

2005 No. 3187

PENSION

The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) (No. 3) Order 2005

Made - - - - - *15th November 2005*
Laid before Parliament *25th November 2005*
Coming into force - - - *5th December 2005*

At the Court at Buckingham Palace, the 15th day of November 2005

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(a) by Order in Council in pursuance of section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(b)

NOW, THEREFORE, Her Majesty, in exercise of the powers conferred by section 3 of the Naval and Marine Pay and Pensions Act 1865(c), section 2(1) of the Pensions and Yeomanry Pay Act 1884(d), section 2(1) of the Air Force (Constitution) Act 1917(e)and section 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 2005 and shall come into force on 5th December 2005.

(2) In this Order “the principal Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983.

(a) S.I.1983/883, as amended by S.I. 1983/1116, 1521, 1984/1154, 1687, 1985/1201, 1986/592, 1987/165, 1988/248 and 2248, 1989/156, 1990/250 and 1308,1991/776, 1992/710 and 3208, 1993/598, 1994/772 and 1906, 1995/766, 1996/732, 1638 and 2882, 1997/286, 1998/262, 1999/294, 2000/252, 2001/409, 2003/434, 2004/708, 2005/851 and 1471.

(b) 1977c.5.

(c) 1865 c.73: section 3 was amended by the Armed Forces (Pensions and Compensation) Act 2004(c.32.),section 4.

(d) 1884 c.55; parts of section 2(1) were repealed by the Statute Law Revision Act 1898 (c.22) and by the Statute Law (Repeals) Act 1976 (c.16).

(e) 1917 c.51.

Amendments to the principal Order and application

2. The amendments to the principal Order contained in Schedule 1 to this Order shall have effect.

AK Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2

AMENDMENTS TO THE PRINCIPAL ORDER

Amendments throughout the principal Order

1. For “widow or widower” (in each place) substitute “surviving spouse or surviving civil partner”.

Amendments to Part I of the principal Order

2. Article 1 shall be amended as follows—

(1) in sub-paragraph (6)(b) for “unmarried dependant who lived as a spouse” substitute “dependant who lived as a spouse or dependant who lived as a civil partner,”;

(2) in sub-paragraphs 7(a), 7(b)(i) and 7(b)(ii) after “spouse” (in each place) insert “or civil partner”; and

(3) in sub-paragraphs 7(a), and 7(b)(i) after “spouses” (in each place) insert “or civil partners”.

Amendments to Part II of the principal Order

3. Article 3A shall be amended as follows—

(1) in sub-paragraph (2)(j) for “widow or widower’s” substitute “surviving spouse’s or surviving civil partner’s”;

(2) in sub-paragraph (2)(k) for “an unmarried dependant who lived as a spouse” substitute “a dependant who lived as a spouse or dependant who lived as a civil partner”; and

(3) in sub-paragraph (2)(l) for “widow, widower or an unmarried dependant who had lived as a spouse” substitute “surviving spouse, surviving civil partner, dependant who lived as a spouse or dependant who lived as a civil partner”.

4. Article 3B shall be amended as follows—

(1) in paragraph (3) for “widow or widower’s” substitute “surviving spouse’s or surviving civil partner’s”;

(2) in paragraph (5)—

(a) for “elderly widows and unmarried dependants who lived as wives” substitute “elderly surviving spouses, surviving civil partners, dependants who lived as spouses and dependants who lived as civil partners”;

(b) for “pensions for widows” substitute “pensions for surviving spouses and surviving civil partners”; and

(c) for “unmarried dependants who lived as spouses” substitute “dependants who lived as spouses or dependants who lived as civil partners”;

(3) in sub-paragraphs 7(d) and 8(c) for “widow of a member of the armed forces, or to a woman who had lived as the wife” substitute “surviving spouse, surviving civil partner, dependant who lived as the spouse or dependant who lived as the civil partner”; and

(4) in paragraph 9—

- (a) for “widow or widower’s” substitute “surviving spouse’s or surviving civil partner’s”; and
- (b) for “an unmarried dependant living as spouse” substitute “a dependant living as a spouse or dependant living as a civil partner”.

5. Article 4(1A) shall be amended as follows—

- (1) after “death,” delete “no claim in respect of”; and
- (2) after “shall” insert “not”.

6. Article 5(1A) shall be amended as follows—

- (1) after “death,” delete “no claim in respect of”; and
- (2) after “shall” insert “not”.

Amendments to Part III

7. Article 18 shall be amended as follows—

- (1) in sub-paragraph (5)(b) for “wife or husband or unmarried dependant living as a spouse” substitute “spouse, civil partner, dependant living as a spouse or dependant living as a civil partner”.

Amendments to Part IV

8. For the title of article 29 substitute “Pensions to surviving spouses and surviving civil partners”.

9. Article 30 shall be amended as follows—

- (1) in the title for “unmarried dependants who lived as spouses” substitute “dependants who lived as spouses or dependants who lived as civil partners”;
- (2) for “an unmarried dependant who lived as a spouse” (in each place) substitute “a dependant who lived as a spouse or a dependant who lived as a civil partner”; and
- (3) for “the unmarried dependant who lived as a spouse” substitute “the dependant who lived as a spouse or the dependant who lived as a civil partner”.

10. Article 31 shall be amended as follows—

- (1) in the title for “widows, widowers, and unmarried dependants who lived as spouses” substitute “surviving spouses, surviving civil partners, dependants who lived as spouses and dependants who lived as civil partners”;
- (2) in paragraph (1)—
 - (a) after “surviving spouse” (in each place) insert “or surviving civil partner”,
 - (b) for “an unmarried dependant who lived as a spouse” (in each place) substitute “a dependant who lived as a spouse or a dependant who lived as civil partner”, and
 - (c) for “may be, unmarried dependant who lived as a spouse” substitute “may be, dependant who lived as a spouse or dependant who lived as a civil partner”;
- (3) in paragraph (2) for “surviving spouse or the unmarried dependant who lived as spouse” substitute “surviving spouse, surviving civil partner, dependant who lived as a spouse or dependant who lived as a civil partner”; and
- (4) in paragraph (3)(b) for “surviving spouse or unmarried dependant who lived as a spouse” substitute “surviving spouse, surviving civil partner, dependant who lived as a spouse or dependant who lived as a civil partner”.

11. Article 32 shall be amended as follows—

- (1) for the title substitute “Allowance to elderly surviving spouses, surviving civil partners, dependants who lived as spouses and dependants who lived as civil partners”; and

(2) in sub-paragraph (a)(i) after “their spouse” insert “or civil partner”.

12. Article 33 shall be amended as follows—

(1) for the heading substitute “Temporary Allowances to surviving spouses, surviving civil partners, dependants who lived as spouses or dependants who lived as civil partners of severely disabled pensioners”;

(2) in paragraph (1) for “or unmarried dependant who lived as their spouse” substitute “dependant who lived as his spouse or dependant who lived as his civil partner”;

(3) in paragraph (3) for “An unmarried dependant who lived as the spouse” substitute “A dependant who lived as the spouse or a dependant who lived as the civil partner”;

(4) in sub-paragraph (3)(a) for “the unmarried dependant” substitute “that dependant”;

(5) in sub-paragraph (3)(b) omit “unmarried”;

(6) in paragraph (4) for “an unmarried dependant who lived as the spouse” substitute “a dependant who lived as the spouse or dependant who lived as the civil partner”; and

(7) In paragraph (5)(c) for the word “remarries” substitute “enters into a subsequent marriage or forms a subsequent civil partnership”.

Amendments to Article 42

13. Article 42 shall be amended as follows—

(1) for the heading substitute “Relationships subsequent to the award of a pension”;

(2) in paragraph (1) after “another person as the spouse of that person” insert “or forms a civil partnership or lives with another person as the civil partner of that person”;

(3) in paragraph (1A) after the words “had another person living with her as her spouse” insert “or formed a civil partnership or had another person living with her as her civil partner”;

(4) in paragraph (1B) after “person as the spouse of that person” insert “or forms a civil partnership or begins to live with another person as the civil partner of that person”; and

(5) in paragraph (2) after the words “marriage of that person” insert “or if that person forms a civil partnership”

Amendments to Part VI

14. In Article 62(2) for “spouse, to an unmarried dependant of the pensioner” substitute “spouse, the pensioner’s civil partner, an unmarried dependant of the pensioner, a dependant of the pensioner who has not formed a civil partnership”.

15. In article 65A(1)(b) after “spouse” insert “or civil partner”.

16. Article 68 shall be amended as follows—

(1) in sub-paragraph (1)(b)(i) for “widow or, as the case may be, widower” substitute “surviving spouse or surviving civil partner”; and

(2) for “unmarried dependant who lived as a spouse” substitute “dependant who lived as a spouse or dependant who lived as a civil partner”.

Amendment of Part IV of Schedule 1 (Disablement due to service in the armed forces)

17. In paragraph 6(b)(i) of the Table of Rates of Allowances Payable in Respect of Disablement and Earnings or Income Thresholds, for “wife, husband or unmarried dependant living as a spouse” substitute “spouse, civil partner, dependant living as a spouse, dependant living as a civil partner”

Amendments to Schedule 2 (Death due to service in the armed forces)

18. Schedule 2 shall be amended as follows—

(1) in the titles of the tables at Part II for “widows and widowers” (in each place) substitute “surviving spouses and surviving civil partners”;

(2) in the title of the table 5 at Part II for “widows or widowers” substitute “surviving spouses or surviving civil partners”;

(3) in the title of the table at Part III, for “Widows’ or Widowers’” substitute “Surviving Spouses’ or Surviving Civil Partners’”; and

(4) in paragraphs 1 and 3 of the Table at Part III, for “unmarried dependant who lived as a spouse” substitute “dependant who lived as a spouse or dependant who lived as a civil partner”.

Amendments to Schedule 3 (Commencing dates of awards under this order)

19.—(1) For paragraph 1(4) substitute—

“(4) This sub-paragraph is satisfied where the date of claim or application for review is made within 3 months of—

- (a) the date of termination of service, or the date of death where an award is made in respect of a member’s death; or,
- (b) except where paragraph (a) applies, the date of notification of a decision on the claim or review.”;

(2) for paragraph 2 substitute—

“(1) In a case to which section 168 of the Pensions Act 1995 (war pensions for widows: effect of remarriage) or article 42(1A) (Relationships subsequent to the award of a pension) applies, for paragraph 1(4)(a) of this Schedule substitute “the date of termination of a marriage or civil partnership; the date of judicial separation of the parties to a marriage, the date of a separation order relating to a civil partnership; or the date that the claimant ceased to live with another as a spouse or as a civil partner;”

(2) In this paragraph,

- (a) in relation to marriage “termination of marriage” and “judicial separation” have the meanings they bear in section 168 of the Pensions Act 1995
- (b) in relation to civil partners
 - (i) the reference to the termination of a civil partnership is to the termination of the civil partnership by death, dissolution or annulment, and
 - (ii) the reference to a separation order includes any legal separation obtained in a country or territory outside the British Islands and recognised in the United Kingdom

and for those purposes a dissolution, annulment or legal separation obtained in a country or territory outside the British Islands must, if the Secretary of State so determines, be treated as recognised in the United Kingdom even though no declaration as to its validity has been made in any court in the United Kingdom.”.

(3) in paragraph 9 for “pensions to widows” substitute “pensions to surviving spouses and surviving civil partners”

Amendments to Schedule 4 (Glossary of Expressions)

20.—(1) The General Table in Part II of Schedule 4 shall be amended as follows—

(a) At item 16

- (i) omit “and is a widow or has never been married or is married to a husband”;
- (ii) At item 16(a)(iv) omit “and has never been married or is a widow or is married to a husband”

(b) At item 24, in the Meaning column for “wife, husband or child or unmarried dependant living as a spouse” substitute “spouse, civil partner, dependant living as a spouse, dependant living as a civil partner or child”;

- (c) At item 39(d), in the Meaning column after “(not being a separated spouse)” insert “or civil partner (not being a separated civil partner)”;
- (d) After item 50A insert—
 - (i) in the Item column, “50B”;
 - (ii) in the Expression column, ““surviving civil partner””; and
 - (iii) in the Meaning column, “the surviving civil partner of a member of the armed forces”.
- (e) At item 51A—
 - (i) in the Expression column delete “unmarried”; and
 - (ii) in the Meaning column after the words “person of the opposite sex” insert “who is not married to, but who is”; and after “expression” delete “unmarried”.
- (f) At item 52—
 - (i) for the Expression column substitute ““dependant living as a civil partner””; and
 - (ii) for the Meaning column substitute—

“in relation to a member of the armed forces whose disablement is due to service before the commencement of the 1914 World War or after 30th September 1921 a person of the same sex who has not formed a civil partnership with, but is wholly or substantially maintained by the member on a permanent bona fide domestic basis throughout the period beginning 6 months prior to the commencement of his service and continuing, where the member is disabled, up to the date of any award under this Order in respect of his disablement, and where the award is reviewed, up to the date of review, or where the member is dead, up to the date of his death;

(and the expression “dependant who lived as a civil partner” shall be construed accordingly).”

Amendments to Schedule 7 (Deductions for the purposes of Article 56)

- 21.—**(1) In the first column (Allowance/Pension)—
- (a) for “wife, husband, unmarried dependant, living as a spouse” substitute “spouse, civil partner, dependant living as a spouse, dependant living as civil partner”; and
 - (b) for “War widows pension and war widowers pension (article 29) and pension paid to an unmarried dependant who lived a spouse (article 30)” substitute “Surviving spouses’ and surviving civil partners’ pension (article 29) and pension paid to dependants who lived as spouses and dependants who lived as a civil partners (article 30)”; and
- (2) in the third column (Weekly Rate of Deduction)—
- (a) for “Where member has no partner, spouse or dependants” substitute “Where the member has no spouse, civil partner, dependant living as a spouse, dependant living as a civil partner or other dependants.”
 - (b) for “Where member has a partner, spouse or dependants” substitute “Where the member has spouse, civil partner, dependant living as a spouse, dependant living as a civil partner or other dependants.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Service Pensions Order 1983 ('the principal Order').

Paragraphs 5 and 6 of Schedule 1 clarify that injuries or deaths giving rise to benefits under the Armed Forces (Pensions and Compensation) Scheme 2005 shall not be accepted as due to service for the purposes of the principal Order.

Paragraph 20(a) of Schedule 1 removes marriage-related eligibility requirements in the definition of an adult dependant for the purposes of the Order.

All other paragraphs provide that marriage related benefits are paid equally to civil partners in consequence of the introduction of civil partnerships by the Civil Partnership Act 2004 (2004 c.33).

A regulatory assessment has not been produced for this instrument as it has no impact on the costs of business.

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The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) (No. 3) Order 2005

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