
STATUTORY INSTRUMENTS

2005 No. 690

PENSIONS

The Pensions Regulator Tribunal Rules 2005

Made - - - - - *10th March 2005*
Laid before Parliament *15th March 2005*
Coming into force - - - *6th April 2005*

The Lord Chancellor, in exercise of the powers conferred upon him by sections 102(3) and 104(6) of, and paragraph 9 of Schedule 4 to, the Pensions Act 2004⁽¹⁾, and Article 98(5) of the Pensions (Northern Ireland) Order 2005⁽²⁾, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992⁽³⁾, makes the following Rules:

PART 1

Introduction

Citation and commencement

1. These Rules may be cited as the Pensions Regulator Tribunal Rules 2005 and shall come into force on 6th April 2005.

Interpretation

2.—(1) A reference in these Rules—

- (a) to a rule by number alone means the rule so numbered in these Rules;
- (b) to a section or Schedule by number alone means the section or Schedule so numbered in the Pensions Act 2004; and
- (c) to an Article by number alone means the Article so numbered in the Pensions (Northern Ireland) Order 2005.

(2) In these Rules, unless the context requires otherwise—

“the 2004 Act” means the Pensions Act 2004;

(1) 2004 c. 35.
(2) S.I.2005/255 (N.I.1).
(3) 1992 c. 53.

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005;

“appeal” means appeal (or an appeal) under—

- (i) section 104(1) to the Court of Appeal or the Court of Session; or
- (ii) Article 98(1) to the Court of Appeal in Northern Ireland,

from a decision of the Tribunal disposing of a reference, and “appellant” means a party applying for permission to appeal;

“applicant” means a person who makes a referral to the Tribunal and, if there is more than one such person, “applicant” means each such person;

“Chairman” means the person from time to time acting as chairman of the Tribunal in respect of a reference;

“determination notice” means the determination notice given by the Regulator under the standard procedure by virtue of section 96(2)(d) or Article 91(2)(d);

“direction” includes any direction, summons or order given or made by the Tribunal;

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information—

- (i) in legible form; or
- (ii) in a form from which it can readily be produced in a legible form;

“file” means send to the Tribunal;

“final notice” means the final notice given by the Regulator under the special procedure by virtue of section 98(2)(e) or Article 93(2)(e);

“further material” means documents which—

- (i) were considered by the Regulator in reaching or maintaining the Regulator’s determination; or
- (ii) were obtained by the Regulator in connection with the matter to which a determination notice (standard procedure) or final notice (special procedure) relates (whether they were obtained before or after giving that notice) but which were not considered by it in reaching or maintaining that decision,

but does not include documents which were relied on in support of the Regulator’s determination;

“party” means the applicant or the Regulator (or, if there is more than one applicant, any of the applicants or the Regulator) and “other party” shall be construed accordingly;

“pension scheme” means any pension scheme as defined under section 1 of the Pension Schemes Act 1993(4) and which is relevant to the Regulator’s determination;

“President” means the President of the Pensions Regulator Tribunal appointed under paragraph 2 of Schedule 4;

“protected item” has the meaning provided by section 311(2) or Article 283(2);

“Regulator’s determination” means the determination of the Regulator which is the subject matter of—

- (i) a determination notice (standard procedure) and which has been referred to the Tribunal by virtue of section 96(3) or Article 91(3); or
- (ii) a final notice (special procedure) and which has been referred to the Tribunal by virtue of section 99(7) or Article 94(7);

“reference” means a reference to the Tribunal under section 96(3) or Article 91(3) (standard procedure) or section 99(7) or Article 94(7) (special procedure);

“reference notice” means a notice filed under rule 4(1);

“the register” means the register maintained in accordance with rule 31;

“the Regulator” means the Pensions Regulator established under section 1;

“reply” means a reply filed by the applicant under rule 6(1);

“representations” means written representations or (with the consent of the Tribunal, or at its request) oral representations;

“response document” means—

(i) in relation to the Regulator, its statement of case; and

(ii) in relation to the applicant, his reply;

“the Secretary” means the person from time to time appointed as secretary to the Tribunal, being a member of staff appointed under paragraph 5(1) of Schedule 4;

“special procedure” means that part of the Regulator’s procedure which is provided for under section 98 or Article 93;

“standard procedure” means that part of the Regulator’s procedure which is provided for under section 96 or Article 91;

“statement of case” means a statement filed by the Regulator under rule 5(1);

“supplementary statement” means a statement that is supplementary to a response document and filed in accordance with a direction given under rule 12(f); and

“the Tribunal” means the Pensions Regulator Tribunal established under section 102.

(3) Unless the context requires otherwise, anything permitted or required by these Rules to be done by a party may be done by any representative of that party.

Application of these Rules

3. These Rules apply to all references to the Tribunal.

PART 2

Preliminary matters

Reference notice

4.—(1) A reference shall be made by way of a written notice (“the reference notice”) signed and filed by or on behalf of the applicant.

(2) The reference notice shall state—

(a) the name and address of the applicant;

(b) the name and address of the applicant’s representative (if any);

(c) the name and address of the pension scheme;

(d) if no representative is named under sub-paragraph (b), the applicant’s address for service in the United Kingdom (if different from the address notified under sub-paragraph (a));

(e) that the notice is a reference notice; and

(f) the issues concerning the determination notice (standard procedure) or final notice (special procedure) that the applicant wishes the Tribunal to consider.

(3) In paragraph (2)(a) and (c), “address” in respect of a corporation means the address of the registered or principal office.

(4) Where the applicant was given a determination notice (standard procedure) or final notice (special procedure) by the Regulator, a copy shall be filed with the reference notice.

(5) The applicant may include an application for directions with the reference notice.

(6) Where the time limit for making a reference under section 103(1) or Article 97(1) has expired, the applicant shall include with the reference notice an application for a direction to extend the time limit for making a reference, which shall include a statement of the reasons for the delay.

(7) At the same time as he files the reference notice, the applicant shall send a copy of that notice (and of any application in accordance with paragraphs (5) and (6)) to the Regulator.

(8) Where an application is made under paragraph (5) or (6), the Secretary shall refer the application to the Tribunal for determination and he shall take no further action in relation to the reference notice until the application has been determined.

(9) Subject to paragraph (8) and to any directions given by the Tribunal, upon receiving a reference notice the Secretary shall—

- (a) enter particulars of the reference in the register; and
- (b) inform the parties in writing of—
 - (i) the fact that the reference has been received;
 - (ii) the date when the Tribunal received the notice; and
 - (iii) the Tribunal’s decision on any application made for directions (and include a copy of any direction given),
 and the Secretary when sending the parties this information shall specify the date on which he is sending it.

Regulator’s statement of case

5.—(1) The Regulator shall file a written statement (“a statement of case”) in support of the Regulator’s determination so that it is received by the Tribunal no later than 28 days after the day on which the Regulator received the information sent by the Secretary in accordance with rule 4(9)(b).

(2) The statement of case shall—

- (a) specify the statutory provisions providing for the Regulator’s determination;
- (b) specify the reasons for the Regulator’s determination;
- (c) set out all the matters and facts relied upon to support the Regulator’s determination; and
- (d) specify the date on which the statement of case is filed.

(3) The statement of case shall be accompanied by—

- (a) a list of—
 - (i) the documents relied upon in support of the Regulator’s determination; and
 - (ii) the further material which in the opinion of the Regulator might undermine the decision to take that action; and
- (b) a copy of the determination notice (standard procedure) or final notice (special procedure) if not filed by the applicant under rule 4(4).

(4) At the same time as it files the statement of case, the Regulator shall send to the applicant a copy of the statement of case and a copy of the list referred to in paragraph (3)(a).

(5) If at any time the Regulator amends the statement of case, it shall file the amendments and at the same time send a copy to the applicant.

(6) The Regulator may include an application for directions with the statement of case.

Applicant's reply

6.—(1) The applicant shall file a written reply so that it is received by the Tribunal no later than 28 days after—

- (a) the date on which the applicant received a copy of the statement of case; or
- (b) if the Regulator amends its statement of case, the date on which the applicant received a copy of the amended statement of case.

(2) The reply shall—

- (a) state the grounds on which the applicant relies in the reference;
- (b) identify all matters contained in the statement of case which are disputed by the applicant;
- (c) state the applicant's reasons for disputing them; and
- (d) specify the date on which it is filed.

(3) The reply shall be accompanied by a list of all the documents on which the applicant relies in support of his case.

(4) At the same time as he files the reply, the applicant shall send to the Regulator a copy of the reply and of the list referred to in paragraph (3).

Secondary disclosure by the Regulator

7.—(1) Following the filing of the applicant's reply, if there is any further material which might be reasonably expected to assist the applicant's case as disclosed by the applicant's reply and which is not mentioned in the list provided in accordance with rule 5(3)(a), the Regulator shall file a list of such further material.

(2) Any list required to be filed by paragraph (1) shall be filed so that it is received no later than 14 days after the day on which the Regulator received the applicant's reply.

(3) At the same time as it files any list required by paragraph (1) the Regulator shall send a copy of that list to the applicant.

Exceptions to disclosure

8.—(1) A list provided in accordance with rule 5(3)(a), 6(3) or 7(1) need not include any document in respect of which an application has been or is being made under paragraph (2).

(2) A party may apply to the Tribunal (without giving notice to the other party) for a direction authorising that party not to include a document in the list required by rule 5(3)(a), 6(3) or 7(1) on the ground that disclosure of the document—

- (a) would not be in the public interest; or
- (b) would not be fair, having regard to—
 - (i) the likely significance of the document to the applicant in relation to the matter referred to the tribunal; and
 - (ii) the potential prejudice to the commercial interests of a person other than the applicant which would be caused by disclosure of the document.

(3) For the purpose of deciding an application by a party under paragraph (2), the Tribunal may—

- (a) require that the document be produced to the Tribunal together with a statement of the reasons why it should not be included in the list; and
- (b) invite the other party to make representations.

(4) If the Tribunal refuses an application under paragraph (2) for a direction authorising a party not to include a document in a list, it shall direct that party—

- (a) to revise the list so as to include the document; and
- (b) to file a copy of that list as revised and send a copy to the other party.

Provision of copy documents

9.—(1) A party who has filed a list under rule 5(3)(a), 6(3) or 7(1) shall, upon the request of the other party, provide that other party with a copy of any document specified in the list or make any such document available to that party for inspection or copying.

- (2) Paragraph (1) does not apply to any document that is a protected item.

Directions

10.—(1) The Tribunal may at any time give directions to enable the parties to prepare for the hearing of the reference, to assist the Tribunal to determine the issues and generally to ensure the just, expeditious and economical determination of the reference.

(2) The Tribunal may give directions on the application of any party or of all the parties or of its own initiative and, where it gives a direction of its own initiative, it may (but need not) give prior notice to the parties of its intention to do so.

- (3) Any application for directions shall include the reasons for making that application.

(4) Except where it is made during the pre-hearing review or during the hearing of the reference, an application for directions shall be filed and, unless the application is accompanied by the written consent of all the parties or an application without notice is permitted by these Rules, the party making the application shall at the same time send a copy to the other party.

(5) Where the application for directions was filed and a copy sent to the other party in accordance with paragraph (4)—

- (a) any objection to the directions applied for, together with the reasons for the objection, shall be sent to the Tribunal within 14 days of the date on which the copy application was sent; and
- (b) at the same time, a copy of the objection and reasons shall be sent to the party who applied for the directions.

(6) Directions may be given orally or in writing and, unless the Tribunal decides otherwise in any particular case, notice of any written direction (or refusal to give a direction) shall be given to the parties.

(7) Directions containing a requirement may specify a time limit for complying with the requirement and shall include a statement of the possible consequences of a party's failure to comply with the requirement.

(8) A person to whom a direction is given under these Rules may apply to the Tribunal showing good cause why it should be varied or set aside, but the Tribunal shall not grant such an application without first notifying any person who applied for the direction and giving that party an opportunity to make representations.

Pre-hearing review

11.—(1) The following paragraphs of this rule shall apply if the Chairman directs that it is appropriate to hold a pre-hearing review.

(2) The Secretary shall give the parties not less than 14 days' notice of the time and place of the pre-hearing review.

- (3) At the pre-hearing review, which shall be held before the Chairman—
 - (a) the Chairman shall give all directions appearing necessary or desirable for securing the just, expeditious and economical conduct of the reference; and
 - (b) the Chairman shall endeavour to secure that the parties make all admissions and agreements as they ought reasonably to have made in relation to the proceedings.
- (4) In this rule, “pre-hearing review” means a review of the reference that may be held at any time before the hearing of the reference.

Particular types of direction

12. Directions given by the Tribunal may in particular—

- (a) permit the applicant to make a reference after the expiry of the time limit under section 103(1) or Article 97(1);
- (b) fix the time and place of any hearing and alter any time and place so fixed;
- (c) provide for an oral hearing, upon such notice as the Tribunal may determine, in connection with any matter arising under the reference;
- (d) adjourn any oral hearing;
- (e) vary (whether by extending or shortening) any time limit for anything to be done under these Rules;
- (f) permit or require any party to provide further information or supplementary statements or to amend a response document or a supplementary statement;
- (g) require any party to file any document—
 - (i) that is in the custody or under the control of that party;
 - (ii) that the Tribunal considers is or may be relevant to the determination of the reference; and
 - (iii) that has neither been exempted from disclosure by direction given pursuant to rule 8(2) nor been made available pursuant to rule 9(1),and may also require that any such document directed for filing as above shall be copied to the other party or else be made available to that other party for inspection and copying;
- (h) require any party to provide a statement of relevant issues and facts, identifying those which are, and are not, agreed by the other party;
- (i) require any party to file documents for any hearing under these Rules or to agree with the other party the documents to be filed;
- (j) require any party to file—
 - (i) a list of the witnesses whom the party wishes to call to give evidence at the hearing of the reference; and
 - (ii) statements of the evidence which those witnesses intend to give, if called;
- (k) make provision as to any expert witnesses to be called including the number of such witnesses and the evidence to be given by them;
- (l) provide for the appointment of any expert under paragraph 7(4) of Schedule 4 and for that expert to send the parties copies of any report that he produces;
- (m) provide for the manner in which any evidence may be given;
- (n) provide for the use of languages in addition to English, including provision—
 - (i) as to the venue of any hearing under these Rules so as to ensure the availability of simultaneous interpretation facilities; and

- (ii) for the translation of any document;
- (o) require that the register shall include no particulars about the reference; and
- (p) where two or more reference notices have been filed—
 - (i) in respect of the same matter;
 - (ii) in respect of separate interests in the same subject in dispute; or
 - (iii) which involve the same issues,provide that the references or any particular issue or matter raised in the references be consolidated or heard together.

Application for permission to make a late reference

13. Where the applicant has made an application under rule 4(6) to the Tribunal for a direction under rule 12(a) to allow a reference to be made after the time limit for doing so has expired, the Tribunal shall consider whether—

- (a) the determination notice (standard procedure) or final notice (special procedure) was such as to notify the applicant properly and effectively of the Regulator’s determination; and
- (b) the existence of the right to make the reference and the time limit had been notified to the applicant, whether in the determination notice (standard procedure) or final notice (special procedure) or otherwise,

and in any case shall not allow the reference to proceed unless it considers that it is in the interests of justice to do so.

Directions fixing the time and place of a hearing

14. Before making a direction under rule 12(b) to fix the time and place of a hearing, the Tribunal shall consider—

- (a) whether the reference should be dealt with as a matter of urgency, in particular considering whether the Regulator has already exercised a regulatory function under the 2004 Act or the 2005 Order, or whether that function may not be exercised until the reference has been finally disposed of; and
- (b) the convenience of the applicant to the reference in attending or being able to attend a hearing which is to be heard as a matter of urgency at short notice.

Directions varying time limits

15.—(1) The Tribunal shall not make a direction under rule 12(e) to vary any time limit imposed by virtue of these Rules or by virtue of a previous direction of the Tribunal, whether on the application of any party or of all the parties or of its own initiative, unless it is satisfied that it is in the interests of justice to do so.

(2) Before making a direction to vary any time limit, the Tribunal shall consider whether the reference should be dealt with as a matter of urgency, in particular considering whether the Regulator has already exercised a regulatory function under the 2004 Act or the 2005 Order, or whether that function may not be exercised until the reference has been finally disposed of.

(3) The Tribunal may direct that a time limit be extended by 14 days or less without first considering whether any party objects to the direction, but any such objection shall be taken into account on any subsequent application to extend a time limit.

(4) The Tribunal may direct that a time limit be extended whether or not that time limit has already expired.

(5) A time limit which has previously been extended may from time to time be further extended by directions of the Tribunal, whether or not that or any subsequent such time limit has already expired.

(6) Where a party files a response document or list later than any time limit imposed by or extended under these Rules but without applying for a direction under rule 12(e) extending the time limit, that party shall be treated as applying for such a direction.

(7) If a response document or list is not filed in accordance with the time limit imposed by or extended under these Rules, the Tribunal may of its own initiative direct that the document or list be filed by a specified date.

Further matters regarding specific directions

16.—(1) If the Tribunal gives a direction under rule 12(f) to permit or require a party to provide a supplementary statement or to amend a response document or supplementary statement, the direction may require that party to file any such statement or amendment and send a copy to the other party.

(2) The Tribunal shall not give a direction under rule 12(g) or 12(i) in relation to the disclosure of any document to the extent that the Tribunal is satisfied that—

- (a) it is a protected item; or
- (b) should not otherwise be disclosed,

and, for the purpose of determining whether such a direction should be given in respect of any such document, the Tribunal may—

- (i) require that the document be produced to the Tribunal;
- (ii) hear the application in the absence of any party; and
- (iii) invite any party to make representations.

(3) In the case of an application for a direction under rule 12(o) that the register should include no particulars about the reference, the Tribunal may give such a direction if it is satisfied that this is necessary, having regard to—

- (a) the interests of morals, public order, national security or the protection of the private lives of the parties; or
- (b) any unfairness to the applicant or prejudice to the interests of consumers that might result from the register including particulars about the reference.

Filing of subsequent notices in relation to the Regulator's determination

17. Where, after the filing of a reference notice, the Regulator gives the applicant any notice under the 2004 Act or the 2005 Order in relation to the Regulator's determination, the Regulator shall without delay file a copy of that notice.

Summoning of witnesses

18.—(1) Any party may apply to the Tribunal for a summons to require any person to—

- (a) attend, at such time and place as is specified in the summons, to give evidence as a witness;
- (b) file, within the time specified in the summons, any document in his custody or under his control which the Tribunal considers it necessary to examine; or
- (c) both attend and file in accordance with sub-paragraphs (a) and (b) above.

(2) Any summons issued under paragraph (1) above shall—

- (a) state the name and address of, or otherwise describe, the person to be served; and
- (b) be signed by the Chairman of the Tribunal issuing it,

and it shall be the responsibility of the party who made the application under paragraph (1) to serve the summons.

(3) No person may be required under this rule to file a document to the extent that the Tribunal is satisfied that—

- (a) it is a protected item; or
- (b) it should not otherwise be disclosed,

and, for the purpose of satisfying itself in respect of any such document, the Tribunal may—

- (i) require that the document be produced to the Tribunal;
- (ii) conduct any hearing in the absence of any party; and
- (iii) invite any party to make representations.

(4) A witness summons shall be sent so as to be received by the person to whom it is addressed not less than seven days before the time specified in the summons.

(5) Every summons under paragraph (1) shall contain a statement warning of the effect of paragraph 11(3) to (6) of Schedule 4 (offences connected to summonses).

(6) No person shall be required, in obedience to a summons under paragraph (1), to travel more than 16 kilometres from his place of residence unless the necessary expenses of his attendance are paid or tendered to him in advance, and when the summons is issued at the request of a party, those expenses shall be paid by that party.

(7) The Tribunal may, upon the application of the person to whom the witness summons is addressed, direct that the witness summons be set aside or varied.

Preliminary hearing

19.—(1) The Tribunal may direct that any question of fact or law which appears to be in issue in relation to the reference be determined at a preliminary hearing.

(2) If, in the opinion of the Tribunal, the determination of that question substantially disposes of the reference, the Tribunal may treat the preliminary hearing as the hearing of the reference and may make such order by way of disposing of the reference as it thinks fit.

(3) If the parties so agree in writing, the Tribunal may determine the question without an oral hearing, but, in any such case, the Tribunal may not at the same time dispose of the reference unless the parties have agreed in writing that it may do so.

Withdrawal of reference and unopposed references

20.—(1) The applicant may withdraw the reference—

- (a) at any time before the hearing of the reference, without permission, by filing a notice in writing to that effect; or
- (b) at the hearing of the reference, with the Tribunal's permission,

and the Tribunal may determine any reference that is so withdrawn.

(2) The Regulator may state that it does not oppose the reference or that it is withdrawing its opposition to it—

- (a) at any time before the hearing of the reference, without permission, by filing a notice to that effect; or
- (b) at the hearing of the reference, with the Tribunal's permission.

(3) In any case where—

- (a) the Regulator files a notice in accordance with paragraph (2)(a);

- (b) the Regulator does not file a statement of case within the time limit imposed by rule 5(1) (or any such time limit as varied under rule 12(e)); or
- (c) the applicant does not file a reply within any time limit imposed by rule 6(1) (or any such time limit as varied under rule 12(e)),

the Tribunal may (subject to its power to give a direction pursuant to rule 15(7)) determine the reference without an oral hearing in accordance with rule 21, but it shall not dismiss a reference without notifying the applicant that it is minded to do so and giving him an opportunity to make representations.

(4) When determining proceedings pursuant to paragraph (1) or (3), the Tribunal may make a costs order under rule 26.

PART 3

Hearings

Determination without oral hearing

21.—(1) The Tribunal may determine a reference, or any particular issue, without an oral hearing if—

- (a) the parties agree in writing;
- (b) the issue concerns an application for directions; or
- (c) rule 20(3) applies.

(2) Where a reference or an issue is determined in accordance with this rule, the Tribunal shall consider whether there are circumstances making it undesirable to make a public pronouncement of the whole or part of its decision.

(3) If the Tribunal decides that a restriction on public pronouncement is desirable—

- (a) the Tribunal may take any steps, including any one or more of the steps specified in paragraph (4);
- (b) any step taken under this paragraph shall be taken with a view to ensuring the minimum restriction on public pronouncement that is consistent with the need for the restriction.

(4) The steps referred to in paragraph (3) are—

- (a) anonymising the decision;
- (b) editing the text of the decision;
- (c) declining to publish the whole or part of the decision.

(5) Before reaching a decision under paragraph (2), the Tribunal shall invite the parties to make representations on the matter.

Public hearings and directions for private hearings

22.—(1) In this rule, “hearing” means any hearing under these Rules but does not include—

- (a) any determination under rule 21(1); or
- (b) the hearing of any application made to the Tribunal without notice to the other party.

(2) Subject to the following paragraphs of this rule, all hearings shall be in public.

(3) The Tribunal may direct that all or part of a hearing shall be in private—

- (a) upon the application of all the parties; or

- (b) upon the application of any party, if the Tribunal is satisfied that a hearing in private is necessary, having regard to—
- (i) the interests of morals, public order, national security or the protection of the private lives of the parties; or
 - (ii) any unfairness to the applicant that might result from a hearing in public,
- if the Tribunal is satisfied that a hearing in private would not prejudice the interests of justice.
- (4) Before determining an application under paragraph (3)(b), the Tribunal shall give the other party an opportunity to make representations.
- (5) Before giving a direction under paragraph (3) that all of a hearing should be in private, the Tribunal shall consider whether only part of the hearing should be in private.
- (6) The following persons shall be entitled to attend any hearing of the Tribunal whether or not it is in private—
- (a) the parties and their representatives;
 - (b) the President or any member of the panel of chairmen or of the lay panel, notwithstanding that they are not members of the Tribunal for the purpose of the reference to which the hearing relates;
 - (c) the Secretary and any member of the Tribunal’s staff appointed under paragraph 5 of Schedule 4; and
 - (d) a member of the Council on Tribunals or the Scottish Committee of that Council.
- (7) The Tribunal may permit any other person to attend a hearing which is held in private.
- (8) The persons mentioned in paragraph (6)(b) and (d) shall be entitled to attend the deliberations of the Tribunal but shall take no part in those deliberations.
- (9) The Tribunal may exclude from the whole or part of a hearing any person whose conduct, in the opinion of the Tribunal, has disrupted or is likely to disrupt the hearing.
- (10) Subject to any direction under paragraph (11), the Secretary shall provide for the public inspection at the Tribunal’s offices of a daily list of all hearings which are to be held, together with information about the time and place fixed for the hearings.
- (11) Where all or part of a hearing is held or is to be held in private, the Tribunal may direct that information about the whole or part of the proceedings before the Tribunal (including information that might help to identify any person) shall not be made public, and such a direction may provide for the information (if any) that is to be entered in the register or removed from it.

Representation at hearings

- 23.**—(1) Subject to paragraph (2), the parties may appear at the hearing (with assistance from any person if desired), and may be represented by any person, whether or not that person is legally qualified.
- (2) If in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to assist or represent a party at the hearing.
- (3) In this rule, “hearing” means any hearing under these Rules.

Procedure at hearings

- 24.**—(1) Subject to the 2004 Act, the 2005 Order and these Rules, the Tribunal shall conduct all hearings under these Rules in such manner as it considers most suitable to the clarification of the issues before it and generally to the just, expeditious and economical determination of the proceedings.

- (2) Subject to any directions by the Tribunal, the parties shall be entitled—
- (a) to give evidence (and, with the consent of the Tribunal, to bring expert evidence);
 - (b) to call witnesses;
 - (c) to question any witnesses; and
 - (d) to address the Tribunal on the evidence, and generally on the subject matter of the reference.

(3) Evidence may be admitted by the Tribunal whether or not it would be admissible in a court of law and whether or not it was available to the Regulator when the Regulator’s determination was made.

(4) If a party fails to attend or be represented at any hearing of which that party has been duly notified, the Tribunal may, if it is satisfied that there is no good and sufficient reason for the absence—

- (a) hear and determine the application or reference in the party’s absence; or
- (b) adjourn the hearing,

and may give any directions it thinks fit (including orders regarding the payment of costs under rule 26).

Decisions of Tribunal

25.—(1) Subject to paragraph (2) and to rule 21(3), the Tribunal shall make arrangements for the public pronouncement of its decisions, whether by giving its decisions orally in open court or by publishing its decisions in writing.

(2) Where the whole or any part of any hearing under these Rules was in private, the Tribunal shall consider whether, having regard to—

- (a) the reason for the hearing or any part of it being in private; and
- (b) the outcome of the hearing,

it would be undesirable to make a public pronouncement of the whole or part of its decision.

- (3) If the Tribunal decides that a restriction on public pronouncement is desirable—
- (a) the Tribunal may take any steps, including any one or more of the steps specified in paragraph (4);
 - (b) any step taken under this paragraph shall be taken with a view to ensuring the minimum restriction on public pronouncement that is consistent with the need for the restriction.

(4) The steps referred to in paragraph (3) are—

- (a) anonymising the decision;
- (b) editing the text of the decision;
- (c) declining to publish the whole or part of the decision.

(5) Before reaching a decision under paragraph (2), the Tribunal shall invite the parties to make representations on the matter.

(6) The Secretary shall as soon as may be practicable—

- (a) whether there has been an oral hearing or not, send a notification of the decision to each of the parties to the reference; and
- (b) subject to any steps taken under paragraph (2), under rule 21(3) or any direction given under rule 22(11), enter the decision in the register.

(7) Every notification of a decision determining a reference which is sent to the parties shall be accompanied by a notification of—

- (a) any provision of the 2004 Act or 2005 Order (as appropriate) relating to appeals from the Tribunal; and
- (b) the time within which and the place at which an application for permission to appeal may be made.

Costs

26.—(1) In this rule, “costs order” means an order under paragraph 13 of Schedule 4 that a party pay the whole or part of the costs or expenses incurred by another party.

(2) In this rule, “paying party” and “receiving party” mean, respectively, the parties against whom and in whose favour the Tribunal makes or considers making a costs order.

(3) The Tribunal shall not make a costs order without first giving the paying party an opportunity to make representations against the making of the order.

(4) Where the Tribunal makes a costs order it may order—

- (a) that an amount fixed by the Tribunal shall be paid to the receiving party by way of costs or expenses; or
- (b) that the costs shall be assessed or expenses shall be taxed—
 - (i) in England and Wales, by a costs officer;
 - (ii) in Scotland, by the Auditor of the Court of Session;
 - (iii) in Northern Ireland, by the Taxing Master of the Supreme Court of Northern Ireland, on such basis as the Tribunal shall specify.

Review of Tribunal’s decision

27.—(1) If, on the application of a party or of its own initiative, the Tribunal is satisfied that—

- (a) its decision determining a reference was wrongly made as a result of an error on the part of the Tribunal staff; or
- (b) new evidence has become available since the conclusion of the hearing to which that decision relates, the existence of which could not have been reasonably known or foreseen,

the Tribunal may review and set aside the relevant decision.

(2) An application for the purposes of paragraph (1) shall be made—

- (a) orally at the hearing immediately following the announcement of the decision by the Tribunal; or
- (b) by way of written application filed not later than 14 days after the notification of the decision is sent to the party making the application,

stating the grounds on which the application is based.

(3) Where the Tribunal proposes to review its decision of its own initiative, it shall notify the parties of that proposal not later than 14 days after the date on which the decision was sent to the parties.

(4) The parties shall have an opportunity to make representations on any application or proposal for review under this rule and the review shall be determined either by the same members of the Tribunal who decided the case or by a differently constituted Tribunal appointed by the President.

(5) The decision of the Tribunal whether or not to set aside the decision shall be recorded in a certificate signed by the Chairman.

(6) If, having reviewed the decision, the decision is set aside—

- (a) the Tribunal shall—

- (i) substitute such decision as it thinks fit; or
 - (ii) order a re-hearing before either the same or a differently constituted Tribunal; and
 - (b) the certificate of the Chairman recording the decision in accordance with paragraph (5) shall be sent to the Secretary who shall immediately—
 - (i) make such correction as may be necessary in the register; and
 - (ii) shall send a copy of the entry so corrected to each party.
- (7) If, having reviewed the decision, the decision is not set aside, the Secretary shall notify each of the parties in writing to this effect.

PART 4

Appeals from the Tribunal

Application for permission to appeal

- 28.**—(1) An application to the Tribunal for permission to appeal may be made—
- (a) orally at the hearing immediately following the announcement of the decision by the Tribunal; or
 - (b) by way of written application filed not later than 14 days after the notification of the decision is sent to the party making the application; or
 - (c) by way of written application filed not later than 14 days after the notification under rule 27(7) that a decision is not to be set aside.
- (2) When an application is made under paragraph (1)(b) or (c), it shall be signed by the appellant and shall—
- (a) state the name and address of the appellant and any representative of the appellant;
 - (b) identify the decision of the Tribunal to which the application relates; and
 - (c) state the grounds on which the appellant intends to rely in the appeal.

Decision as to permission to appeal

- 29.**—(1) The application for permission to appeal shall be decided without an oral hearing unless—
- (a) the decision is made immediately following an oral application; or
 - (b) the Chairman considers that special circumstances render a hearing desirable.
- (2) The decision of the Tribunal on an application for permission to appeal, together with the reasons for its decision, shall be recorded in writing.
- (3) Unless the decision is given immediately following an oral application, the Secretary shall notify the appellant and each of the other parties of the decision and the reasons for the decision in writing.
- (4) Where the Tribunal refuses the application, the notification to the appellant under paragraph (3) shall include notification of the time within which an application for permission to appeal to the Court of Appeal, the Court of Appeal in Northern Ireland or Court of Session may be made.

Reference remitted for rehearing

30.—(1) The following paragraphs of this rule apply where—

- (a) the Court of Appeal or the Court of Session under section 104(3)(a); and
- (b) the Court of Appeal in Northern Ireland under Article 98(3)(a),

remits a reference to the Tribunal for rehearing and determination (“rehearing”).

(2) These Rules, so far as relevant, shall apply to the rehearing as they did to the original hearing of the reference.

(3) The Tribunal shall, within 28 days of the remittal, give directions in relation to the rehearing.

PART 5

General

The Register

31.—(1) The Secretary shall maintain a register of references to and decisions of the Tribunal.

(2) The register shall be open to the inspection of any person without charge and at all reasonable hours.

Miscellaneous powers of Tribunal

32.—(1) Any functions of the Secretary may be performed by an Assistant Secretary to the Tribunal or by any other member of the Tribunal staff authorised for the purpose by the Secretary.

(2) Subject to the provisions of the 2004 Act, the 2005 Order and these Rules, the Tribunal may regulate its own procedure.

(3) Without limiting any other powers conferred on it by the 2004 Act, the 2005 Order or these Rules, the Tribunal may, if it thinks fit—

- (a) order any response document, supplementary statement or written representation to be struck out at any stage of the proceedings on the ground that it is scandalous, frivolous or vexatious; or
- (b) order any reference to be struck out for want of prosecution.

(4) Before making any order under paragraph (3), the Tribunal shall give notice to the party against whom it is proposed that the order should be made, giving that party an opportunity to make representations against the making of the order.

Failure to comply

33.—(1) Where a party has, without reasonable excuse, failed to comply—

- (a) with a direction given under these Rules; or
- (b) with a provision of these Rules,

the Tribunal may take any one or more of the following steps in respect of that party—

- (i) make a costs order under rule 26 against that party;
- (ii) where that party is the applicant, dismiss the whole or part of the reference (or, if there is more than one applicant, that applicant’s reference);
- (iii) where that party is the Regulator, strike out the whole or part of the statement of case and, where appropriate, direct that the Regulator be debarred from contesting the reference altogether.

(2) The Tribunal shall not take any of these steps in respect of a party unless it has given that party an opportunity to make representations against the taking of any such steps.

Irregularities

34.—(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction of the Tribunal 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, the Tribunal may, and shall if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just to cure or waive the irregularity.

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

Power of Chairman to exercise powers of Tribunal

35. Any matter (other than the determination of a reference or the setting aside of a decision on a reference) required or authorised by these Rules to be done by the Tribunal may be done by the Chairman.

Proof of documents

36.—(1) Any document purporting to be a document duly executed or issued by the Chairman or the Secretary on behalf of the Tribunal shall, unless proved to the contrary, be deemed to be a document so executed or issued.

(2) A document purporting to be certified by the Secretary to be a true copy of any entry of a decision in the register shall, unless proved to the contrary, be sufficient evidence of the entry and of the matters referred to in it.

Sending notices

37.—(1) This rule applies to any notice sent under these Rules, and in this rule—

“send” to a person includes deliver or give to, or serve on, that person;

“notice” includes any notice or other thing required or authorised by these Rules to be sent or delivered to, or served on, any person; and

“recipient” means a person to or on whom any notice is required or authorised to be sent for the purposes of these Rules.

(2) A notice may be sent—

(a) by a postal service which seeks to deliver documents or other things by post no later than the next working day in all or in the majority of cases;

(b) by fax or other means of electronic communication; or

(c) by personal delivery.

(3) A notice shall be sent—

(a) in the case of a notice directed to the Tribunal, to the Tribunal’s office;

(b) in the case of a notice directed to the applicant—

(i) to his representative; or

(ii) where there is no representative, to the applicant,

- at the appropriate address notified to the Tribunal in accordance with rule 4(2);
- (c) in the case of a notice directed to the Regulator, to the Regulator’s head office; or
 - (d) otherwise, to the recipient’s registered office or last known address.
- (4) Subject to paragraphs (5) and (6), a notice that is sent shall be deemed, unless the contrary is proved, to have been received—
- (a) where it was sent by post, on the second day after it was sent; and
 - (b) in any other case, on the day it was sent.
- (5) Where a notice is sent by post to the Tribunal, it shall be deemed to have been received on the day it was actually received by the Tribunal.
- (6) No notice shall be deemed to have been received if it is not received—
- (a) in legible form; or
 - (b) in a form from which it can readily be produced in a legible form.
- (7) Where the time prescribed by these Rules for doing any act expires on a Saturday, Sunday, Christmas Day, Good Friday or bank holiday, the act shall be in time if done on the next following working day.
- (8) Paragraph (9) applies where—
- (a) a recipient cannot be found;
 - (b) a recipient has died and has no known personal representative;
 - (c) a recipient has no address for service in the United Kingdom; or
 - (d) for any other reason service on a recipient cannot be readily effected.
- (9) Where this paragraph applies the Chairman may dispense with service on the recipient or may make an order for alternative service on such other person or in such other form (whether by advertisement in a newspaper or otherwise) as the Chairman may think fit.
- (10) In this rule, “bank holiday” means a day that is specified in, or appointed under, the Banking and Financial Dealings Act 1971(5).

Signed by authority of the Lord Chancellor

10th March 2005

Cathy Ashton
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the procedure for references to the Pensions Regulator Tribunal (“the Tribunal”), established under section 102 of the Pensions Act 2004.

These Rules in particular provide for—

- (i) the making of a reference by the applicant filing a reference notice with the Tribunal (rule 4);
- (ii) the filing, by the Pensions Regulator, of a statement of case (rule 5);
- (iii) the filing, by the applicant, of a reply (rule 6);
- (iv) direction-making powers for the Tribunal (rules 10 to 16);
- (v) power to summon witnesses (rule 18);
- (vi) hearings by the Tribunal (rules 21 to 24);
- (vii) the publication of the Tribunal’s decision (rule 25);
- (viii) the awarding of costs (rule 26); and
- (ix) appeals from the Tribunal’s decision (rules 28 to 30).