

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

EXPLANATORY NOTES

Part II: Pensions

Commentary on Sections

Chapter III: War Pensions

Background

The Current Position

627. The war pensions scheme is long established, with most provisions originating from around the time of the First and Second World Wars. The legislation and procedures governing decision-making and appeals have not significantly changed since then. War Pensions legislation permits awards to be made in respect of any disablement (physical or mental) or death due to service. Awards vary according to the assessed level of disablement.

Appeals

628. Where a claim to a war pension is rejected, there is a right of appeal to the independent Pensions Appeal Tribunals (PAT). Most decisions about entitlement to a war pension or assessment of the level of disability are appealable. But certain decisions, such as entitlement to supplementary allowances (which can be paid in addition to a basic war pension) do not carry a statutory right of appeal. There are also groups of people, such as those who served in the inter-war years, that do not have appeal rights. Instead, War Pensions Committees (a countrywide network of statutory bodies comprised of volunteers appointed by the Secretary of State) hear these cases and can make non-binding recommendations to the Secretary of State.

The Pensions Appeal Tribunals

629. The PATs are completely separate from the appeals arrangements that apply to Social Security benefits. They are administered by the Lord Chancellor's Department, the Scottish Courts Administration and the Northern Ireland Court Service. The current system of appeals is slow, in part due to the complexity of the schemes, with waiting times averaging two years (a year for the War Pensions Agency to prepare the papers, and a year for the PATs to list and hear the appeal) although recently performance has improved.
630. The existing legislation provides for varying time limits for different types of appeal. It envisaged a 12-month time limit for some parts of the scheme and a 3-month time limit for others. For a variety of reasons, the envisaged time limits are not, however, always applied in practice. In part this is due to the fact that the PAT can hear late appeals when the appellant demonstrates that there is "reasonable excuse" for the delay in submitting the appeal. "Reasonable excuse" is not defined in the legislation and there are no PAT guidelines on its interpretation. In practice, most late applications are heard and so the time limits are not applied.

Composition of the Pensions Appeals Tribunals

631. Currently the Tribunals are composed of –

Entitlement Appeals	a legally qualified member
	a medically qualified member
	a “service” member
Assessment Appeals	two medically qualified members
	a “service” member.

632. Currently the “service” member must be of the same gender, have held similar rank and had a similar service history to the appellant.

The Central Advisory Committee on War Pensions

633. This Committee, which is a statutory advisory body, was established in 1921 to “consider such matters as may be put before them by the Minister for their advice”. It has been required, since 1970, to include at least 12 War Pensions Committee chairmen amongst its membership. However, War Pensions Committees have reduced from 149 in 1970 to just 29 now, and are again due for reconstitution on 1st January 2001.

Recent Developments

634. In April 1999, independent consultants working with the War Pensions Agency (WPA) published a report *A Review of Decision Making and Appeals Process*. The report recommended a variety of measures including the extension of appeal rights and changes to appeal time limits. The Social Security Select Committee welcomed the review. Representatives of ex-service organisations have received the report and members of the Central Advisory Committee on War Pensions were able to address this matter at their meetings, with the Parliamentary under Secretary, in June and December 1999. The WPA has since completed a feasibility study that concluded that almost all of the proposals identified in the report were both desirable and achievable.

The Measures in the Act

Extension of Appeal Rights

635. This provision will enable the Secretary of State to increase the scope of appeal rights through a power to permit the creation of new appeal rights, by affirmative regulations, and the repeal of a provision that prohibits appeals related to service before 3 September 1939.

636. The intention is to use this provision to provide appeal rights that are similar to those provided in the Social Security scheme. For example, certain war pensions supplementary allowances do not have appeal rights whereas similar social security benefits already carry a right of appeal.

637. Appeals relating to the new appeal rights will be heard by the PATs. There is also a provision for these decisions to be set aside or to be appealed beyond the PAT to the High Court, as with certain other types of appeal.

Appeal Time Limits

638. All appeals will now be subject to a statutory 6-month appeal time limit, except for interim assessment appeals where the existing statutory 3-month time limit will be retained. There is also a power to make regulations providing for the grounds upon which a PAT may hear a late appeal, which is defined in section 57(2) of this Act as being an appeal received in the 12 month period after the relevant statutory appeal time limit has expired. Transitional protection is provided in those areas where the appeal time limit is to be reduced. This will have the effect demonstrated in the example below.

<i>TYPE OF DECISION</i>	<i>EFFECT</i>
<i>(Made before the provisions come into force)</i>	
Entitlement decision	All decisions, regardless of the date on which they were made and notified, will have one year from 1 July 2001 in which to submit an appeal. The time within which an appeal must be brought will therefore expire on 30 June 2002 although a "late" appeal may be brought up to 30 June 2003.
Final Assessment	Will retain the current 12-month appeal time limit from date of notification. So, if notification takes place on 30 June 2001 (the last available day prior to commencement) the time within which an appeal must be brought will therefore expire on 29 June 2002, although a late appeal may be brought up to 29 June 2003.
<p>Note: Interim assessments will not be affected. They will retain their current 3-month appeal time limit. Assume for this example only that the commencement date of new provisions is 1 July 2001, and that regulations may have been made bringing in the "late" appeal time limit.</p>	

Jurisdiction of Tribunals

639. The tribunal will not be required to consider issues that have not been raised by the appellant or the Secretary of State. Additionally the tribunal will only take into account matters that occurred up to the date the decision that is under appeal was made. Any changes in circumstances that occur after a decision is made should be notified to the Secretary of State who may review the original decision and issue a further notification which may provide a further appeal right. These provisions are similar to those in the Social Security Act 1998*.

Composition of Tribunals

640. This section provides for a President and a Deputy President to be appointed for each part of the United Kingdom. The President will be able to issue directions and will be responsible for deciding the appropriate composition of appeal tribunals either on a case-by-case basis or according to the type of case. All tribunals will be required to include a legally qualified member. But, because of the reducing pool of people with relevant expertise, eg Civilian Defence Volunteers, the requirement for them to include a "service" member of the same gender and rank as the appellant will be removed. Instead, the Lord Chancellor will have a duty to appoint persons with knowledge or experience of service life to the pool of tribunal members and in addition the power also to appoint suitably experienced lay members to the tribunal pool.

Composition of the Central Advisory Committee on War Pensions

641. The number of War Pensions Committees continues to reduce. The Secretary of State will no longer be required to appoint twelve war pensions committee chairmen to the CAC, but may select an appropriate number provided at least one chairman is appointed.