

DÁIL ÉIREANN:

**BILLE NA bPINSEAN SEIRBHISE MILEATA (LEASU),
1945—AN COISTE.**

**MILITARY SERVICE PENSIONS (AMENDMENT) BILL
1945—COMMITTEE.**

*Leasuithe.
Amendments.*



SECTION 2.

1. Before section 2 to insert a new section as follows:—

“Section 5 of the Act of 1934 shall have effect as if it enabled the appointment of a number of Referees instead of a Referee only and all consequential amendments may be made in the Act of 1934 as are required by the substitution of a number of Referees instead of a Referee only and each such Referee shall have the duties, powers, rights and privileges as are by the Act of 1934 given to the Referee by or under the said Act.”

—Thomas F. O’Higgins, Patrick McGilligan, Seán Mac Eoin.

2. In subsection (1), lines 18 and 19, page 2, to delete the words “each member whereof shall if so requested by the Referee”, and the commas immediately before and after the said words, and substitute therefor the word “to”.—Eamonn Coogan.

3. In subsection (1), line 19, page 2, to delete the words “in such manner as he may request” and the commas immediately before and after the said words.—Eamonn Coogan.

4. To delete subsection (2).—Eamonn Coogan, Thomas F. O’Higgins, Patrick McGilligan, Seán Mac Eoin.

5. To delete subsections (3), (4), (5), (7) and (8) and to substitute therefor the following subsection:—

“ (3) Where a person was granted a military service pension at any time before the passing of this Act and the provisions of sections 5, 6 and 8 of the Act of 1934 and of the Rules made by the Minister regulating the procedure of the Referee were not complied with in relation to the grant of such pension to such person the grant or purported grant of such pension to such person shall not be invalid or be questioned merely on the ground that the said provisions were not observed or on the ground that no regulations defining the procedure to be followed by the Referee had been made or had come into force when such pension was granted to such person or on the ground that the regulations made by the Minister to regulate the procedure of the Referee had not been followed when such pension was granted to such person.”

—Eamonn Coogan.

6. To delete subsection (3) (a) (i), line 27.—Thomas F. O’Higgins, Patrick McGilligan, Seán Mac Eoin.

7. To delete subsection (3) (a) (ii), line 28.—Thomas F. O’Higgins, Patrick McGilligan, Seán Mac Eoin.

8. To delete subsection (3) (a) (iii), lines 29 and 30.—Thomas F. O’Higgins, Patrick McGilligan, Seán Mac Eoin.

9. To delete subsection (3) (b), lines 31 to 33, inclusive.—Thomas F. O’Higgins, Patrick McGilligan, Seán Mac Eoin.

SECTION 2—continued.

10. To delete subsection (4) (a) (i), line 38.—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
11. To delete subsection (4) (a) (ii), line 39.—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
12. To delete subsection (4) (a) (iii), line 41.—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
13. To delete subsection (4) (a) (iv), lines 42 and 43.—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
14. To delete sub-section (4) (c), lines 9-12, page 3.—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
15. To delete in subsection (5) (a), line 17, the words " or on his behalf ".—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
16. To delete subsection (5) (c), lines 20 and 21.—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
17. To delete subsection (6), lines 22 to 24.—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
18. In subsection (6), line 24, to add after the word " relevant " -at end of the line the words " and in assessing any such relevant evidence or information nothing in the Act of 1934 shall prohibit the Referee from construing the words " rendering active service " in section 2 (1), lines 10 and 11 of the Act of 1934 to mean actual military service under arms in any theatre of active military operations under mobilisation orders or specific orders from competent superior officers and in addition any secret intelligence or nursing services rendered which were essential to the success of active military operations.—Eamonn Coogan.
19. To delete subsection (7) (a), lines 25 to 32.—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
20. To delete subsection (7) (b), lines 33 to 40.—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
21. In subsection (8), line 41, to insert after the word " shall " the words " apply only in respect of reports which shall have been made by the Referee prior to the 8th day of February, 1945, and in consequence of which a service certificate has been granted and shall in relation to such reports alone ".—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin.
22. In subsection (9), line 48, to delete the words " 1st day of February, 1945," and substitute therefor the words " date of the passing of this Act ".—Thomas F. O'Higgins, Patrick McGilligan, Seán Mac Eoin, Eamonn Coogan.
23. In subsection (9), page 3, line 48, to delete the word " February " and substitute the word " August ".—William Norton.
24. To add at the end of section 2 a new subsection as follows :—

" (10)—Where a report has been made or purports to have been made by the Referee prior to the 8th day of February, 1945, in consequence of which the Minister has refused to grant a service certificate to the person to whom such report relates and such person, prior to the 1st day of January, 1946, by a notice in writing requests the Minister to cause such person's application for a service certificate to be again investigated, the following provisions shall have effect :—the application shall be again investigated and

SECTION 2—continued.

a report made thereon by a Referee as if subsections (1), (2), (3), (4), (5), (6), (7) and (8) of this section had not been enacted.”

—Thomas F. O’Higgins, Patrick McGilligan, Seán Mac Eoin.

SECTION 3.

25. Before section 3, to insert the following section:—

“ Where—

(a) a conditional order of certiorari has been granted directing the Minister to send before the High Court for the purpose of being quashed a report of the Referee on an application for a service certificate, and

(b) the conditional order has been made absolute by an order (in this section referred to as the absolute order) of the High Court made at any time during the period commencing on the 1st day of February, 1945, and ending on the date of the passing of this Act,

Appeals
against
certain
orders of
the High
Court relat-
ing to reports
of the
Referee.

then, whether or not any further order or orders to quash the said report or allowing costs or otherwise is or are made (whether before or after the passing of this Act) in the matter by the High Court, the following provisions shall have effect—

(i) the Minister may, notwithstanding any rule of court, appeal, within twenty-eight days after the date of the passing of this Act, to the Supreme Court against the absolute order and such further order or orders (if any),

(ii) if the Minister so appeals and the appeal is allowed, no costs in the High Court or the Supreme Court shall be awarded to, or recoverable from the Minister by, the prosecutor, but the Supreme Court may make such order as it thinks fit for the payment to the Minister by the prosecutor of the costs of the Minister in the High Court or the Supreme Court or in both.”

—Aire Cosanta.

26. In sub-section (1), line 12, to delete the word “ Subsections ” and substitute therefor the words:—“ Save in respect of reports made by the Referee prior to the 8th day of February, 1945, in accordance with the provisions of the Act of 1934 as amended by this Act, subsections ”.—Thomas F. O’Higgins, Patrick McGilligan, Seán Mac Eoin.

SECTION 4.

27. To add at the end of the section after the word “ power ” in line 46 the words:—“ and where an appeal by a Brigade Committee has been made on behalf of an applicant to the Minister to exercise the power conferred on him by subsection (5) of section 8, and subsection (1) of section 13 of the Act of 1934 the Minister shall refer back to the Referee each such appeal and that in such case the evidence of the nominees of the Brigade Committee may be accepted as sufficient evidence to discharge the onus of proof in each case: Provided always that the applicant shall have the right to give oral evidence and call any witnesses that he may consider necessary and that no person save the Minister shall have the right to call rebutting evidence and where such rebutting evidence is being called a summary of such evidence shall be forwarded to the applicant fourteen clear days before hearing or rehearing.”—Seán Mac Eoin.

28. To add a new sub-section as follows:—

“ (2) Where rebutting evidence is given against a claimant on appeal such evidence, whether sustained or rejected, shall be privi-

SECTION 4—continued.

leged and no action shall lie for slander or libel against any witness who may have tendered such evidence before the Referee or before members of Brigade Committees or who may discuss such evidence with other persons after such meeting.”

—Seán Mac Eoin.

SECTION 5.

29. Before section 5 to insert a new section as follows :—

“ Active service shall be interpreted to apply to any applicant who was a member of the Forces and who :—

- (a) took part under arms in one major engagement either in the front line or outpost in the periods 1st April, 1920, to 11th July, 1921, and who gave 50 per cent. of his time on road blocking and trenching and dispatch or guard duty, or
- (b) rendered essential service in a medical, administrative or judicial capacity during the periods 1st April, 1920, to 11th July, 1921, or
- (c) was on intelligence service with or without rank, or
- (d) was on secret service, including service while serving in the civil or military forces of the Crown, or
- (e) suffered imprisonment for a period of over three months, or
- (f) was tried by courtmartial and sentenced to any term of penal servitude or imprisonment, or
- (g) was on duty at a headquarters of a battalion or column, and was responsible for arms and in receipt of dispatches, or
- (h) being a member of Cumann na mBán, or Fianna Eireann, gave 50 per cent. of his or her time in the periods 1920-21 and was arrested for his or her activities during that period, or who delivered dispatches regularly during the period and had care of or custody of arms or documents, or whose name was utilised as a covering address, or who rendered first aid to wounded or injured volunteers, or rendered nursing service to members of the Army or Cumann na mBán who were ill as the result of services rendered.”

—Seán Mac Eoin.

30. Before section 5 to insert a new section as follows :—

“ The Act of 1934 is hereby amended by the deletion of Rule 1 (4) of the First Schedule and the substitution therefor of the following Rule :—

‘ (4) A person who at any date held commissioned rank in any battalion or company staff.’ ”

—Seán Mac Eoin.

31. Before section 5 to insert a new section as follows :—

“ The Act of 1934 is hereby amended by the deletion of paragraph (a) of Rule 1 (7) of the First Schedule and the substitution therefor of the following :—

‘ any person who at any date was an officer of Fianna Eireann or Cumann na mBán.’ ”

—Seán Mac Eoin.

32. Before section 5 to insert a new section as follows :—

“ The First Schedule of the Act of 1934 is hereby amended by the addition to Rule 4 of the following :—

4 (A) The Brigade Committee's certificate as shown by

SECTION 5—continued.

their records shall be conclusive evidence of the rank held by the applicant on the first or second critical date as may apply.

4 (B) Evidence of the rank held by an applicant when given by the Brigade Committee nominees shall be sufficient to discharge the onus of proof and shall be final and conclusive.”

—Seán Mac Eoin.

33. Before section 5 to insert a new section as follows:—

“ The Third Schedule of the Act of 1934 is hereby repealed and the following substituted therefor:—

A.	Exceeding £400 and not exceeding £500	10%
B.	Exceeding £500 and not exceeding £600	20%
C.	Exceeding £600 and not exceeding £700	40%
D.	Exceeding £700 and not exceeding £800	50%
E.	Exceeding £800	100%.”

—Seán Mac Eoin.

