

Armed Forces (Pensions and Compensation) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Defence, are published separately as EN – 10.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Hoon has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Armed Forces (Pensions and Compensation) Bill are compatible with the Convention rights.

Armed Forces (Pensions and Compensation) Bill

CONTENTS

Pensions and compensation

- 1 Pension and compensation schemes: armed and reserve forces
- 2 Payments due from scheme administrator in respect of deceased persons
- 3 Accrued rights
- 4 Existing naval and marine pensions

Appeals

- 5 Amendments to Pensions Appeal Tribunals Act 1943

Miscellaneous and supplementary

- 6 Royal Patriotic Fund Corporation
- 7 Amendment and repeals
- 8 Commencement
- 9 Expenses
- 10 Orders
- 11 Interpretation
- 12 Short title

Schedule 1 – Amendments to Pensions Appeal Tribunals Act 1943
Schedule 2 – Royal Patriotic Fund Corporation: transfer of staff
Schedule 3 – Repeals

A
B I L L

TO

Make new provision for establishing pension and compensation schemes for the armed or reserve forces; to amend the Pensions Appeal Tribunals Act 1943; to provide for the transfer of the property, rights and liabilities of the Royal Patriotic Fund Corporation to a registered charity; and for connected purposes.

BE IT ENACTED by the Queen'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:—

Pensions and compensation

1 Pension and compensation schemes: armed and reserve forces

- (1) The Secretary of State may by order establish schemes which, in respect of a person's service in the armed forces, provide—
- (a) for benefits, in the form of pensions or otherwise, to be payable to or in respect of him on termination of service or on death or retirement, or 5
 - (b) for payments to be made towards the provision of such benefits.
- Such a scheme is referred to in this Act as an armed forces pension scheme.
- (2) The Secretary of State may by order establish schemes which provide for benefits to be payable to or in respect of a person by reason of his illness or injury (whether physical or mental), or his death, which is attributable (wholly or partly) to his service in the armed forces or the reserve forces. 10
- Such a scheme is referred to in this Act as an armed and reserve forces compensation scheme.
- (3) The Secretary of State may provide for any scheme under this section to be administered by another person. 15

2 Payments due from scheme administrator in respect of deceased persons

- (1) This section applies if on the death of any person who is or has been a member of the armed forces or the reserve forces –
- (a) an amount is due to him in respect of benefits payable under an armed forces pension scheme or an armed and reserve forces compensation scheme, and 5
 - (b) the amount is payable by a person (“the administrator”) other than the Secretary of State.
- (2) Sections 3 and 5 to 11 of Navy and Marines (Property of Deceased) Act 1865 (c. 111) (distribution of personal estate of deceased seamen, etc.) are to have effect in relation to the due amount as if it were payable by the Secretary of State, and the Secretary of State may give directions to the administrator as to the payment of that amount. 10
- (3) Section 4 of the Pensions and Yeomanry Pay Act 1884 (c. 55) (distribution of personal estate of deceased soldiers, etc., not exceeding £5000) is to have effect in relation to the due amount as if it were held by or under the control of the Secretary of State, and the Secretary of State may give directions to the administrator as to the payment of the due amount. 15

3 Accrued rights

- (1) The power of the Secretary of State to modify an armed forces pension scheme may not on any occasion be exercised in any manner which would or might adversely affect any entitlement, accrued rights or pension credit rights of any member of the scheme acquired before the power is exercised unless – 20
- (a) the consent requirements are satisfied in respect of the exercise of the power on that occasion in that manner, or 25
 - (b) the scheme is modified in the prescribed manner.
- (2) The consent requirements are those prescribed for the purpose of obtaining the consent of members of the scheme to its modification.
- (3) In this section –
- “prescribed” means prescribed by an order under section 1, 30
 - “accrued rights”, “entitlement”, “member” and “pension credit rights” have the same meanings as in Part 1 of the Pensions Act 1995 (c. 26).

4 Existing naval and marine pensions

In section 3 of the Naval and Marine Pay and Pensions Act 1865 (c. 73) (payment to officers, widows etc.), for the words from “services” to “deceased” there is substituted “service in Her Majesty’s naval or marine force as an”. 35

Appeals

5 Amendments to Pensions Appeal Tribunals Act 1943

Schedule 1 (which makes amendments to the Pensions Appeal Tribunals Act 1943 (c. 39) about appeals to and from Pensions Appeal Tribunals, including amendments conferring appeal rights in relation to schemes under section 1(2) of this Act) has effect. 40

*Miscellaneous and supplementary***6 Royal Patriotic Fund Corporation**

- (1) The Secretary of State may by order transfer, or provide for the transfer of, the property, rights and liabilities of the Royal Patriotic Fund Corporation to a registered charity established for the benefit of persons who – 5
- (a) are widows or widowers, or children or dependants, of persons who have served in the armed forces or the reserve forces, and
- (b) are in need of assistance.
- (2) The rights and liabilities that may be transferred include rights and liabilities under a contract of employment. 10
- (3) Schedule 2 makes provision in relation to the transfer of employees.
- (4) An order under this section may provide for the dissolution of the Corporation.
- (5) A reference in any instrument or other document to the Corporation is, so far as the context permits, to be read as a reference to the transferee.
- (6) In this section “charity” has the same meaning as in the Charities Act 1993 (c. 10) and “registered” means registered under that Act. 15

7 Amendment and repeals

- (1) In section 4 of the Forfeiture Act 1982 (c. 34) (Commissioner to decide whether forfeiture rule applies to social security benefits), in the definition of “relevant enactment” in subsection (5), the following entry is inserted after the entry relating to the Social Security Contributions and Benefits Act 1992 – 20
- “section 1 of the Armed Forces (Pensions and Compensation) Act 2004,”.
- (2) The enactments set out in Schedule 3 are repealed to the extent specified.

8 Commencement

25

The preceding provisions of this Act are to come into force on such day as the Secretary of State may by order appoint.

9 Expenses

Any expenses incurred by the Secretary of State in pursuance of this Act are to be paid out of money provided by Parliament. 30

10 Orders

- (1) Any power to make an order under this Act is exercisable by the Secretary of State by statutory instrument.
- (2) An order under this Act may make – 35
- (a) any supplementary, incidental or consequential provision,
- (b) any transitory, transitional or saving provision,
- which the Secretary of State considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.

- (3) The provision which may be made under subsection (2) includes provision amending or repealing any enactment or instrument.
- (4) A statutory instrument containing an order under this Act is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A statutory instrument containing an order under this Act which adds to, replaces or omits any part of the text of an Act is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament; and subsection (4) does not apply to such an instrument.

5

11 Interpretation

In this Act—

“armed forces” means the naval, military or air forces of the Crown, but not the reserve forces,

“reserve forces” has the same meaning as in the Reserve Forces Act 1996 (c. 14).

10

12 Short title

This Act may be cited as the Armed Forces (Pensions and Compensation) Act 2004.

15

SCHEDULES

SCHEDULE 1

Section 5

AMENDMENTS TO PENSIONS APPEAL TRIBUNALS ACT 1943

- 1 The Pensions Appeal Tribunals Act 1943 (c. 39) is amended in accordance with the following provisions of this Schedule. 5
- 2 (1) Section 5A (appeals to Pension Appeal Tribunal against specified decisions) is amended as follows.
- (2) In subsection (1), for “any such claim as is referred to in section 1, 2 or 3 of this Act” there is substituted “a claim to which this section applies”.
- (3) After that subsection there is inserted – 10
- “(1A) This section applies to –
- (a) any such claim as is referred to in section 1, 2 or 3 of this Act;
- (b) a claim under a scheme mentioned in section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (compensation schemes for armed and reserve forces).” 15
- 3 (1) Section 6 (constitution, jurisdiction and procedure of Pension Appeal Tribunals) is amended as follows.
- (2) Subsections (2) to (2B) (which are superseded by provisions inserted by this Schedule) are omitted.
- (3) In subsection (2C), for the words from the beginning to “above,” there is substituted – 20
- “Where –
- (a) a case is referred under section 6B of this Act for redetermination, or determination by a differently constituted Tribunal, or
- (b) a direction for a rehearing is given under rules made by virtue of paragraph 5(3B) of the Schedule to this Act,”
- and after “date of the” there is inserted “reference or”.
- (4) In subsection (3), for “Subject to subsections (2) and (2A) of this section,” there is substituted – 30
- “Subject to –
- (a) sections 6A and 6B of this Act, and
- (b) rules made by virtue of paragraph 5(3A) of the Schedule to this Act.”

4 After section 6 there is inserted –

“6A Appeals from Tribunal to Social Security Commissioner

- (1) Subject to the provisions of this section, an appeal shall lie to an appropriate Social Security Commissioner from any decision of the Tribunal under section 1, 2, 3, 4 or 5A of this Act on the ground that the decision was erroneous in point of law. 5
- (2) An appeal shall lie under this section at the instance of the person who appealed to the Tribunal or of the Minister.
- (3) If each of the parties to the appeal expresses the view that the decision appealed against was erroneous in point of law, the Commissioner may set aside the decision and refer the case to the Tribunal with directions for its determination. 10
- (4) Where the Commissioner holds that the decision appealed against was erroneous in point of law, he shall set it aside and –
- (a) he shall have power – 15
- (i) to give the decision which he considers the Tribunal should have given, if he can do so without making fresh or further findings of fact; or
- (ii) if he considers it expedient, to make such findings and give such decision as he considers appropriate in the light of them; 20
- and
- (b) in any other case he shall refer the case to the Tribunal with directions for its determination.
- (5) Subject to any direction of the Commissioner, a reference under subsection (3) or (4)(b) above shall be to a differently constituted Tribunal. 25
- (6) No appeal lies under this section without the leave –
- (a) of the person who constituted, or was the chairman of, the Tribunal when the decision was given; 30
- (b) of the President or Deputy President of Pensions Appeal Tribunals for the part of the United Kingdom for which the Tribunal was appointed; or
- (c) subject to and in accordance with regulations, of an appropriate Social Security Commissioner. 35
- (7) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought and applications made for leave to appeal.
- (8) Subject to section 6C of this Act, a decision of a Commissioner under this Act shall be final and conclusive. 40
- (9) In this section “appropriate Social Security Commissioner” means –
- (a) if the appeal tribunal which made the decision was appointed for Northern Ireland, a Northern Ireland Social Security Commissioner;
- (b) otherwise, a Great Britain Social Security Commissioner. 45

- (10) Where it appears convenient to do so by reason of a subsequent change of residence by the person who appealed to the Tribunal, a Great Britain Social Security Commissioner may direct that an application or appeal to him under this section be transferred to a Northern Ireland Social Security Commissioner; and vice versa. 5

6B Redetermination etc of appeals by Pensions Appeal Tribunal

- (1) This section applies where an application is made to a person under section 6A(6)(a) of this Act for leave to appeal from a decision of the Tribunal.
- (2) If the person considers that the decision was erroneous in point of law, he may set aside the decision and refer the case either for redetermination by the Tribunal or for determination by a differently constituted Tribunal. 10
- (3) If each of those who would be parties to the appeal if leave were granted expresses the view that the decision was erroneous in point of law, the person shall set aside the decision and refer the case for determination by a differently constituted Tribunal. 15

6C Appeals from Commissioner

- (1) Subject to subsection (2) below, a party to an appeal under section 6A of this Act may appeal on a question of law to the appropriate court from a decision of a Commissioner under that section. 20
- (2) No appeal under this section shall lie from a decision except –
- (a) with the leave of the Commissioner who gave the decision or, in a case prescribed by regulations, a Commissioner selected in accordance with regulations; or 25
 - (b) if he refuses leave, with the leave of the appropriate court.
- (3) On an application to a Commissioner for leave under this section it shall be the duty of the Commissioner to specify as the appropriate court –
- (a) the Court of Session if it appears to him that the person who appealed to the Tribunal is ordinarily resident in Scotland; 30
 - (b) the Court of Appeal in Northern Ireland if it appears to him that that person is ordinarily resident in Northern Ireland;
 - (c) the Court of Appeal if it appears to him that that person is ordinarily resident elsewhere. 35
- But if it appears to the Commissioner, having regard to the circumstances of the case and in particular to the convenience of the persons who may be parties to the proposed appeal, that he should specify a different court mentioned in paragraphs (a) to (c) above as the appropriate court, it shall be his duty to specify that court as the appropriate court. 40
- (4) Regulations may make provision as to –
- (a) the manner in which, and the time within which, appeals under this section are to be brought and applications made for leave to appeal; 45
 - (b) the procedure for dealing with such appeals and applications.

6D Procedure in proceedings before Commissioner

- (1) Regulations may make, for the purposes of proceedings under this Act before a Commissioner, any provision which may be made by procedure regulations under section 16 of the Social Security Act 1998 for the purposes of proceedings under that Act before a Commissioner. 5
- (2) The Lord Chancellor may by regulations provide—
- (a) for officers authorised by the Lord Chancellor or, in Scotland, by the Secretary of State to make any determinations which fall to be made by Commissioners; 10
 - (b) for the procedure to be followed by such officers in making such determinations;
 - (c) for the manner in which such determinations by such officers may be called in question.
- (3) Regulations prescribing the procedure to be followed in cases before a Commissioner shall provide that any hearing shall be in public except in so far as the Commissioner for special reasons otherwise directs. 15
- (4) If it appears to a Commissioner that a matter before him involves a question of fact of special difficulty, he may direct that in dealing with that matter he shall have the assistance of one or more experts. 20
- In this subsection “expert” means a person appearing to the Commissioner to have knowledge or experience which would be relevant in determining the question of fact of special difficulty.
- (5) If it appears to the Chief Commissioner (or, in the case of his inability to act, to such other of the Commissioners as he may have nominated to act for that purpose) that— 25
- (a) an application for leave under section 6A(6)(c) of this Act, or
 - (b) an appeal,
- falling to be heard by one of the Commissioners involves a question of law of special difficulty, he may direct that the application or appeal be dealt with, not by that Commissioner alone, but by a tribunal consisting of two or more Commissioners. 30
- If the decision of the tribunal is not unanimous, the decision of the majority shall be the decision of the tribunal; and the presiding Commissioner shall have a casting vote if the votes are equally divided. 35
- (6) Regulations may make provision with respect to—
- (a) the correction of accidental errors in any decision or record of a decision of a Commissioner under this Act; and 40
 - (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—
 - (i) additional evidence is available;
 - (ii) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party’s representative or was not 45

- received at an appropriate time by the Commissioner;
or
- (iii) a party to the proceedings or a party’s representative was not present at a hearing related to the proceedings. 5
- (7) Nothing in subsection (6) above shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that subsection.
- (8) Except so far as it may be applied in relation to England and Wales or Northern Ireland by regulations, Part 1 of the Arbitration Act 1996 shall not apply to any proceedings under this Act.” 10
- 5 In subsections (1) and (3) of section 8 (time limit for appeals), after “shall be brought” there is inserted “to the Tribunal”.
- 6 After section 11 there is inserted –
- “11A Regulations”** 15
- (1) Regulations under section 6A, 6C or 6D of this Act shall be made by the Lord Chancellor.
- (2) Where the Lord Chancellor proposes to make regulations under this Act which extend to Scotland, it shall be his duty to consult the Scottish Ministers with respect to the proposal. 20
- (3) Subsections (4) to (7) of section 79 of the Social Security Act 1998 (supplemental provision in connection with powers to make subordinate legislation) apply to any power to make regulations under this Act as they apply to any such power under that Act.
- (4) Regulations under this Act shall be made by statutory instrument. 25
- (5) A statutory instrument containing –
(a) regulations under section 5A or 8(4) or (5) of this Act, or
(b) regulations under section 6D of this Act made by virtue of paragraph 2 of Schedule 5 to the Social Security Act 1998 (striking out or reinstatement of proceedings), 30
shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A statutory instrument containing regulations under this Act (but not containing any such regulations as are referred to in subsection (5) above) shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 35
- 7 (1) Section 12 (interpretation) is amended as follows.
- (2) In subsection (1) –
- (a) in the definition of “the Minister”, after “means” there is inserted “(subject to subsection (1A) below)”; 40
- (b) the following definitions are inserted at the appropriate places –
““Chief Commissioner” means the Chief Social Security Commissioner appointed under the Social Security Act 1998 or the Social Security Administration (Northern Ireland) Act 1992;” 45

- ““Commissioner” means a Great Britain Social Security Commissioner or a Northern Ireland Social Security Commissioner, and includes a tribunal of Commissioners constituted under section 6D(5) of this Act;”;
- ““Great Britain Social Security Commissioner” means the Chief Social Security Commissioner or any other Social Security Commissioner appointed under the Social Security Act 1998;”;
- ““Northern Ireland Social Security Commissioner” means the Chief Social Security Commissioner or any other Social Security Commissioner appointed under the Social Security Administration (Northern Ireland) Act 1992;”.
- (3) After that subsection there is inserted –
- “(1A) In relation to a claim under a scheme mentioned in section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (compensation schemes for armed and reserve forces), references in this Act to the Minister shall be read as references to the person administering the scheme.”
- In paragraph (b) of section 13 (application to Scotland), after “for references” there is inserted “in the Schedule to this Act”.
- (1) Section 14 (application to Northern Ireland) is amended as follows.
- (2) For the words from “subject to the modifications” to “the Schedule)” there is substituted “subject to the following modifications –
- (a) for the references in the Schedule to the Lord Chancellor (except the reference in paragraph 5(4)(b))”;
- (3) At the end there is inserted –
- “(b) for the reference in section 6D(1) to section 16 of the Social Security Act 1998 there shall be substituted a reference to Article 16 of the Social Security (Northern Ireland) Order 1998.”
- (1) The Schedule (constitution, jurisdiction and procedure of Pensions Appeal Tribunals) is amended as follows.
- (2) In paragraph 5 (rules about practice and procedure of Tribunals), after subparagraph (3) there is inserted –
- “(3A) Such rules may make provision with respect to –
- (a) the correction of accidental errors in any decision or record of a decision of the Tribunal under this Act; and
- (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that –
- (i) additional evidence is available;
- (ii) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party’s representative or was not received at an appropriate time by the Tribunal; or
- (iii) a party to the proceedings or a party’s representative was not present at a hearing related to the proceedings.

- Nothing in this sub-paragraph shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from rules made by virtue of this sub-paragraph.
- (3B) Such rules may make provision with respect to the rehearing of an appeal where a decision has been set aside under rules made by virtue of sub-paragraph (3A)(b) above. 5
- (3C) Rules under this Schedule may –
- (a) make provision with respect to the striking out or reinstatement of proceedings before the Tribunal;
 - (b) provide that where an appeal to the Tribunal under this Act is struck out in pursuance of such rules no further appeal under this Act shall be brought in respect of the matters to which the struck-out appeal related except with leave given in pursuance of such rules.” 10
- (3) In paragraph 6 (appeal by person resident in Scotland or Northern Ireland), after “Any appeal” there is inserted “to the Tribunal”. 15
- (4) In paragraph 6A (appeal by person resident outside the United Kingdom), after “an appeal” there is inserted “to the Tribunal”.
- (5) After that paragraph there is inserted –
- “6B Where it appears convenient to do so by reason of a subsequent change of residence by the person who brought the appeal, the Tribunal seised of an appeal may direct that it be transferred to a Tribunal appointed for another part of the United Kingdom.” 20

SCHEDULE 2

Section 6

- ROYAL PATRIOTIC FUND CORPORATION: TRANSFER OF STAFF 25
- 1 The contract of employment of an employee transferred under an order under section 6 –
- (a) is not terminated by the transfer,
 - (b) has effect from the date of transfer as if originally made between the employee and the transferee. 30
- 2 Where an employee is so transferred –
- (a) all the rights, powers, duties and liabilities of the Corporation under or in connection with the contract of employment are by virtue of this paragraph transferred to the transferee on the date of transfer, and
 - (b) anything done before that date by or in relation to the Corporation in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the transferee. 35
- This paragraph does not prejudice the generality of paragraph 1.
- 3 But if the employee informs the Corporation or the proposed transferee that he objects to the transfer – 40
- (a) paragraphs 1 and 2 do not apply, and
 - (b) the contract of employment is terminated immediately before the date of transfer but the employee is not to be treated, for any purpose, as having been dismissed by the Corporation.

- 4 This Schedule does not prejudice any right of an employee to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.
- 5 In this Schedule “date of transfer” means the date decided under the order for the transfer of the employee.

5

SCHEDULE 3

Section 7

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Patriotic Fund Reorganisation Act 1903 (c. 20)	The whole Act.	10
War Pensions (Administrative Provisions) Act 1918 (c. 57)	Section 7.	
Pensions Appeal Tribunals Act 1943 (c. 39)	In section 5A, the words “made by statutory instrument” in subsection (2), and subsection (3). Section 6(2) to (2B). In section 8, the words “made by statutory instrument” in subsections (4) and (5), and subsection (6). Section 13(a). In the Schedule, paragraph 5(4)(c) and the word “and” before it.	15 20
Royal Patriotic Fund Corporation Act 1950 (c. 10)	Section 2.	
Chronically Sick and Disabled Persons Act 1970 (c. 44)	Section 23(3) and (4).	25
Judicature (Northern Ireland) Act 1978 (c. 23)	In Schedule 5, in Part 2, the entries relating to section 6(2) of, and the Schedule to, the Pensions Appeal Tribunals Act 1943.	
Social Security Act 1980 (c. 30)	Section 16(4).	30
Child Support, Pensions and Social Security Act 2000 (c. 19)	Section 57(2) and (3).	

Armed Forces (Pensions and Compensation) Bill

A

B I L L

To make new provision for establishing pension and compensation schemes for the armed or reserve forces; to amend the Pensions Appeal Tribunals Act 1943; to provide for the transfer of the property, rights and liabilities of the Royal Patriotic Fund Corporation to a registered charity; and for connected purposes.

*Presented by Mr Secretary Hoon
supported by
The Prime Minister, Mr Secretary Prescott,
Mr Chancellor of the Exchequer,
Mr Secretary Straw, Mr Secretary Blunkett,
Mr Secretary Smith, Mr Adam Ingram and
Mr David Lammy.*

*Ordered, by the House of Commons,
to be Printed, 4th December 2003.*

© Parliamentary copyright House of Commons 2003
*Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx net