **16. Adjourned hearings**

Where an appeal has been adjourned by a tribunal or has been remitted back to the tribunal by the Upper Tribunal and the President is of the opinion that it is not practicable, or that it is not possible, without undue delay, for the hearing of the appeal or consideration of the remit to be continued by the same tribunal, he may direct that the appeal be re-heard or the remit considered by another tribunal.

## **17. Medical examination of appellant**

In a case where the appellant is present in person at the hearing and is the person in respect of whose incapacity for work or disablement the appeal is brought, the medical member or members of the tribunal may, with the assent of the appellant, make a medical examination of the appellant.

## **18.— Decisions of the tribunal**

(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 the Upper Tribunal.

(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.

## **19.— Record of tribunal decisions**

(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.

(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.

## **20.— Appeals in absence of parties**

(1) Subject to rule 20A, to any arrangements made by the President under rule 21, to rule 23 and to the following provisions of this rule, an appeal may be heard in the absence of the parties or their representatives.

(2) If a party fails to attend, or be represented at, a hearing of which he has been duly notified, the tribunal—

(a) if it is not satisfied that there is sufficient reason for his absence and does not think that his presence is necessary for the due determination of the appeal, may hear and determine the appeal in his absence; or

(b) whether or not it is so satisfied or so thinks, may adjourn the hearing [ ], giving written reasons for the adjournment, and may make such order as to expenses as it thinks fit.

(3) Where an appeal has been determined by virtue of paragraph (2)(a) but the appellant applies to the President, without undue delay, for the decision to be set aside, the President may, if after affording each party a reasonable opportunity to make representations he considers that the interests of justice so require, grant the application and arrange for the appeal to be re-heard before a differently constituted tribunal; and he may make such further order as he thinks fit.

## **20A.— Appellant resident abroad**

(1) This rule applies to an appeal where—

(a) an appellant is resident outside the United Kingdom, and

(b) his appeal has been directed to be heard by a tribunal appointed for Scotland.

(2) The appeal shall, subject to this rule, be heard in the absence of the appellant.

(3) When the appeal is ready for hearing, the Pensions Appeal Office shall so notify the appellant and specify a period for the purposes of paragraph (4).

(4) The appellant may within that period request that the appeal should not be heard before a specified date on the ground that on that date he will be available to attend the appeal.

(5) The President may grant the request and may give such further directions for the hearing of the appeal as he thinks fit.

(6) In an entitlement appeal the President may, and in an assessment appeal the President shall, unless he certifies that it is not practicable to do so, make arrangements for the appellant to be medically examined at some convenient place in the country in which he is resident.

(7) Where such an arrangement is made, the appeal shall not proceed until a medical report on the examination has been received in the Pensions Appeal Office and a copy has been sent to the appellant or his representative, and to the Secretary of State.

## **21. Appellant unable to attend tribunal through infirmity**

(1) Where the President is satisfied that any appellant is unable, through physical or mental infirmity, to attend the tribunal and that his incapacity is likely to continue for a prolonged period, the President may make such arrangements as may appear to him best suited, in all the circumstances of the case, for disposing fairly of the appeal, and in particular may arrange—

(a) for the appellant to be visited at some convenient place by one or more members of the tribunal, or by other person or persons appointed in that behalf by the President, for the purpose of recording the appellant's evidence and any statement which he may wish to make, and for the appellant to be medically examined, so however that in an assessment appeal the visit shall be made by one of the medical members of the tribunal or by another duly qualified medical practitioner, as may be appointed by the President;

(b) for taking, whether before the tribunal or otherwise, the evidence of medical or other witnesses on behalf of the appellant and the Secretary of State, and in particular the evidence of the near relatives, guardian or other representative of the appellant;

(c) for enabling the appellant's representative and the Secretary of State to comment, whether at a hearing of the tribunal or in writing, on the evidence so taken and to make a statement in writing or to address the tribunal;

(d) for the determination of the appeal in the absence of the appellant:

Provided that any arrangement made under paragraph (a) or (b) shall make provision for enabling the representative of the Secretary of State if he so desires, to be present while the evidence of the appellant and other witnesses, is taken and to ask questions of the appellant and other witnesses.

(2) Paragraph (3) of rule 20 shall apply in relation to an appeal determined by virtue of paragraph (1)(d) of this rule as it does in relation to an appeal determined by virtue of paragraph (2)(a) of that rule.

## **22.— Medical evidence injurious to the appellant**

(1) This rule shall apply to any case where the medical history of the appellant or of the person in respect of whose death an appeal is brought comprises material which, in the opinion of the Secretary of State, it would be undesirable in the interests of the appellant to disclose to him.

(2) Where in any case to which this rule applies it comes to the knowledge of the Secretary of State, before the Statement of Case is sent to the appellant under rule 5 that the appellant is to be represented at the hearing of the appeal, the representative shall for the purposes of the provision of that rule relating to the transmission of the Statement of Case, the submission of an answer and the transmission of any comments thereon, be treated as the appellant.

(3) If in any case to which this rule applies it appears to the Secretary of State that the appellant does not intend to be represented at the hearing of the appeal, the Secretary of State shall omit from the copies of the Statement of Case sent by him to the appellant under rule 5 those portions which in the opinion of the Secretary of State it would be undesirable in the interest of the appellant to disclose to him, so however, that the copies of the Statement of Case sent by the Secretary of State to the Pensions Appeal Office under rule 5(1A) shall contain the omitted portions and shall be accompanied by a notice stating the fact of the omission and the reasons therefor.

(4) On the receipt of copies of a Statement of Case and a notice under paragraph (3), the President shall use his best endeavours to assist the appellant to obtain a suitable person or organisation to represent him at the hearing of the appeal, and where such a representative is obtained the Secretary of State shall, on being notified to that effect, send to the representative two copies of the omitted portions of the Statement of Case, together with a statement that the omissions were made pursuant to this rule.

(5) In any case to which this rule applies the President shall indicate to the tribunal before the hearing of the appeal which portions of the Statement of Case have not been disclosed to the appellant, and the tribunal shall decide whether, in the interests of the appellant, those portions should or should not be disclosed to him, and accordingly the tribunal may order that all or any of those portions shall be communicated to the appellant forthwith, or may hear the appeal without all or any of those portions being so communicated, so, however, that the tribunal shall take the omitted portions into consideration before deciding the appeal.

## **23.— Death of appellant before hearing**

(1) Where the Pensions Appeal Office is notified that an appellant has died before the appeal is decided, the case shall be placed in the deferred list. The Pensions Appeal Office shall forthwith notify the Secretary of State that the appellant has died.

(2) In such a case, the President may give directions to the Secretary of State to ascertain the identity of the designated person, if any.

(3) In such a case, if the appeal was an entitlement appeal and the designated person proceeds with it on behalf of the appellant, it shall be heard at the same time and by the same tribunal as any appeal brought by the designated person in respects of the appellant's death.

#### **24.— Appeal to the Upper Tribunal**

(1) An application for leave to appeal to the Upper Tribunal from a decision of the tribunal on an assessment appeal, 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 the Upper Tribunal 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 [ the Upper Tribunal ]<sup>3</sup> 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.

#### **25.— Deferred list cases**

(1) Where a case is placed in the deferred list, a notice of the fact shall be sent from the Pensions Appeal Office to the Secretary of State and to the appellant or, where an appeal has been placed in the deferred list because the appellant has died before the appeal was decided, to the designated person.

(2) An appellant whose case has been placed in the deferred list [...], may at any time within 12 months after notice of the fact has been given apply to the President for an order that the case be restored to the list of cases for hearing.

(2A) Where notice is sent under paragraph (1) to the designated person and that person or the Secretary of State, at any time within the following 12 months, gives written notice to the Pensions Appeal Office that the designated person wishes the case to be restored to the list of cases for hearing, the case shall be so restored.

(3) An order under paragraph (2) of this rule may be made unconditionally or subject to such terms and conditions as the President thinks just:

Provided that, where the case has been placed in the deferred list pursuant to a direction given by the President under rule 10, the case shall, on the application of the appellant, be restored unconditionally to the list of cases for hearing unless the President is satisfied that the appellant's failure to prosecute the appeal was due to his wilful default.

(4) Where

(a) no application to restore the case to the list of cases for hearing has been made within the time prescribed by paragraph (2), or where any such application has been made and has been refused by the President,

(b) as the case may be, no notice has been given under paragraph (2A) by the designated person within the period prescribed by that paragraph, the appeal shall be struck out.

(5) Where an appeal has been struck out under paragraph (4) above, no further appeal in respect of the same matter may be brought without leave of the President.

(6) Where the President grants leave in such a case, he may do so unconditionally or subject to such terms and conditions as he thinks just.

## **26.— Expenses of appellant**

(1) The tribunal shall make payments in respect of allowances, fees and expenses in accordance with the following provisions of this rule.

(2) In this rule, “prescribed” in relation to any amount means the amount payable as determined by the Lord President of the Court of Session from time to time with the consent of the Minister for the Civil Service.

(3) The travelling expenses actually and reasonably incurred shall be payable to the following:—



- (a) an appellant attending the hearing of his appeal by the tribunal;
- (b) in a case where an appellant is unable to attend the hearing for reasons of health, a relative or friend attending the hearing on his behalf;
- (c) in a case where the appellant attends the hearing but requires for reasons of health to be accompanied by an attendant, that attendant;
- (d) an appellant who is required to undergo an examination by a medical specialist pursuant to arrangements made by the tribunal under rule 15(2) and, where necessary, to an attendant who accompanies him;
- (e) a witness, other than a medical witness, attending the hearing, where an application is made to the President or Chairman of the tribunal and he certifies that in the exceptional circumstances of the case the attendance of the witness is necessary.

(4) Where it is necessary for the appellant or other person to travel by rail to and from the tribunal, or, as the case may be, the place where the medical examination is held, a rail warrant shall be sent to him from the Pensions Appeal Office.

(5) An allowance in respect of subsistence shall be payable at the appropriate prescribed rate to the persons and in the circumstances mentioned in paragraph (3) above.

(6) Where the appeal is successful and where the appeal was not successful but the Chairman certifies that there were reasonable grounds for the appeal, there may be allowed to a person mentioned in paragraph (3) above such additional sum as compensation for loss of time as the Chairman thinks reasonable, not exceeding the prescribed maximum.

(7) Where an appellant brings a medical witness to the hearing or, for the purposes of the appeal, has obtained from a medical adviser, or from a hospital, nursing home or other institution in which he has received treatment, a report, certificate or other document and the Chairman of the tribunal or the President certifies that the attendance of the medical witness, or the production of the report, certificate or other document, was reasonably necessary for the purposes of the appeal, the appellant may be allowed such sum in respect of the expenses incurred by him in securing such attendance or obtaining such a report, certificate or document as the President thinks reasonable, not exceeding the prescribed maximum.

(8) Where under rule 15 the tribunal takes the opinion of the medical specialist or other technical expert, or sends the appellant to be examined by a medical specialist, the President may direct payment to the specialist or expert of a fee not exceeding the prescribed maximum.

(9) Where the tribunal summons an expert or other witness, the tribunal may direct the payment to such a witness of a fee not exceeding the prescribed maximum.

(10) Where the tribunal obtains from a medical practitioner, a hospital or other institution a report, certificate or other documentary information relating to an appeal, the President may direct the payment to the medical practitioner, hospital or institution of such sum, not exceeding the prescribed maximum, as he may think reasonable.

27.— [...]

28.— [...]

### **29. Claims for expenses**

An application for any expenses or allowances payable to an appellant or other person shall be made in writing to the clerk to the tribunal or to the Pensions Appeal Office.

### **30.— Applications to the President for directions**

(1) The appellant or the Secretary of State may at any time apply to the President for directions on any matter arising in connection with the appeal, or with an application to the tribunal for leave to appeal to [ the Upper Tribunal.

(2) An application for directions shall state the matter on which the directions are required.

(3) The President shall communicate the nature of the application to the Secretary of State or, as the case may be, to the appellant, together with a statement that the Secretary of State or the appellant may comment thereon in writing if he so desires, and before giving his directions the President shall consider any comments furnished to him.

(4) Any directions given by the President under this rule shall be communicated to the appellant and the Secretary of State.

(5) If an appellant fails to comply with a direction given to him by the President under this rule, the President may direct the case to be placed in the deferred list.

### **31. Extension of time**

(1) Subject to rule 24(5), the time appointed by these rules for doing any act or taking any step in connection with an appeal may be extended by the tribunal or by the President upon such terms (if any) as the justice of the case may require, and such extension may be ordered although the application therefore is not made until after the expiration of the time appointed.

(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.

### **32.— Notices, etc.**

(1) Any notice, document or other communication required or authorised by these rules to be given or sent to the Pensions Appeal Office shall be delivered to, or sent by post addressed to, the Pensions Appeal Office.

(2) Any notice, request, direction, document or other communication required or authorised by these rules to be given or sent to an appellant may be given or sent by sending it by post to the address given by the appellant in his notice of appeal or, where notice of appeal is given on behalf of an appellant, to the address of the person acting on his behalf, or to such other address as may be subsequently notified in writing to the Pensions Appeal Office by the appellant or by the person acting on his behalf.

(3) Any application to be made to the President under these rules may be made by post addressed to the President at the Pensions Appeal Office.

(4) Where under these rules any notice, certificate, request, direction, application or communication is to be given or made, it shall be given or made in writing.

### **33.— Sittings of the tribunal**

(1) Subject to the provisions of this rule, the sittings of the tribunal shall be held in public.

(2) A sitting of the tribunal shall be held in private to such extent as may be necessary to enable the tribunal to comply with a direction given by the President.

(3) If a party makes a request to the tribunal for the appeal, or part of it, to be heard in private, the tribunal may sit in private to such extent as it considers appropriate.

(4) Nothing in this rule shall prevent a member of the Council on Tribunals or a member of the Scottish Committee of the Council on Tribunals from attending the hearing in his capacity as such.

### **34. Evidence on oath**

The tribunal may, if they think fit, take the evidence of the appellant or any other witness on oath and for that purpose the chairman may administer an oath.

### **35. Irregularities**

Non-compliance with any of these Rules shall not render the proceedings on the appeal void unless the tribunal or the President shall so direct, but the tribunal or the President may give such directions for the purpose of mitigating the consequences of the irregularity as the justice of the case may require.

### **36. Acting President**

The functions of the President under these Rules may, if he is for any reason unable to act or during a vacancy in his office, be discharged by [ the Deputy President or, if there is no Deputy President or the Deputy President is for any reason unable to act, by ] a person nominated for that purpose by the Lord President of the Court of Session.

### **37. Revocations**

The Rules specified in Schedule 2 to these Rules are hereby revoked.

## **SCHEDULE 1**

Repealed

**[...]**<sup>1</sup>

**Notes**

<sup>1</sup> Revoked by Pensions Appeal Tribunals (Scotland) (Amendment) Rules 1998/1225 rule 12 (June 8, 1998)

## **SCHEDULE 2**

### **RULES REVOKED**

#### **Title Reference**

The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 1972 S.I. 1972/1783  
The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 1973 S.I. 1973/1714  
The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 1974 S.I. 1974/1968  
The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 1975 S.I. 1975/519  
The Pensions Appeal Tribunals (Scotland) (Amendment No. 2) Rules 1975 S.I. 1975/1764  
The Pensions Appeal Tribunals (Scotland) (Amendment No. 3) Rules 1975 S.I. 1975/2198  
The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 1978 S.I. 1978/977  
The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 1979 S.I. 1979/94  
The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 1980 S.I. 1980/389