

EXPLANATORY MEMORANDUM TO

PENSIONS APPEAL TRIBUNALS (NORTHERN IRELAND) (AMENDMENT) RULES 2008

SR 2008 No. 444

1. This explanatory memorandum has been prepared by the Office of the Lord Chief Justice of Northern Ireland and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Pensions Appeal Tribunals (Northern Ireland) Rules 1981 (S.R. 1981 No. 231) (“the principal Rules”) govern practice and procedure in the Pensions Appeal Tribunal for Northern Ireland.

2.2 This instrument amends the principal Rules to prescribe the procedure for a new route of appeal to the Upper Tribunal from a decision of the Tribunal in an assessment appeal.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments.

3.1 None.

4. Legislative Background

The Pensions Appeal Tribunals Act 1943

4.1 By virtue of paragraphs 6-6B of the Schedule to the Pensions Appeal Tribunals Act 1943 (“the 1943 Act”), separate Pensions Appeal Tribunals exist for England and Wales, Scotland and Northern Ireland. The purpose of each of these Tribunals is to hear appeals against: decisions of the Secretary of State to reject claims for entitlement to a war pension (‘entitlement appeals’); assessment of the extent of disablement for the purposes of a war pension (‘assessment appeals’); and other specified decisions of the Secretary of State relating to war pensions (‘specified appeals’).

The Armed Forces (Pensions and Compensation) Act 2004

4.2 The Armed Forces (Pensions and Compensation) Act 2004 inserted section 6A into the 1943 Act thereby creating a right of appeal on a point of law to the Social Security Commissioner for Northern Ireland against decisions of the Pensions Appeal Tribunal for Northern Ireland in entitlement appeals and specified appeals. No right of appeal from decisions of the Pensions Appeal Tribunal for Northern Ireland in assessment appeals was created.

The Transfer of Tribunal Functions Order 2008

4.3 The Transfer of Tribunal Functions Order 2008, was made by the Lord Chancellor in exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007 and came into force on 3rd November 2008. It amended section 6A of the 1943 Act to create a new right of appeal on a point of law to the Upper Tribunal from decisions of the Pensions Appeal Tribunal for Northern Ireland in assessment appeals. Decisions

by the Pensions Appeal Tribunal for Northern Ireland in entitlement appeals and specified appeals continue to be appealed to the Social Security Commissioner for Northern Ireland.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Most tribunals in the United Kingdom have been created by individual items of primary legislation, without any overarching framework. Many have been administered by the government departments responsible for the policy area in which that tribunal has jurisdiction. Those departments are sometimes responsible for the decisions which may be appealed to the tribunal. Following a Review of Tribunals by Sir Andrew Leggatt, published in August 2001, the Government enacted the Tribunals, Courts and Enforcement Act 2007 which creates two new, generic tribunals, the First-Tier Tribunal and the Upper Tribunal, into which existing tribunal jurisdictions can be transferred. The Upper Tribunal is primarily, but not exclusively, an appellate tribunal from the First-Tier Tribunal. The Act also provides for the establishment of “chambers” within the two tribunals so that the jurisdictions that will be transferred into the tribunals can be grouped together. The 2007 Act also provides a unified appeal structure.

7.2 The transfer of the Pensions Appeal Tribunals into the First-Tier Tribunal relates only to tribunals in England and Wales. Pensions Appeal Tribunals for Scotland and Northern Ireland retain their existing functions as they are not administered by the Tribunals Service for England and Wales.

7.3 Section 11 of the 2007 Act provides that appeals can be made to the Upper Tribunal on all decisions of the First-Tier Tribunal on a point of law with permission. Therefore, a right of appeal has been created against decisions made by the First-Tier Tribunal in assessment appeals. In consequence, the Transfer of Tribunal Functions Order 2008 made provision for an equivalent right of appeal to the Upper Tribunal from decisions by the Pensions Appeal Tribunal for Northern Ireland in assessment appeals. Appeals from the Pensions Appeal Tribunal for Northern Ireland in entitlement appeals and specified appeals continue to be to the Social Security Commissioner for Northern Ireland.

Importance

7.6 These rules are procedural and of limited public interest. It is not considered that the amendments are politically or legally significant.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it will not have an impact on business, charities or voluntary bodies.

8.2 This instrument has no impact on the public sector.

9. Contact

9.1 Paul Conway, Principal Legal Officer, Office of the Lord Chief Justice of Northern Ireland (telephone 028 90724615 or email paulconway@courtsni.gov.uk) can answer any queries regarding this instrument.