EXPLANATORY MEMORANDUM TO

THE PENSIONS APPEAL TRIBUNALS (LATE APPEAL) (AMENDMENT) REGULATIONS 2023

2023 No. 347

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Pensions Appeal Tribunals (Late Appeals) Regulations 2001 (S.I. 2001/1032) ("the 2001 Regulations") to align the late appeal provision for individuals who appeal decisions under the Armed Forces compensation schemes in Scotland and Northern Ireland, with that for England and Wales. It sets out the conditions in which a late appeal will be treated as having been made in time. It also provides that a Pensions Appeal Tribunal in Scotland or Northern Ireland may allow a late appeal where the Tribunal is satisfied that it is in the interests of justice to do so.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister for Defence People, Veterans and Service Families has made the following statement regarding Human Rights:

"In my view the provisions of the Pensions Appeal Tribunals (Late Appeal) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made under section 8(5) and 8(6) of the Pensions Appeal Tribunals Act 1943 ("the 1943 Act") as substituted / inserted by section 21 of the Armed Forces Act 2021. It amends the Pensions Appeal Tribunals (Late Appeals) Regulations 2001 (S.I. 2001/1032). The 2001 Regulations relate to the conditions in which a Pensions Appeal Tribunal in Scotland and Northern Ireland may admit a late appeal against decisions made under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (S.I. 2006/606), the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/507) and other minor war pension

schemes (referred to collectively as "the Schemes"). The decisions made under the Schemes for which an appeal can be brought are set out in Sections 1 - 5 and 5A of the 1943 Act.

6.2 In respect of Northern Ireland and Scotland, the time limit for appeals to the Pensions Appeal Tribunal is 12 months (sections 8(1) and 8(3) of the 1943 Act). At present, regulation 3 of the 2001 Regulations provides that the Tribunal may allow a late appeal to be brought no later no later than 12 months after the statutory time limit, but only in the prescribed circumstances set out in regulation 4.

6.3 In respect of England and Wales, in 2008 the functions of the Pensions Appeal Tribunals were transferred to the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal ("the FTT"). Rule 21(1) of the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rule 2008 (S.I. 2008/2686) ("the 2008 Rules) provides that an appeal must be brought within 12 months. However, rule 21(3) of the 2008 Rules provides that an appeal is to be treated as having been made in time, if the decision-maker does not object and it is brought within a year of the initial 12-month time limit (rule 21(4)). If the decision-maker does object, then the decision-maker must refer the case to the FTT (rule 21(6)). The FTT can exercise its case management powers, where appropriate, to extend the initial 12-month time limit (but not beyond the ultimate 24-month time limit).

6.4 The new regulation 3, inserted by this instrument provides that a late appeal will be treated as having been made in time if the Secretary of State does not object. It also provides that the Pensions Appeal Tribunal may allow a late appeal where it considers it is in the interests of justice to do so, subject to the ultimate 24- month limit.

7. Policy background

What is being done and why?

7.1 The Schemes provide benefits to or in respect of a person by reason of their illness, injury or death caused (wholly or partly) by service in the regular armed forces or reserve forces. The Pensions Appeal Tribunals are the tribunals that hear the appeals for the Armed Forces Compensation and War Pension schemes in Scotland and Northern Ireland, and thus are an essential part of the Schemes.

7.2 Until 2008, appeals from decisions made under the Schemes were heard by separate Pensions Appeal Tribunals for England and Wales, Scotland and Northern Ireland. Each jurisdiction operated under procedural rules which, for the most part, were identical in provision. Following the implementation of tribunal reform in 2008, a War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal was created in England and Wales, with its own discrete set of procedural rules. Consequently, appellants in Scotland and Northern Ireland have been subject to different rules regarding late appeals, as the Pensions Appeal Tribunals in Scotland and Northern Ireland can currently only use their discretion to allow a late appeal in those circumstances specified in regulation 4.

7.3 The Lord Chancellor has established a War Pensions and Armed Forces Compensation Advisory Steering Group ("ASG") to pursue a consistent approach to war pensions and compensation appeals across the United Kingdom. It comprises representatives from ex-service and service communities, the judiciary, judicial administration and officials from the Ministries of Justice and Defence. Its remit

includes identifying key differences between procedural rules in the three jurisdictions. The ASG, having formed the view that the provision in the 2001 Regulations with respect to the circumstances in which a late appeal may be brought has the potential to operate to the detriment of appellants in Scotland and in Northern Ireland, asked for an amendment to the 2001 Regulations to remove this anomaly.

7.4 The amendments in this instrument align the late appeals position in Scotland and Northern Ireland more closely with the late appeals position in England and Wales. This will ensure that appeal rules are consistent across the United Kingdom, ensuring equality of access to the Tribunals.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A public consultation has not been undertaken on this instrument. The Pensions Appeal Tribunals in Scotland and Northern Ireland were invited to comment on the draft legislation.

11. Guidance

11.1 Information about the new provisions will be made available on the Pensions Appeal Tribunal Scotland website and the Northern Ireland Courts and Tribunals website.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector. The number of additional late appeals that the Pensions Appeal Tribunals in Northern Ireland and Scotland may allow to be brought as a result of this amendment is expected to be low.

12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business, charities or voluntary bodies.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Ministry of Defence will continue to review the AFCS and WPS as part of its day-to-day management and to liaise with the Pensions Appeal Tribunals in Northern Ireland and Scotland. This will include monitoring the impact of the changes made in this instrument.

15. Contact

15.1 Zena Prescott at the Ministry of Defence email: afcompensation-policy@mod.gov.uk can be contacted with any queries regarding the instrument.

15.2 James Greenrod, Head – Armed Forces People Support, at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard. Email: afcompensation-policy@mod.gov.uk

15.3 The Minister for Defence People, Veterans and Service Families, Rt Hon Dr Andrew Murrison MP can confirm that this Explanatory Memorandum meets the required standard.