
STATUTORY INSTRUMENTS

1996 No. 2882

PENSIONS

The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Amendment (No. 3) Order 1996

Made - - - - *19th November 1996*
Laid before Parliament *29th November 1996*
Coming into force - - *20th December 1996*

At the Court at Buckingham Palace, the 19th day of November 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 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. 3) Order 1996 and shall come into force on 20th December 1996.

(2) In this Order “the principal Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 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, 1996/732 and 1638.
(2) 1977 c. 5.
(3) 28 & 29 Vict c.73.
(4) 47 & 48 Vict c.55.
(5) 7 & 8 Geo 5 c.51.

requires, a reference to a numbered article or Schedule is to the article or Schedule in the principal Order which bears that number.

Substitution of article 3

2. For article 3 (basic conditions of awards and the making of claims) there shall be substituted the following article—

“Basic conditions of awards under this Order

3. Subject to articles 3A and 3B, awards under this Order may be made where the disablement or death of a member of the armed forces is due to service.”.

Insertion of articles 3A to 3D

3. After article 3 as substituted by article 2 of this Order, there shall be inserted the following articles—

“Making of claims

3A.—(1) Subject to article 3B (cases where claims are not required), it shall be a condition precedent to the making of any award of any pension, allowance or supplement mentioned in paragraph (2) that the person making the claim shall have—

- (a) completed and signed a form approved by the Secretary of State for the purpose of claiming that pension, allowance or supplement payable under this Order; and
 - (b) delivered that form either to an appropriate office of the Secretary of State or to an office of an authorised agent.
- (2) The pensions, allowances and supplement to which paragraph (1) applies are—
- (a) retired pay or a pension payable under article 10 (pension for disablement)(6);
 - (b) a constant attendance allowance payable under article 14;
 - (c) an allowance for wear and tear of clothing payable under article 17;
 - (d) an unemployability allowance payable under article 18(7);
 - (e) an allowance for lowered standard of occupation payable under article 21(8);
 - (f) a treatment allowance under article 23(9);
 - (g) an allowance where abstention from work is necessary following treatment in a hospital or similar institution under article 24(10);
 - (h) an allowance for part-time treatment under article 25(11);
 - (i) a mobility supplement payable under article 26A(12);
 - (j) a widow’s pension payable under article 29(13);

(6) Article 10 has been amended by S.I. 1993/598.

(7) Article 18 has been amended (*inter alia*) by S.I. 1984/1154, 1985/1201 and 1992/710. Paragraph (2) has been amended in consequence of the up-rating of benefits: a pensioner may be regarded as unemployable notwithstanding that he has earnings if in the opinion of the Secretary of State they are unlikely to exceed an amount specified in that paragraph: the current amount is £2366 by virtue of S.I. 1996/732.

(8) Article 21 has been amended by S.I. 1985/1201 and 1996/1638.

(9) Article 23 has been amended by S.I. 1986/592, 1992/710 and 1993/598.

(10) Article 24 has been amended by S.I. 1993/598.

(11) Article 25 has been amended by S.I. 1993/598.

(12) Article 26A was inserted by S.I. 1983/1116 and amended by S.I. 1986/592, 1990/1308, 1991/766 and 1992/710.

(13) Article 29 has been amended by S.I. 1993/598, 1994/1906, .

- (k) a pension payable to an unmarried dependant who lived as a spouse under article 30(14);
- (l) a rent allowance payable to a widow, widower or an unmarried dependant who had lived as a spouse under article 31;
- (m) a widower's pension payable under article 34(15);
- (n) an allowance payable under article 35 to a widow in respect of a child born after the death of the member;
- (o) an allowance in respect of, or a pension payable to, a child of a member under article 37.

(3) A claim for a pension for a child under article 36 (pensions to motherless or fatherless children under the age limit) shall be made by the child's guardian or by any other person having parental responsibility (within the meaning of the Children Act 1989(16)) for the child.

Cases where claims are not required

3B.—(1) A claim for the pensions, allowances and supplements mentioned in the following paragraphs of this article shall not be required if the conditions set out in that paragraph are satisfied.

(2) A claim for retired pay or a disablement pension under article 10 is not required to be made by the former member of the armed forces if—

- (a) he is discharged from the armed forces on medical grounds; and
- (b) the Secretary of State for Defence has delivered to the Secretary of State copies of the member's medical and service records.

(3) A claim for a widow's pension under article 29 is not required if—

- (a) the member of the armed forces by reference to whose death the pension would be payable died whilst serving in the armed forces; and
- (b) the Secretary of State for Defence has delivered to the Secretary of State copies of that member's medical and service records.

(4) A separate claim is not required for an award under this Order of—

- (a) comforts allowance payable under article 20(1)(a)(ii); or
- (b) age allowance payable under article 22;

where a pensioner is in receipt of retired pay or a disablement pension under article 10.

(5) A separate claim is not required for an award under this Order of the allowance payable under article 32 (allowance to elderly widows and unmarried dependants who lived as wives) where a person is in receipt of a pension under article 29 (pensions for widows), article 30 (which relates to pensions for unmarried dependants who lived as spouses), or article 34 (pensions to widowers).

(6) Where a claim has been made for retired pay or a disablement pension under article 10 on the basis of a particular disablement which is alleged to have been due to an injury which is attributable to or aggravated by service, no separate claim shall be required in respect of any other disablement which appears, upon an examination which is conducted by a medical practitioner before the claim is determined, to have been so attributable or so aggravated, whether due to that or another injury.

(14) Article 30 has been amended by S.I. 1984/1154.

(15) Articles 34 and 35 have been amended by S.I. 1996/1638.

(16) 1989 c. 41.

(7) Where a claim for a constant attendance allowance has been made in respect of a former member of the armed forces under article 14, no separate claim shall be required for—

- (a) an exceptionally severe disablement allowance under article 15;
- (b) a severe disablement occupational allowance under article 16(17);
- (c) a comforts allowance under article 20; or
- (d) a temporary allowance payable under article 33(18) to a widow of a member of the armed forces, or to a woman who had lived as the wife of such a member.

(8) Where a claim for an unemployability allowance under article 18 has been made, no separate claim shall be required for—

- (a) an invalidity allowance under article 19;
- (b) a comforts allowance under article 20; or
- (c) a temporary allowance payable under article 33 to a widow of a member of the armed forces, or to a woman who had lived as the wife of such a member.

(9) Where a claim has been made for—

- (a) a widow's pension under article 29;
- (b) a pension payable to an unmarried dependant living as a spouse under article 30; or
- (c) a widower's pension under article 34,

no separate claim for the award of an allowance under article 35 (children under the age limit) or article 37 (awards to or in respect of children over the age limit) shall be required if the claim for that pension provides sufficient information for the making of the award.

Withdrawal of claims

3C.—(1) Where a claim for a pension, allowance or supplement specified in article 3A has been made and—

- (a) the Secretary of State makes a request in writing for further information which is reasonably required for the determination of that claim, and that information is not furnished within three months of the date on which the request is given or sent to the person making the claim; or
- (b) the person in respect of whom the claim is made has been requested to attend for a medical examination at a time and place specified in a notice given or sent to him not less than ten days before the date of the examination and he fails without providing, within three months of the date on which he was requested to attend, a satisfactory explanation for that failure;

the claim shall be treated as having been withdrawn.

(2) Where a person who has made a claim for a pension, allowance or supplement specified in article 3A, and that claim has not been determined, gives written notice to the Secretary of State or, where the claim was made by delivering the claim to an authorised agent, gives written notice to either the Secretary of State or that authorised agent, that he wishes to withdraw the claim, the claim shall thereafter be treated for all purposes of this Order as having been withdrawn.

(17) Article 16 was amended by S.I. 1984/1687.

(18) Article 33 was amended by S.I. 1983/1521.

(3) The treating of a claim as having been withdrawn under this article shall not prejudice the making of a further claim for the pension, allowance or supplement to which the earlier claim related.

Date of claim

3D.—(1) In this Order “date of claim” means, subject to the following paragraphs of this article, the date on which a claim, in the form prescribed in respect of the pension, supplement or allowance claimed, is delivered to the Secretary of State or to an authorised agent.

(2) Where not more than three months earlier than the date referred to in paragraph (1) a form prescribed for making the claim in question has been despatched as a result of an enquiry made in person, in writing or orally to the Secretary of State or to an authorised agent about claiming a pension, allowance or supplement under this Order for a named person, and that enquiry is made by the person who subsequently makes the claim or by a relative of his or a representative of a charitable organisation (including a company limited by guarantee with charitable objects) which represents former members of the armed forces, the date of claim shall be the date on which that enquiry is received by the Secretary of State, or, as the case may be, the authorised agent.

(3) Where a claim for a disablement pension or retired pay results in an award and, within three months of the notification of that award being given or sent to the pensioner of the decision to allow that claim, the member claims any allowance specified in article 3A(2)(19) or a mobility supplement under article 26A, the date of claim, for the purposes of determining entitlement to that allowance or supplement, shall be the date of the claim for the disablement pension or retired pay under article 10.

(4) Where a claim for a disablement pension or retired pay under article 10 results in an award and the member to whom it is awarded subsequently claims any allowance specified in article 3A(2) or a mobility supplement under article 26A, but not within the three months of the notification of that award being given or sent to him, the date of claim for the purpose of determining entitlement to that allowance or supplement shall, subject to paragraph (5), be the date on which he makes a claim for that allowance or supplement.

(5) Where not more than three months earlier than the date referred to in paragraph (4) a form prescribed for making the claim in question has been despatched as a result of an enquiry made in person, in writing or orally to the Secretary of State or to an authorised agent about claiming a pension, allowance or supplement under this Order for a named person, and that enquiry is made by the person who subsequently makes the claim or by a relative of his or a representative of a charitable organisation (including a company limited by guarantee with charitable objects) which represents former members of the armed forces, the date of claim shall be the date on which that enquiry is received by the Secretary of State, or, as the case may be, the authorised agent.

(6) Where a claim or an enquiry referred to in this article is made by post in the United Kingdom and the arrival of that claim or enquiry at the appropriate office of the Secretary of State or the authorised agent is delayed by postal disruption caused by industrial action, whether within the postal service or elsewhere, the claim shall be treated as having been received on the day on which it would have been received if it had been delivered in the ordinary course of post.”.

Amendment of article 8

4. In paragraph (1) of article 8 (general conditions for awards in respect of disable ment)(20) for the words “article 3” there shall be substituted the words “article 3A”.

Amendment of article 27

5. In paragraph (1) of article 27 (application of Part IV)(21) for the words “article 3” there shall be substituted the words “article 3A”.

Heading of article 30

6. In the heading of article 30 (pensions to unmarried dependants who lived as wives) for the word “wives” there shall be substituted the word “spouses”.

Heading of article 31

7. In the heading of article 31 (rent allowance to widows, and unmarried dependants who lived as wives)(22) after the word “widows,” there shall be inserted the word “widowers,” and for the word “wives” there shall be substituted the word “spouses”.

Heading of article 32

8. In the heading of article 32 (allowances to widows and unmarried dependants who lived as wives of severely disabled pensioners) after the word “widows” there shall be inserted the word “, widowers” and for the word “wives” there shall be substituted the word “spouses”.

Amendment of article 54

9. In article 54 (interpretation of Part VI) in paragraph (2) the figure “65,” shall be omitted.

Substitution of article 65

10. For article 65 (commencing date of awards) there shall be substituted the following articles—

“Commencing date of awards of pension or retired pay and associated allowances and supplements

65. Subject to article 65ZA, Schedule 3 shall have effect with respect to the commencing date of an award of a pension or retired pay under article 10, or a pension payable under article 29, 30 or 34 or any other pension, allowance or supplement payable under this Order except one to which article 65ZA applies.

Commencing date of award of widow’s pension where section 168 of the Pensions Act 1995 applies

65ZA.—(1) Except where the Secretary of State otherwise provides in a particular case or class of case, the commencing date for an award of a pension payable to a woman as a widow under this Order following the dissolution of a marriage which falls to be disregarded

(20) Article 8 has been amended: the relevant amending instrument is S.I. 1986/592.

(21) Article 27 has been amended: the relevant amending instrument is S.I. 1986/592.

(22) Article 31 has been amended by S.I. 1984/1154.

by virtue of section 168 of the Pensions Act 1995(23) (war pensions for widows: effect of remarriage) shall be—

- (a) where the claim for the payment or, as the case may be, restoration of the widow's pension is made within three months of the dissolution of the marriage, or where there is more than one, of the last marriage, falling to be disregarded, the day immediately following that dissolution;
- (b) in any other case, the date on which the claim for payment or, as the case may be, restoration of the widow's pension is made.

(2) In this article “dissolution” means the same as in section 168 of the Pensions Act 1995.”.

Amendment of Schedule 3

11. In Schedule 3, for paragraph 4 there shall be substituted the following paragraph—

“**4.** In this Schedule “pension” means—

- (a) any retired pay or pension payable under article 10;
- (b) any pension payable under article 29, 30, or 34; or
- (c) any other pension, allowance or supplement payable under this Order other than one to which article 65ZA applies.”.

Amendment of Schedule 4

12. Schedule 4 (glossary of expressions) shall be amended by the insertion in Part II, after the definition of “apprentice”, of the following definition—

“**18A.** “authorised agent”

A person authorised by the Secretary of State for the purpose of receiving claims under this Order, including, without prejudice to the generality of the foregoing, a person exercising consular functions on behalf of Her Majesty's Government in right of the United Kingdom in the territory or place where the person making the claim is resident at the time when it is made.”.

N. H. Nicholls
Clerk of the Privy Council

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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 make clear which pensions, allowances and supplements are required to be claimed expressly, to provide for claims to be made through certain authorised agents and to provide for claims to be treated as being made on earlier dates in specified circumstances. It also makes minor corrections to the titles to certain articles in consequence of changes in their scope by earlier amending Orders.

This Order does not impose any costs on business.