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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 353**

**PENSIONS**

**The Pensions Appeal Tribunals  
(Scotland) (Amendment) Rules 2009**

*Made* - - - - *13th October 2009*  
*Laid before the Scottish*  
*Parliament* - - - - *14th October 2009*  
*Coming into force* - - *16th November 2009*

The Lord President of the Court of Session, in exercise of the powers conferred on him by paragraph 5 of the Schedule to the Pensions Appeal Tribunals Act 1943(1), and after consultation with the Administrative Justice and Tribunals Council in accordance with section 8 of the Tribunals and Inquiries Act 1992(2), hereby makes the following Rules:

**Citation, commencement and interpretation**

1.—(1) These Rules—

- (a) may be cited as the Pensions Appeal Tribunals (Scotland) (Amendment) Rules 2009; and
- (b) come into force on 16th November 2009.

(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(3).

**Amendment of the Pensions Appeal Tribunals (Scotland) Rules 1981**

2.—(1) Omit rule 2(1A) (references to a Commissioner).

(2) For rule 9 (withdrawal of appeal), substitute—

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(1) 1943 c.39; paragraph 5 of the Schedule was amended by the Administration of Justice Act 1977 (c.38), Schedule 5, part II, the Social Security Act 1980 (c.30), section 16(6), the Armed Forces (Pensions and Compensation) Act 2004 (c.32), Schedule 1, paragraph 10(2) and Schedule 3, the Statute Law (Repeals) Act 2004 (c.14), Schedule 1(11), the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraph 28(6) and the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), Schedule 3, paragraph 21(8) and is to be read with the Scotland Act 1998 (c.46), section 118(3).

(2) 1992 c.53. The reference to the Administrative Justice and Tribunals Council in section 8 was inserted by virtue of the Tribunals, Courts and Enforcement Act 2007 (c.15) (“the 2007 Act”), Schedule 8, paragraph 30. Section 8 is prospectively repealed by the 2007 Act, Schedule 8, paragraph 27.

(3) S.I. 1981/500, amended by S.I. 1986/373, 1998/1225 and S.S.I. 2001/410 and 2005/152.

“**9.**—(1) Where the Secretary of State revises the decision challenged, the appeal shall continue as if brought in relation to the revised decision.

(2) The appeal will lapse if the appellant does not wish to proceed with the appeal and notifies the Pensions Appeal Office accordingly.”.

(3) The heading of rule 9 becomes “**Lapse of appeal**”.

(4) In rule 16 (adjourned hearings)(**4**), for “a Commissioner” substitute “the Upper Tribunal”.

(5) In rule 18 (decisions of the tribunal)(**5**), in paragraph (3)(b), for “a Commissioner” substitute “the Upper Tribunal”.

(6) In rule 24 (appeal to a Pensions Appeal Commissioner)(**6**)—

(a) in paragraphs (1), (2) and (4), for “a Commissioner” substitute “the Upper Tribunal”; and

(b) in paragraph (1), after “decision of the tribunal on” insert “an assessment appeal.”.

(7) The heading of rule 24 becomes “**Appeal to the Upper Tribunal**”.

(8) In rule 30 (applications to the President for directions)(**7**), in paragraph (1), for “a Commissioner” substitute “the Upper Tribunal”.

### **Revocations**

**3.** Rules 5 and 10 of the Pensions Appeal Tribunals (Scotland) (Amendment) Rules 2005(**8**) are revoked.

Edinburgh  
13th October 2009

*A.C. HAMILTON*  
Lord President

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(4) Rule 16 was amended by [S.S.I. 2005/152](#), rule 5.  
(5) Rule 18 was substituted by [S.S.I. 2005/152](#), rule 6.  
(6) Rule 24 was substituted by [S.S.I. 2005/152](#), rule 8.  
(7) Rule 30 was amended by [S.S.I. 2005/152](#), rule 10.  
(8) [S.S.I. 2005/152](#).

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Pensions Appeal Tribunals (Scotland) Rules 1981 (“the 1981 Rules”) to reflect the route of appeal from the Pensions Appeal Tribunal to the Upper Tribunal which was established under section 3(2) of the Tribunals, Courts and Enforcement Act 2007.

Rule 2(1) omits rule 2(1A), which provided that a Social Security Commissioner was to be known as a Pensions Appeal Commissioner for the purposes of the 1981 Rules.

Rule 2(2) substitutes a new rule 9, relating to the lapse of appeals.

Rules 2(4), (5), (6) and (8) amend rules 16, 18, 24 and 30 of the 1981 Rules respectively, by substituting new references to the Upper Tribunal for references to a Commissioner. These are the rules relating to adjourned hearings, notification of decisions of the Pensions Appeal Tribunal, appeals from the Pensions Appeal Tribunal and applications to the President of the Pensions Appeal Tribunals for Scotland for directions. Rule 2(6)(b) also brings applications for leave to appeal to the Upper Tribunal in respect of assessment appeals under section 5 of the Pensions Appeal Tribunals Act 1943 within the scope of the procedure set out in rule 24 of the 1981 Rules.