STATUTORY INSTRUMENTS

1980 No. 348 (S. 35)

BANKS AND BANKING

The Banking Act 1979 (Scottish Appeals) Regulations 1980

Made - - - -	*7th March* 1980
Laid before Parliament	*11th March* 1980
Coming into Operation	*2nd April* 1980

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SCHEDULE Documents and statements to be sent to the appointed persons and the appellant by the Bank.

The Lord Advocate, in exercise of the powers conferred upon him by section 12(1) and (3) of the Banking Act 1979(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals, which has consulted with its Scottish Committee, hereby makes the following regulations:—

Citation and commencement

1.—(1) These regulations may be cited as the Banking Act 1979 (Scottish Appeals) Regulations 1980.

(2) These regulations shall come into operation on 2nd April 1980.

(a) 1979 c. 37.

Interpretation

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

"the Act" means the Banking Act 1979;

"appeal" means an appeal to which these regulations apply in accordance with regulation 3;

"appellant" means an institution which under the Act is entitled to appeal or, being so entitled, has appealed, as the case may be, to the Chancellor against a decision of the Bank;

"appointed persons" means the persons appointed to hear the appeal in accordance with regulation 7(1);

"the Chairman" means a person so designated in accordance with regulation 7(2);

"the Chancellor" means the Chancellor of the Exchequer;

"immediate revocation notice" means a notice given under section 7(4) of the Act;

"notice of appeal" means a notice complying with regulation 5(1);

"notice of intention to act" means a notice given under section 7(3)(*a*) of the Act.

(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.—(1) Subject to paragraph (2), these regulations apply to appeals under section 11 of the Act against decisions of the Bank, including appeals under that section as applied by paragraph 7 of Schedule 3 to the Act to institutions to which a transitional licence has been granted.

(2) These regulations apply only to Scottish appeals within the meaning of section 12(3) of the Act.

Time for and manner of bringing appeals

4.—(1) Subject to paragraphs (2) and (3) an appeal shall be brought by sending notice of appeal to the Chancellor not later than 21 days from the date on which the Bank gives notice in writing to the appellant of its decision and the reasons for it.

(2) In a case where the Bank has exercised its powers under section 7(1)(*b*) of the Act by virtue of section 7(4) of the Act, the reference in paragraph (1) to the date on which the Bank gives notice in writing to the appellant of its decision and the reasons for it shall be taken to be a reference to the date on which the Bank gives notice of its decision and the reasons for it under paragraph 5(1) of Schedule 4 to the Act.

(3) In the case of an appeal against a decision of the Bank to give a direction under section 8 of the Act, the reference in paragraph (1) to the date on which the Bank gives notice in writing to the appellant of its decision and the reasons for it shall be taken to be a reference to the date on which the Bank gives notice to the appellant under section 9(1) of the Act confirming the direction.

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;

(*b*) the address of the principal or prospective principal place of business in the United Kingdom of the appellant and, where the appellant is a body corporate, the address of its registered office;

(*c*) the address within the United Kingdom to which applications, notices and other documents in connection with the appeal should be sent;

(*d*) the name and address of any person appointed by the appellant to represent it in connection with the appeal;

(*e*) a statement of the decision of the Bank against which the appeal is made;

(*f*) the grounds of the appeal.

(2) The appellant shall, upon sending notice of appeal to the Chancellor, send a copy of the notice to the Bank.

Respondent

6. On every appeal the Bank shall be the respondent.

Reference of appeal to appointed persons

7.—(1) On receipt of the notice of appeal the Chancellor shall appoint three persons to hear the appeal on his behalf in accordance with the provisions of these regulations and shall send to each of them notice in writing of their appointment and a copy of the notice of appeal.

(2) The Chancellor shall indicate in the notices of appointment referred to in paragraph (1) which of the appointed persons he designates as Chairman for the purposes specified in these regulations.

(3) The Chairman and one of the other appointed persons shall be advocates or solicitors of not less than seven years standing and the other shall be a person who appears to the Chancellor to be experienced in matters of finance or accountancy. No person shall be appointed under this regulation who is in Her Majesty's service or an officer or employee of the Bank.

Procedure before hearing

8.—(1) On receipt of the notice of appointment referred to in regulation 7(1), the Chairman shall arrange for the hearing to take place, and shall give to the appellant and to the Bank—

(*a*) not less than 21 days notice in writing of the date, time and place of the hearing, together with,

(*b*) notice in writing of the address to which any application, notice or other document to be sent or delivered to the appointed persons should be so sent or delivered.

(2) Within 14 days of the notices referred to in paragraph (1)(*a*) and (*b*) being given, the Bank shall send to the appointed persons and to the appellant such copies of the documents and statements as are required to be sent in accordance with the provisions of the Schedule to these regulations.

Procedure at hearing and evidence

9.—(1) The hearing shall be in public unless, on the application of either the Bank or the appellant, the appointed persons decide that the hearing or any part of it shall be in private, but nothing in this paragraph shall prevent a member of the Scottish Committee of the Council on Tribunals from attending the hearing in his capacity as such.

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

(3) The Chairman shall preside at the hearing.

(4) For the purposes of the appeal, the appointed persons may, whether or not on the application of a party to the appeal, by notice in writing require any person, at a time and place stated in the 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; but

(*a*) no person shall be required, in obedience to such notice, to attend and give evidence or 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.

(5) Subject to the foregoing provisions of this regulation, at the hearing the appellant and the Bank 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.

(6) The appointed persons may require any witness to give evidence on oath or affirmation which may be administered for that purpose by the Chairman.

(7) Evidence may be admitted by the appointed persons whether or not it would be admissible in a court of law.

(8) If the appellant or the Bank shall fail to appear or be represented at the time and place fixed for the hearing, the appointed persons may, at their discretion, proceed with the hearing or adjourn it to a later date; and if they proceed with the hearing, they shall take into consideration any written representations which may have been submitted by either party whether in accordance with any provision contained in these regulations or otherwise.

Procedure after hearing

10.—(1) The appointed persons shall after the close of the hearing submit to the Chancellor a report in writing, which shall include any findings of fact by them, their recommendations for the determination of the appeal, and their reasons for making such recommendations.

(2) The report may include any recommendations which the appointed persons consider appropriate as to payment of expenses by any party to the appeal. Without prejudice to the generality of the foregoing, such recommendations may be:—

(*a*) that such expenses should be directed to be taxed in accordance with regulation 13; or

(*b*) that a specified amount in respect of expenses should be paid by one party to the other.

(3) The Chancellor shall have regard to the report when determining the appeal, and he shall supply a copy of the report to the appellant and the Bank when giving them notice in writing of his decision on the appeal and a statement of his reasons therefor in accordance with section 11(4) of the Act.

New evidence or issue of fact not raised at hearing

11.—(1) If the Chancellor proposes to take into consideration any new evidence or any new issue of fact which was not raised at the hearing and which he considers material to his decision, he shall notify the appellant and the Bank of the substance thereof and he shall give them notice that they may, within 14 days of such notice being given to them, make representations to him in writing in respect thereof.

(2) If the representations made by either party in accordance with paragraph (1) contain a request that the new evidence or new issue of fact should be referred to the appointed persons, the Chancellor shall so refer it, together with all representations made with respect thereto, with a request that the appointed persons should submit to him their report and recommendations thereon.

(3) Before submitting to the Chancellor their report and recommendations in accordance with paragraph (2), the appointed persons may if they think fit, cause the hearing to be re-opened; and if the hearing is re-opened regulations 8(1) and 9 shall apply as they applied to the original hearing.

(4) The provisions of regulation 10 shall apply with respect to the report and recommendations of the appointed persons made in accordance with this regulation in so far as the circumstances of the case allow.

Withdrawal of appeal

12. The appellant may at the hearing give notice to the appointed persons that he desires to withdraw the appeal and thereupon

(*a*) the appointed persons shall bring the hearing to a close, and

(*b*) the provisions of regulation 10 shall apply.

Expenses

13.—(1) Any expenses directed to be paid under section 11(3)(*b*) of the Act and required to be taxed shall be taxed by the Auditor of the Court of Session.

(2) 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

14.—(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 period of 14 days referred to in regulation 8(2) may be extended by the appointed persons and the period of 14 days referred to in regulation 11(1) may be extended by the Chancellor on such terms (if any) as the appointed persons

or, as the case may be, the Chancellor think fit, and any application for such extension may be granted although it is not made until after the expiry of the period.

(3) The appointed persons may postpone the date fixed for the hearing of an appeal or adjourn the hearing as they think fit.

Appointed persons' power to determine their own procedure

15. Subject to the provisions of the Act and of these regulations, the appointed persons shall have power to determine their own procedure.

Service of notices etc

16. Any application, notice or other document to be sent or given to any person for the purposes of the appeal may be sent by post or delivered—

(*a*) in the case of a document directed to the Chancellor, to The Chancellor of the Exchequer, HM Treasury, Treasury Chambers, Parliament Street, London SW1P 3AG;

(*b*) in the case of a document directed to the appointed persons, to the address specified in the notice given in accordance with regulation 8(1)(*b*), or to such other address as may subsequently be notified to the Chancellor, the appellant and the Bank;

(*c*) 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(1)(*c*) or such other address as may subsequently be notified to the Chancellor, the Chairman and the Bank;

(*d*) in the case of a document directed to the Bank, to the Head of Banking Supervision, Bank of England, Threadneedle Street, London EC2R 8AH;

(*e*) in any other case, to the last known address of the person to whom the document is directed;

and documents falling within (*c*) or (*e*) above, if sent or given to the authorised representative of any person, shall be deemed to be sent or given to that person.

Irregularities

17. Any irregularity resulting from failure to comply with these regulations before the Chancellor has reached his decision shall not of itself render the proceedings void, but shall be referred to the Chancellor who may if he considers that any person may have been prejudiced, take such steps as he thinks fit before reaching his decision to cure the irregularity whether by referring the appeal again to the appointed persons for their further report and recommendations thereon, the amendment of any document, the giving of any notice, the taking of any step or otherwise.

MACKAY OF CLASHFERN
Lord Advocate

Edinburgh
7 March 1980.

SCHEDULE

Regulation 8(2)

DOCUMENTS AND STATEMENTS TO BE SENT TO THE APPOINTED PERSONS AND THE APPELLANT BY THE BANK

1. In the case of an appeal against a decision to refuse to grant recognition or the licence applied for, including a decision to grant a licence on an application for recognition, the Bank shall send to each of the appointed persons and to the appellant one copy of the following:—

(*a*) the application submitted under section 5(1)(*a*) of the Act;

(*b*) any information furnished pursuant to section 5(1)(*b*) or section 5(2) of the Act, or, where such information was provided orally, a written statement setting out such information;

(*c*) the notice referred to in section 5(4)(*a*) of the Act;

(*d*) any representations made by the appellant pursuant to section 5(4)(*b*) of the Act; and

(*e*) the notice of the decision of the Bank together with the reasons therefor.

2. In every other case the Bank shall send to each of the appointed persons and to the appellant one copy of such of the following documents as are relevant in the circumstances of the appeal:—

(*a*) the notice of intention to act;

(*b*) the immediate revocation notice;

(*c*) directions, and further directions, under section 8 of the Act, and any notice confirming the directions under section 9(1) of the Act;

(*d*) representations made by or on behalf of the appellant under section 9(2) of the Act, or paragraph 1(1), or paragraph 4(1) of Schedule 4 to the Act;

(*e*) notice of the Bank's decision given pursuant to paragraph 2(1) or paragraph 5(1) of Schedule 4 to the Act.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These regulations make provision with respect to Scottish appeals under section 11 of the Banking Act 1979 against decisions of the Bank of England ("the Bank") to refuse to grant recognition or a licence, to grant a licence on an application for recognition, to revoke recognition or a licence, or to give a direction under section 8 of the Act. Scottish appeals are appeals where the institution concerned is a company registered in Scotland or has its principal or prospective principal place of business in the United Kingdom in Scotland. Provision is made as to the period and manner in which appeals are to be brought, the reference of appeals to persons appointed to hear and report on them to the Chancellor of the Exchequer, procedure and evidence at the hearing, the payment of expenses, and other miscellaneous matters connected therewith.