
STATUTORY INSTRUMENTS

1996 No. 1638

PENSIONS

The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment (No. 2) Order 1996

<i>Made</i>	- - - -	<i>26th June 1996</i>
<i>Laid before Parliament</i>		<i>8th July 1996</i>
<i>Coming into force</i>	- -	<i>29th July 1996</i>

At the Court at Buckingham Palace, the 26th day of June 1996

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 1983(1) by Order in Council in pursuance of section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(2):

NOW THEREFORE, Her Majesty, in exercise of the powers conferred by section 3 of the Naval and Marine Pay and Pensions Act 1865(3), section 2(1) of the Pensions and Yeomanry Pay Act 1884(4), section 2(1) of the Air Force (Constitution) Act 1917(5), and sections 12(1) and (3) and 24(3) of the said Act of 1977 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 may be cited as the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment (No. 2) Order 1996 and shall come into force on 29th July 1996.

(2) In this Order “the Service Pensions Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 and other expressions shall have the meaning assigned to them by the Service Pensions Order and, except where the context otherwise

(1) S.I. 1983/883, as amended by S.I. 1983/1116, 1521, 1984/1154, 1687, 1985/1201, 1986/592, 1987/165, 1988/248, 2248, 1989/156, 1990/250, 1308, 1991/766, 1992/710, 3208, 1993/598, 1994/772, 1906, 1995/766 and 1996/732.
(2) 1977 c. 5.
(3) 28 & 29 Vict c.73.
(4) 47 & 48 Vict c.55.
(5) 7 & 8 Geo 5 c.51.

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requires, a reference to a numbered article or Schedule is a reference to the article of, or Schedule to, that Order which is so numbered.

Amendment of the Service Pensions Order

2. The Service Pensions Order shall be amended in accordance with the provisions of Schedule 1 to this Order.

Transitional provisions

3. The transitional provisions set out in Schedule 2 to this Order shall have effect.

Revocations

4. The instruments specified in column 1 of Schedule 3 to this Order are, to the extent shown in column 2 of that Schedule, revoked.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE 1

Article 2

Amendments to the Service Pensions Order

1. For sub-paragraph (b) of paragraph (4) of article 1 (which relates to the certificates of medical officers) there shall be substituted the following sub-paragraph—

“(b) where no such decision has been given and the matter involves a medical question—

(i) in accordance with a certificate on that question of a medical officer or board of medical officers appointed or recognised by the Secretary of State

(ii) in a case where a pension or retired pay was payable in respect of disablement or death due to service before the commencement of the 1914 World War or after 30th September 1921 but before 3rd September 1939, if a certificate on that question has been given before 29th July 1996 by a medical officer or a board of medical officers appointed the Secretary of State for Defence, in accordance with that certificate, or

(iii) where it appears to the Secretary of State that the medical question raises a serious doubt or difficulty and he so desires, in accordance with the opinion thereon obtained from one or more of a panel of independent medical experts nominated by the President of the Royal College of Physicians of London, the Royal College of Surgeons of England or the Royal College of Obstetricians and Gynaecologists.”.

2. In paragraph (6) of article 4, and paragraphs (1)(a)(i) and (3) of article 5 for the words “after 2nd September 1939” there shall be substituted the words “before the commencement of the 1914 World War or after 30th September 1921”.

3. In article 7 (rank or status) after paragraph (9) there shall be inserted the following paragraph—

“(9A) Where the relevant rank held by the member is not one mentioned in Schedule 2, for the purposes of this Order his relevant rank shall be such as the Secretary of State shall determine in the light of the available evidence.”.

4. In paragraph (1) of article 9, and articles 10 and 11 (which concern the determination of the degree of disablement and the awards which flow from such disablement)(6) for the words “after 2nd September 1939”, in each place where they occur, there shall be substituted the words “before the commencement of the 1914 World War or after 30th September 1921”.

5. In article 21 (allowance for lowered standard of occupation)(7), for head (ii) of sub-paragraph (c) of paragraph (2) there shall be substituted the following head—

“(ii) where there was no such regular occupation, or where the member’s disablement is due to service—

(aa) before the commencement of the 1914 World War;

(bb) between 30th September 1921 and 3rd September 1939; or

(cc) after 31st July 1973;

the occupation which was his regular occupation on the date when he sustained the wound or injury, or was first removed from duty on account of the disease on which his award is based, or if there were no such occurrences, the date of the termination of his service;”.

6. In paragraph (1) of article 34 (pensions to widowers) for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.

(6) Article 9 was amended by S.I. [1993/3208](#) and article 10 by S.I. [1993/598](#).

(7) Article 21 was amended by S.I. [1985/1201](#).

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7. In head (a) of paragraph (3) of article 35 (allowances in respect of children under the age limit) for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.

8. In article 67 (review of decisions)(8)—

- (a) in paragraphs (8) and (11) for the words “during the 1914 World War” there shall be substituted the words “before or during the 1914 World War”;
- (b) in paragraph (9) after the word “under” there shall be inserted the words “this Order in respect of service before the 1914 World War or under”; and
- (c) in paragraph (10) for the word “under” there shall be substituted the words “under this Order in respect of service before the 1914 World War or under”.

9. In article 69 (power to dispense with probate) after the words “a 1919 to 1921 instrument” there shall be inserted the words “the Naval and Marine (Widows Attributable Awards) Order 1994, the Naval and Marine Pay and Pensions (Disablement Awards) Order 1994, Appendix VII to the Army Pay Warrant, or Appendix 34 to the Queen’s Regulations for the Royal Air Force”.

10. For the heading to Schedule 1 there shall be substituted the following heading—

“Disablement Due To Service In The Armed Forces”.

11. For the heading to Schedule 2 there shall be substituted the following heading—

“Death Due To Service In The Armed Forces”,

and in that Schedule in Part II—

(a) for the heading to Table 1 there shall be substituted—

“Yearly Rates of Pensions for Widows of Officers who were Members of the Armed Forces before 14 August 1914 or After 30 September 1921”;

(b) for the heading to Table 2 there shall be substituted—

“Weekly Rates of Pensions for Widows of Ratings, Soldiers or Airmen”;

(c) in the headings to Tables 4 and 5 for “After 2 September 1939” there shall be substituted “Before 14 August 1914 or After 30 September 1921”.

12.—(1) In Schedule 4(9) (glossary of expressions), Part II shall be amended in accordance with the following provisions of this paragraph.

(2) In item 17 (meaning of “airman”), in column 3, in paragraph (2) of the entry for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.

(3) In item 30 (meaning of “member of the air forces”), in column 3, in paragraph (2) of the entry for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.

(4) In item 32 (meaning of “member of the military forces”), in column 3—

(a) in paragraph (1) for the words “during the 1914 World War” there shall be substituted the word “before or during the 1914 World War”;

(b) in paragraph (2) for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.

(5) In item 33 (meaning of “member of the naval forces”), in column 3—

(a) in paragraph (1) for the words “during the 1914 World War” there shall be substituted the words “before or during the 1914 World War”;

(8) Article 67 has been amended by S.I. [1984/1154](#), [1985/1201](#) and [1994/772](#).

(9) Schedule 4 has been amended by S.I. [1984/1154](#), [1993/598](#) and [1994/772](#).

- (b) in paragraph (2) for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.
- (6) In item 34 (meaning of “member of the Reserve or Auxiliary Forces”), in column 3 for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.
- (7) In item 36 (meaning of “officer”), in column 3—
 - (a) in paragraph (1) of the entry—
 - (i) for the words “service during” there shall be substituted the words “service before or during”;
 - (ii) for the words “some period of the said war” there shall be substituted the words “some period before or during the said war”;
 - (b) in paragraph (2) for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.
- (8) In item 46 (meaning of “rating”), in column 3—
 - (a) in paragraph (1)—
 - (i) for the words “during the 1914 World War” there shall be substituted the words “before or during the 1914 World War”;
 - (ii) for the words “during some period of the said war” where they first occur, there shall be substituted the words “before or during same period of the said war,”;
 - (b) in paragraph (2) for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.
- (9) In item 48 (meaning of “service”), in column 3 the words from “during the whole or part of the 1914 World War” to “2nd September 1939” shall be omitted.
- (10) In item 49 (meaning of “soldier”), in column 3—
 - (a) in paragraph (1) for the words “service during the 1914 World War” there shall be substituted the words “service before or during the 1914 World War”;
 - (b) in paragraph (2) for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.
- (11) In item 51A (meaning of “unmarried dependant living as a spouse”)(**10**), in column 3 in paragraph (a) for the words “after 2nd September 1939” there shall be substituted the words “before the commencement of the 1914 World War or after 30th September 1921”.
- (12) In item 52 (meaning of “unmarried dependant living as a wife”) in column 3, in paragraph (a) for the words “after 2nd September 1939” there shall be substituted the words “before the commencement of the 1914 World War or after 30th September 1921”.
- (13) In item 54 (meaning of “woman member of the armed forces”) in column 3—
 - (a) in paragraph (1) for the words “during the 1914 World War” there shall be substituted the words “before or during the 1914 World War”;
 - (b) in paragraph (2) for the words “after 2nd September 1939” there shall be substituted the words “after 30th September 1921”.

(10) Item 51A was inserted by S.I. [1984/1154](#).

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SCHEDULE 2

Article 3

Transitional provisions

1. In this Schedule—

- (a) “commencement date” means the date on which this Order comes into force;
- (b) “first review” means the first review after commencement date of the entitlement of a member of the armed forces to a relevant allowance;
- (c) “relevant allowance” means any allowance, pension, retired pay or supplement payable either—
 - (i) under a provision which is revoked by article 4 of this Order; or
 - (ii) by virtue of a grant made by the Secretary of State for Defence out of monies provided by Parliament,

under conditions analogous to those relating to any allowance, pension, retired pay or supplement payable under the Service Pensions Order other than those formerly laid down in article 13 or 38 (education allowances)(11)

2. This Schedule applies where, immediately before commencement date a relevant allowance or an allowance analogous to an education allowance under article 13 or 38 was payable to or in respect of a member of the armed forces, and that allowance would have continued to be payable but for the coming into force of this Order.

3.—(1) After commencement date, and until the first review, the decision by virtue of which the relevant allowance was payable immediately before commencement date shall have effect as if it were a decision that the allowance, pension, retired pay or supplement under the Service Pensions Order to which the relevant allowance was analogous, should be payable at the same rate, subject to the same conditions and for the same term (subject to the following provisions of this Schedule) as the relevant allowance would have been if this Order had not come into force.

(2) Where on the first or any subsequent review of a decision referred to in sub-paragraph (1) that decision is reviewed to the disadvantage of the recipient there shall be paid to him under this paragraph an amount equal to the difference between the amount payable under the Service Pensions Order under the reviewed decision and the amount which would have been payable if the decision had not been reviewed, and that amount shall be increased.

- (a) it is determined that the decision which is the subject of the review was erroneous in law and that error was attributable to misrepresentation, or failure to disclose a material fact by the recipient or someone acting on his behalf; or
- (b) he becomes entitled by virtue of another review to a higher total payment under the Service Pensions Order.

(3) In a case where head (a) of sub-paragraph (2) applies the amount payable under this paragraph shall be reduced to that which would have been payable but for the misrepresentation or failure to disclose a material fact.

(4) In a case falling within head (b) of sub-paragraph (2), the amount of the payment under this paragraph shall be reduced by the amount of the increase in the total payment under the Service Pensions Order.

4. Any payment under paragraph 3 shall be in addition to any allowance, pension, retired pay or supplement which would have been payable under the Service Pensions Order if this Order had not been made.

(11) These articles were revoked by S.I. 1993/598, but continue to have effect in respect of cases where awards under them were in payment immediately before their revocation.

5. Where immediately before the coming into force of this Order a person was in receipt by virtue of—

- (a) a provision revoked by article 4 of this Order; or
- (b) a grant made by the Secretary of State for Defence out of monies provided by Parliament,

of an allowance analogous to that payable under article 13 or 38 (education allowances) there may be paid to him an allowance under paragraph 6 below, subject to paragraphs 7 and 8 below.

6.—(1) Subject to sub-paragraphs (3), (4) and (5) there may be paid to a member of the armed forces who is in receipt of retired pay or pension an allowance in respect of a child for the purpose of his education if the child is a child of the member or by virtue of article 18(5)(e) is treated as a child of the member.

(2) Subject to the following provisions of this paragraph, an allowance in respect of a child to whom or in respect of whom an award has or, but for the provisions of article 33, would have been made under article 35, 36, 37 or 39 may be awarded for the purpose of that child's education.

(3) Subject to sub-paragraphs (4) and (5), an allowance under sub-paragraph (1) or (2) shall be payable only if—

- (a) the child has attained the age of 5 years; and
- (b) the circumstances of the family are such as to require it; and
- (c) the Secretary of State is satisfied that the type of education which the child is receiving or is to receive is suitable for the child.

(4) Where a child begins or is to begin school before the age of 5 years, sub-paragraph (3)(a) shall have effect as if for "has attained the age of 5 years" there were substituted the words "has commenced the term's attendance at school in the course of which he will attain the age of 5 years".

(5) The amount of an allowance under this paragraph shall be determined by the Secretary of State, but the total payments made in respect of any period of 12 months for any one child shall not exceed £120.

7. An allowance payable under paragraph 6 of this Schedule shall not be payable if at any time after the coming into force of this Order—

- (a) the conditions set out in that paragraph cease to be satisfied; or
- (b) it appears to the Secretary of State that it is for any other reason inappropriate for payment of the allowance to continue.

8. Paragraphs 3 and 6 of this Schedule are without prejudice to any power now exercisable by the Secretary of State with the concurrence of the Treasury to make provision in excess of that permitted by this Order or the Service Pensions Order in exceptional circumstances conferred by—

- (a) the Order in Council dated 19th December 1881 concerning non-effective pay and allowances for the Royal Navy at rates, and under circumstances, other than those laid down in existing Regulations;
- (b) the Royal Warrant dated 27th October 1884 concerning the issue of pay, non-effective pay and allowances for the Army; or
- (c) the Order of His Majesty dated 14th January 1922 concerning the issue of pay, non-effective pay and allowances of the Royal Air Force,

and accordingly those instruments shall have effect as if a reference to those paragraphs of this Schedule were included in each of them.

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SCHEDULE 3

Article 4

Revocations

Instrument	Extent of revocation
The Naval and Marine Pay and Pensions (Widows Attributable Pensions) Order 1994	The whole instrument
The Naval and Marine Pay and Pensions (Disablement Awards) Order 1994	The whole instrument
The Army Pensions Warrant 1977	Appendix VII
The Queen's Regulations for the Royal Air Force	Appendix 34

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 1983 (S.I.1983/883), so as to bring within its scope pensions payable as a result of death or disablement of members of the armed forces of the Crown in right of the United Kingdom due to service before the First World War or between 30th September 1921 and 2nd September 1939. It is made in consequence of a transfer of responsibilities for these pensions from the Ministry of Defence to the Department of Social Security.

This Order does not impose any costs on business.