

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT PENSIONS APPEAL TRIBUNALS
(LATE APPEAL) (AMENDMENT) REGULATIONS 2022

Monday 9 January 2023

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The Committee consisted of the following Members:

Chair: CAROLINE NOKES

† Baker, Duncan (*North Norfolk*) (Con)
 Carden, Dan (*Liverpool, Walton*) (Lab)
 † Eastwood, Mark (*Dewsbury*) (Con)
 † Fletcher, Mark (*Bolsover*) (Con)
 † Gardiner, Barry (*Brent North*) (Lab)
 † Hopkins, Rachel (*Luton South*) (Lab)
 Jarvis, Dan (*Barnsley Central*) (Lab)
 † Jones, Gerald (*Merthyr Tydfil and Rhymney*) (Lab)
 † Lopresti, Jack (*Filton and Bradley Stoke*) (Con)
 † Mackrory, Cherilyn (*Truro and Falmouth*) (Con)
 † Mann, Scott (*Lord Commissioner of His Majesty's Treasury*)

† Menzies, Mark (*Fylde*) (Con)
 † Monaghan, Carol (*Glasgow North West*) (SNP)
 † Murrison, Dr Andrew (*Minister for Defence People, Veterans and Service Families*)
 † Sturdy, Julian (*York Outer*) (Con)
 † Tolhurst, Kelly (*Rochester and Strood*) (Con)
 Whitley, Mick (*Birkenhead*) (Lab)

Huw Yardley, *Committee Clerk*

† **attended the Committee**

Third Delegated Legislation Committee

Monday 9 January 2023

[CAROLINE NOKES *in the Chair*]

Draft Pensions Appeal Tribunals (Late Appeal) (Amendment) Regulations 2022

6 pm

The Minister for Defence People, Veterans and Service Families (Dr Andrew Murrison): I beg to move,

That the Committee has considered the draft Pensions Appeal Tribunals (Late Appeal) (Amendment) Regulations 2022.

May I say what a pleasure it is to serve under your chairmanship, Ms Nokes? I declare an interest as a current reservist and a past beneficiary of the war pensions scheme.

The statutory instrument will change the rules allowing late appeals against decisions under the various armed forces compensation schemes in Scotland and Northern Ireland. The purpose of these changes is to align the rules for Scotland and Northern Ireland with the current rules in England and Wales. It is worth emphasising that that alignment, although it is the right thing to do, will in practice materially affect only a very small number of appellants.

The schemes provide compensation where persons have sustained illness, injury or death wholly or partly as a result of service in the regular or reserve armed forces. Claims made under the rules of the various schemes are decided by the Secretary of State for Defence, and claimants who do not agree with the decision have a right of appeal against most substantive decisions.

Before 2008, all such appeals were made to pensions appeal tribunals, which operated across the United Kingdom under the provisions of the Pensions Appeal Tribunals Act 1943. Following the 2008 courts and tribunal reforms in England and Wales, a war pensions and armed forces compensation chamber of the first-tier tribunal was created in England and Wales with its own rules, made under an Act that extended to England and Wales only. The pensions appeal tribunals in Scotland and Northern Ireland continued to exist under the provisions of the original 1943 Act.

As I said, claimants who disagree with decisions by the Secretary of State may appeal those decisions, and they have 12 months in which to make that appeal. There is also provision for what is known as a “late appeal”—an appeal made more than 12 months after the original decision, but within 24 months.

As a result of the 2008 reforms in England and Wales, a late appeal is accepted by the first-tier tribunal unless the Secretary of State objects. If the Secretary of State does object, the tribunal has the power to consider the matter and admit the appeal if it is fair and just to do so. However, the provisions of the 1943 Act still apply to the tribunals in Scotland and Northern Ireland. Until recently they did not allow tribunals in those

jurisdictions to treat late appeals with such flexibility, and tribunals could do so only in specific circumstances set out in regulations.

The Lord Chancellor established a war pensions and armed forces compensation advisory steering group to pursue consistency in the procedure for appeals across the United Kingdom. It concluded that existing late appeal processes may—possibly—disadvantage appellants in Scotland and Northern Ireland. The request to make these amendments came from the presidents of tribunals in Scotland and Northern Ireland, and the devolved Administrations have been consulted on, and have approved, the draft regulations.

In 2021, amendments to the 1943 Act were made that would allow us to align the rules under which late appeals are accepted in Scotland and Northern Ireland with the current rules in England and Wales. The draft regulations seek to amend the Pensions Appeal Tribunals (Late Appeals) Regulations 2001 to remove the current anomaly and align the rules on late appeals across the United Kingdom.

6.4 pm

Rachel Hopkins (Luton South) (Lab): It is a pleasure to serve under your chairmanship for the first time this year, Ms Nokes. May I wish a happy new year to you, the Clerk and everyone on the Committee, including the Minister? I look forward to working well with him and to being part of an effective Opposition over the coming year as we work towards truly making the UK the best place to be a veteran.

As has been outlined, the regulations align the late appeals process in Scotland and Northern Ireland more closely with the position in England and Wales, so we will not oppose them. However, having read the documentation and listened to the Minister’s speech, I would like to raise a few points and questions. I declare an interest as a former civil servant and I am particularly interested by the explanatory memorandum, which leads to some of the points I will make.

New regulation 3 provides that

“late appeal will be treated as made in time if the Secretary of State does not object.”

Will the Minister outline the criteria that would result in the Minister, or the Secretary of State on the Minister’s recommendation, objecting to a late appeal? The regulations as amended allow a tribunal to hear an appeal

“in the interests of justice.”

Does the Minister have any further information about the criteria that would lead the tribunal to decide that it is

“in the interests of justice”

to hear the late appeal that has potentially been objected to by the Secretary of State?

I note from the helpful briefing that the pensions appeal tribunals in Scotland and Northern Ireland were invited to comment on the draft legislation, and I heard the Minister say that the devolved Administrations have approved them. Were any comments received from the appeal tribunals in Scotland and Northern Ireland? Will the Minister outline their position on the draft legislation?

I note that there has not been a public consultation on the instrument, but have there been any interactions, discussions or requests for feedback on the late appeal process by veterans’ organisations or charities that support

veterans through the tribunal process? Even in my short tenure so far as the shadow Minister, I have spoken to a number of veterans who are frustrated by the process of application and subsequent appeals. It is important for us to hear the voices of veterans and the charities supporting them in our consideration of the new regulations.

As the Minister mentioned and as set out in the explanatory memorandum, the number of additional late appeals that the pensions appeal tribunals in Scotland and Northern Ireland may allow to be brought as a result of the regulations is expected to be low. However, an impact assessment was not undertaken. Will the Minister clarify what analysis was undertaken to evidence that the impact will be low? Will the Minister tell us the percentage of late appeals that were successful in England and Wales, perhaps in 2019, 2020 and 2021, in order to compare that figure with the number of late appeals in Northern Ireland and Scotland? It would be great if the Minister could provide that information; if he does not have it now, I am happy to receive it in writing.

Will the Minister provide a breakdown of the forms of injury or illness relating to applications and potential objections, and therefore to appeals? I am particularly interested in appeals that relate to mental ill health. Many veterans find such appeals difficult to make in light of decisions around mental ill health. That issue has been raised with me and we all need to be alive to it. If the Minister has a breakdown of such information I am happy to receive it in writing.

I mentioned the views of veterans' charities and reflected on the change between the two systems. Since the implementation of the tribunal reform in 2008, which created the two systems, how satisfied have the veterans' charities been? That might help us understand how the whole process is operating. As I said, since I have been the shadow Minister over the last six months or so, many veterans have raised concerns about the process with me due to the wait time for a decision or dissatisfaction with a decision that conflicts with medical advice. Does the Minister intend any further reforms to the compensation system? It will be interesting to know.

We are pleased that the Government have finally agreed to medallic recognition for nuclear test veterans, but what recourse will be available to nuclear test veterans and their family members whose appeals were rejected due to difficulties in demonstrating that an illness, injury or death were caused by service at an atomic testing site? Again, I would be grateful for any feedback we could have today, or I would be happy to receive that in writing.

As I have said, we will not oppose the regulations or push them to a vote. However, we have some questions. It would be helpful to look at the compensation and appeal systems, which will be of interest to veterans and the public. I look forward to the Minister's answers.

6.11 pm

Dr Murrison: It is worth pointing out that 24% of decisions made on the armed forces compensation scheme are in fact appealed—a significant number. Most of those come within the 12 months, so what we are talking about is what happens if people bring an appeal outside that time, between 12 and 24 months, and the answer is very few. If I give the hon. Lady a few figures, that will go some way to addressing the points that she

made. From the data that I have, since 2019 Northern Ireland has received eight late appeals, of which seven were accepted and one was rejected by the president. Scotland has received four late appeals, of which two were accepted and two are still pending awaiting reasons for lateness from the appellant. In the past 12 months in England and Wales, there have been no late appeals. I hope that gives a sense of the extent of the matter that we are dealing with today.

In terms of breaking down by cause, illness or injury, I will reflect on the hon. Lady's request. When we get down to these small numbers, there is a danger that we might start identifying the causes for people appealing, and it might be that that information is protected. Perhaps the hon. Lady will allow me to reflect on that, but if I can be helpful, I will be.

On the wider reforms to the armed forces compensation scheme, there is the quinquennial review that is currently under way. I expect that to report in the spring, and we will then have to make a decision on whether the scheme is fit for purpose or whether it needs to be changed.

The matter of nuclear test veterans and others is kept under review by the independent medical advisory group, whom I have met, and it examined the epidemiology of various conditions. So far, the data regarding nuclear test veterans gives us some cause for reassurance. That data is kept under constant review, given the passage of time, to make sure that individuals have not been disadvantaged because of their military service.

On the grounds for objection to an appeal by the Secretary of State, the truth is that the Secretary of State does not object. Even if he did, it could be overturned by a tribunal. That has been a consistent feature. I have asked officials whether we have any records of the Secretary of State objecting, but we could not find any. In terms of the criteria and why this is going to be helpful to people in Northern Ireland and Scotland, it introduces flexibility. At the moment, the only way to make a late appeal is on the grounds of a set of very defined circumstances. This removes that constraint and it is important to say that this is at the request of the presidents of tribunals in Northern Ireland and Scotland and the Lord Chancellor's advisory group. This is something that they have identified as causing the playing field to not be as level as it should be and is therefore seen to be erasing a potential disadvantage that people living in Northern Ireland and Scotland making an appeal for a late application may fall under. The point of this is to erase that incongruity but, as I said in my opening remarks, the expectation is that the number of people who will be affected by this is very small, and I hope the figures that I have given serve to illustrate that.

Barry Gardiner (Brent North) (Lab): Can the Minister clarify a point? When my hon. Friend the Member for Luton South was talking about the Secretary of State not objecting, she was referring to new regulation 3, under which it would be possible for the Secretary of State to object if a late appeal was made, but also possible for the pensions appeal tribunal to then overrule that, in effect, and make its own judgment. I just wanted clarification from the Minister, who was absolutely right in saying that the Secretary of State could not do

[Barry Gardiner]

that to date, but would be able to under the new regulations. Therefore, the clarification that my hon. Friend sought is still needed.

Dr Murrison: The Secretary of State could object, but he would have to state his grounds for objection. The reality is that he has not objected so far as we can determine and, in any event, even if he did, his objection could be overruled by the appeal process. I hope that makes it clear and that is not altered by this particular measure.

Going through the list of points that the hon. Member for Luton South made, I hope what I have said explains the position because it is the tribunals and the advisory group set up by the Lord Chancellor that has called for this—the advisory group set up to ensure that there is congruity between the arrangements in Scotland and Northern Ireland and the arrangements in England and Wales. This has been driven by those two sets of authorities, so the answer is that they would be commenting on a measure that they themselves have decided to push for. I hope that is helpful.

I think the hon. Lady's point about consultation was reasonable, but there has to be some proportionality in this and, given that there really is no conceivable objection to this from a user point of view, it is difficult to see

anything in this that could possibly disadvantage any set of veterans. I will be quite clear with the hon. Lady: our consultation has not exactly been extensive on this matter. I hope that is helpful. I cannot possibly see how any of the service charities, Cobseo or any group of veterans could object to the playing field being levelled in the way that has been described, particularly since this has been driven by the presidents of the tribunals and the Lord Chancellor's advisory group. If there was any suggestion that anyone was going to be relatively disadvantaged, we would have to have done, as the hon. Lady said, a piece of work around wider public consultation, but, on the grounds of proportionality, that would be unnecessary in this particular case.

The hon. Lady asked about an impact assessment. I hope she is reassured by the numbers. They really are tiny and it is not entirely clear that these changes would affect those numbers in any way historically. This has been identified by the presidents of the tribunals and by the advisory group set up by the Lord Chancellor to address what appears to me to be a theoretical disadvantage that residents of Scotland and Northern Ireland may face. It is for that reason that this measure has been introduced. I hope that is helpful.

Question put and agreed to.

6.19 pm

Committee adjourned.

