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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 367**

**PENSIONS**

**The Pensions Appeal Tribunals  
(Scotland) (Amendment) Rules 2017**

*Made* - - - - 30th October 2017  
*Laid before the Scottish  
Parliament* - - - - 1st November 2017  
*Coming into force* - - 4th December 2017

The Lord President of the Court of Session makes the following Rules in exercise of the powers conferred by paragraph 5(1) of the schedule of the Pensions Appeal Tribunals Act 1943<sup>(1)</sup> and all other powers enabling him to do so.

**Citation and commencement**

1. These Rules may be cited as the Pensions Appeal Tribunals (Scotland) (Amendment) Rules 2017 and come into force on 4th December 2017.

**Amendment of the Pensions Appeal Tribunals (Scotland) Rules 1981**

2.—(1) The Pensions Appeal Tribunals (Scotland) Rules 1981<sup>(2)</sup> are amended as follows.

(2) In rule 2(1) (interpretation)—

- (a) in sub-paragraph (db), omit “the” in the second place it occurs;
- (b) in sub-paragraph (e), omit “in article 68(1)(b) and (2) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 and”;
- (c) in sub-paragraph (i), for “20 Walker Street, Edinburgh, EH3 7HS” substitute “126 George Street, Edinburgh, EH2 4HH”; and
- (d) in sub-paragraph (kl), omit “for the reasons”.

(3) For rule 4 (method of appealing), substitute—

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(1) 1943 (c.39). Paragraph 5 of the schedule was last amended by S.I. 2008/2833 and is to be read with the Scotland Act 1998 (c.46), section 118(3).  
(2) S.I. 1981/500, last amended by S.S.I. 2009/353.

**“Method of appealing**

- 4.—(1) An appeal to a tribunal must be commenced by a notice of appeal.
- (2) The appellant must send the completed notice of appeal to the Pensions Appeal Office.
- (3) The Pensions Appeal Office must send a copy of the notice of appeal to the Secretary of State as soon as reasonably practicable.”.
- (4) In rule 5 (Statement of Case and answer)—
- (a) after paragraph (1), insert—
- “(1A) The Secretary of State must—
- (a) send four copies of the Statement of Case to the Pensions Appeal Office within 6 months of the date of the notice of appeal; or
- (b) if it would not be reasonably practicable to prepare a Statement of Case within 6 months of that date—
- (i) notify the Pensions Appeal Office of that fact; and
- (ii) send four copies of the Statement of Case to the Pensions Appeal Office as soon as reasonably practicable to do so.”;
- (b) in paragraph (2)—
- (i) for “When the Statement of Case has been prepared” substitute “At the same time as sending the Statement of Case to the Pensions Appeal Office”; and
- (ii) omit “(on a form to be supplied by the Secretary of State)”;.
- (c) in paragraph (4)—
- (i) for “Except where the appellant is resident outside the United Kingdom, he” substitute “The appellant”; and
- (ii) after “the Secretary of State” insert “and the Pensions Appeal Office”;
- (d) in paragraph (5), for “if he so desires” substitute “within 28 days of receiving the appellant’s answer”; and
- (e) for paragraph (6), substitute—
- “(6) Where the appellant submits an answer, the Secretary of State must, within 28 days of receiving that answer, send four copies of the following documents to the Pensions Appeal Office—
- (a) the appellant’s answer;
- (b) any documents submitted by the appellant; and
- (c) any comments by the Secretary of State on the appellant’s answer.”.
- (5) In rule 5A(1) (review of appeal documents)—
- (a) omit “paragraphs (a) to (d) of”;
- (b) after “the Pensions Appeal Office” insert “or, where the appellant does not submit an answer, on expiry of the period within which such an answer may be submitted under rule 5(4)”; and
- (c) in sub-paragraph (a), for “those documents” substitute “the documents sent to the Pensions Appeal Office”.
- (6) For rule 7 (list of cases for hearing), substitute—

**“List of cases for hearing**

- 7.—(1) The Pensions Appeal Office must prepare a list of cases for hearing.

- (2) The Pensions Appeal Office must add a case to the list—
  - (a) if the appellant submits an answer, 28 days after receiving the answer; or
  - (b) in any other case, on expiry of the period within which the appellant may submit an answer.
- (3) Where the Pensions Appeal Office considers that there is a good reason to do so, it may add a case to the list at an earlier time than that mentioned in paragraph (2).”.
- (7) For rule 9 (lapse of appeal), substitute—

**“Lapse of appeal**

- 9.—(1) If the decision being appealed is revised, the Secretary of State must send the revised decision to the Pensions Appeal Office at the same time as sending it to the appellant.
- (2) The appeal lapses unless the appellant, within 42 days of the date of the revised decision, sends to the Pensions Appeal Office—
  - (a) representations in relation to the revised decision; or
  - (b) a statement that the appellant—
    - (i) is continuing with the appeal; and
    - (ii) has no additional representations to make.
- (3) Where the appellant takes a step mentioned in paragraph (2)—
  - (a) the Pensions Appeal Office must send a copy of the representations or statement to the Secretary of State as soon as reasonably practicable; and
  - (b) the appeal continues as if brought in relation to the revised decision.”.
- (8) After rule 10 (appeal not prosecuted), insert—

**“Withdrawal**

- 10A.—(1) The appellant may withdraw the appeal—
  - (a) by sending a notice of withdrawal to the Pensions Appeal Office; or
  - (b) orally at a hearing.
- (2) If the appellant withdraws the appeal—
  - (a) by notice; or
  - (b) at a hearing where the Secretary of State was not in attendance,the Pensions Appeal Office must inform the Secretary of State of the withdrawal.
- (3) The appellant may apply to the President for a direction that the appeal is to be restored to the list of cases for hearing.
- (4) The application must be made within 28 days of—
  - (a) the date on which the Pensions Appeal Office received the notice of withdrawal; or
  - (b) the date of the hearing at which the appeal was withdrawn.”.
- (9) In rule 12(5) (evidence), for “inadmissable” substitute “inadmissible”.
- (10) The cross-heading of rule 20A becomes “**Appellant resident abroad**”.
- (11) In rule 21(1)(a) (appellant unable to attend tribunal through infirmity), omit “or both”.
- (12) In rule 22(3) (medical evidence injurious to the appellant), for “rule 5(6)” substitute “rule 5(1A)”.
- (13) In rule 25 (deferred list cases)—

- (a) in paragraph (1), for “place” substitute “placed”; and
  - (b) in paragraph (3), for “willful” substitute “wilful”.
- (14) In rule 33 (sittings of the tribunal)—
- (a) in paragraph (2), omit “under rule 6”; and
  - (b) for paragraph (3), substitute—
    - “(3) If a party makes a request to the tribunal for the appeal, or part of it, to be heard in private, the tribunal may sit in private to such extent as it considers appropriate.”.

**Saving**

**3.** The amendments made by rule 2(3) to (7) and (12) of these Rules do not apply to an appeal commenced before 4th December 2017.

Edinburgh  
30th October 2017

*CJM Sutherland*  
Lord President

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Pensions Appeal Tribunals (Scotland) Rules 1981 (“the 1981 Rules”).

Rule 2(3) to (5) makes provision for lodging appeal documents directly with the Pensions Appeal Office and the timescale within which parties must lodge those documents.

Rule 2(6) substitutes a new rule 7 (list of cases for hearing) into the 1981 Rules to set out when the Pensions Appeal Office must add a case to the list of cases for hearing.

Rule 2(7) substitutes a new rule 9 (lapse of appeal) into the 1981 Rules so that, if the decision appealed is revised, the appellant must take certain steps to prevent the appeal from lapsing.

Rule 2(8) introduces a new rule 10A setting out how the appellant may withdraw the appeal. This amendment also provides that the appellant may apply to the President for a withdrawn appeal to be restored to the list of cases for hearing.

Rule 2(14) extends the application of rule 33 (sittings of the tribunal) of the 1981 Rules so that either party can ask for an appeal, or part of an appeal, to be heard privately.

These Rules also fix a number of typographical errors.

Rule 3 is a saving provision, the effect of which is that a number of the amendments made by these Rules will only apply in an appeal commenced on or after 4th December 2017.