

2005 No. 781

PENSIONS, ENGLAND AND WALES

PENSIONS, NORTHERN IRELAND

**The Pensions Regulator Tribunal (Legal Assistance Scheme)
Regulations 2005**

<i>Made</i> - - - -	<i>16th March 2005</i>
<i>Laid before Parliament</i>	<i>18th March 2005</i>
<i>Coming into force</i> - -	<i>15th April 2005</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 106 of the Pensions Act 2004(a), after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(b), makes the following Regulations:

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Pensions Regulator Tribunal (Legal Assistance Scheme) Regulations 2005 and shall come into force on 15th April 2005.

Interpretation

2. In these Regulations—

“the Act” means the Pensions Act 2004;

“advocate” means a barrister, or a solicitor who has obtained a higher courts advocacy qualification in accordance with regulations and rules of conduct of the Law Society of England and Wales or the Law Society of Northern Ireland;

“assisted person” means a person in receipt of legal assistance;

“disposable income” and “disposable capital” mean, respectively, income and capital, calculated in accordance with regulations 16 to 33;

“legal assistance” means legal assistance in connection with proceedings which are before the Tribunal pursuant to a reference, and with regard to which a determination of the Tribunal

(a) 2004 c.35.

(b) 1992 c.53. By virtue of paragraph 35 of Part 1 of Schedule 1, as amended by paragraph 8(4) of Schedule 12 to the Pensions Act 2004, the Pensions Regulator Tribunal is a tribunal under the supervision of the Council on Tribunals.

disposing of the reference has not yet been made, and includes advice, assistance and representation for the purpose of those proceedings;

“partner” except in the expression “partner in a business” means a person with whom the applicant lives as a couple, and includes a person with whom the applicant is not currently living but from whom he is not living separate and apart;

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

“representative” means a solicitor or an advocate;

“reference” means—

(a) in England and Wales, a reference to the Tribunal under section 96(3) or 99(7) of the Act; or

(b) in Northern Ireland, a reference to the Tribunal under Article 91(3) or 94(7) of the Pensions (Northern Ireland) Order 2005(a); and

“the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Act, and, for the purposes of these Regulations, includes—

(a) any member of the panel of chairmen of the Tribunal established under paragraph 1 of Schedule 4 to the Act acting alone; and

(b) any person acting on behalf of the Tribunal in accordance with regulation 42.

Scope

3. The Lord Chancellor shall fund such legal assistance as the Tribunal directs regarding a reference which the Tribunal is to determine, in relation to any individual who—

(a) has referred the matter to the Tribunal; and

(b) fulfils the criteria set out in regulation 8.

Applications for legal assistance

4.—(1) Any application shall be made in writing to the Tribunal.

(2) The application shall state—

(a) the name and address of the applicant;

(b) the name and address of the applicant’s solicitor;

(c) the Tribunal reference number allocated to the case, if known;

(d) the reasons why the applicant considers it to be in the interests of justice for legal assistance to be granted; and

(e) details of the financial resources of the applicant and of any other person whose resources are to be treated as his resources under these Regulations.

Provision of information

5.—(1) The Tribunal may direct the applicant to provide any information it requires in order to decide whether to grant his application.

(2) The applicant shall provide the Tribunal with any information it requires under paragraph (1).

Legal assistance order

6.—(1) Where an application for legal assistance is granted, the Tribunal shall—

(a) issue a legal assistance order; and

(a) S.I.2005/255 (N.I.1).

- (b) send a copy of the order to—
 - (i) the applicant;
 - (ii) the applicant’s solicitor; and
 - (iii) the Regulator.

(2) The legal assistance order shall include details of any contribution payable.

Refusal of legal assistance

7.—(1) Where an application for legal assistance is refused, the Tribunal shall send written reasons for the refusal to the applicant.

(2) An applicant whose application for legal assistance has been refused may make a renewed application in writing to the Tribunal.

(3) Any renewed application to the Tribunal under paragraph (2) shall specify any new or additional factors which the applicant wishes the Tribunal to take into account.

PART 2

Eligibility, assessment and contributions

Eligibility

8. The Tribunal shall grant legal assistance to an individual if it is satisfied that—

- (a) it is in the interests of justice to do so; and
- (b) his financial resources are such that he requires assistance in meeting the legal costs he would, but for these Regulations, be likely to incur in relation to the proceedings before the Tribunal.

Interests of justice test

9. In deciding whether it is in the interests of justice for legal assistance to be granted, the Tribunal shall take all relevant factors into account, including—

- (a) whether the individual would, if any matter arising in the proceedings before the Tribunal is decided against him, be likely to lose his livelihood or suffer serious damage to his reputation;
- (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law;
- (c) whether the individual may be unable to understand the proceedings or to state his own case;
- (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual; and
- (e) whether it is in the interests of another person that the individual be represented.

Financial eligibility

10.—(1) Where a doubt arises as to whether the financial resources of an individual are such that he requires legal assistance, the doubt shall be resolved in his favour.

(2) The Tribunal shall determine the financial eligibility of the applicant and any contribution payable in accordance with these Regulations.

(3) The Tribunal may appoint an expert to prepare a report with regard to the financial resources of the applicant.

Resources of other persons

11.—(1) In calculating the disposable income and disposable capital of the applicant, the resources of his partner shall be treated as his resources.

(2) Where it appears to the Tribunal that—

- (a) another person is, has been or is likely to be substantially maintaining the applicant; or
- (b) any of the resources of another person have been or are likely to be made available to the applicant,

the Tribunal may treat all or any part of the resources of that other person as the resources of the applicant.

(3) In this regulation and regulation 12, “person” includes a company, partnership, body of trustees and any body of persons, whether corporate or not corporate.

Deprivation or conversion of resources

12. If it appears to the Tribunal that the applicant has, with intent to reduce the amount of his disposable income or disposable capital, whether for the purpose of making himself eligible to receive legal assistance, reducing his liability to pay a contribution, or otherwise—

- (a) directly or indirectly deprived himself of any resources;
- (b) transferred any resources to another person; or
- (c) converted any part of his resources into resources which under these Regulations are to be wholly or partly disregarded,

the resources which he has so deprived himself of, transferred or converted shall be treated as part of his resources or as not so converted as the case may be.

Duty to report change in financial circumstances

13. The assisted person shall immediately inform the Tribunal of any change in his financial circumstances (or those of any other person whose resources are to be treated as his resources under these Regulations) of which he is aware, or of which he should reasonably be aware, which has occurred since any assessment of his resources, and which might affect the terms on which he was assessed as eligible to receive legal assistance.

Amendment of assessment due to error or receipt of new information

14. Where—

- (a) it appears to the Tribunal that there has been an error in the assessment of a person’s resources or contribution, or in any calculation or estimate upon which such assessment was based; or
- (b) new information which is relevant to the assessment has come to light,

the Tribunal may make an amended assessment, and may take such steps equitable to give effect to it in relation to any period during which legal assistance has already been provided.

Further assessments

15.—(1) Where it appears that the circumstances of the assisted person may have altered so that—

- (a) his disposable income has increased by an amount greater than £750 or decreased by an amount greater than £300; or
- (b) his disposable capital has increased by an amount greater than £750,

the Tribunal shall, subject to paragraph (6), make a further assessment of the assisted person's resources and any contribution which he is required to pay under regulation 34, in accordance with these Regulations.

(2) Where a further assessment is made, the period of calculation for the purposes of disposable income shall be the period of 12 months following the date of the change of circumstances or such other period of 12 months as the Tribunal considers appropriate.

(3) Where a further assessment is made, the amount or value of every resource of a capital nature acquired since the date of the original application shall be ascertained as at the date of receipt of that resource.

(4) Any capital contribution which becomes payable as a result of a further assessment shall be payable in respect of the cost of the legal assistance, including costs already incurred.

(5) Where legal assistance is withdrawn as a result of a further assessment of capital, the Tribunal may require a contribution to be paid in respect of costs already incurred.

(6) The Tribunal may decide not to make a further assessment under paragraph (1) if it considers such a further assessment inappropriate, having regard in particular to the period during which legal assistance is likely to continue to be provided to the assisted person.

Calculation of income

16.—(1) The income of the individual from any source shall be taken to be the income which he may reasonably expect to receive (in cash or in kind) during the period of calculation.

(2) For the purpose of this regulation and regulation 31, the period of calculation shall be the 12 months starting on the date of the application for legal assistance or such other 12 month period as the Tribunal considers appropriate.

17.—(1) The income from a trade, business or gainful occupation other than an occupation at a wage or salary shall be deemed to be whichever of the following the Tribunal considers more appropriate and practicable—

- (a) the profits which have accrued or will accrue to the individual in respect of the period of calculation; or
- (b) the drawings of the individual.

(2) In calculating the profits under paragraph (1)(a)—

- (a) the Tribunal may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and
- (b) there shall be deducted all sums necessarily expended to earn those profits, but no deduction shall be made in respect of the living expenses of the individual or any member of his family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of his remuneration.

18.—(1) For the purposes of this regulation, “national insurance contributions” means contributions—

- (a) in England and Wales, under Part I of the Social Security Contributions and Benefits Act 1992(a); or
- (b) in Northern Ireland, under Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b).

(2) In calculating the disposable income of the individual, any income tax and national insurance contributions paid or payable on that income in respect of the period of calculation shall be deducted.

19.—(1) For the purposes of this regulation, “the Schedule” means—

(a) 1992 c.4.
(b) 1992 c.7.

- (a) in England and Wales, Schedule 2 to the Income Support (General) Regulations 1987(a); or
- (b) in Northern Ireland, Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(b).

(2) Subject to paragraph (3), in calculating the disposable income of the individual there shall be a deduction at or equivalent to the following rates (as they applied at the beginning of the period of calculation)—

- (a) in respect of the maintenance of his partner, the difference between the income support allowance for a couple both aged not less than 18 (which is specified in column 2 of paragraph 1(3)(d) of the Schedule), and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of the Schedule); and
- (b) in respect of the maintenance of any dependant child or dependant relative of his, where such persons are members of his household—
 - (i) in the case of a dependant child or a dependant relative aged 15 or under at the beginning of the period of calculation, the amount specified at (a) in column 2 in paragraph 2(1) of the Schedule; and
 - (ii) in the case of a dependant child or a dependant relative aged 16 or over at the beginning of the period of calculation, the amount specified at (b) in column 2 in paragraph 2(1) of the Schedule.

(3) The Tribunal may reduce any rate provided by virtue of paragraph (2)(b) by taking into account the income and other resources of the dependant child or dependant relative to such extent as appears to the Tribunal to be equitable.

(4) In ascertaining whether a child is a dependant child or whether a person is a dependant relative for the purpose of this regulation, regard shall be had to their income and other resources.

20. Where the individual is making and, throughout such period as the Tribunal considers adequate, has regularly made payments for the maintenance of—

- (a) a former partner;
- (b) a child; or
- (c) a relative,

who is not a member of his household, in calculating the disposable income of the individual a reasonable amount shall be deducted in respect of such payments.

21. In calculating the disposable income of the individual from any source, the Tribunal shall disregard such amount (if any) as it considers reasonable, having regard to the nature of the income or to any other circumstances.

22. Where the income of the individual consists, wholly or partly, of a wage or salary from employment, in calculating his disposable income there shall be deducted—

- (a) the reasonable expenses of travelling to and from his place of employment;
- (b) the amount of any payments reasonably made for membership of a trade union or professional organisation;
- (c) where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the individual during the time that he is absent from home by reason of his employment; and
- (d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme or a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993(c).

(a) S.I. 1987/1967, amended by S.I. 2004/552; there are other amending instruments but none is relevant.

(b) S.R. 1987 No.459, amended by S.R. 1988 No.318 and S.R. 2003 No.195; there are other amending instruments but none is relevant.

(c) 1993 c.48, amended by section 239 of the Pensions Act 2004 (c.35).

23.—(1) Paragraphs (2) to (5) apply only if the individual is a householder.

(2) In calculating the disposable income of the individual, the net expenses payable by him in respect of his main or only dwelling, or such part of it as is reasonable in the circumstances, shall be deducted.

(3) Where the individual lives in more than one dwelling, the Tribunal shall decide which is the main dwelling.

(4) For the purpose of this regulation, “net expenses” includes—

- (a) any annual rent payable;
- (b) any annual instalment (whether of interest or capital) in respect of a mortgage debt up to a maximum of an amount bearing the same proportion to the amount of the annual instalment as £100,000 bears to the debt secured; and
- (c) a sum in respect of yearly outgoings borne by the householder including, in particular—
 - (i) in England and Wales, any water and sewerage charges, and any sums payable by the householder in respect of the council tax to which he is liable by virtue of section 6 of the Local Government Finance Act 1992^(a);
 - (ii) in Northern Ireland, the rates payable on the property; and
 - (iii) a reasonable allowance towards any necessary expenditure on repairs and insurance.

(5) In calculating the amount of net expenses payable, there shall be deducted—

- (a) in England and Wales, any council tax benefit and any housing benefit paid under the Social Security Contributions and Benefits Act 1992;
- (b) in Northern Ireland, any housing benefit paid under the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (c) any proceeds of sub-letting any part of the premises; and
- (d) an amount reasonably attributable to any person other than the individual, his partner or any dependant, who is accommodated in the premises otherwise than as a sub-tenant.

(6) If the individual is not a householder, a reasonable amount in respect of the cost of his living accommodation shall be deducted.

Calculation of capital

24. Subject to the provisions of these Regulations, in calculating the disposable capital of the individual, the amount or value of every resource of a capital nature belonging to him on the date on which the application for legal assistance is made shall be included.

25. In so far as any resource of a capital nature does not consist of money, its value shall be taken to be—

- (a) the amount which that resource would realise if sold; or
- (b) the value assessed in such other manner as appears to the Tribunal to be equitable.

26. Where money is due to the individual, whether it is payable immediately or otherwise and whether payment is secured or not, its value shall be taken to be its present value.

27. The value to the individual of any life insurance or endowment policy shall be taken to be the amount which he could readily borrow on the security of that policy.

28. Other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, nothing shall be included in the disposable capital of the individual in respect of—

- (a) the household furniture and effects of the main or only dwelling house occupied by him;
- (b) articles of personal clothing; and

(a) 1992 c.14, amended by S.I. 1997/74, article 2 and the Schedule, and by section 74 of the Local Government Act 2003 (c.26).

- (c) the tools and equipment of his trade, unless they form part of the plant or equipment of a business to which the provisions of regulation 29 apply.

29.—(1) Where the individual is the sole owner of or partner in a business, the value of the business to him shall be taken to be the greater of—

- (a) such sum, or his share of such sum, as could be withdrawn from the assets of his business without substantially impairing its profits or normal development; and
- (b) such sum as the individual could borrow on the security of his interest in the business without substantially injuring its commercial credit.

(2) Where the individual stands in relation to a company in a position analogous to that of a sole owner or partner in a business, the Tribunal may, instead of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat him as if he were a sole owner or partner in a business and calculate the amount of his capital in respect of that resource in accordance with paragraph (1).

(3) Where the individual owns solely, jointly or in common with other persons, any interest on the termination of a prior estate, whether

- (a) legal or equitable;
- (b) vested or contingent;
- (c) in reversion or remainder; and
- (d) whether in real or personal property or in a trust or other fund,

the value of such interest shall be calculated in such manner as is both equitable and practicable.

30.—(1) In calculating the disposable capital of the individual, the value of any interest in land shall be taken to be the amount for which that interest could be sold less the amount of any mortgage debt, subject to the following—

- (a) in calculating the value of his interests, the total amount to be deducted in respect of all mortgage debts shall not exceed £100,000;
- (b) in making the deductions in sub-paragraph (a), any mortgage debt in respect of the main or only dwelling shall be deducted last; and
- (c) the first £100,000 of the value of his interest (if any) in the main or only dwelling in which he resides, after the application of sub-paragraphs (a) and (b), shall be disregarded.

(2) Where the individual resides in more than one dwelling, the Tribunal shall decide which is the main dwelling.

31. Where under any statute, bond, covenant, guarantee or other instrument the individual is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, the Tribunal shall disregard such amount as is reasonably likely to become payable within the period of calculation in regulation 16(2).

32. In calculating the disposable capital of the individual, the Tribunal may disregard any capital resource where—

- (a) the individual is restrained from dealing with that resource by order of a court;
- (b) he has requested the court which made the order to release part or all of that resource for use in connection with the proceedings before the Tribunal; and
- (c) that request has been refused.

33. In calculating the disposable capital of the individual, the Tribunal may disregard such amount of capital (if any) as it considers reasonable, having regard to the nature of the capital or to any other circumstances.

Contributions

34.—(1) The assisted person shall make the following contributions—

- (a) where his annual disposable income exceeds £3,110, monthly contributions of one thirty-sixth of the excess; and
 - (b) where his disposable capital exceeds £3,000, a contribution of the whole of the amount of the excess.
- (2) All contributions shall be payable in such manner as the Tribunal directs.
- (3) All contributions payable under paragraph (1)(a) shall be payable monthly throughout the period the legal assistance order is in force.
- (4) All contributions payable under paragraph (1)(b) shall be payable upon assessment, or at such other time as the Tribunal directs.
- (5) Where the contribution made by the assisted person exceeds the cost to the Tribunal of the legal assistance provided to him, the excess shall be refunded to the assisted person.
- 35.—**(1) Where, on determining a reference, the Tribunal directs the Regulator to—
- (a) vary or revoke the Regulator’s determination, and any order, notice or direction made, issued or given as a result of it; or
 - (b) substitute a different determination, order, notice or direction,
- the Tribunal may, at the hearing of the reference, order the refund of some or all of any contribution made by the assisted person.
- (2) In making a decision under paragraph (1), the Tribunal shall have regard to all the circumstances of the case, including the conduct of the parties.

PART 3

Assignment and amendment

Assignment of legal representatives

- 36.—**(1) A legal assistance order may provide for legal assistance to be provided by a solicitor alone, or by a solicitor and one or more advocates.
- (2) The Tribunal, in deciding what legal assistance to grant under paragraph (1), shall take all relevant factors into account, including—
- (a) whether the case appears to involve substantial, novel or complex issues of law or fact;
 - (b) whether the case is exceptional compared with the generality of such cases; and
 - (c) the number and level of advocates instructed on behalf of the Regulator.

37. Where a reference to the Tribunal has been made on the same matter by more than one person each of whom are assisted, the Tribunal may, unless it considers it not to be in the interests of justice to do so, assign the same solicitor and, if any, advocate, to each of those individuals.

Amendment of legal assistance order

- 38.—**(1) An application may be made to the Tribunal to amend a legal assistance order, and any such application shall state the grounds on which it is made.
- (2) The Tribunal may grant or refuse any application made under paragraph (1).
- (3) The Tribunal may, before granting legal assistance for more than one advocate, require written advice from any advocate already assigned to the assisted person on the question of what legal assistance is required in the proceedings.
- 39.—**(1) Where an application for legal assistance has been granted, an application may be made to the Tribunal to select a representative in place of a representative previously assigned and any such application shall state the grounds on which it is made.
- (2) The Tribunal may grant or refuse any application made under paragraph (1).

PART 4

Withdrawal and abuse

Withdrawal of legal assistance

40.—(1) The Tribunal may withdraw legal assistance where—

- (a) the assisted person has requested that it do so;
- (b) there has been a change of circumstances in relation to any of the factors which the Tribunal took into account in deciding that legal assistance should be granted;
- (c) the assisted person has failed to provide any relevant information or evidence;
- (d) the assisted person has made a false statement regarding his financial resources;
- (e) the assisted person has failed to pay all or part of any contribution required by the Tribunal; or
- (f) it appears to the Tribunal to be in the interests of justice to do so.

(2) Before the Tribunal withdraws legal assistance, it shall take into account any representations which are made within a reasonable time by or on behalf of the assisted person.

(3) Where legal assistance is withdrawn, the Tribunal shall provide written notification of the withdrawal and of the reason for it to the assisted person and his solicitor, who shall inform any assigned advocate.

(4) On any subsequent application by the assisted person for legal assistance in respect of the same proceedings, he shall declare the withdrawal of legal assistance and the reason for it.

Duty to report abuse

41. Notwithstanding the relationship between or rights of a representative and client or any privilege arising out of any such relationship, where the representative for an assisted person knows or suspects that that person—

- (a) has intentionally failed to comply with any provision of these Regulations concerning the information to be provided by him; or
- (b) in providing such information has knowingly made a false statement or false representation,

the representative shall immediately report the circumstances to the Tribunal.

PART 5

Constitution

Acts of the Tribunal

42. Any act required or authorised by these Regulations to be done by the Tribunal may be done by a member of the panel of chairmen of the Tribunal acting alone or by a person authorised by the Tribunal to carry out that act.

Signed by authority of the Lord Chancellor

16th March 2005

David Lammy
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the provision of legal assistance in respect of matters which are referred to the Pensions Regulator Tribunal under the Pensions Act 2004 (c.35) or the Pensions (Northern Ireland) Order 2005 (S.I.2005/255 (N.I.1)).

In particular, the Regulations provide for—

- (a) the manner in which applications for legal assistance are to be made (regulation 4);
- (b) the circumstances in which an individual may receive legal assistance, including with regard to his financial eligibility (regulations 8, 9 and 10);
- (c) the assessment of his financial resources, including the calculation of his disposable income and disposable capital (regulations 11 to 33);
- (d) the determination of any contribution payable (regulations 34 and 35);
- (e) the assignment and change of representatives (regulations 36 to 39);
- (f) the withdrawal of legal assistance and duty to report abuse (regulations 40 and 41);
- (g) the constitution of the Tribunal (regulation 42).

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Regulations 2005

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