
STATUTORY INSTRUMENTS

2009 No. 1810

The Dunfermline Building Society
Independent Valuer Order 2009

PART 5

References to the Tribunal

Right to refer to the Tribunal

13. If —

- (a) the Treasury, or
- (b) any person who is affected by the determination set out in a revised assessment notice of the amount of compensation payable,

are dissatisfied with the revised assessment notice, the Treasury or any such person may refer the matter to the Tribunal.

Application of the Financial Services and Markets Act 2000

14.—(1) The provisions of—

- (a) Part 9 (hearing and appeals) of, and Schedule 13 (the Financial Services and Markets Tribunal) to, the Financial Services and Markets Act 2000(1); and
- (b) the Financial Services and Markets Tribunal Rules 2001(2);

shall apply in respect of any reference made under article 13, subject to the modifications set out in this Part.

Modification of the Financial Services and Markets Act 2000

15. Part 9 of, and Schedule 13 to, the Financial Services and Markets Act 2000 are modified as follows.

16. In section 133 (proceedings: general provision) and Schedule 13, for “the Authority” in each place where it occurs substitute “the independent valuer appointed in accordance with article 5(2) of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009”.

17. In section 133—

(1) Paragraphs 4 and 8 of Schedule 13 to FSMA 2000 were amended by the Constitutional Reform Act 2005 (c. 4), section 15(1) and Schedule 4, paragraph 286. Section 137 of FSMA is to be amended by the Constitutional Reform Act 2005, section 40 and Schedule 9, paragraph 70 from a date to be appointed. Schedule 13 to FSMA was amended by the Tribunal Courts and Enforcement Act 2007, section 50 and Schedule 10, paragraph 34.

(2) [S.I. 2001/2476](#).

- (i) in subsection (1)(a) for “the decision notice or supervisory notice in question”, substitute “the revised assessment notice issued by the independent valuer under article 12(2) of the Dunfermline Building Society Independent Valuer Order 2009”;
- (ii) for subsection (4) substitute—
 - “(4) Where the Tribunal is satisfied that the decision as to the amount of compensation shown in the revised assessment notice was not a reasonable decision the Tribunal must remit the matter to the independent valuer for reconsideration in accordance with such directions (if any) as it considers appropriate.”;
- (iii) ignore subsections (5) to (9) and (12).

18. Ignore sections 134 to 136.

Modification of Financial Services and Markets Tribunal Rules 2001

19. The Financial Services and Markets Tribunal Rules 2001 are modified as follows.

20. In each place where it occurs (other than in rule 2)—

- (a) for “Authority” substitute “respondent”;
- (b) for “Authority notice” substitute “revised assessment notice”;
- (c) for “statement of case” substitute “response document”.

21. In rule 2 (interpretation)—

- (a) ignore the definitions for “the Authority”, “Authority notice”, “further material”, “protected item”, “reply” and “statement of case”;
- (b) in the definition of “party”, for “Authority”, in both places where it occurs, substitute “respondent”;
- (c) in the definition of “referred action” for “the act (or proposed act) on the part of the Authority” substitute “the revised assessment notice”;
- (d) for the definition of “response document” substitute
 - ““response document” means a statement filed by the respondent under rule 5(1);”;
 - and

(e) in the appropriate places insert—

““respondent” means the independent valuer appointed in accordance with article 5(2) of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009”;

“revised assessment notice” means the revised assessment notice issued by the respondent under article 12(2) of the Dunfermline Building Society Independent Valuer Order 2009.”.

22. In rule 4(6) (reference notice) ignore “, a direction under rule 10(1)(e) (suspension of Authority’s action) or”.

23. In rule 5 (Authority’s statement of case)—

(a) for paragraphs (1) and (2) substitute—

“(1) The respondent shall file a written statement (“a response document”) dealing with any issues arising out of the reference notice that the respondent wishes the Tribunal to consider so that it is received by the Tribunal no later than 28 days after the day on which the respondent received the information sent by the Secretary in accordance with rule 4(9)(b).

(2) At the same time as it files the response document, the respondent shall send a copy to the applicant.”;

(b) ignore paragraphs (3) and (4).

24. Ignore rules 6 (applicant’s reply), 7 (secondary disclosure by the Authority), 8 (exceptions to disclosure), 11 (filing of subsequent notices in relation to the referred action), 12(2) (summoning of witnesses), 14(3)(c) (withdrawal of reference and unopposed references), 15 (references by third parties) and 23(4) (application for permission to appeal).

25. In rule 10 (particular types of directions) ignore paragraphs (1)(e), (2)(a), (6) and (8).

26. After rule 10 (particular types of directions) insert—

“Same issues proceedings

10A.—(1) The President may, of his own motion or on application by a party, direct that a reference is heard as a lead case where—

- (a) two or more references under article 13 of the Dunfermline Building Society Independent Valuer Order 2009 have been made, but have not yet been determined by the Tribunal; and
- (b) it appears to the President that those references give rise to common or related issues of fact or law (“same issues proceedings”).

(2) The President may—

- (a) make such further directions as he or she considers appropriate for determination of the lead case; and
- (b) direct that pending determination of the lead case all other same issues proceedings before the Tribunal shall be stayed.

(3) All parties in same issue proceedings must be allowed to make representations prior to the President making a direction under paragraph (1) or (2).

(4) Without prejudice generally to the parties’ rights of appeal and to paragraphs (5) to (7), the Tribunal’s determination of the same issues in the lead case shall be binding on the parties to each of the same issues proceedings unless the Tribunal or the President directs otherwise.

(5) Any party to any of the same issues proceedings may apply to the President for a direction that the determination of the same issues in the lead case does not apply to that party’s case.

(6) An application under paragraph (5) must be made not later than 21 days after the date on which that party received notice of the determination of the same issues in the lead case.

(7) Within 28 days beginning with the date of determination of the same issues in the lead case the President may make further directions in relation to—

- (a) the lead case and each of the same issues proceedings stayed pending the determination of the same issues in the lead case;
- (b) the extent to which the determination of the same issues in the lead case is binding on any subsequent proceedings; and
- (c) any further directions required as a result of an application under paragraph (5), including a direction as to any further hearing required in relation to those proceedings.

(8) Where a direction has been made for any proceedings to be heard as a lead case and those proceedings are withdrawn or discontinued either before or during the hearing, the President may direct—

- (a) that one of the remaining same issues proceedings be substituted as the lead case; and
- (b) the extent to which any directions made prior to substitution shall be binding in relation to the substituted proceedings.

(9) The Secretary must send notice of the directions to be made under paragraphs (1) and (2), a copy of the directions made under paragraphs (1), (2), (4), (5), (7) and (8) and the determination of the same issues in the lead case to all the parties to the same issues proceedings.

Joining of parties to proceedings

10B. If it appears to the President or the Chairman, whether on the application of a party or otherwise, that it is desirable that any person other than the respondent be made a party to any proceedings, he or she may direct that such person be joined as a party in the proceedings and may make such further directions for giving effect to, or in connection with, the direction as he or she thinks fit.”.

27. In rule 19(3) (procedure at hearings) ignore “when taking the referred action”.