

1988 No. 639

PENSIONS

**The War Pensions (Mercantile Marine) (Amendment)
Scheme 1988**

Made - - - - - *25th March 1988*

Coming into force *11th April 1988*

The Secretary of State for Social Services, with the consent of the Treasury, in exercise of powers conferred by sections 3, 4 and 7 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(a), as amended by the Pensions (Mercantile Marine) Act 1942(b) and now vested in him(c) and of all other powers enabling him in that behalf, hereby makes the following Scheme:

Citation, commencement and interpretation

1.—(1) This Scheme may be cited as the War Pensions (Mercantile Marine) (Amendment) Scheme 1988 and shall come into force on 11th April 1988.

(2) This Scheme shall be read as one with the War Pensions (Mercantile Marine) Scheme 1964(d) (“the principal Scheme”).

Amendment of Article 21 of the principal Scheme

2.—(1) Article 21 of the principal Scheme (prevention of double payments) shall be amended in accordance with the following provisions of this Article.

(2) In paragraph (1) for the words “Where the Minister” there shall be substituted the words “Subject to paragraph (3), where the Minister”.

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

“(3) The provisions of paragraph (1) above shall not apply to persons employed by or under the Crown.”.

Amendment of Article 22 of the principal Scheme

3. In Article 22 of the principal Scheme (modification of awards in certain cases) after paragraph (1) there shall be inserted the following paragraph –

“(1A) Paragraph (1) shall not apply to awards first made on or after 11th April 1988.”.

(a) 1939 c.83. (b) 1942 c.26. (c) See The Transfer of Functions (Ministry of Pensions) Order 1953 (S.I. 1953/1198), article 2, Ministry of Social Security Act 1966 (c.20), section 2, and the Secretary of State for Social Services Order 1968 (S.I. 1968/1699), article 2. (d) 1964/2058; the relevant amending instrument is S.I. 1987/585.

Payment of benefits

4. In the principal Scheme,

(a) after article 28, there shall be inserted the following article –

“Payment of benefit

28A. The date of commencement of an award of pension shall be determined in accordance with Schedule 7 to this Scheme”; and

(b) after Schedule 6, there shall be inserted the Schedule set out in the Schedule to this Scheme.

Mariner

5. For the purposes of the principal Scheme any reference to a mariner shall be treated as including a reference to a member of the sea fishing service, a member of the pilotage service, a member of the light vessel service and a salvage worker.

Signed by authority of the Secretary of State for Social Services

21st March 1988

Skelmersdale
Parliamentary Under-Secretary of State,
Department of Health and Social Security

We consent,

25th March 1988

Mark Lennox-Boyd
Peter Lloyd
Two of the Lords Commissioners of Her Majesty's Treasury

To be inserted after Schedule 6 to the principal Scheme –

“SCHEDULE 7

COMMENCING DATES OF AWARDS OF BENEFIT

1.—(1) Except in so far as the Secretary of State may otherwise direct with respect to any particular case or class of case, payment of any pension, allowance or gratuity awarded under this Scheme in respect of disablement or death, including payment of an increase in the rate of pension, allowance or gratuity on account of an increased assessment of the degree of disablement, shall not be made in respect of any period preceding the specified day, that is to say the day specified in the following provisions of this paragraph.

(2) Where a claim for a pension, allowance or gratuity which results in an award is made within 3 months of the date—

- (a) the mariner arrives on land in the United Kingdom, or if he is not ordinarily resident in the United Kingdom, then in the country in which he is ordinarily resident; or
- (b) on which service to which the Scheme applies terminates; or
- (c) of the mariner's death,

the specified day is the day following the date on which the mariner ceases to be entitled to payment of wages under the Merchant Shipping Acts 1894–1984 or the date of the mariner's death, whichever is the earlier.

(3) Where a claim for a pension, allowance or gratuity which results in an award is not made within 3 months of the date mentioned in sub-paragraph (2) above, the specified day is the day the claim was made.

(4) Subject to paragraphs 2 and 3 below sub-paragraph (5) applies where as a result of

- (a) an appeal under section 2, 4 or 6(2) of the 1943 Act (appeal to and from a Pensions Appeal Tribunal), or,
- (b) a review under Article 67 of the Naval Order or under section 6(2C) of the 1943 Act (review following order under section 6(2A) of the 1943 Act for a rehearing of an appeal by a Pensions Appeal Tribunal)

a pension, allowance or gratuity is awarded or, as the case may be, restored.

(5) Where the application for appeal or review, or in a case of a review where there is no application for review, the date on which the Secretary of State first decided there should be a review—

- (a) was within 3 months of the date of notification of rejection of the claim or of notification of withholding or reduction under Article 6 of the Naval Order, the specified day shall, where the claim was –
 - (i) made within 3 months of the date referred to in sub-paragraph (2) above, be the day following the date on which the mariner ceases to be entitled to payment of wages under the Merchant Shipping Acts 1894–1984 or the date of the mariner's death, whichever is the earlier; or
 - (ii) not made within 3 months of that date, be the day the claim was made; or
- (b) was not within 3 months of the date of notification of rejection of the claim or of notification of withholding or reduction under Article 6 of the Naval Order, the specified day shall be—
 - (i) in all appeal cases and reviews under section 6(2C) of the 1943 Act, the day the appeal under section 2 or 4 of the 1943 Act commenced; or
 - (ii) in any other review, the day on which the application for review was made or where no such application was made, the day on which the Secretary of State first decided there should be a review.

(6) Where following an appeal under section 5 of the 1943 Act the claim to the continuance or resumption of the payment of the pension is accepted or the rate of pension is increased, the specified day is –

- (a) the date of commencement of the assessment of the degree of disablement in a case where the appeal is commenced within the time prescribed under the 1943 Act, or
- (b) the date of commencement of the appeal in any other case.

(7) Where following a review of an assessment under Article 67 of the Naval Order the rate of pension is increased, the specified day is –

- (a) the date of commencement of the assessment of the degree of disablement in a case where the date the review is applied for, or where there is no application for review, the date the Secretary of State first decided there should be a review, is within 3 months of the notification of the interim assessment or within 12 months of a final assessment; or
- (b) the date of application for review, or where there is no application for review, the date the Secretary of State first decided there should be a review, in any other case.

2. Except in so far as the Secretary of State may otherwise direct with respect to any particular case or class of case, in a case referred to in paragraph 1(4) and (5) of this Schedule where following –

- (a) an appeal under section 6(2) of the 1943 Act (appeal from Pensions Appeal Tribunal), or
- (b) an order under section 6(2A) of that Act (joint application); or
- (c) an order for a rehearing of an appeal made on directions given under rules made under paragraph 5 of the Schedule to that Act,

an appeal under section 2 or 4 of that Act has been reheard, the payment of a pension shall not be made in respect of any period preceding the date 6 years prior to the date (as the case may be) of the successful application for leave to appeal under section 6(2), the application under section 6(2A) which resulted in the order under that section, or the application for directions which resulted in the order for a rehearing.

3. Except in so far as the Secretary of State may otherwise direct with respect to any particular case or class of case –

- (a) in the case of an appeal under section 6(2) of the 1943 Act (appeal from Pensions Appeal Tribunal) as a result of which appeal a pension is awarded or restored, the payment of a pension shall not be made in respect of any period preceding the date 6 years prior to the date of the successful application for leave to appeal under section 6(2), and
- (b) in the case of a review under section 6(2C) of the 1943 Act as a result of which a pension is awarded or restored, the payment of a pension shall not be made in respect of any period preceding the date 6 years prior to the date of the application under section 6(2A) of the 1943 Act which resulted in the order for a rehearing of an appeal by a Pensions Appeal Tribunal.

4. In this Schedule, "1943 Act" means the Pensions Appeal Tribunals Act 1943(a)."

(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 and 6 were amended by section 23 of the Chronically Sick and Disabled Persons Act 1970 (c. 44). Sections 5 and 6 were also amended by section 16 of the Social Security Act 1980 (c.30) and section 6 was also amended by section 43 of the Social Security and Housing Benefits Act 1982 (c.24).

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme, which is to come into force on 11th April 1988, amends the War Pensions (Mercantile Marine) Scheme 1964 ("the principal Scheme").

In order to deal with an anomalous distinction between different groups of merchant seamen, Article 21 is amended so that payment of injury benefit compensation no longer precludes payment of benefit under the principal Scheme (Article 2). The Secretary of State's discretion to reduce the rate or amount of benefit payable under the principal Scheme is limited to awards first made before 11th April 1988 (Article 3). Provision is also made as to the date payment of benefit is to commence (Article 4 and Schedule). Article 5 extends the meaning of the word "mariner" in the principal Scheme.