

PENSIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – the Pensions Regulator

The Pensions Regulator Tribunal

Section 102: The Pensions Regulator Tribunal

310. This section establishes the new Pensions Regulator Tribunal – referred to in the Act as “the Tribunal”. *Schedule 4* sets out detailed provisions in relation to the Tribunal. The Lord Chancellor may make procedural rules in relation to the conduct of the Tribunal’s proceedings.

Schedule 4: The Pensions Regulator Tribunal

311. *Paragraph 1* sets out that the Lord Chancellor must appoint a panel of individuals who will chair the Tribunal (the panel of Chairmen) and the qualifications individuals need for this post. The Lord Chancellor must also appoint a panel (the lay panel) of individuals who appear to be qualified by experience or otherwise to deal with matters which will come before the Tribunal.
312. *Paragraph 2* sets out that the Lord Chancellor must appoint from the panel of chairmen a President and a Deputy President to preside over the exercise of the Tribunal’s functions and the qualification that these individuals should hold. The President can assign functions on to the Deputy President as he sees fit. If the President is absent, his functions can be exercised by the Deputy President or another member of the panel of chairmen who is appointed by the Lord Chancellor.
313. *Paragraph 3* states that each member of each panel (chairmen and lay panel) may hold, vacate, resign or be removed from office in accordance with the terms and conditions of their appointment. A member can be re-appointed if he ceases to hold office.
314. *Paragraphs 4, 5 and 6* set out that the Lord Chancellor can determine the pay of any member of the Tribunal and of an expert appointed under *paragraph 7(4)* and he can appoint staff for the Tribunal and set their remuneration, and which expenses of the Tribunal are to be borne by the Lord Chancellor.
315. *Paragraph 7* sets out the constitution of the Tribunal. It specifies that the President must set out how members of a Tribunal are chosen from the panels (‘the standing arrangements’). These arrangements must provide for at least one member to be selected from the panel of chairmen. The paragraph also provides for the procedures if a member of a Tribunal is unable to sit on the Tribunal. The Tribunal may appoint one or more experts if it feels it needs their technical expertise on a factual matter which may arise.
316. *Paragraph 8* states that the Lord Chancellor may state the times when and the place where the Tribunal must sit.

317. *Paragraph 9* lists provisions that the Lord Chancellor may include in the rules made under *section 102*.
318. *Paragraph 10* specifies that the President may give directions as to the practice and procedure to be followed by the Tribunal in relation to references to it.
319. *Paragraph 11* states that the Tribunal may by summons require persons to attend or produce evidence which the Tribunal considers it necessary to examine. A person who without reasonable excuse fails to attend, or give evidence, is guilty of an offence and can receive a fine not exceeding level 5 on the standard scale. A person who without reasonable excuse refuses to produce a document, or alters, conceals or destroys a document which he is required to produce can, on summary conviction, be subject to a fine not exceeding the statutory maximum and on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
320. *Paragraph 12* lists rules and procedure surrounding the decisions of the Tribunal. These are:
- a decision of the Tribunal may be taken by a majority;
 - the decision must state whether it was unanimous or taken by a majority;
 - the decision must be recorded in a document which, contains a statement of the reasons for the decision, and is signed and dated by the member of the panel of chairmen dealing with the reference;
 - the Tribunal must inform each party to the reference of its decision;
 - the Tribunal must as soon as reasonably practicable send a copy of the document which the decision was recorded in, to each of the parties to the reference, and to such other persons as appear to the Tribunal to be directly affected by the decision;
 - the Tribunal must send the Secretary of State and the Department for Social Development in Northern Ireland a copy of its decision.
321. *Paragraph 13* provides that if the Tribunal considers that a party acted vexatiously, frivolously or unreasonably, it can order the party to pay some or all of the costs or expenses that were incurred by another party to the proceedings. Also, if the Tribunal considers the determination of the Regulator was unreasonable it can order the Regulator to pay some or all of the costs of the other party incurred in the proceedings.
322. *Paragraph 14 to 21* lists amendments to other enactments to ensure that correct reference is made to the provisions contained in this schedule.

Section 103: References to the Tribunal

323. *Subsection (1)* provides for the time limits for making references to the Tribunal. The Tribunal may allow a case to be referred after these periods have elapsed.
324. The Tribunal will hear any reference afresh, and accordingly will be able to consider any evidence relating to a reference whether or not it was available to the Regulator. Its purpose is to determine what action, if any, the Regulator must take in relation to the reference.
325. The Tribunal may give the Regulator such directions as it considers appropriate for giving effect to its determination. The Tribunal may also on determining a reference make a recommendation to change the Regulator's procedures. An order of the Tribunal can be enforced as if it were an order of a county court or in Scotland an order of the Court of Session.

Section 104: Appeal on a point of law

326. There is a right of appeal, with permission of the Tribunal, the Court of Appeal, or in Scotland the Court of Session, on a point of law only, from decisions of the Tribunal to the Court of Appeal or in Scotland, the Court of Session. There is then a further right of appeal to the House of Lords.
327. If on appeal the court finds the decision of the Tribunal was wrong in law then the court may either send the case back to the Tribunal for a rehearing and redetermination or make a determination itself.

Section 105: Redetermination etc by the Tribunal

328. This section applies when an application for permission to appeal a decision of the Tribunal is made. If the chairman or person who constitutes in law the Tribunal for this application considers that the decision of the Tribunal was wrong the decision may be set aside and either reheard and redetermined by the same Tribunal or one made up of different members.

Section 106: Legal assistance scheme

329. This section enables the Lord Chancellor to establish, by regulations, a scheme providing legal assistance for cases which go to the Tribunal. This provision does not extend to Scotland (see [section 323\(3\)](#)(extent)).
330. The legal assistance scheme may make provision for-
- the kinds of legal assistance that may be provided;
 - the persons by whom legal assistance may be provided;
 - the manner in which applications for legal assistance are to be made;
 - the criteria on which eligibility for legal assistance is to be determined;
 - the persons or bodies by whom applications are to be determined;
 - appeals against refusals of applications; the revocation or variation of decisions; and
 - its administration and the enforcement of its provisions.
331. The conditions placed on the legal assistance provided may require the recipient of the aid to make a contribution.