
S T A T U T O R Y I N S T R U M E N T S

1981 No. 1672

PENSIONS

The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment (No. 2) Order 1981

<i>Made</i> - - - -	24th November 1981
<i>Laid before Parliament</i>	2nd December 1981
<i>Coming into Operation</i>	23rd December 1981

At the Court at Buckingham Palace, the 24th day of November 1981

Present,

The Queen's Most Excellent Majesty in Council

WHEREAS Her Majesty deems it expedient to amend the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1978(a) and to do so by Order in Council in pursuance of section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(b):

NOW, THEREFORE, Her Majesty in the exercise of the powers conferred by the said section 12(1) 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 cited as the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment (No. 2) Order 1981 shall come into operation on 23rd December 1981.

(2) In this Order the expression “the principal Order” means the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1978.

Amendment of article 21 of the principal Order

2.—(1) There shall be inserted at the beginning of paragraph (3) of article (21) of the principal Order (allowance for lowered standard of occupation) the words “Subject to the provisions of paragraph (4) below,”.

(2) After the said paragraph (3) there shall be inserted the following paragraph—

“(4) Where a member is in receipt of an allowance under this article he may continue to receive such allowance if he becomes eligible subsequently for an allowance under article 18(1)(a).”

Amendment of article 54 of the principal Order

3. In article 54(2) of the principal Order (interpretation) for “67” there shall be substituted “67(1) to (4)”.

(a) S.I. 1978/1525, as amended by S.I. 1978/1902, 1979/113, 1312, 1980/1080, 1081 and 1955 and 1981/1110.

(b) 1977 c. 5.

Amendment of article 65 of the principal Order

4. Article 65 of the principal Order (commencing date of awards) shall be re-designated paragraph (1) of article 65 and article 65 shall be amended as follows—

- (a) in paragraph (1) there shall be inserted immediately after the words “payment of a pension” the words “in respect of disablement or as the case may be death”;
- (b) in paragraph (1)(a)(i) there shall be inserted immediately after the words—
 - (i) “due to invaliding” the words “or the day following the date of death where the member has died during service”,
 - (ii) “of such termination” the words “or death”;
- (c) in paragraph (1)(a)(ii) there shall be inserted immediately after the words—
 - (i) “a member’s service” the words “or the day following the date of death where the member has died after termination of service”,
 - (ii) “of such termination” the words “or death”;
- (d) in paragraph (1)(b) there shall be inserted immediately after the words “an appeal under” the words “section 8 of the War Pensions (Administrative Provisions) Act 1919(a) in respect of death or,”;
- (e) in paragraph (1)(b)(i) there shall be inserted immediately after the words—
 - (i) “due to invaliding” the words “or the day following the date of death where the member has died during service”,
 - (ii) “such termination” the words “or death”,
 - (iii) “review is applied for” the words “or, if there is no application for review, where the date on which the Secretary of State first decided that there should be a review is,”;
- (f) in paragraph (1)(b)(ii) there shall be inserted immediately after the words—
 - (i) “a member’s service” the words “or the day following the date of death where the member has died after termination of service”,
 - (ii) “such termination” the words “or death”,
 - (iii) “review is applied for” the words “or, if there is no application for review, where the date on which the Secretary of State first decided that there should be a review is,”;
- (g) in paragraph (1)(b)(iii) there shall be inserted immediately after the words “review is applied for” the words “or, if there is no application for review, where the date on which the Secretary of State first decided that there should be a review is,”;
- (h) in paragraph (1)(b)(iv) there shall be inserted immediately after the words “such review” the words “or, if there is no such application, the date on which the Secretary of State first decided that there should be a review”;
- (i) in paragraph (1)(d) for the words “an application under article 67 for a review” there shall be substituted the words “a review under article 67”;

(a) 1919 c. 53.

- (j) in paragraph (1)(d)(i) for the words “the application for review is made” there shall be substituted the words “the review is applied for or, if there is no application for review, where the date on which the Secretary of State first decided that there should be a review is,”;
- (k) in paragraph (1)(d)(ii) there shall be inserted immediately after the words “application for the review” the words “or, if there is no such application, the date on which the Secretary of State first decided that there should be a review”;
- (l) a new paragraph shall be inserted immediately after the end of paragraph (1) as follows—

“(2) In the case of an appeal under section 6(2) of the Pensions Appeal Tribunals Act 1943 (appeal from Pensions Appeal Tribunals) as a result of which appeal a pension is awarded or restored, paragraph (1)(b) of this article shall apply as if the first reference to an appeal under section 1 or 4 of that Act were a reference to an appeal under section 6(2) of that Act, but as if all the references in paragraph (1)(b)(i) to (iv) to “the appeal” were references to the appeal made under section 1 to 4 of that Act to the Pensions Appeal Tribunal against whose decision the further appeal under section 6(2) was made.”

Amendment of article 67 of the principal Order

5. Article 67 of the principal Order (review of decisions, assessments and awards) shall be amended as follows—

- (a) for paragraph (1) there shall be substituted the following new paragraph—

“(1) Subject to the provisions of paragraphs (2A) and (2B) and to the provisions of paragraphs (5) and (6) of this article, any decision accepting or rejecting a claim for pension or any assessment of the degree of disablement of a member of the armed forces or any final decision that there is no disablement or that the disablement has come to an end may be reviewed by the Secretary of State at any time on any ground.”;

- (b) immediately after paragraph (2) there shall be inserted the following new paragraphs—

“(2A) Subject to the provisions of the said paragraphs (5) and (6), following a review under paragraph (1) of this article of any decision accepting a claim for pension or any assessment of the degree of disablement of a member of the armed forces, that decision or assessment may be revised by the Secretary of State to the detriment of a member of the armed forces only where the Secretary of State is satisfied that—

- (a) the decision or assessment was given or made in consequence of ignorance of, or a mistake as to, a material fact, or of a mistake as to the law; or
- (b) in the case of an interim assessment there has been a change in the degree of disablement due to service since the assessment was made.

(2B) An award under this Order may be revised by the Secretary of State to the detriment of a member of the armed forces only where the Secretary of State is satisfied that—

- (a) the award was made in consequence of ignorance of, or a mistake as to, a material fact, or of a mistake as to the law; or
 - (b) there has been any relevant change of circumstances since the award was made; or
 - (c) the decision or assessment upon which the award was based has been revised under paragraph (2A) of this article.”;
- (c) in paragraph (3) there shall be inserted at the beginning the words “Subject to the provisions of paragraphs (2A) and (2B) of this article,”;
- (d) in paragraph (4) for the words—
 - (a) “of paragraph (3)” there shall be substituted the words “of paragraphs (2A), (2B) and (3)”;
 - (b) “claim under article 4 or 5” there shall be substituted the words “claim for pension”;
- (e) in paragraph (5) immediately after the words “given or upheld under” there shall be inserted the words “section 8 of the War Pensions (Administrative Provisions) Act 1919 or,”;
- (f) for paragraph (6) there shall be substituted the following new paragraph—

“(6) Paragraphs (1) to (4) of this article shall not apply to any decision, assessment or award made in respect of or relating to the rate of pension or retired pay for the disablement or death of a member which is due to service during the 1914 World War; but the following provisions of this article shall apply.”;
- (g) immediately after paragraph (8) there shall be inserted the following new paragraph—

“(9) Any decision rejecting a claim for a pension in respect of the death of a member which is due to service during the 1914 World War may be reviewed by the Secretary of State at any time on any ground and may be revised by him as may be appropriate having regard to the provisions of this Order.”

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

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1978 ("the principal Order").

The Order amends article 21 of the principal Order by making provision for an award of an allowance for a lowered standard of occupation already in payment under the article to be continued despite subsequent eligibility under article 18 of the principal Order for unemployability allowances when a pensioner becomes unemployable.

The Order amends article 54(2) of the principal Order (interpretation) by limiting the application to article 67 of the principal Order (review of decisions, assessments and awards) of the interpretation of "pension" to article 67(1) to (4).

The Order amends article 65 of the principal Order (commencing date of awards) by including specific provision for commencement dates for awards in respect of death and also provision in respect of awards following appeals in respect of death due to service during the 1914 World War, reviews by the Secretary of State where there has been no application for review, and High Court decisions, or in Scotland and Northern Ireland, decisions of the Court of Session and Court of Appeal respectively.

The Order also amends article 67 of the principal Order by making provision for reviews of decisions and assessments which were previously limited to specific grounds to be made on any ground and for the grounds for revising a decision or award to the detriment of a member of the armed forces following such reviews to be the same as those which applied to adverse reviews prior to the coming into operation of this Order. A reference to the War Pensions (Administrative Provisions) Act 1919 (which makes provision for appeals in respect of service during the 1914 World War) is inserted in article 67(5) which confirms that review powers under the article do not authorise reviews of Pensions Appeal Tribunal decisions or assessments. The provisions of article 67(6) to (8) are restricted to pension or retired pay in respect of disablement or death of a member due to service during the 1914 World War. The Order also amends article 67 by making provision for decisions on allowances payable under the principal Order in respect of such service and decisions rejecting claims for allowances in respect of service after 2nd September 1939 to be reviewed by reference to article 67(1) to (4). A new paragraph (9) is added to article 67 which makes provision for review of a rejection of a claim for a pension in respect of the death of a member which is due to service during the 1914 World War on any ground.

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