CHAPTER 22.

An Act to amend the Police and Firemen (War Service) Act, 1939, and, in connection therewith, to amend certain other enactments. [24th May 1944.]

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 :—

Grants in case of death or incapacity.

1.—(1) The following section shall be substituted for section four of the principal Act :—

"**4.**—(1) If a person to whom section one of this Act applies (being a person who, in order to serve in His Majesty's forces, ceased to serve as a constable) dies either—

(*a*) while serving in His Majesty's forces during the period of the present emergency and one year after the end thereof, or, if the Secretary of State on the application of the appropriate authority so directs in his case, such longer period as may be specified in the direction ; or

(*b*) in consequence of infirmity of mind or body which prevented him from resuming his service as a constable, whether the infirmity was occasioned while serving in those forces or before he began so to serve ;

the appropriate pension enactment shall apply in relation to him as if he had been serving at the time of his death in the police force to which he belonged immediately before he ceased to serve as a constable, and had died otherwise than from the effects of an injury received in the execution

of his duty; and the appropriate authority, if they think fit,—

(i) where, by virtue of the foregoing provisions of this subsection, a gratuity is payable to the widow of any such person, may, in lieu of paying her a gratuity, pay to her under and subject to the provisions of the appropriate pension enactment, a pension of such amount as is provided in subsection (5) of this section;

(ii) where, by virtue of the said provisions of this subsection, a pension or an allowance is payable to any person, may increase the amount thereof up to such amount as they think fit not exceeding the amount so provided:

Provided that the appropriate authority shall not exercise the powers conferred by paragraphs (i) and (ii) of this subsection, in a case where the deceased died in consequence of infirmity of mind or body which prevented him from resuming his service as a constable but was occasioned before he began to serve in His Majesty's forces, unless they are satisfied that the infirmity was occasioned by a non-accidental injury received by him in the execution of his duty as a constable without his own default.

(2) If a person to whom section one of this Act applies (being a person who, in order to serve in His Majesty's forces, ceased to serve as a fireman) dies either—

(*a*) while serving in His Majesty's forces during the period of the present emergency and one year after the end thereof, or, if the Secretary of State on the application of the appropriate authority so directs in his case, such longer period as may be specified in the direction; or

(*b*) in consequence of infirmity of mind or body which prevented him from resuming his service as a fireman, whether the infirmity was occasioned while serving in those forces or before he began so to serve;

the appropriate authority may, if they think fit, pay—

(i) a pension to his widow, of an amount not exceeding the amount provided in subsection (5) of this section;

(ii) allowances to his children under sixteen years of age until they severally reach the age of sixteen years, of an amount not exceeding the amount so provided;

(iii) a gratuity to any relative of his who has been wholly or mainly dependent upon him, of an amount not exceeding the amount which would have been payable to such a relative if the deceased had died while

serving in the fire brigade from the effects of an injury received in the execution of his duty without his own default;

and the provisions of the appropriate pension enactment shall apply to any pension, allowance or gratuity granted under this subsection as they apply to any pension, allowance or gratuity granted under that enactment:

Provided that the appropriate authority shall not exercise the powers conferred by this subsection, in a case where the deceased died in consequence of infirmity of mind or body which prevented him from resuming his service as a fireman but was occasioned before he began to serve in His Majesty's forces, unless they are satisfied that the infirmity was occasioned by an injury received in, or disease resulting from, the execution of his duty as a fireman without his own default.

(3) If a person to whom section one of this Act applies, after ceasing to serve in His Majesty's forces, is prevented, in consequence of infirmity of mind or body (whether occasioned while so serving or before he began so to serve), from resuming his service as a constable or fireman, the appropriate pension enactment shall apply in relation to him as if he—

(*a*) had become, while serving as a constable or fireman in the police force or fire brigade to which he belonged immediately before he ceased to serve as a constable or fireman, incapacitated for the performance of his duty by infirmity of mind or body otherwise than in consequence of an injury received in the execution of his duty; and

(*b*) had retired on a medical certificate at the expiration of the period (or last period, if more than one) which by virtue of subsection (1) of section two of this Act is treated as a period of approved service in his case;

and the appropriate authority, if they think fit—

(i) where, by virtue of the foregoing provisions of this subsection, a gratuity is payable to any such person, may, in lieu of paying him a gratuity, pay to him, under and subject to the provisions of the appropriate pension enactment, a pension of such amount as is provided in subsection (5) of this section;

(ii) where by virtue of the said provisions of this subsection a pension is payable to any such person, may increase the amount thereof up to such amount as they think fit, not exceeding the amount so provided:

Provided that the appropriate authority shall not exercise the powers conferred by paragraphs (i) and (ii) of this

subsection, in the case of a person prevented from resuming his service in consequence of infirmity of mind or body occasioned before he began to serve in His Majesty's forces, unless they are satisfied that the infirmity was occasioned, in the case of a constable, by an injury received in the execution of his duty as a constable without his own default, and, in the case of a fireman, by an injury received in or disease resulting from the execution of his duty as a fireman without his own default.

(4) If a person to whom section one of this Act applies, after ceasing to serve in His Majesty's forces, resumes his service as a constable or fireman, then—

(*a*) if he dies in consequence of an injury or disease received or contracted while serving in those forces and either is at the time of his death serving as a constable or fireman or in receipt of a pension from the appropriate authority or has retired on account of that injury or disease, the appropriate authority may, if they think fit—

(i) in the case of a constable, exercise the powers conferred by paragraphs (i) and (ii) of subsection (1) of this section as if any gratuity, pension or allowance payable under the appropriate pension enactment in respect of his death were payable by virtue of that subsection ; and

(ii) in the case of a fireman, exercise the powers conferred by paragraphs (i), (ii) and (iii) of subsection (2) of this section ;

(*b*) if he becomes incapacitated for the performance of his duty in consequence of any such injury or disease and retires on a medical certificate, the appropriate authority may, if they think fit, exercise the powers conferred by paragraphs (i) and (ii) of subsection (3) of this section as if any gratuity or pension payable to him under the appropriate pension enactment were payable by virtue of the said subsection (3).

(5) Subject to the provisions of this subsection, the amount of any pension or allowance payable to any person for any period at the discretion of the appropriate authority by virtue of this section shall not, when aggregated with the amount of any grant which is also payable for that period to that person out of any naval, military or air force fund in pursuance of any royal warrant or other instrument, exceed—

(*a*) in a case to which subsection (1) or (2) or paragraph (*a*) of subsection (4) of this section applies, the amount which would have been payable to that person for that

period under the appropriate pension enactment if the deceased had died from the effects of a non-accidental injury received in the execution of his duty as a constable or fireman without his own default; and

(*b*) in a case to which subsection (3) or paragraph (*b*) of subsection (4) applies, the amount which would have been payable to that person for that period under the appropriate pension enactment if he had been incapacitated for the performance of his duty as a constable or fireman by infirmity of mind or body occasioned by an injury received in the execution of his duty without his own default:

Provided that—

(i) where by virtue of subsection (1) or paragraph (*a*) of subsection (4) of this section a pension is paid in lieu of a gratuity to a widow, the pension shall be at a rate not less than thirty pounds a year; and

(ii) where by virtue of subsection (3) or paragraph (*b*) of subsection (4) of this section a pension is paid in lieu of a gratuity to a person to whom section one of this Act applies, the amount of the pension shall be at a rate not less than one-twelfth of his annual pay.

(6) Where the grant, the amount whereof for any period is to be aggregated for the purpose of the last foregoing subsection with the amount of a pension or allowance payable to any person for that period, is a gratuity, the amount of the grant for that period shall be taken to be the amount which would be payable for that period under Part I of the Government Annuities Act, 1929, if the gratuity had been laid out at the date when it became payable in the purchase of an annuity dependent on the life of that person. 19 & 20 Geo. 5. c. 29.

(7) Where by virtue of any of the foregoing provisions of this section the amount of any pension, allowance or gratuity is to be determined, whether wholly or in part, at the discretion of the appropriate authority, that authority may from time to time revise their determination."

(2) Any pension, allowance or gratuity granted before the commencement of this Act which could have been lawfully granted if the principal Act had originally been enacted as amended by this section shall be deemed to have been lawfully granted.

(3) After the commencement of this Act the appropriate authority may grant to any person any pension, allowance or gratuity which could have been lawfully granted before the commencement of this Act if the principal Act had originally

been enacted as amended by this section, and any such pension or allowance may be granted as from such date as the authority think fit, not being later than the commencement of this Act or earlier than the date from which it could have been so granted:

Provided that where by virtue of this subsection a pension is granted in lieu of a gratuity which has been paid, the appropriate authority may, if and to such extent as they think fit, treat the gratuity as having been paid on account of the pension.

Provision for determination of questions and for medical appeals.

2.—(1) Before granting a pension, allowance or gratuity—

(*a*) under subsection (1) or (2) of section four of the principal Act, on the ground that a person has died in consequence of infirmity of mind or body which prevented him from resuming his service as a constable or fireman; or

(*b*) under subsection (4) of the said section four, on the ground that a person has died, or become incapacitated for the performance of his duty, in consequence of an injury or disease received or contracted while serving in His Majesty's forces;

the appropriate authority may require such evidence as they think fit that that person has died in consequence of such an infirmity, or has died or become incapacitated in consequence of such an injury or disease, as the case may be.

(2) Before granting, under subsection (3) of the said section four, a pension or gratuity to any person on the ground that he is prevented in consequence of any infirmity from resuming his service as a constable or fireman, the appropriate authority shall be satisfied by the evidence of some duly qualified medical practitioner or practitioners, selected by the authority, that he is so prevented and is likely to continue to be so prevented.

(3) Where an application for the grant of a pension or gratuity under the said subsection (3) is made after the commencement of this Act, or has been made but not determined before the commencement of this Act, the following enactments (which provide for medical examinations and appeals thereon) namely—

11 & 12 Geo. 5. c. 31.

(*a*) subsections (7) and (8) of section twelve of the Police Pensions Act, 1921 (in the case of a constable); and

15 & 16 Geo. 5. c 47.

(*b*) subsections (7) and (8) of section ten of the Fire Brigade Pensions Act, 1925 (in the case of a fireman);

shall apply as they apply for the purposes of those sections.

Presumption of death of persons serving in forces.

3.—(1) For the purposes of the following provisions of the principal Act, namely—

(*a*) subsection (2) of section one (which authorises the supplementation of the pay of persons to whom that section applies while serving in His Majesty's forces);

(*b*) subsection (1) of section two (which provides that a period for which any such person serves in His Majesty's forces is to be treated for the purpose of the appropriate pension enactment as a period of approved service); and

(*c*) subsections (1) and (2) of section four (which provide for the grant of pensions, allowances and gratuities in respect of the death of any such person while serving in His Majesty's forces);

the question whether any such person has died while serving in His Majesty's forces shall be determined in accordance with the following rules:—

(i) no such person shall be treated as having died while serving in those forces unless and until the appropriate authority are satisfied that he has been officially reported as dead or as missing;

(ii) where the appropriate authority are satisfied that any such person has been officially reported as dead, or as missing and presumed dead, he shall be treated as having died while serving in those forces unless and until the authority are satisfied that he has subsequently been officially reported as alive;

(iii) subject to the last foregoing paragraph, where the appropriate authority are satisfied that any such person has been officially reported as missing, the authority may, if they think fit, treat him as having died while serving in those forces unless and until they are satisfied that he has subsequently been officially reported as alive.

(2) Where the appropriate authority determine in accordance with the foregoing rules that any such person is to be treated as having died, the date of his death shall be taken to be such date as the authority may fix on the evidence available to them; but any sums paid to or in respect of him under subsection (2) of section one of the principal Act for a period after the date of his death as so fixed shall be irrecoverable, and no pension or allowance shall be payable for any period for which such sums are paid.

(3) Where by virtue of the foregoing rules the appropriate authority determine that any person is to be treated as having died and subsequently determine that he is to be treated as being alive—

(*a*) any pension, allowance or gratuity paid by virtue of the first determination shall be irrecoverable; and

(*b*) no payments shall be made to or in respect of him under subsection (2) of section one of the principal

Act for the period between the two determinations in excess of the difference between the aggregate amount of the payments which might have been so made if he had been treated as alive during the said period and the aggregate amount of all pensions, allowances and gratuities paid by virtue of the first determination; and

(*c*) the said period shall be treated as a period of approved service in the police force or fire brigade to which he belonged immediately before he ceased to serve as a constable or fireman in order to serve in His Majesty's forces:

Provided that, where a gratuity has been paid to any person as his wife or dependant by virtue of the first determination, the appropriate authority may, if and to such extent as they think fit, treat the gratuity as having been paid on account of any gratuity, pension or allowance that may subsequently become payable in respect of his death to that person.

(4) Where before the commencement of this Act the appropriate authority have determined that a person to whom section one of the principal Act applies is to be treated as having died while serving in His Majesty's forces, nothing in this section shall require them to revise that determination unless and until they are satisfied that he has been officially reported as alive.

(5) In this section the expression "officially reported" means reported (whether before or after the commencement of this Act) by or on behalf of the Admiralty, the Army Council or the Air Council.

Alteration of certain time limits in principal Act.

4.—(1) A reference to the period of the present emergency and one year after the end thereof, or, if the Secretary of State on the application of the appropriate authority so directs in the case of any person, such longer period as may be specified in the direction, shall be substituted for any reference to the period of the present emergency in the following provisions of the principal Act, namely—

(*a*) subsection (2) of section one (which authorises the supplementation of the pay of persons to whom that section applies while serving in His Majesty's forces during the period of the present emergency);

(*b*) subsection (1) of section two (which extends approved service so as to include service in His Majesty's forces during the period of the present emergency);

(*c*) section five (which defines the amount of civil pay which a constable or fireman is to be deemed to have received while serving in His Majesty's forces during the period of the present emergency);

(*d*) subsections (1) and (2) of section six (which substitute certain provisions of the Act for previous enactments in relation to service as a member of a reserve during the period of the present emergency);

and accordingly in subsection (2) of the said section two the words from "or within such further time" to the end of the subsection are hereby repealed.

(2) On the application of the appropriate authority, the Secretary of State may, in the case of any person to whom section one of the principal Act applies, direct that the period for which payments may be made to or in respect of him under subsection (3) of that section after he has ceased to serve in His Majesty's forces shall be extended to such longer period as may be specified in the direction.

(3) In section eight of the principal Act (which provides that a constable on probation joining His Majesty's forces, and subsequently resuming service as a constable during the period of the present emergency or within two months from the end of that period, shall serve on probation for his unexpired period of probation) the words "during that period or within two months from the end of that period" are hereby repealed.

(4) The period within which a person may, under section nine of the principal Act, resume service as a constable without making a declaration required to be made on accepting office as a constable shall be any period which is to be treated as a period of approved service in his case by virtue of subsection (1) of section two of that Act and two months from the end thereof, instead of the period of the present emergency and two months from the end thereof.

Effect of suspension of right to retire on pension.

5. Section ten of the principal Act (which suspends during the period of the present emergency the right to retire on pension) shall have effect, and be deemed always to have had effect, as if the following subsection were substituted for subsection (2) thereof:—

"(2) Where before the commencement of this Act or during the period of the present emergency written notice has been or is given—

(*a*) by the chief officer of a police force or fire brigade to the appropriate authority; or

(*b*) by any other constable or fireman to the chief officer of the police force or fire brigade to which he belongs;

of his intention to retire on pension on a date on which he would have been entitled so to retire if the appropriate authority or chief officer consented thereto (hereafter referred to as 'the relevant date'), then if such consent is withheld and he continues to

serve in the police force or fire brigade after the relevant date, the following provisions shall have effect :—

(i) if he retires while serving in a lower rank or at a lower rate of pay than his rank or rate of pay at the relevant date, not having been required to retire as an alternative to dismissal, the amount of his pension shall not be less than it would have been if he had retired on the relevant date ;

(ii) if he is dismissed, or required to retire as an alternative to dismissal, on grounds other than grounds on which his pension, had he been in receipt of a pension, would have been liable to forfeiture, he shall be entitled, as from the expiration of the period of the present emergency, to a pension of the same amount as that to which he would have been entitled if he had retired on the relevant date ;

(iii) if he dies while serving in such lower rank or at such lower rate of pay as aforesaid, or while in receipt of a pension granted to him on his retirement while so serving, the amount of any pension or allowances payable to his widow or children shall not be less than it would have been if he had retired on the relevant date and been granted a pension as from that date ;

(iv) if he dies before the expiration of the period of the present emergency, being entitled as from the expiration of that period to a pension by virtue of paragraph (ii) of this subsection, his widow and children shall be entitled, as from the date of his death, to a pension or allowances of the same amount as the pension or allowances (if any) to which they would have been entitled if he had retired on the relevant date and been granted a pension as from that date."

Consequential amendment of enactments.

6.—(1) The power of the Parliament of Northern Ireland under section fifteen of the principal Act to make laws in respect of members of a police force or fire brigade in Northern Ireland for purposes similar to the purposes of that Act shall include power to make such laws for purposes similar to the purposes of this Act.

3 & 4 Geo. 6. c. 20.

(2) Notwithstanding anything in subsection (2) of section one of the Emergency Powers (Defence) Act, 1940 (which provides that the enactments which may be applied with modifications by Defence Regulations shall be enactments passed before the commencement of that Act), any such Regulation applying the provisions of the principal Act with modifications to persons engaged in war work as defined by the Regulation, having ceased to serve as constables or firemen in order to be so engaged or in order to serve in His Majesty's forces, and to persons serving

in His Majesty's forces having ceased to serve as constables or firemen in order to be so engaged, may apply the provisions of this Act with modifications to such persons.

(3) The power of the Secretary of State under the Fire Services (Emergency Provisions) Act, 1941, as extended by any Defence Regulations (whether made before or after the commencement of this Act) to make regulations for the preservation of the pension rights of persons transferred to or joining the National Fire Service and similar matters shall include power— 4 & 5 Geo. 6. c. 22.

(*a*) to apply the provisions of this Act (including those provisions as extended by any Defence Regulation made by virtue of the last foregoing subsection), with or without modification, as if the rights and obligations thereby conferred and imposed had been conferred and imposed before the establishment of the National Fire Service;

(*b*) to make provision corresponding to subsection (2) of section ten of the principal Act;

(*c*) to declare what, during the existence of the National Fire Service, is to be treated for the purposes of the principal Act or this Act as resuming service as a fireman;

(*d*) to provide that any such regulations, in so far as they are made by virtue of this subsection, shall have effect from such date before the making thereof but after the passing of the said Act of 1941 as may be specified in the regulations.

(4) As soon as may be after the commencement of this Act, every local authority by whom a scheme was submitted to the Secretary of State under subsection (2) of section seven of the principal Act for securing that firemen mentioned in that subsection should as nearly as may be have the same rights and be under the same obligations as are conferred or imposed by sections two to six of the principal Act on a fireman to whom the Fire Brigade Pensions Act, 1925, applies—

(*a*) shall submit, under paragraph (iii) of the said subsection (2), a further scheme varying the first mentioned scheme in such manner as to secure; or

(*b*) in a case where the first mentioned scheme has not been approved before the commencement of this Act, shall re-submit a new scheme for securing;

that the said firemen shall, as nearly as may be, have the same rights and be under the same obligations as are so conferred or imposed by the said sections two to six as amended by this Act and by subsection (2) of section ten of the principal Act as so amended.

(5) Nothing in subsection (2) of section seven of the principal Act or in the last foregoing subsection shall be taken to require a scheme submitted and approved under those subsections, being a scheme for amending a scheme in operation in Scotland by virtue of paragraph (*b*) of subsection (1) of section twenty-four of the Fire Brigade Pensions Act, 1925, to contain provisions conferring rights or imposing obligations which are inconsistent with the provisions of the scheme so in operation.

Short title, citation, interpretation and extent.

7.—(1) This Act may be cited as the Police and Firemen (War Service) Act, 1944, and the principal Act and this Act may be cited together as the Police and Firemen (War Service) Acts, 1939 and 1944.

2 & 3 Geo. 6. c. 103.

(2) In this Act the expression "principal Act" means the Police and Firemen (War Service) Act, 1939.

(3) This Act, save in so far as it amends section fifteen of the principal Act, shall not extend to Northern Ireland.

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