



PENSIONS APPEAL TRIBUNALS SCOTLAND

PENSIONS APPEAL TRIBUNALS ACT 1943

PENSIONS APPEAL TRIBUNALS (SCOTLAND) RULES 1981

Pilot Practice Direction: Contingency Arrangements in the Pensions Appeal Tribunals for Scotland

Background

1. This Practice Direction is made under paragraphs 3A and 3B of the Schedule to the Pensions Appeal Tribunals Act 1943 ('the 1943 Act'). The Pensions Appeal Tribunals Rules 1981, as amended ('the 1981 Rules'), are subject to the changes made to procedure by this Practice Direction.
2. During the Covid-19 pandemic, the maintenance of the health, safety and welfare of all of those involved in proceedings before the Pensions Appeal Tribunals for Scotland (PAT), (including but not limited to appellants, applicants, representatives, tribunal panel members and administrative support staff) is paramount.
3. As such, it may be necessary for the PAT to adjust its way of working to limit the spread of the virus and exposure of participants in tribunal proceedings to potential contagion and to ensure continuity of judicial business.
4. This Practice Direction is issued on a pilot basis for a period of six months, although it may be reviewed within that period should it become inappropriate or unnecessary and may be revoked at any time.

Scope

5. This Practice Direction applies to all appeals and applications in the PAT.

Number of members who decide appeals

6. The PAT is constituted by section 6 of and the Schedule to the Pensions Appeal Tribunals Act 1943. Paragraph 1 of the Schedule provides that members of the PAT shall be appointed by the Lord President of the Court of Session. The Lord President must ensure that the PAT at all times includes persons who are legally qualified, medically qualified, and those with knowledge or experience of service in Her Majesty's naval, military or air forces, and other persons (paragraph 2A). Paragraph 3 provides that each tribunal shall include a legal member, who shall be the presiding chairman of any appeal. The 1943 Act does not make express provision for a minimum number of tribunal members to hear any particular appeal. It is the current practice that each tribunal comprises a legal, medical and service member (three-member tribunal). That will continue to be the normal composition of tribunals.
7. The President of the PAT may give directions as to the number of members of the PAT who should hear an appeal (paragraph 3A).
8. While this Practice Direction remains in force, the following provisions will also apply to all decisions (whether on preliminary issues or those that determine proceedings):-
 - (a) If the President, or a legal member requested by the President to undertake a review of case papers, considers that an appeal could not proceed, or would be subject to unacceptable delay, if the appeal was to be heard by a three-member tribunal, the President or that legal member may decide that the case may be heard by a legal member alone, or by a tribunal consisting of fewer or different members.
 - (b) When making a decision under paragraph 8(a), the President, or legal member, must have regard to the urgency within which an appeal needs to be heard and the need to ensure the case is dealt with fairly and justly.

Involvement of Non-Legal Members not on a panel

9. If the normal composition arrangements for a case (see para 6) are altered under paragraph 8(a), the tribunal may seek the advice of one or more non-legal members to assist with its decision-making, provided the advice is recorded and disclosed to the parties.

Hearings – present position

10. The default position for hearings before the PAT is that each individual appeal is listed for oral hearing. The appellant and the Secretary of State for Defence (SSD) are entitled to be present and to be represented. Both parties are entitled to call witnesses.
11. Rule 20 of the 1981 Rules permits the PAT to proceed in the appellant's absence in certain circumstances including, under Rule 20(4) where the appellant or the

appellant's representative has requested that the appeal proceed in the appellant's absence.

12. Rule 8(1) of the 1981 Rules mandates that not less than 10 days before the date fixed for the hearing, a notice of hearing shall be sent from the Pensions Appeal Office (PAO) to the appellant and the SSD. Present practice is that several weeks before the date fixed for the hearing, the PAO writes to the appellant confirming the date of oral hearing and asking the appellant to confirm (i) attendance in person or not (ii) representation or not (iii) attendance of representative or not.

Hearings – future position

13. The hearing notice mandated by Rule 8(1) of the 1981 Rules will, for the duration of this Practice Direction, ask the appellant (and any representative of the appellant) to elect to have one of the following types of hearing:
 - (i) Decisions by one legal member alone on the papers without a hearing;
 - (ii) 'Remote' hearings with participation by the appellant, any representative, and the SSD.
 - (iii) Full oral hearings in line with current practice.

Decisions by one legal member alone on the papers without a hearing ('paper hearings')

14. Paper hearings involve hearing the appeal in the appellant's and the SSD's absence and resemble the current practice provided for in Rule 20 of the 1981 Rules and as set out in paragraph 10 above, except that the case will be decided by one legal member rather than a three-member tribunal. The appellant and the SSD will be invited to make written submissions to the tribunal to be considered at the paper hearing.

Remote hearings

15. Remote hearings are hearings which are not face to face but involve full participation by the appellant, the SSD, any representatives of the parties, and any witnesses before a three-member tribunal. Use will be made of any available technological resource to facilitate full involvement but without, necessarily, all of the participants being physically present in the same tribunal room together.
16. Where a party fails to appear or participate in a remote hearing without an application made in advance to adjourn or postpone the hearing, the hearing may proceed on that basis provided this is in accordance with Rule 20 and subject to any post-hearing application for a set-aside of the decision of the PAT under Rule 20(3).

17. An appellant, and any representative of an appellant, should note that an election for this type of hearing is likely to involve a delay for at least the duration of this Practice Direction (six months) and any further extension of that period.

Full oral hearings in line with current practice

18. An appellant, and any representative of an appellant, should note that an election for this type of hearing is likely to involve a delay for at least the duration of this Practice Direction (six months) and any further extension of that period.

Hearings – interlocutory matters

19. Oral hearings of interlocutory matters are suspended and all interlocutory matters, including interlocutory applications for directions by the President under Rule 30 of the 1981 Rules are suspended for the duration of this Practice Direction and all interlocutory matters shall be determined on the papers.

Disapplication of certain of the 1981 Rules

20. The following of the 1981 Rules are disapplied for the duration of this Practice Direction:

Rule 17 – Medical examination of the appellant

Rule 21(1)(a)(b) and (c) – Appellant unable to attend Tribunal through infirmity

Sittings of the Tribunal

21. For the purposes of Rule 33 of the 1981 Rules all hearings of the PAT, in any category, shall be held in private.

General

22. Insofar as compatible with the efficient administration of justice, the PAT will take into account the impact of the Covid-19 pandemic when considering applications for the extension of time.

Marion Caldwell QC
President Pensions Appeal Tribunals Scotland

31 March 2020