
 STATUTORY INSTRUMENTS

1980 No. 1082

PENSIONS

**The Pensions Appeal Tribunals (Posthumous Appeals)
Order 1980**

Made - - - - - 28th July 1980
Laid before Parliament 5th August 1980
Coming into Operation 1st September 1980

At the Court at Buckingham Palace, the 28th day of July 1980

Present,

The Queen's Most Excellent Majesty in Council

WHEREAS Her Majesty deems it expedient to provide for appeals under the provisions of the Pensions Appeal Tribunals Act 1943(a) in respect of claims for benefit under instruments mentioned in that Act to be brought or continued by another person after the death of the claimant and to do so by Order in Council under section 16(1) and (2) of the Social Security Act 1980(b):

NOW, THEREFORE, Her Majesty, in the exercise of the powers conferred by the said section 16 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, commencement and interpretation

1.—(1) This Order, which may be called the Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, shall come into operation on 1st September 1980 immediately after the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1980(c) and the Personal Injuries (Civilians) Amendment Scheme 1980(d) come into operation.

(2) In this Order, unless the context otherwise requires—

“the Act” means the Pensions Appeal Tribunals Act 1943;

“the Civilians Scheme” means the Personal Injuries (Civilians) Scheme 1976(e);

(a) 1943 c. 39; this Act was amended and modified by the Pensions Appeal Tribunals Act 1949 (c. 12); subsection (3A) was added to section 1 by the Pensions Appeal Tribunals Act (Modification) Order 1947 (S.I. 1947/1143) and sections 5, 6 and 12 were amended by s. 23 of the Chronically Sick and Disabled Persons Act 1970 (c. 44).

(b) 1980 c.30.

(c) S.I. 1980/1080.

(d) S.I. 1980/1102.

(e) S.I. 1976/585, as amended by S.I. 1976/1167; 1977/404 1640; 1978/384 1426; 1979/270 1232; 1980/1102.

“the designated person” has the meaning assigned to it in article 67A(1)(b) and (2) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1978(a), or, as the case may be, article 76A(1)(b) and (2) of the Civilians Scheme;

“the Pensions Order” means the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1978;

“the President of the Pensions Appeal Tribunals” means the person appointed by the Lord Chancellor to be President of the Pensions Appeal Tribunals;

“the Secretary of State” means the Secretary of State for Social Services; and other expressions have the same meaning as in the Act.

(3) For the purposes of this Order a person shall be treated as not having been notified of a decision (or given notification of it) unless notice of the decision has been received by him, and for that purpose unless the Secretary of State is satisfied that such notice has not in fact been so received, such notice shall be treated as so received in due course of post if it was sent by post to that person and addressed to him at his ordinary or last known address.

Modification of the Act

2. The Act shall be modified in accordance with the following provisions of this Order and subject thereto references in the Act to the claimant and the appellant shall, unless the context otherwise requires, include a reference to the designated person.

Posthumous notification of, and appeals to Pensions Appeal Tribunals against, decisions of Secretary of State

3.—(1) Where the decision by the Secretary of State of a claim for an award under an instrument mentioned in section 1, 2 or 3 of the Act (appeals to Pensions Appeal Tribunals on entitlement questions) has not been notified to the claimant before his death—

(a) the Secretary of State shall, on becoming aware of that death and the existence and identity of the designated person, notify that person of the decision; and

(b) the designated person may, subject to the following provisions of this Order, bring an appeal under section 1, 2 or as the case may be, 3 of the Act against that decision.

(2) Where the decision by the Secretary of State of such a claim has been notified to the claimant in his life time but the claimant has not appealed against that decision before his death, the designated person may, subject to the following provisions of this Order, bring an appeal under the said section 1, 2 or, as the case may be, 3 as though brought on behalf of the appellant and, without prejudice to the application of article 67A(5) of the Pensions Order or, as the case may be, article 76A(5) of the Civilians Scheme (no award in respect of any period following date of claimant's death), as though the claimant had not died.

Initiation of posthumous appeals in the High Court

4.—(1) Where the claimant has appealed to the Pensions Appeal Tribunal against the rejection of his claim by the Secretary of State and the decision of that Tribunal has not been communicated to him before his death, the Secret-

(a) S.I. 1978/1525, as amended by S.I. 1978/1902; 1979/13 and 1312; and 1980/1080.

ary of State shall, within the period of seven days of the communication to him of that Tribunal's decision, or within the period of seven days of his becoming aware of the claimant's death and the existence and identity of the designated person, whichever period ends later, communicate that decision in writing to the designated person by sending it by post to that person's ordinary or last known address, and the designated person may, subject to the following provisions of this Order, bring an appeal to the High Court under section 6(2) of the Act.

(2) Where the claimant has appealed to the Pensions Appeal Tribunal as aforesaid and the decision of that Tribunal has been communicated to him and he has not appealed against that decision in his life time, the designated person may, subject to the following provisions of this Order, and subject in particular to one of the conditions specified in paragraph (3) below being satisfied, bring an appeal against that decision to the High Court under the said section 6(2).

(3) The conditions referred to in paragraph (2) above are that—

- (a) throughout the period from the communication of the Tribunal's decision to the claimant to the date of his death, the claimant was incapable of bringing an appeal by reason of his physical or mental condition; or
- (b) the failure of the claimant to bring an appeal was due to an error or misdirection by or on behalf of the Secretary of State or a Pensions Appeal Tribunal.

Continuation of appeals after death of claimant

5. Where a claimant dies after an appeal under section 1, 2, 3, 5 or, as the case may be, 6 of the Act has been brought, but before decision of the appeal has been given, the designated person may, subject to the following provisions of this Order, continue the appeal in place of the claimant.

Directions in relation to appeals brought or continued under this Order

6. Any appeal brought or, as the case may be, continued under article 3, 4 or, as the case may be, 5 of this Order shall be subject to directions given by the President of the Pensions Appeal Tribunals or, as the case may be, the judge of the High Court nominated by the Lord Chancellor in accordance with section 6(2) of the Act, in relation to the conduct of the appeal, and the President or the judge may direct that the designated person may bring or continue the appeal notwithstanding that no probate or letters of administration have been granted.

Modification of section 6(2A) of the Act in relation to appeals under this Order

7. The reference to an appeal in paragraph (a) of section 6(2A) of the Act (joint applications following decisions by Pensions Appeal Tribunals), in so far as that section applies to sections 1, 2 and 3 thereof (appeals to Pensions Appeal Tribunals), shall be construed as including, as may be appropriate, an appeal brought or continued by the designated person under this Order.

Application of provisions of Pensions Order and Civilians Scheme in relation to commencement of awards

8.—(1) For the purposes of any award by the Secretary of State implementing a decision of the Pensions Appeal Tribunal in any appeal under article 3(1) above or an order of the High Court on an appeal from that decision, article 65

of the Pensions Order or, as the case may be, article 74 of the Civilians Scheme shall apply—

(a) in the case of the said article 65 as if the references in heads (i), (ii) and (iii) of paragraph (b) of that article to the date of the notification of the rejection of the claim were references to the date of the notification of such rejection to the designated person;

(b) in the case of the said article 74 as if the reference in head (i) of paragraph (b) of that article to the date of the notification of the rejection of the claim was a reference to the date of the notification of such rejection to the designated person;

(2) For the purposes of any award by the Secretary of State implementing such a decision in any appeal under article 3(2) above or an order of the High Court on an appeal from such decision, the said article 65 or, as the case may be, the said article 74 shall apply—

(a) in the case of the said article 65 as if the references in heads (i), (ii) and (iii) of paragraph (b) of that article to six months of the date of the notification of the rejection of the claim and to three months of such notification were references to six months from the date of the claimant's death;

(b) in the case of the said article 74 as if the reference in head (i) of paragraph (b) of that article to three months of the date of the notification of the rejection of the claim was a reference to six months from the date of the claimant's death;

provided that the claimant died within six months or, as the case may be, three months of the date of such notification.

Application of Order and time for appealing

9.—(1) The provisions of this Order shall not apply in relation to any claimant who died before the date on which this Order comes into operation.

(2) No appeal shall be brought by virtue of this Order unless it is brought within three years of the date of the claimant's death.

Application to Scotland

10. This Order in its application to Scotland shall have effect subject to the following modifications—

(a) for references to the High Court there shall be substituted references to the Court of Session;

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

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

(d) for references to probate or letters of administration there shall be substituted references to confirmation; and

(e) for references to the President of the Pensions Appeal Tribunals there shall be substituted references to the President as appointed by the Lord President of the Court of Session to be President of the Pensions Appeal Tribunals.

Application to Northern Ireland

11. This Order in its application to Northern Ireland shall have effect subject to the following modifications—

- (a) for references to the High Court there shall be substituted references to the Court of Appeal;
- (b) for references to a judge of the High Court nominated by the Lord Chancellor there shall be substituted references to the Court of Appeal;
- (c) for references to the Lord Chancellor there shall be substituted references to the Lord Chief Justice of Northern Ireland; and
- (d) for references to the President of the Pensions Appeals Tribunals there shall be substituted references to the Chairman appointed by the Lord Chief Justice of Northern Ireland.

N. E. Leigh,
Clerk of the Privy Council.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order modifies the provisions of the Pensions Appeals Tribunals Act 1943 ("the Act") and so makes provision for appeals to a Pensions Appeal Tribunal or, as the case may be, the High Court, or in Scotland the Court of Session, or in Northern Ireland the Court of Appeal, to be brought or continued under the provisions of the Act after the death of a claimant.

The Order also (in article 8) makes provision for the modification of the restrictions in relation to the Secretary of State's powers to pay awards following decisions in the above mentioned appeals.

