
STATUTORY INSTRUMENTS

2006 No. 606

**The Naval, Military and Air Forces Etc. (Disablement
and Death) Service Pensions Order 2006**

PART VIII

MISCELLANEOUS PROVISIONS

Invalidity of assignments

67. Any assignment or charge, and any agreement to assign or charge any pension, retired pay, allowance or gratuity which may be or has been awarded under this Order shall be void, and, on the bankruptcy of any person to whom such a payment has been awarded, the payment shall not pass to any trustee or person acting on behalf of the creditors.

Posthumous awards

68.—(1) Where, after making a claim for an award of retired pay or a pension under Part II or Part III of this Order, the claimant dies either—

- (a) before an award has been made; or
- (b) where an appeal has been made under the Pensions Appeal Tribunal Act 1943, before the appeal has been determined

the Secretary of State may, notwithstanding the claimant's death, make an award in accordance with the provisions of this Order.

(2) Any such award shall be made to the designated person whose receipt shall be a good discharge to the Secretary of State for any award so made in respect of that claim.

(3) No such award shall be made in respect of any period after the claimant's death.

(4) For the purposes of this article, where there is no grant of probate or letters of administration or other proof of title in respect of a deceased claimant's estate, the expression "personal representatives" means the person or persons appearing to the Secretary of State to be beneficially entitled to the estate of the deceased claimant.

(5) In this article—

- (a) "claimant" means a person who has made a claim for a pension under the Order;
- (b) "designated person" means the person who, after due enquiry, appears to the Secretary of State to be—
 - (i) the claimant's surviving spouse or surviving civil partner, or if it appears to the Secretary of State that there is no such person,
 - (ii) the claimant's dependant who lived as a spouse or dependant who lived as a civil partner, or if it so appears that there are no such persons,
 - (iii) the claimant's children, or if it so appears that there are no such persons,
 - (iv) the claimant's parents, or if it so appears that there are no such persons,

- (v) the claimant's other dependants, or if it so appears that there are no such persons,
- (vi) the claimant's personal representatives;
- (c) "pension" means any retired pay, pension, allowance or other continuing benefit under this Order.

Power to dispense with probate

69.—(1) Where a person to whom any payment referred to in paragraph (2) could have been made before his death, dies before the payment is made, the amount unpaid may—

- (a) be paid to the personal representative or, in Scotland, the executor of the deceased person, without probate, confirmation or other proof of title; or
- (b) may be paid or distributed to or among the persons appearing to the Secretary of State to be the persons beneficially entitled to the personal estate of the deceased person; or
- (c) in Scotland may be paid or distributed to or among the persons entitled to the moveable estate of the deceased person; or
- (d) to or among any one or more of those persons.

(2) The payments referred to in paragraph (1) are payments under—

- (a) this Order;
- (b) a 1919 to 1921 instrument;
- (c) the Naval and Marine (Widows Attributable Awards) Order 1994;
- (d) the Naval and Marine Pay and Pensions (Disablement Awards) Order 1994;
- (e) Appendix VII to the Army Pay Warrant; or
- (f) Appendix 34 to the Queen's Regulations for the Royal Air Force.

(3) In determining the persons to whom and the proportions in which the amount unpaid shall be paid or distributed under paragraph (1), the Secretary of State may have regard to any payments made or expenses incurred by any such person for or on account of the funeral of the deceased person.

(4) Paragraph (1) does not apply if the amount unpaid exceeds £5,000.

(5) Where a deceased person has died intestate and he was, or any child of his was or is, illegitimate, the deceased person and any such child shall, for the purposes of this article, be treated as legitimate.

Transferred powers

70. Nothing contained in this Order shall prejudice or affect any power transferred to the Secretary of State⁽¹⁾ under section 1 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939⁽²⁾.

Revocations, general and transitory provisions

71.—(1) Schedule 4 (which contains transitory provisions) shall have effect.

(2) Subject to the provisions of Schedule 4 and of the following provisions of this article the instruments specified in Schedule 5 are hereby revoked.

(3) Where, immediately before the date on which this Order comes into force—

(1) See Transfer of Function (Ministry of Pensions) Order 1953 (S.I. 1953/1198), article 2; Ministry of Social Security Act 1966 (c. 20), section 2; and Secretary of State for Social Services Order 1968 (S.I. 1968/1699), article 2.

(2) 1939 c. 83.

- (a) a person is entitled to receive retired pay, a pension, an allowance, a supplement or an addition under a 1919 to 1921 instrument or an instrument revoked by a 1964 instrument (“the relevant benefit”); and
- (b) the relevant benefit is, by virtue of article 72(2) of the Service Pensions Order 1983, paid at the rate specified in a provision of Schedule 1 or Schedule 2 to that Order which corresponds to a provision of Schedule 2, 4 or 6 to that 1964 instrument

the relevant benefit shall, after the coming into force of this Order, be paid at the rate specified in a provision of Schedule 1 or Schedule 2 to this Order which corresponds to a provision of Schedule 2, 4 or 6 to that 1964 instrument.

(4) Where, immediately before this Order comes into force, a person is entitled to receive constant attendance allowance under article 14 of the Service Pensions Order 1983 as a result of a decision to award that allowance made before 9th April 2001, the allowance shall, after the coming into force of this Order, be paid at the rate specified in—

- (a) paragraph 1(b)(i) of Part IV of Schedule 1 where the allowance had, immediately before the coming into force of this Order, been paid under article 14(1)(a) of the Service Pensions Order 1983; and
- (b) paragraph 1(b)(ii) of Part IV of Schedule 1 where the allowance had, immediately before the coming into force of this Order, been paid under article 14(1)(b) of the Service Pensions Order 1983.

(5) Anything done or begun under a provision of the Service Pensions Order 1983 which has been re-enacted under this Order shall be treated as having been done or begun under the corresponding provision of this Order.

(6) No award already made to or in respect of any person under any previous Order or Warrant concerning pensions or other benefit in respect of disablement or death due to service shall, by virtue only of the coming into force of this Order, be re-assessed to that person’s disadvantage.

(7) The provisions of this Order are subject to the provisions of the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 13th June 1922 and each of those instruments shall have effect as though this Order were specified in it.

(8) Any relevant provision of this Order shall apply to any case where the disablement or death of a member of the armed forces was due to service before 6th April 2005 whether or not an award has been made under the Service Pensions Order 1983 or any instrument preceding that Order concerning pensions or other benefits in respect of disablement or death due to service.

(9) Any reference in a certificate issued under section 10 of the Crown Proceedings Act 1947(3) (provisions relating to the armed forces) to an instrument revoked by the Service Pensions Order 1978 or by the Service Pensions Order 1983 shall be construed as including, in so far as appropriate in any particular case, a reference to this Order.