

2009 No. 436

PENSIONS

The Pensions (Polish Forces) Scheme (Amendment) Order 2009

Made - - - - *2nd March 2009*

Coming into force - - *6th April 2009*

The Secretary of State, with the consent of the Treasury, makes the following Order in exercise of the powers conferred by section 1 of the Polish Resettlement Act 1947(a) and now vested in him(b):

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Pensions (Polish Forces) Scheme (Amendment) Order 2009 and shall come into force on 6th April 2009.

(2) In this Order “the Scheme” means the Pensions (Polish Forces) Scheme 1964(c) and a reference to a numbered article is a reference to the article in the Scheme which bears that number.

Amendments to the Scheme

2. The Scheme is amended as follows.

Amendments to article 11 (awards not payable to or in respect of persons in Poland)

3. Article 11 is amended as follows—

- (a) for the heading substitute “Residence in Poland prior to 1st May 2004”;
- (b) for “is resident in Poland or, since the termination of the service of the member of the Polish forces concerned, has been or has become so resident,” substitute “was resident in Poland at any time prior to 1st May 2004 or, since the termination of the service of the member of the Polish forces concerned, was or became so resident at any time prior to 1st May 2004,”;

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- (a) 1947 c.19; section 1 was amended by section 139 of the Pensions Act 2008 (c. 30). The commencement date for this amendment is 6th April 2009 by virtue of the Pensions Act 2008 (Commencement No. 2) Order 2009, S.I. 2009/82, article 2.
 - (b) The functions of the Minister of Pensions were transferred to the Minister of Pensions and National Insurance by virtue of the Transfer of Functions (Ministry of Pensions) Order 1953, S.I. 1953/1198, article 2. The functions of the Minister of Pensions and National Insurance were transferred to the Minister of Social Security by virtue of the Ministry of Social Security Act 1966 (c.20), section 2. The functions of the Minister of Social Security were transferred to the Secretary of State for Social Services by virtue of the Secretary of State for Social Services Order 1968, S.I. 1968/1699, article 2. The functions of the Secretary of State for Social Services were transferred to the Secretary of State for Social Security by virtue of the Transfer of Functions (Health and Social Security) Order 1988, S.I. 1988/1843, article 3. The functions of the Secretary of State for Social Security were transferred to the Secretary of State by the Transfer of Functions (War Pensions etc.) Order, S.I. 2001/3506, article 2.
 - (c) S.I. 1964/2007 as amended by S.I. 2005/3040; there are other amending instruments but none is relevant. The Scheme was extended by S.I. 1967/293, 1972/75, 1981/1876, 1992/317, 1997/662, 2002/671 and 2007/645.

- (c) in the final sentence for “during which that person is not resident in Poland.” substitute “prior to 1st May 2004 during which that person was not resident in Poland.”.

Insertion of article 11A

4. After article 11 insert—

“Residence in Poland on or after 1st May 2004

11A.—(1) This article applies in the circumstances specified in paragraphs (2) and (3).

(2) This paragraph applies where—

- (a) a person (“A”) or (“B”) became resident in Poland in the relevant period, and payment of a pension or allowance, or both, to A or B was terminated in accordance with article 11 as in force prior to 6th April 2009; or
- (b) A made a new claim in the relevant period, and a pension, allowance or gratuity was not awarded due to article 11 as in force prior to 6th April 2009.

(3) This paragraph applies where—

- (a) a member of the Polish forces died at any time in the relevant period;
- (b) the member’s death was due to service; and
- (c) a pension or allowance, or both, which would have been payable to B following the member’s death, was not awarded due to article 11 as in force prior to 6th April 2009.

(4) Payment of the pension or allowance, or both, shall commence or recommence, as the case may be, on 6th April 2009, and any amount which would have been payable to A or B during the appropriate period shall be paid at the applicable rate.

(5) Where sub-paragraph (2)(b) applies and a gratuity is awarded, it shall be paid at the rate in force on 6th April 2009.

(6) Where A or B dies—

- (a) in the relevant period; or
- (b) after the relevant period but before payment of a pension, allowance or gratuity payable by virtue of paragraphs (4) or (5) is made

payment shall be made to the designated person whose receipt shall be a good discharge to the Secretary of State of the sum due.

(7) No pension or allowance is payable in respect of any period after the death of A or B.

(8) In this article—

- (a) “A” means a member of the Polish forces;
- (b) “applicable rate” means the rates of pension or allowance in force during the appropriate period;
- (c) “appropriate period” means the period beginning with whichever is the later of 1st May 2004 and —
 - (i) where paragraph (2)(a) applies the day after the termination of a pension or allowance,
 - (ii) where paragraph (2)(b) applies the date of claim,
 - (iii) where paragraph (3) applies the day after the date of death of the member of the Polish forcesand ending on 5th April 2009;
- (d) “B” means a widow, widower, surviving civil partner, parent, child, or other dependant or eligible member of the family of a member of the Polish forces;

- (e) “designated person” has the same meaning as in article 68 of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006(a);
- (f) “new claim” means a claim from a person who has not previously had an award of a pension, allowance or gratuity under the Scheme;
- (g) “relevant period” means the period beginning with 1st May 2004 and ending on 5th April 2009.”.

Signed by authority of the Secretary of State for Defence

27th February 2009

We consent

2nd March 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

Dave Watts
Tony Cunningham
Two of the Lords Commissioners of
Her Majesty’s Treasury

(a) S.I. 2006/606, to which there are amendments but none relevant to this instrument.

EXPLANATORY NOTE

(This note is not part of the Order)

The Pensions (Polish Forces) Scheme 1964 (“the Scheme”) provides for benefits to be payable to or in respect of former members of the Polish Forces who served under British command during World War II, or in the Polish Resettlement Forces.

Section 1(3) of the Polish Resettlement Act 1947 provided that payments under the Scheme could not be made to persons resident in Poland. Section 139 of the Pensions Act 2008 amended section 1(3) with the effect that the residency restriction may only be applied prior to 1st May 2004. This was the date of Poland’s accession to the European Union. The amendment came into force on 6th April 2009, and this Order makes consequential amendments to the Scheme.

Article 3 amends article 11, so that the residency restriction applies only where a person became resident in Poland at any time prior to 1st May 2004.

Article 4 of this Order inserts a new article 11A. This article applies in three circumstances. The first is where an award was terminated because a person became resident in Poland on or after 1st May 2004 and before 6th April 2009. The second is where a new claim was made on or after 1st May 2004 and before 6th April 2009 and a payment could not be made due to the claimant’s residence in Poland. The third is where a former member of the Polish forces died on or after 1st May 2004 and before 6th April 2009 and an eligible family member (e.g. a widow or a surviving civil partner) was not eligible for an award under the Scheme due to residence in Poland.

An award which has been terminated will be reinstated, and where an award was not made by virtue of the person’s residence in Poland an award will be made. In all cases an amount equivalent to arrears of pension or allowance will also be paid. Where a person dies before payment is made, payment will be made to the designated person defined by reference to article 68 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006. A designated person includes a surviving spouse, civil partner, child, other eligible family member or personal representative.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or the voluntary sectors is foreseen.

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