
STATUTORY INSTRUMENTS

1997 No. 811

PENSIONS

The War Pensions (Mercantile Marine) (Amendment) Scheme 1997

Made - - - - *12th March 1997*

Coming into force - - *7th April 1997*

The Secretary of State for Social Security, with the consent of the Treasury, in exercise of powers conferred by section 7(3) of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939⁽¹⁾ and now vested in him⁽²⁾ and of all other powers enabling him in that behalf, hereby makes the following Scheme:

Citation and commencement

1. This Scheme may be cited as the War Pensions (Mercantile Marine) (Amendment) Scheme 1997 and shall come into force on 7th April 1997.

Commencing dates of awards

2. For Schedule 7(3) (commencing dates of awards of benefit) of the War Pensions (Mercantile Marine) Scheme 1964⁽⁴⁾ there shall be substituted the Schedule set out in the Schedule to this Scheme.

Signed by authority of the Secretary of State for Social Security.

12th March 1997

Mackay of Ardbrecknish
Minister of State,
Department of Social Security

(1) 1939 c. 83.
(2) See The Transfer of Functions (Ministry of Pensions) Order 1953 (S.I. 1953/1198), article 2, Ministry of Social Security Act 1966 (c. 20), section 2, and the Secretary of State for Social Services Order 1968 (S.I. 1968/1699), article 2.
(3) Schedule 7 was inserted by S.I. 1988/639.
(4) S.I. 1964/2058; the relevant amending instrument is S.I. 1988/639.

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We consent,

12th March 1997

Patrick McLoughlin
Gyles Brandreth
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE

Article 2

SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 7

“SCHEDULE 7

Article 28A

COMMENCING DATES OF AWARDS OF BENEFIT

1.—(1) Subject to the adjustments in the following provisions of this Schedule, an award or an adjustment to an award shall have effect from such date as may be specified in the award, being a date not earlier than the date specified in sub-paragraph (2) which is relevant in the claimant’s case.

- (2) The date specified in this sub-paragraph is whichever date is the latest in time of the date—
- (a) of the claim;
 - (b) of the last application for review; or
 - (c) of an application for appeal under section 2, 4 or 5 of the Pensions Appeal Tribunals Act 1943⁽⁵⁾.
- (3) Where the claimant satisfies the requirements of sub-paragraph (4)—
- (a) by virtue of sub-head (i) of that sub-paragraph, the award shall have effect from the date on which the mariner ceases to be entitled to payment of wages under the Merchant Shipping Act 1995⁽⁶⁾; or
 - (b) otherwise than by virtue of that sub-head, the award shall have effect from the date sub-paragraph (4) is satisfied.
- (4) This sub-paragraph is satisfied where—
- (a) the claim;
 - (b) the application for review;
 - (c) the application for an appeal under section 2, 4 or 5 of the Pensions Appeal Tribunals Act 1943,

whichever is appropriate in the claimant’s case is made within 3 months of—

- (i) the date the mariner arrives on land in the country in which he is ordinarily resident or the date on which service to which this Scheme applies terminates; or
- (ii) where an award is made in respect of a mariner’s death, the date following the date of death; or
- (iii) except where sub-head (i) or (ii) applies, the date of issue of notification of a decision on the claim, review or, as appropriate, on appeal under section 2, 4 or 5 of the Pensions Appeal Tribunals Act 1943.

(5) Where the requirements of sub-paragraph (4) are satisfied on more than one occasion and the occasions on which they are satisfied are consecutive, sub-paragraph (3) shall apply as from the first occasion on which sub-paragraph (4) is satisfied.

(6) Where an award is adjusted upon review instigated by the Secretary of State, the adjustment shall take effect from the date of the review.

(5) 1943 c. 39; section 5 was amended by the Chronically Sick and Disabled Persons Act 1970 (c. 44), section 23(2) and the Social Security Act 1980 (c. 30), section 16(3).

(6) 1995 c. 21.

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2.—(1) In a case to which section 168 of the Pensions Act 1995⁽⁷⁾ (war pensions for widows: effect of remarriage) or article 42(1A) of the Naval, Military and Air Force Etc. (Disablement and Death) Service Pensions Order 1983⁽⁸⁾ applies—

- (a) paragraphs 1(3)(a) and 1(4)(ii) of this Schedule shall not have effect;
- (b) paragraph 1(3)(b) shall have effect as if the words to “that sub-head,” were omitted; and
- (c) paragraph 1(4) of this Schedule shall have effect as if,
 - (i) for the sub-head (i) there were substituted—
 - “(i) the termination of the claimant’s marriage, judicial separation of the parties or, as the case may be, the date the claimant ceased to live as a spouse with another;”;
 - and
 - (ii) in sub-head (iii) the words “or (ii)” were omitted.

(2) In this paragraph “termination of marriage” and “judicial separation” have the meanings they bear in section 168 of the Pensions Act 1995.

3. Where an award is made pursuant to a successful appeal to the High Court⁽⁹⁾, the Secretary of State may make payment for a past period which does not exceed six years from the date of the application for leave to appeal to the High Court.

4. Where an award or an adjustment to an award is made following a decision of the President of the Pensions Appeal Tribunals that the decision of a Pensions Appeal Tribunal be treated as set aside—

- (a) subject to paragraph 8, payment shall not be made in respect of any period before the date of the application to the President of the Pensions Appeal Tribunals where the ground for setting aside the decision of the Tribunal is the availability of additional evidence⁽¹⁰⁾;
- (b) the Secretary of State may make payment for a past period which does not exceed six years from the date of the application which led to the decision of the President of the Pensions Appeal Tribunals where the ground for setting aside the decision is that the Tribunal’s decision was erroneous in point of law⁽¹¹⁾.

5. Where a claimant satisfies the Secretary of State that—

- (a) he would have made a claim, an application for a review or, as the case may be, an application for an appeal on a date (“the earlier date”) earlier than that (“the actual date”) on which he actually did so but for the fact that he was incapable of so doing, or of instructing someone to act on his behalf by reason of illness or disability; and
- (b) that illness or disability continued to be the cause of the delay up to the moment the claim or application was made

any reference in this Schedule to the date of a claim, application for review, or application for an appeal shall be treated as references to the later of—

- (i) the earlier date; and
- (ii) the date three years before the actual date.

6.—(1) Where, upon review of a decision rejecting a claim for pension, the Secretary of State makes an award on the basis that medical opinion has developed since the date of the decision which

⁽⁷⁾ 1995 c. 26.

⁽⁸⁾ S.I. 1983/883; article 42(1A) is inserted by S.I. 1997/286.

⁽⁹⁾ See section 6(2) of the Pensions Appeal Tribunals Act 1943 (1943 c. 39).

⁽¹⁰⁾ See section 6(2A)(b)(i) of the Pensions Appeal Tribunals Act 1943 (1943 c. 39); section 6(2A) was inserted by the Chronically Sick and Disabled Persons Act 1970 (c. 44), section 23(1) and amended by the Social Security and Housing Benefits Act 1982 (c. 24), section 43(1).

⁽¹¹⁾ See section 6(2A)(b)(ii) of the Pensions Appeal Tribunals Act 1943 (1943 c. 39).

is the subject of the review, no payment may be made in respect of any period preceding whichever is the later of—

- (a) the date on which the Secretary of State considers that medical opinion had developed to the extent that an award in the claimant's case was justified; and
- (b) the date three years before the date of application for a review or, where the review is at the instigation of the Secretary of State, the date three years before the date of the Secretary of State's review decision.

(2) Where the Secretary of State accepts a claim and he is satisfied that a claimant would have made a claim at an earlier date but for advice given by the Secretary of State that a claim would be rejected on the basis of medical opinion, the Secretary of State may make payment in respect of a period commencing on whichever is the later of—

- (a) the date on which the Secretary of State considers that medical opinion had developed to the extent that an award in the claimant's case was justified; and
- (b) the date three years before the date of claim.

7. Where a decision, which falls to be reviewed in the light of a decision of a court in a case to which the claimant is not a party, is revised, no payment may be made pursuant to the revision in respect of any period before the date three years before the decision of the court.

8. Where, either upon review of a decision rejecting a claim for pension or following a decision of the President of the Pensions Appeal Tribunals that the decision of a Pensions Appeal Tribunal be treated as set aside by reason of the availability of additional evidence, an award is made on the basis of evidence contained in documents produced by the claimant which was not available to the claimant at the time of the decision which is the subject of the review or appeal because those documents were classified at that time, payment may be made in respect of a period commencing on the date three years before the date of the application for review or, as the case may be, application to the President of the Pensions Appeal Tribunals that the decision of a Pensions Appeal Tribunal be treated as set aside.

9. Except in a case to which paragraph 6 or 7 applies, where a claimant satisfies the Secretary of State that—

- (a) he would have made a claim, an application for a review or, as the case may be, an application for an appeal on an earlier date than he actually did but for an administrative error on the part of the Secretary of State; and
- (b) that error continued to be the dominant cause of the delay up to the moment the claim or application was made,

any reference in this Schedule to the date of a claim or application for an appeal shall be treated as references to the earlier date referred to in this paragraph.”

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme, which comes into force on 7th April 1997, amends the War Pensions (Mercantile Marine) Scheme 1964 (S.I.1964/2058) by substituting provision as to the date payment of benefit

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is to commence. Formerly, the Secretary of State had power to depart from the rules governing the commencing dates of awards of benefit in particular cases or classes of case. In place of that power, uniform provision is made as to when awards or adjustments to awards are to take effect in cases affected by a change in the law or medical opinion; cases where an award is restored after a period when it ceased because the person remarried or lived with another as a spouse; or where a claimant has good cause for tardily making a claim, application for review or appeal.

This Scheme does not impose any costs on business.