

SCHEDULE

Regulation 33

APPEALS: PROCEDURAL MATTERS

Appeal against a decision which has been replaced or revised

1.—(1) An appeal against a decision of the Secretary of State does not lapse where—

- (a) the decision is treated as replaced by a decision under section 11(1) or section 28F(5) of the 1991 Act(2); or
- (b) is revised under section 16 of that Act before the appeal is determined,

and the decision as replaced or revised is not more advantageous to the appellant than the decision before it was replaced or revised.

(2) Where sub-paragraph (1) applies, the appeal must be treated as though it had been brought against the decision as replaced or revised.

(3) The appellant has a period of one month from the date of notification of the decision as replaced or revised to make further representations as to the appeal.

(4) Subject to sub-paragraph (5), after the expiration of the period specified in sub-paragraph (3), or within that period if the appellant consents in writing, the appeal to the First-tier Tribunal must proceed.

(5) The appeal shall lapse where, in the light of the further representations from the appellant, the decision as replaced or revised as referred to in sub-paragraph (1), is revised, and the new decision is more advantageous to the appellant than the decision before it was replaced or revised as referred to in sub-paragraph (1).

Late appeals

2.—(1) Where a dispute arises as to whether an appeal was brought within the time specified under the Tribunal Procedure Rules the dispute shall be referred to, and determined by, the First-tier Tribunal.

(2) The Secretary of State may treat a late appeal as made in time in accordance with the Tribunal Procedure Rules if the Secretary of State is satisfied that it is in the interests of justice to do so.

(3) For the purposes of sub-paragraph (2) it is not in the interests of justice to treat the appeal as made in time unless the Secretary of State is satisfied that—

- (a) the special circumstances specified in sub-paragraph (4) are relevant; or
- (b) some other special circumstances exist which are wholly exceptional and relevant,

and as a result of those special circumstances, it was not practicable for the appeal to be made within the time limit specified in the Tribunal Procedure Rules.

(4) For the purposes of sub-paragraph (3)(a), the special circumstances are that—

- (a) the appellant or a partner or dependant of the appellant has died or suffered serious illness;
- (b) the appellant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(5) In determining whether it is in the interests of justice to treat the appeal as made in time regard must be had to the principle that the greater the amount of time that has elapsed between the expiration of the time limit under the Tribunal Procedure Rules and the submission of the notice of appeal, the more compelling should be the special circumstances.

(1) Section 11 was substituted by section 1(1) of the 2000 Act and amended by Schedule 8 to the 2008 Act.

(2) Section 28F was substituted by section 5(1) and (5) of the 2000 Act.

(6) In determining whether it is in the interests of justice to treat the appeal as made in time no account shall be taken of the following—

- (a) that the applicant or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by the Tribunal Procedure Rules); or
- (b) that the Upper Tribunal or a court has taken a different view of the law from that previously understood and applied.

Notice of Appeal

3.—(1) A notice of appeal made in accordance with the Tribunal Procedure Rules and on a form approved by the Secretary of State or in such other form as the Secretary of State accepts, is to be sent or delivered to an appropriate office of the Secretary of State.

(2) Except where sub-paragraph (3) applies, where a form does not contain the information required under the Tribunal Procedure Rules the form may be returned by the Secretary of State to the sender for completion in accordance with the Tribunal Procedure Rules.

(3) Where it appears that the form, although not completed in accordance with the instructions on it, includes sufficient information to enable the appeal to proceed, the Secretary of State may treat the form as satisfying the requirements of the Tribunal Procedure Rules.

(4) Where a notice of appeal is made in writing otherwise than on the approved form (“the letter”), and it appears that the letter includes sufficient information to enable the appeal to proceed, the Secretary of State may treat the letter as satisfying the requirements of the Tribunal Procedure Rules.

(5) Where the letter does not include sufficient information to enable the appeal to proceed, the Secretary of State may request further information in writing (“further particulars”) from the person who wrote the letter.

(6) Where a person to whom a form is returned duly completes and returns the form, if the form is received by the Secretary of State within—

- (a) 14 days after the date on which the form was returned by the Secretary of State, the time for making the appeal shall be extended by 14 days following the date on which the form was returned;
- (b) such longer period as the Secretary of State may direct, the time for making the appeal shall be extended by a period equal to that longer period directed by the Secretary of State.

(7) Where a person from whom further particulars are requested duly sends the further particulars, if the particulars are received by the Secretary of State within—

- (a) 14 days after the date on which the Secretary of State’s request was made, the time for making the appeal shall be extended by 14 days following the date of the request;
- (b) such longer period as the Secretary of State may direct, the time for making the appeal shall be extended by a period equal to that longer period directed by the Secretary of State.

(8) Where a person to whom a form is returned or from whom further particulars are requested does not complete and return the form or send further particulars within the period of time specified in sub-paragraph (6) or (7)—

- (a) the Secretary of State must forward a copy of the form, or as the case may be, the letter, together with any other relevant documents or evidence to the First-tier Tribunal, and
- (b) the First-tier Tribunal shall determine whether the form or the letter satisfies the requirements of the Tribunal Procedure Rules.

(9) Where—

- (a) a form is duly completed and returned or further particulars are sent after the expiry of the period of time allowed in accordance with sub-paragraph (6) or (7), and
- (b) no decision has been made under sub-paragraph (8) at the time the form or the further particulars are received by the Secretary of State, that form or further particulars must also be forwarded to the First-tier Tribunal which must take into account any further information or evidence set out in the form or further particulars.

(10) The Secretary of State may discontinue action on an appeal where the notice of appeal has not been forwarded to the First-tier Tribunal and the appellant or an authorised representative of the appellant has given notice that he does not wish the appeal to continue.

Death of a party to an appeal

4.—(1) In any proceedings, on the death of a party to those proceedings, the Secretary of State may appoint a person to proceed with the appeal in the place of such deceased party.

(2) A grant of probate, confirmation or letters of administration in respect of the estate of the deceased party, whenever taken out, shall have no effect on an appointment made under sub-paragraph (1).

(3) Where a person appointed under sub-paragraph (1) has, prior to the date of such appointment, taken any action in relation to the appeal on behalf of the deceased party, the appointment shall be treated as having effect on the day immediately prior to the first day on which such action was taken.