

1987 No. 891

BUILDING SOCIETIES

**The Building Societies Appeal Tribunal Regulations
1987**

<i>Made - - - -</i>	<i>13th May 1987</i>
<i>Laid before Parliament</i>	<i>14th May 1987</i>
<i>Coming into force</i>	<i>8th June 1987</i>

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The Treasury, in exercise of the powers conferred upon them by section 48(3) of the Building Societies Act 1986(a) and of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals, hereby make the following Regulations:—

Citation and commencement

1.—(1) These Regulations may be cited as the Building Societies Appeal Tribunal Regulations 1987.

(2) These Regulations shall come into force on 8th June 1987.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Building Societies Act 1986;

“appeal” means an appeal to which these Regulations apply in accordance with regulation 3;

“appellant” means a person who under the Act is entitled to appeal or, being so entitled, has appealed, as the case may be, to the Tribunal against a decision of the Commission;

“the chairman” means the chairman of the Tribunal appointed in accordance with section 47(2) of the Act;

“the Commission” means the Building Societies Commission established by section 1 of the Act;

“preliminary hearing” means the hearing held pursuant to regulation 10.

“the secretary” means the person appointed by the Treasury to act as secretary to the Tribunal.

(2) Unless the context otherwise requires any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

Application of Regulations

3. These Regulations apply to appeals under section 46 of the Act against decisions of the Commission.

Time for and manner of bringing appeals

4. An appeal shall be brought by sending a notice of appeal to the Secretary of the Building Societies Appeal Tribunal, c/o Her Majesty's Treasury, Treasury Chambers, Parliament Street, London SW1P 3AG not later than—

(a) in the case of an appeal against the decision of the Commission to refuse to grant authorisation, to impose conditions or as to the conditions imposed, 28 days,

(b) in the case of an appeal against the decision of the Commission to revoke authorisation, 10 days, or

(c) in the case of an appeal under section 46(2) of the Act, 10 days where the decision of the Commission relates to the revocation of an authorisation and 28 days in any other case,

from the date on which the Commission serves notice in writing on the appellant of its decision.

Notice of appeal

5.—(1) The notice of appeal shall be signed by or on behalf of the appellant and shall contain the following particulars:—

(a) the appellant's name;

(a) 1986 c.53.

- (b) his address or, where the appellant is a building society, the address of its principal office;
- (c) the address within the United Kingdom to which applications, notices and other documents in connection with the appeal should be sent to the appellant, if different from the address referred to in sub-paragraph (b);
- (d) the name and address of any person appointed by the appellant to represent him or it in connection with the appeal;
- (e) a statement of the decision of the Commission against which the appeal is made.

(2) The appellant shall, upon sending notice of appeal to the secretary, send a copy of the notice to the Commission and, where in making its decision the Commission makes a determination that a person is not a fit and proper person to hold or, as the case may be, to remain in an office in the society or imposes a requirement that he be removed from an office in the society, the appellant shall, if it is a building society, send a copy of the notice to that person or, if the appellant is that person himself, send a copy of the notice to the building society concerned.

Establishment of the Tribunal

6. On receipt of a notice of appeal the secretary shall forthwith request the Lord Chancellor or the Lord Advocate and the Chancellor of the Exchequer respectively to appoint the Chairman and other members of the Tribunal in accordance with section 47(2) of the Act to determine the appeal.

Respondent

7. On every appeal the Commission shall be the respondent.

Grounds of Appeal

8.—(1) The appellant shall send to the secretary a notice of grounds of appeal containing sufficient particulars to show why the decision appealed against was unlawful or was not justified by the evidence on which it was based—

- (a) within 28 days from the date on which the Commission served notice in writing on the appellant of its decision, in the case of an appeal against the decision of the Commission to revoke authorisation and in the case of an appeal under section 46(2) of the Act where the decision of the Commission relates to the revocation of authorisation, and
- (b) within 14 days of sending the notice of appeal to the secretary, in any other case.

(2) The appellant shall, upon sending the notice of grounds of appeal referred to in paragraph (1), send a copy of the notice to the persons to whom a copy of the notice of appeal was sent pursuant to regulation 5(2).

Supply of documents by the Commission

9. Within 14 days of receiving the copy of the notice of appeal under regulation 5, the Commission shall send to the secretary four copies of the documents listed in the Schedule to these Regulations and shall send to the appellant a list of those documents together with a copy of any documents which the Commission has not already supplied to the appellant.

Preliminary hearing

10.—(1) The secretary shall send to the appellant and the Commission and, in the case of an appeal under section 46(2) of the Act, the building society concerned a notice informing them of the time and place of the preliminary hearing which, unless the appellant and the Commission otherwise agree, shall be—

- (i) not earlier than 21 days and not later than 35 days after the date of receipt by the secretary of the notice of appeal; and
- (ii) not earlier than 5 days after the date on which the notice is sent.

(2) The preliminary hearing shall be in private and shall be heard by the chairman.

(3) The appellant and the Commission and, in the case of an appeal under section 46(2) of the Act, the building society concerned may appear at the preliminary hearing and may be represented by counsel or solicitor or by any other person.

(4) At the preliminary hearing the chairman shall give such directions as he considers necessary or desirable for the conduct of the appeal and shall fix the date for the hearing.

(5) Notwithstanding that the preliminary hearing shall be in private, the other members of the Tribunal may attend and a member of the Council on Tribunals or the Scottish Committee of the Council on Tribunals may attend in his capacity as such.

Interim relief

11.—(1) On an application under section 47(5) of the Act for the suspension of the operation of any condition which is the subject of an appeal, the Tribunal may determine it on the basis of written representations if the parties so agree in writing or may direct the parties to appear before it.

(2) The Tribunal shall notify its determination and the reasons for it to the Commission and the building society which made the application for interim relief and may do so to any other party to the appeal or to any person to whom notice of the appeal has been given under regulation 5(2).

Amendment of grounds of appeal

12.—(1) An appellant may amend a notice of grounds of appeal at any time before the preliminary hearing and shall promptly notify any person to whom a copy of the notice was sent pursuant to regulation 5(2) of the amendment.

(2) An appellant may amend a notice of grounds of appeal in the course of the preliminary hearing with the leave of the chairman or at any time thereafter with the leave of the Tribunal.

(3) The chairman or the Tribunal shall not give such leave unless he or it has afforded the Commission an opportunity of making representations on the proposed amendment.

(4) Leave may be granted on such terms (if any), including terms as to costs or expenses, as the chairman or the Tribunal thinks fit.

(5) Where a notice of grounds of appeal is amended with leave the appellant shall promptly notify any person to whom a copy of the notice was sent pursuant to regulation 5(2) of the amendment.

Evidence and procedure at hearing

13.—(1) For the purposes of the appeal the chairman may, on the application of a party to the appeal or on his own motion, by direction given at the preliminary hearing or by notice in writing require any person, at a time and place stated in the direction or notice, to attend and give evidence or produce any document in that person's custody or under his control which relates to any matter in question at the hearing; provided that—

(a) no person shall be required, in obedience to such direction or notice, to attend and give evidence or to produce any such document unless the necessary expenses of his attendance are paid or tendered to him; and

(b) no person shall be compelled to give any evidence or produce any document which he could not be compelled to give or produce if the hearing were a proceeding in a court of law in that part of the United Kingdom where the appeal is to be determined; and

(c) in exercising the power conferred by this paragraph the chairman shall take into account, in particular, the need to protect commercially sensitive information relating to a person not a party to the appeal.

(2) Except where the chairman otherwise directs, a witness shall not be obliged to attend and give evidence or produce any document in obedience to a direction of or notice from the chairman unless that direction or notice has been served on him not less than 5 days before the day appointed for the hearing.

(3) The chairman may set aside any direction or notice under this regulation on the application of the person to whom the direction was addressed but shall not do so without first notifying any person who applied for the direction and considering any representations made by that person.

(4) The secretary shall supply a copy of any documents obtained under this regulation to any party to the appeal if that party does not already have a copy of the document and it shall be a condition of such supply that the information so supplied shall be used only for the purposes of the appeal.

(5) The hearing shall, subject to section 48(2) of the Act, be in private unless, at the preliminary hearing or at any other time the chairman directs that the hearing or any part of it shall be in public, but nothing in this paragraph shall prevent a member of the Council on Tribunals or the Scottish Committee of the Council on Tribunals from attending the hearing, and (with the consent of the parties to the appeal) any deliberations of the Tribunal, in his capacity as such.

(6) The appellant and the Commission may appear at the hearing and may be represented by counsel or solicitor or by any other person.

(7) At the hearing the appellant and the Commission shall each be entitled to make an opening statement, to call witnesses to give evidence, to cross examine witnesses called by the other party and to make a final statement.

(8) Where the building society is entitled to be heard in accordance with section 48(2) of the Act, it may be represented by counsel or solicitor or by any other person or may make written representations.

(9) The Tribunal may require any witness to give evidence on oath or affirmation which may be administered for that purpose by the chairman.

(10) Subject to paragraph (1), evidence may be admitted by the Tribunal whether or not it would be admissible in a court of law.

(11) If the appellant or the Commission shall fail to appear or be represented at the time and place fixed for the hearing, the Tribunal may proceed with the hearing or adjourn it to a later date; and if it proceeds with the hearing, it shall take into consideration any written representations which may have been submitted by either party or, in the case of an appeal under section 46(2) of the Act, by the building society concerned, whether in accordance with any provision contained in these Regulations or otherwise.

(12) The Tribunal may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

Procedure after hearing

14.—(1) The Tribunal shall after the close of the hearing notify its determination and its reasons therefor in writing to the appellant and the Commission and may do so to any person who, having appeared at the hearing or having made written representations, has asked to be notified of the determination.

(2) The Tribunal may, after hearing representations from the parties, make arrangements for the publication of its determination but in doing so shall have regard to the desirability of safeguarding commercially sensitive information and the interests of investors and for that purpose may make any necessary amendments to the text of the decision to conceal the identity of the appellant.

(3) Where appeals have been consolidated pursuant to regulation 21, the Tribunal shall give its reasons for its determination—

- (a) in respect of the appeal by a building society to that society; and
- (b) in respect of the appeal brought by a person pursuant to section 46(2) of the Act to that person and to the society concerned.

Withdrawal of appeal

15.—(1) The appellant may withdraw the appeal at any time before the hearing by giving notice in writing to the Commission and to the secretary.

(2) The appellant may at the hearing give notice to the Tribunal that he or it desires to withdraw the appeal and thereupon the Tribunal shall bring the hearing to a close.

(3) The Commission may at any time withdraw its opposition to an appeal by giving notice to the appellant and the Tribunal.

(4) If an appeal is withdrawn, it shall be deemed to be dismissed and the Tribunal shall formally notify the persons referred to in regulation 14(1) accordingly.

(5) Where an appeal is withdrawn, or the Commission withdraws from an appeal, the Tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

Costs

16.—(1) Any costs or expenses directed to be paid under section 48(1) of the Act (which provides that the Tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal) and required to be taxed shall be taxed by a taxing master of the Supreme Court or, in Scotland, the Auditor of the Court of Session.

(2) A direction under section 48(1) of the Act in respect of the payment of costs by a party to the appeal shall, on application being made to the High Court by the party to whom costs have been directed to be paid, be enforceable as if he had obtained a judgement of that Court in his favour, and in Scotland the certificate of taxation of such expenses taxed in accordance with paragraph (1) may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued from the Books of Council and Session.

Time and miscellaneous powers

17.—(1) Where the time prescribed by or under these Regulations for doing any act expires on a Saturday, Sunday or public holiday and by reason thereof the act cannot be done on that day, the act shall be in time if done on the next working day.

(2) The periods referred to in regulations 8, 9 and 10 may be extended by the chairman on such terms (if any) as the chairman after consulting the parties thinks fit and any application for such extension may be granted although it is not made until after the expiration of the period.

(3) The chairman may, after consulting the parties—

- (a) postpone the date fixed for the hearing of an appeal; or
- (b) alter the place appointed for any hearing;

and, if he exercises either of the above powers, the secretary shall notify each party and any witnesses concerned and, in the case of an appeal under section 46(2) of the Act, the building society concerned of the revised arrangements.

Tribunal's power to determine its own procedure

18. Subject to the provisions of the Act and of these Regulations, the Tribunal shall have power to determine its own procedure.

Service of notices etc.

19.—(1) Any notice or other document to be sent, served or given to any person for the purposes of the appeal may be delivered or may be sent by first class recorded delivery service or registered letter—

- (a) in the case of a document directed to the Tribunal, to the address set out in regulation 4;
- (b) in the case of a document directed to the appellant or his representative, to the address provided in the notice of appeal in accordance with regulation 5 or such other address as may subsequently be notified to the Tribunal and the Commission;
- (c) in the case of a document directed to the Commission to the address shown on the notice of its decision;

(d) in any other case, to the last known address of the person to whom the document is directed;
and documents falling within (b) or (d) above, if sent, served or given to the authorised representative of any person, shall be deemed to be sent, served or given to that person.

(2) Any such notice or other document may be sent, served or given by telex or other similar means which produce a document containing the text of the communication.

Irregularities

20—(1) Any irregularity resulting from failure to comply with any provision of these Regulations before the Tribunal have reached their decision shall not of itself render the proceedings void.

(2) In any such case the Tribunal may, and shall if they consider that any person may have been prejudiced, take such steps as they think fit before reaching their decision to cure the irregularity.

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

Consolidation of appeals

21. Where in making its decision the Commission made a determination that a person is not a fit and proper person to hold or, as the case may be, to remain in an office in the society or imposed a requirement that he be removed from an office in the society and both the society and the person concerned appeal against the decision, the chairman may, at the preliminary hearing or at some other time, direct that the two appeals shall be consolidated provided that the chairman shall not make such a direction without giving all parties concerned an opportunity to show cause why such a direction should not be made.

13th May 1987

Peter Lloyd
Mark Lennox-Boyd
Two of the Lords Commissioners
of Her Majesty's Treasury

SCHEDULE

Regulation 9

DOCUMENTS TO BE SENT TO THE TRIBUNAL BY THE COMMISSION

1. In the case of an appeal against a decision of the Commission to refuse to grant or renew authorisation—

- (a) a copy of the application for authorisation submitted under paragraph 2(1) of Schedule 3 to the Act,
- (b) a copy of any information submitted under paragraph 2(1) or (2) thereof,
- (c) a copy of any notice served by the Commission under paragraph 2(4) thereof,
- (d) a copy of any written representations and a record of any oral representations made in accordance with paragraph 2(4) or (5) thereof, and
- (e) a copy of the notice served under paragraph 2(7) thereof.

2. In the case of an appeal against a decision of the Commission to revoke authorisation—

- (a) a copy of the authorisation,
- (b) a copy of the notice served under paragraph 6(1) of Schedule 3 to the Act,

- (c) a copy of any written representations and a record of any oral representations made in accordance with paragraph 6(1) or (2) thereof, and
 - (d) a copy of the notice served under paragraph 6(3) thereof.
3. In the case of an appeal against a decision of the Commission to impose conditions or as to the conditions imposed—
- (a) a copy of any notice served under paragraph 4(1), 5(2), 7(2) or 8(2) of Schedule 3 to the Act,
 - (b) a copy of any written representations and a record of any oral representations made in accordance with paragraph 4(1) or (2), 5(2) or (3), 7(2) or (3) or 8(2) or (3) thereof, and
 - (c) a copy of any notice served under paragraph 4(3), 5(4), 7(4) or 8(4) thereof.
4. In the case of an appeal under section 46(2) of the Act—
- (a) a copy of any notice served under paragraph 2(5), 4(2), 5(3), 6(2), 7(3) or 8(3) of Schedule 3 to the Act,
 - (b) a copy of any written representations and a record of any oral representations made by the appellant in accordance with paragraph 2(5), 4(2), 5(3), 6(2), 7(3) or 8(3) thereof, and
 - (c) a copy of any notice served under paragraph 2(7), 4(3), 5(4), 7(4) or 8(4) thereof.
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to appeals under section 46 of the Building Societies Act 1986 against decisions of the Building Societies Commission to refuse to grant authorisation, to revoke authorisation or to impose conditions or as to the conditions imposed or that a person is not a fit and proper person to be an officer of a building society. Provision is made as to the time and manner in which appeals are to be brought, the evidence and procedure at the hearing, the procedure after the hearing, the payment of costs of appeals and other miscellaneous matters connected with them.

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