CHAPTER 39.

An Act to provide for the bringing of appeals against the rejection by the Minister of Pensions on certain grounds of claims in respect of incapacity for work, disablement or death arising out of the war and against certain other decisions of the Minister of Pensions affecting awards in respect of such claims; to give a statutory right to sums payable under such awards; and for purposes connected with the matters aforesaid.

[5th August 1943.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Appeals against rejection of war pension claims made in respect of members of the naval, military or air forces.

1.—(1) Where any claim in respect of the disablement of any person made under any such Royal Warrant, Order in Council or Order of His Majesty as is administered by the Minister is rejected by the Minister on the ground that the injury on which the claim is based—

(*a*) is not attributable to war service; and

(*b*) does not fulfil the following conditions, namely, that it existed before or arose during war service and has been and remains aggravated thereby;

the Minister shall notify the claimant of his decision, specifying that it is made on that ground, and thereupon an appeal shall lie to a Pensions Appeal Tribunal constituted under this Act (hereafter in this Act referred to as "the Tribunal") on the issue whether the claim was rightly rejected on that ground.

(2) Where, for the purposes of any such claim as aforesaid, the injury on which the claim is based is accepted by the Minister as fulfilling the conditions specified in paragraph (*b*) of the last foregoing subsection but not as attributable to war service, the Minister shall notify the claimant of his decision, specifying that the injury is so accepted, and thereupon an appeal shall lie to the Tribunal on the issue whether the injury was attributable to such service.

(3) Where any claim in respect of the death of any person made under any such Royal Warrant, Order in Council or Order of His Majesty as aforesaid is rejected by the Minister on the ground that neither of the following conditions is fulfilled, namely—

(*a*) that the death of that person was due to or hastened by an injury which was attributable to war service;

(*b*) that the death was due to or hastened by the aggravation by war service of an injury which existed before or arose during war service;

the Minister shall notify the claimant of his decision, specifying that it is made on that ground, and thereupon an appeal shall lie to the Tribunal on the issue whether the claim was rightly rejected on that ground.

(4) Where, in connection with the determination, for the purposes of any such claim as is referred to in the foregoing provisions of this section, of—

(i) the date by reference to which the rank of the disabled or deceased person is to be determined, or

(ii) in the case of a claim by or in respect of a widow, widower, wife, husband or child, the date before which any marriage or any birth, legitimation or adoption of a child must have taken place,

it is contended that, as the result of a particular period of war service, the disabled or deceased person suffered aggravation of the injury on which the claim is based, being aggravation which in the case of death persisted until death, the Minister shall, if he rejects the said contention, notify the claimant of his decision, and thereupon an appeal shall lie to the Tribunal on the issue whether, as a result of such service during that period, the disabled or deceased person suffered such aggravation.

Appeals against rejection of war pension claims made

2.—(1) Where any claim in respect of the disablement or death of any person made under any scheme made under section three, section four or section five of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939, as amended by the

Pensions (Mercantile Marine) Act, 1942, is rejected by the Minister on either or both of the following grounds, namely— in respect of mariners, pilots, &c. 2 & 3 Geo. 6. c. 83. 5 & 6 Geo. 6. c. 26.

(*a*) that the disablement or death of the said person is not directly attributable to a war injury, war risk injury or detention ;

(*b*) that the case is not one in which—

(i) the said person is to be treated for the purpose of the said section three as having sustained the injury or suffered the detention by reason of his service as a mariner in a British ship ; or

(ii) the said person is to be treated for the purpose of the said section four as having sustained the injury or suffered the detention by reason of his service ; or

(iii) the injury was sustained in the circumstances specified in a scheme made under the said section five or the detention was caused by reason of his service in a ship forming part of His Majesty's navy ;

the Minister shall notify the claimant of his decision, specifying the ground or grounds of the rejection, and thereupon an appeal shall lie to the Tribunal on the issue whether the claim was rightly rejected on that ground or those grounds.

(2) Where the Minister rejects any such claim as aforesaid on one of the grounds specified in the last foregoing subsection and an appeal is brought from his decision,—

(*a*) the Minister may notify the appellant before the hearing of the appeal that he also rejects the said claim on the other ground so specified, and thereupon the Tribunal shall treat the appeal as an appeal on the issue whether the claim was rightly rejected on both the said grounds ;

(*b*) unless the Minister notifies the appellant as aforesaid, he shall not be entitled, if the appeal is allowed, subsequently to reject the said claim on the said other ground.

3.—(1) Where any claim in respect of the incapacity for work, disablement or death of any person made under any scheme made under section one of the Personal Injuries (Emergency Provisions) Act, 1939, is rejected by the Minister on the ground that the incapacity for work or the disablement was not caused by, or the death was not the direct result of, a war injury, or, in the case of a civil defence volunteer, a war service injury, the Minister shall notify the claimant of his decision, specifying that it is made on that ground, and thereupon an appeal shall lie to the Tribunal on the issue whether the claim was rightly rejected on that ground. Appeals against rejection of war pension claims made in respect of civil defence volunteers and other civilians. 2 & 3 Geo. 6. c. 82.

(2) Where an appeal is brought under the last foregoing subsection in any case where the Minister has refused to certify an

injury sustained by a civil defence volunteer as a war service injury or has revoked such a certificate, the Tribunal shall consider whether it is a physical injury (as defined by section five of the Pensions (Mercantile Marine) Act, 1942) which arose out of and in the course of the performance by the volunteer of his duties as a member of the civil defence organisation to which he belonged at the time when the injury was sustained, and (except in the case of a war injury), did not arise out of and in the course of his employment in any other capacity, and if they decide that question in the affirmative, the injury shall be deemed for the purposes of the Personal Injuries (Emergency Provisions) Act, 1939, and any scheme made thereunder to have been certified by the Minister as a war service injury.

Appeals in cases where award is withheld or reduced on ground of serious negligence or misconduct.

4.—(1) Where, in the case of any such claim as is referred to in section one, section two or section three of this Act in respect of the incapacity for work, disablement or death of any person, the Minister withholds or reduces the award on the ground that the injury or detention on which the claim is based was caused or contributed to by the serious negligence or misconduct of the said person or, as the case may be, that his death was so caused or contributed to, the Minister shall notify the claimant of his decision, specifying that it is made on that ground, and thereupon an appeal shall lie to the Tribunal on the issue whether the injury or detention or, as the case may be, the death was so caused or contributed to.

(2) Where an appeal is brought under this Act on any of the issues specified in section one, section two or section three, and the Minister notifies the appellant before the hearing of the appeal that, if the appeal is allowed, he intends to withhold or reduce the award on the ground specified in the last foregoing subsection, the Tribunal shall, if they allow the appeal, determine the issue specified in that subsection, and unless the Minister notifies the appellant as aforesaid, he shall not be entitled, if the appeal is allowed, to withhold or reduce the award on the said ground.

Appeals against assessment of extent of disablement.

5.—(1) Where, in the case of any such claim as is referred to in section one, section two or section three of this Act in respect of the disablement of any person, the Minister makes an interim assessment of the degree of the disablement, he shall notify the claimant thereof and if, at the expiration of two years from the time when he first notified such an interim assessment, he has not made such a final decision or assessment as is referred to in the next following subsection, an appeal shall lie to the Tribunal from the interim assessment in force at the expiration of the said period of two years and from any subsequent interim assessment, and the Tribunal on any such appeal may uphold the Minister's assessment or may assess the disablement at such higher or lower degree as they think proper.

In this subsection the expression " interim assessment " means any assessment other than such a final assessment as is referred to in the next following subsection.

(2) Where, in the case of any such claim as is referred to in section one, section two or section three of this Act in respect of the disablement of any person, it appears to the Minister that the circumstances of the case permit a final settlement of the question to what extent, if any, the said person is disabled, and accordingly—

(*a*) he decides that there is no disablement or that the disablement has come to an end or, in the case of any such claim as is referred to in section three of this Act, that the disablement is not or is no longer serious and prolonged ; or

(*b*) he makes a final assessment of the degree or nature of the disablement ;

he shall notify the claimant of the decision or assessment, stating that it is a final one, and thereupon an appeal shall lie to the Tribunal on the following issues, namely—

(i) whether the circumstances of the case permit a final settlement of the question aforesaid ;

(ii) whether the Minister's decision referred to in paragraph (*a*) hereof or, as the case may be, the final assessment of the degree or nature of the disablement, was right ;

and the Tribunal on any such appeal may set aside the said decision or assessment on the ground that the circumstances of the case do not permit of such a final settlement, or may uphold that decision or assessment, or may make such final assessment of the degree or nature of the disablement as they think proper, which may be either higher or lower than the Minister's assessment, if any.

(3) This section shall not come into operation until such date as may be appointed by Order in Council, and different dates may be appointed for subsection (1) and subsection (2) respectively and for different classes of cases to which those respective subsections apply.

Constitution, jurisdiction and procedure of Pensions Appeal Tribunals.

6.—(1) The provisions of the Schedule to this Act shall have effect with respect to the constitution, jurisdiction and procedure of Pensions Appeal Tribunals.

(2) Where, in the case of an appeal to the Tribunal under section one, section two, section three or section four of this Act, the appellant or the Minister is dissatisfied with the decision of the Tribunal as being erroneous in point of law, he may, with the leave of the Tribunal or of a judge of the High Court nominated

for the purpose by the Lord Chancellor, appeal therefrom, within such time as may be limited by rules of court to the judge so nominated and the decision of that judge shall be final and conclusive.

Rules of court, may provide that, where an appeal is brought under this subsection, a case shall be stated by the chairman of the Tribunal.

(3) Subject to the provisions of the last foregoing subsection, the decision of the Tribunal on any issue on which an appeal is brought under this Act shall be final and conclusive.

(4) In determining an appeal under this Act in respect of any claim or award, the Tribunal shall be bound by the terms of the Royal Warrant, Order in Council, Order of His Majesty or scheme under which the claim or award purports to be made and of any enactment under which any such scheme is made, being terms relating to the issue before the Tribunal.

Application of Act to past decisions and assessments.

7.—(1) This Act shall apply in cases where any such decision of the Minister as is referred to in section one, section two, section three or section four of this Act has been made before the passing of this Act, and in cases where any such decision or assessment as is referred to in section five of this Act has been made before that section comes into operation, and no further notification of any such decision or assessment as is referred to in any of the said sections shall be necessary in any such case, but the Minister shall take such steps as he considers necessary to bring the rights of appeal conferred by this Act to the notice of persons affected by any such decision or assessment.

(2) Any decision of the Minister given before the passing of this Act which corresponds, apart from any difference arising from the terms of the Royal Warrant, Order in Council or Order of His Majesty, as the case may be, in force when the decision was made, with such a decision as is referred to in section one of this Act, shall be deemed, for the purposes of this Act, to be such a decision, and an appeal shall lie therefrom accordingly.

Time limit for appeals.

8.—(1) No appeal shall be brought under any provision of this Act except subsection (1) of section five unless notice of that appeal is given, in such manner as may be prescribed by rules made under the Schedule to this Act, not later than twelve months after—

(*a*) in the case of a decision from which an appeal lies to the Tribunal under section one, section two, section three or section four of this Act, being a decision made before such date as may be appointed by order of the Minister, that date;

(*b*) in the case of a decision or assessment from which an appeal lies to the Tribunal under section five of this Act, being a decision or assessment made before the said section comes into operation in relation to that decision or assessment, such date as may be appointed by order of the Minister;

(*c*) in any other case, the date on which the decision or assessment is notified to the claimant:

Provided that the Tribunal may allow an appeal to be brought after the expiration of the period limited by this subsection if they consider that there was a reasonable excuse for the delay.

(2) The Minister may, for the purposes of paragraph (*a*) or paragraph (*b*) of the last foregoing subsection, appoint different dates for different classes of cases.

(3) No appeal shall be brought under subsection (1) of section five of this Act unless notice of that appeal is given in such manner as may be prescribed by rules made under the Schedule to this Act not later than three months after,—

(*a*) the date on which the period of two years referred to in the said subsection expires; or

(*b*) the date on which the said subsection comes into operation in relation to the assessment from which the appeal is brought; or

(*c*) the date on which the said assessment is notified;

whichever is the latest of those dates:

Provided that the Tribunal may allow the appeal to be brought after the expiration of the period limited by this subsection if they consider there was a reasonable excuse for the delay.

Notices.

9. Any notice given by the Minister under this Act shall be in writing and may be sent by post to the last known or usual place of abode of the claimant or any person authorised to act on his behalf in relation to the claim and, in the case of a notice of a decision from which an appeal lies to the Tribunal, shall specify that fact and the time within which and the manner in which notice of such an appeal must be given.

Power to modify ss. 1, 2, 3 and 4 of this Act by Order in Council.

10.—(1) Where any such Royal Warrant, Order in Council or Order of His Majesty as is referred to in section one of this Act or any such scheme as is referred to in section two or section three of this Act is amended or replaced so as to modify or extend the grounds on which awards may be made and to give rise to any issue on which it appears to His Majesty that an appeal ought to lie under the said sections or section four of this Act but

does not lie thereunder, he may by Order in Council make such modifications of the said sections or section four of this Act as appear to him to be necessary for the purpose of granting such a right of appeal.

(2) Where any Royal Warrant administered by the Minister provides for the awarding of pensions or other grants to any class of persons on grounds similar to those on which awards may be made under any such Royal Warrant, Order in Council or Order of His Majesty as is referred to in section one of this Act or any such scheme as is referred to in section two or section three of this Act, His Majesty may by Order in Council make such modifications of this Act as appear to him to be necessary for the purpose of extending the rights of appeal thereunder in relation to claims made in respect of persons of the said class.

(3) Every Order in Council made under this section shall be laid before Parliament as soon as may be after it is made, and if an address is presented to His Majesty by either House of Parliament within the period of forty days beginning with the day on which any such Order is laid before it, praying that the Order be annulled, His Majesty in Council may annul the Order and it shall thenceforth become void, but without prejudice to the validity of anything previously done thereunder or to the making of a new Order.

In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(4) Any Order in Council made under this section may be varied or revoked by a subsequent Order in Council.

Statutory right to pensions.

11. Where the Minister has made an award under any such Royal Warrant, Order in Council, Order of His Majesty or scheme as is referred to in section one, section two or section three of this Act, in respect of the incapacity for work, disablement or death of any person, the person to whom the award has been made shall have a right to receive the sums payable under the award:

Provided that this section shall not affect any condition to which the award or any payment thereunder is subject, or any power of the Minister to vary or revoke the award, or to withhold, reduce or apply any payment thereunder, in accordance with any provision of the Royal Warrant, Order in Council, Order of His Majesty or scheme.

Interpretation.

12.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them:—

"detention" and "war injuries" have the same meanings as in the Pensions (Navy, Army, Air Force and Mercantile

Marine) Act, 1939, as amended by the Pensions (Mercantile Marine) Act, 1942;

"civil defence organisation" means any organisation established for civil defence purposes which is declared by a scheme made under the Personal Injuries (Emergency Provisions) Act, 1939, to be a civil defence organisation for the purpose of the said Act and the scheme;

"civil defence volunteer" and "war service injury" have the same meanings as in the Personal Injuries (Emergency Provisions) Act, 1939, as amended by the Pensions (Mercantile Marine) Act, 1942;

"His Majesty's naval, military or air forces" include the nursing service and any other auxiliary service of any of His Majesty's said forces;

"injury", in relation to any such claim as is referred to in section one of this Act, includes wound or disease;

"the Minister" means the Minister of Pensions;

"war risk injury" means an injury falling within section one of the Pensions (Mercantile Marine) Act, 1942, except that, in relation to the persons referred to in subsection (4) of section four of that Act, it means an injury falling within the said section one as amended by the said subsection (4);

"war service," in relation to any claim made under any such Royal Warrant, Order in Council or Order of His Majesty as is referred to in section one of this Act, has the same meaning as in that Royal Warrant, Order in Council or Order.

(2) References in this Act to the rejection of a claim or the withholding of an award shall be construed as including references to the cancellation of an award made on a claim.

Application to Scotland.

13. This Act in its application to Scotland shall have effect subject to the following modifications:—

(*a*) for references to a judge of the High Court nominated by the Lord Chancellor there shall be substituted references to the Court of Session; and

(*b*) for references to the Lord Chancellor there shall be substituted references to the Lord President of the Court of Session; and

(*c*) for the reference to a barrister there shall be substituted a reference to an advocate.

Application to Northern Ireland.

14. This Act in its application to Northern Ireland shall have effect subject to the modifications that for the references to the Lord Chancellor there shall be substituted references to the Lord Chief Justice of Northern Ireland and for the references to the High Court there shall be substituted references to the Supreme Court.

Short title and extent.

15.—(1) This Act may be cited as the Pensions Appeal Tribunals Act, 1943.

(2) It is hereby declared that this Act extends to Northern Ireland.

SCHEDULE.

Section 6.

Constitution, Jurisdiction and Procedure of Pensions Appeal Tribunals.

1. Such number of Pensions Appeal Tribunals shall be constituted as the Lord Chancellor may from time to time determine and they shall sit at such times and in such places as he may from time to time determine.

2. The members of the Tribunals shall be appointed by the Lord Chancellor, and there shall be paid to them such remuneration as the Treasury may determine and the Lord Chancellor may, if he thinks fit, remove any member of such a Tribunal.

3.—(1) The number of members of the Tribunal to hear any particular appeal shall be three and, in the case of an appeal under section one, section two, section three or section four of this Act, shall consist of—

(*a*) a barrister or solicitor of not less than seven years' standing;

(*b*) a duly qualified medical practitioner of not less than seven years' standing;

(*c*) a person who satisfies the conditions specified in the next following paragraph;

and, in the case of an appeal under section five of this Act, shall consist of two duly qualified medical practitioners of not less than seven years' standing and a person who satisfies the conditions specified in the next following paragraph, and the chairman of the Tribunal shall, in cases where there is a legal member, be that member, and in other cases shall be such one of the duly qualified medical practitioners as may be appointed to be chairman by the Lord Chancellor.

(2) The conditions referred to in the last foregoing paragraph are that the member shall be of the same sex as the person in respect of whose incapacity for work, disablement or death the claim to which the appeal relates was made and—

(*a*) if the claim was made in respect of an officer of His Majesty's naval, military or air forces under any such Royal Warrant, Order in Council or Order of His Majesty as is referred to in section one of this Act, shall be a retired or demobilised officer of any of the said forces;

(*b*) if the claim was made in respect of a member of any of the said forces, other than an officer, under any such Royal Warrant, Order in Council or Order of His Majesty as aforesaid, shall be a discharged or demobilised member of any of the said forces who was not at the time of his discharge or demobilisation an officer;

(*c*) if the claim was made under any such scheme as is referred to in section two of this Act, shall be a person who is or has been a master or member of the crew of a British ship;

(*d*) if the claim was made under any such scheme as is referred to in section three of this Act in respect of a war service injury sustained by a civil defence volunteer, shall be a person who is or has been a member of a civil defence organisation;

(*e*) if the claim was made under any such scheme as is referred to in the said section three, not being a claim in respect of a war service injury sustained by a civil defence volunteer, shall be any person other than a member of His Majesty's naval, military or air forces.

4. No court fees shall be charged on the hearing of any case before a Tribunal.

5.—(1) Subject as aforesaid, the Lord Chancellor may make rules with respect to—

(*a*) the manner of hearing of appeals by Pensions Appeal Tribunals and in particular appeals in cases where the appellant owing to illness or other cause is not present at the hearing;

(*b*) the mode of proof and admissibility of evidence;

(*c*) the representation of the appellant and the Minister at the hearing;

(*d*) the recording and proof of the decisions of the Tribunals;

and such other matters relating to the practice and procedure of the Tribunals as the Lord Chancellor thinks fit.

(2) Such rules shall provide for the disclosure of all such documents (whether in the possession of a government department or not) as are necessary for disposing fairly of the appeal, subject to such exceptions and conditions as the rules may prescribe in the public interest, and shall provide for making available to the appellant copies of all documents produced to the Tribunal in connection with the appeal except where the Tribunal considers it undesirable in the interests of the appellant.

(3) Such rules may provide for the taking of medical and other expert advice by the Tribunals but shall require that such advice shall be disclosed to the appellant except where the Tribunal considers it undesirable in the interests of the appellant.

(4) Such rules shall provide for the payment by the Tribunal of:—

(*a*) travelling expenses and allowances to the following persons,—

(i) an appellant attending the hearing of his appeal by the Tribunal;

(ii) in a case where an appellant is unable to attend the hearing for reasons of health, a relative or friend attending the hearing on his behalf;

(iii) in a case where the appellant attends the hearing but requires for reasons of health to be accompanied by an attendant, that attendant;

(*b*) expenses reasonably incurred by appellants in obtaining, for the purpose of their appeals, medical reports and certificates and the attendance of medical witnesses; and

(*c*) in a case where leave is obtained (whether by the appellant or the Minister) to appeal to a judge of the High Court, the costs incurred by the appellant in connection with that appeal.

(5) All such rules shall be laid before Parliament as soon as may be after they are made, and if either House, within the period of forty days beginning with the day on which any such rules are laid before it, resolves that the rules be annulled, they shall thenceforth become void, but without prejudice to the validity of anything previously done thereunder or to the making of new rules.

In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

6. Any appeal brought by a person who, at the time when the notice of appeal was given, resided in Scotland or in Northern Ireland shall be heard by such one of the Tribunals appointed for Scotland or, as the case may be, for Northern Ireland as may be prescribed by or under rules made for those Tribunals under this Schedule, and all other appeals shall be heard by such one of the Tribunals appointed for England as may be prescribed by or under rules made for those Tribunals under this Schedule:

Provided that where an appeal has been determined by a Tribunal, that determination shall not be open to challenge on the ground that the appeal should, by virtue of this paragraph, have been heard by another Tribunal.

7. In the case of appeals heard in Wales the appellant or any witness may, if he considers that he would otherwise be at a disadvantage by reason of his natural language of communication being Welsh, use the Welsh language and rules made under this Schedule may provide for the employment of interpreters of the English and Welsh languages for the purpose of any such appeal.

8. Any expenses incurred for the purposes of this Schedule, including the remuneration of members of the Tribunals and any expenses which may be incurred by the Tribunals up to an amount sanctioned by the Treasury, shall be defrayed out of moneys provided by Parliament.

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