

## SCHEDULE 1

Article 2

### AMENDMENTS TO THE PRINCIPAL ORDER

#### *Amendment of article 1*

1. In paragraph (6)(b) of article 1 (citation, commencement and interpretation) for “the member’s widow or unmarried dependant who lived as a wife” substitute “the member’s widow or widower or unmarried dependant who lived as a spouse”.

#### *Amendment of article 3A*

2. In paragraph (3) of article 3A (making of claims) for the words in brackets after “article 36” substitute “pensions for children under the child’s age limit with no living parents”.

#### *Amendment of article 14*

3. For article 14 (constant attendance allowance) substitute—

“14.—(1) Where—

- (a) a member of the armed forces is in receipt of retired pay (as defined in article 17(3)) or a pension (as so defined) in respect of disablement the degree of which is not less than 80 per cent; and
- (b) it is shown to the satisfaction of the Secretary of State that constant attendance on the member is necessary on account of the disablement,

the member may be awarded an allowance in accordance with the following paragraphs of this article.

(2) Where the necessary attendance consists of frequent or regular attendance for periods during the daytime which total not less than four and not more than eight hours per day, the rate of the allowance shall be the part day rate specified in paragraph 2(a) of Part IV of Schedule 1.

(3) Where the necessary attendance consists of—

- (a) frequent or regular attendance for periods during the daytime which total not less than eight and not more than sixteen hours per day; or
- (b) frequent or regular attendance for periods during the daytime which total less than eight hours per day and attendance on two or more occasions per night,

the rate of the allowance shall be the full day rate specified in paragraph 2(b) of Part IV of Schedule 1.

(4) Where the necessary attendance consists of—

- (a) frequent or regular attendance for periods during the daytime which total not less than eight hours per day and attendance on two or more occasions per night; or
- (b) frequent or regular attendance for periods at night which total not less than eight hours and during the daytime for periods which total not less than four hours per day,

the rate of the allowance shall be the intermediate rate specified in paragraph 2(c) of Part IV of Schedule 1.

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(5) Where the necessary attendance consists of continual attendance throughout the day and night, the rate of the allowance shall be the exceptional rate specified in paragraph 2(d) of Part IV of Schedule 1.”.

*Amendment of articles 15 and 16*

4. In articles 15 and 16 (exceptionally severe disablement allowance and severe disablement occupational allowance) for “increased under the provisions of article 14(1)(b)” substitute “payable under the provisions of article 14(4) or (5)”.

*Amendment of article 18*

5. In article 18 (unemployability allowances)—

(a) for paragraph (2) substitute—

“(2) For the purposes of this article, subject to paragraph (2A), a member may be deemed to be unemployable although in receipt of therapeutic earnings which are, in the opinion of the Secretary of State, unlikely to exceed per year the figure specified in paragraph 6(c) of Part IV of Schedule 1 and for this purpose “therapeutic earnings” means earnings from work for no more than 16 hours per week and which in the Secretary of State’s view is not detrimental to the health of the member.”;

(b) for paragraph (2A) substitute—

“(2A) Where, before 9th April 2001, a member was in receipt of therapeutic earnings as defined in this Order immediately before that date, any such earnings he receives on and after that date shall constitute therapeutic earnings for the purpose of paragraph (2) until the member ceases permanently to do the work in respect of which they are received.”;

(c) in paragraph (5)(b), for the words after “Part IV of Schedule 1” substitute—

“if—

(i) the person in respect of whom the allowance is claimed has a weekly income which does not exceed the figure specified in paragraph 6(d) of Part IV of Schedule 1; and

(ii) the Secretary of State thinks fit to award the allowance, having regard to that person’s financial circumstances (including any earnings, occupational pension and social security benefits the person receives);”;

(d) omit paragraph (7); and

(e) in respect of decisions made before 9th April 2001, in paragraph (2) for “£3,042” substitute “£3,146”.

*Amendment of article 19*

6. In article 19 (invalidity allowance)—

(a) in paragraph (1) omit “(whether before or after the coming into operation of this article)” and “or, in the case of a woman member, the age of 55.”; and

(b) omit paragraphs (5) and (6).

*Amendment of article 21*

7. In article 21 (allowance for lowered standard of occupation)—

(a) in paragraph (1)—

- (i) omit “or has been granted an award under article 11 in respect of a minor disablement,” and “in either case”;
  - (ii) for “which is of an equivalent standard and” substitute “with equivalent gross income which”; and
  - (iii) after “suitable in his case,” add “taking into account his education, training and experience,”;
- (b) omit paragraphs (1A) and (2)(a), (b) and (d); and
- (c) in paragraph (2)—
- (i) for sub-paragraph (c)(ii) substitute—
    - “(ii) where there was no such regular occupation, or where the member’s disablement is due to service after 31st July 1973, his trade or profession as a member of the armed forces on the date that he sustained the wound or injury, or was first removed from duty on account of the disease on which his award is based, or if there was no such occurrence, the date of the termination of his service;”;
  - (ii) omit sub-paragraph (c)(iii).

*Amendment of article 23*

8. In article 23 (treatment allowances)—
- (a) for paragraph (2) substitute—
    - “(2) Where in relation to a period a member is in receipt of an award of treatment allowance under this article no payment shall be made in respect of that period under article 21.”;
  - (b) omit paragraphs (3), (5) and (7).

*Amendment of article 26A*

9. In article 26A (mobility supplement)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (b) insert after “disablement” “, where the degree of disablement is assessed at 40 per cent or more,” and for sub-paragraphs (i) and (ii) substitute—
      - “(i) rendering him unable to walk (including with any suitable prosthesis or artificial aid which he habitually wears or uses, or which he might reasonably be expected to wear or use);
      - (ii) restricting his leg movements to such an extent that his ability to walk (with any such prosthesis or artificial aid) without severe discomfort is of little or no practical use to him; or”;
    - (ii) in sub-paragraph (c) after “considered by the Secretary of State,” insert “on or after 9th April 2001” and omit sub-paragraph (iii); and
    - (iii) in sub-paragraph (d), after “blind”, insert “(with a loss of vision certified in accordance with article 9 as amounting to more than 80 per cent)” and after “deaf”, insert “(with a loss of hearing so certified as amounting to not less than 80 per cent)”;
  - (b) omit paragraphs (1A), (2) and (2A); and
  - (c) in paragraph (4) omit the words after “acquisition of the car”.

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*Amendment of article 29*

10. In article 29 (pensions to widows) in paragraph (1A) for the amount “£57.07” substitute the amount “£58.95”.

*Substitution of articles 35, 36 and 37*

11. For articles 35, 36 and 37 (awards for children) substitute—

**“Allowances for children under the child’s age limit**

35.—(1) An award may be made in respect of a child of a member of the armed forces whose death is due to service where the child—

- (a) has not attained the child’s age limit; and
- (b) is not eligible for an award of pension under article 36.

(2) An allowance awarded under this article shall be—

- (a) at the appropriate rate specified in paragraph 5(a) of Part III of Schedule 2 where the child lives with a parent; or
- (b) at a rate not exceeding the appropriate rate specified in paragraph 5(b) of Part III of Schedule 2 where the child does not live with a parent or with a person who is or has been in receipt of a pension awarded under article 29, 30, 34 or 39 in respect of the death of that member.

**Pensions for children under the child’s age limit with no parents living**

36.—(1) An award may be made in respect of a child of a member of the armed forces whose death is due to service where the child—

- (a) has not attained the child’s age limit; and
- (b) has no parents living.

(2) A pension awarded under this article shall be at the appropriate rate specified in paragraph 6 of Part III of Schedule 2.

**Award for children who have attained the child’s age limit**

37.—(1) An award may be made or continued in respect of a child of a member of the armed forces whose death is due to service where the child has attained the child’s age limit; and

- (a) is a student or apprentice; or
- (b) is incapable of self-support by reason of an infirmity which arose before he attained the child’s age limit,

and where the Secretary of State considers the making or continuing of the award is justified in all the circumstances of the case.

(2) An allowance or pension awarded or continued under this article—

- (a) shall be at the rate, and subject to the conditions in, articles 35 or 36 as appropriate; or
- (b) where a child in respect of whom an award was made under articles 35 and 36 has attained the age of 18 years and is incapable of self-support by reason of an infirmity which arose before he attained the child’s age limit, shall be at a rate not exceeding the rate specified in paragraph 7 of Part III of Schedule 2.”.

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*Amendment of article 42A*

**12.** In article 42A (funeral expenses)—

- (a) in paragraph (1) before “Where a member” insert “Subject to paragraph (3),”;
- (b) for paragraph (2)(b) substitute—
  - “(b) the death of the member occurred whilst, in respect of the disablement which gives rise to an award under this Order, he was receiving in-patient treatment in a hospital or similar institution, under the National Health Service Act 1977(1), the National Health Service (Scotland) Act 1978(2), the National Health Service and Community Care Act 1990(3), any corresponding enactment having effect in Northern Ireland, or in a hospital or similar institution maintained or administered by the Defence Council;”;
- (c) at the end add—

“(3) For the purposes of this article “reasonable funeral expenses” means expenses which the Secretary of State considers reasonable in relation to any of the following items, and after deduction of any amount payable in respect of death benefit in the Isle of Man or any of the Channel Islands—

- (a) necessary documentation;
- (b) transportation of the body but only within the British Islands and the Republic of Ireland;
- (c) travelling costs of one return journey within the British Islands and the Republic of Ireland, by the responsible person to arrange and attend the funeral;
- (d) funeral director’s fees and disbursements including the cost of an ordinary coffin;
- (e) transportation of the coffin and bearers and the cost of one other car;
- (f) funeral ceremony fees;
- (g) cemetery or cremation fees;
- (h) the cost of flowers from the person responsible for the funeral up to £75; or
- (i) up to £75 for extra costs because of the religion of the deceased member.”.

*Amendment of article 54*

**13.** In article 54 (interpretation of Part VI)—

- (a) in paragraph (1) omit “56,”; and
- (b) in paragraph (2) insert after “(6),” “67A, 67B, 67C”.

*Amendment of article 56*

**14.** For article 56 (maintenance in hospital or an institution) substitute—

“**56.**—(1) This article applies where any person is receiving or has received or is regarded as receiving or having received free in-patient treatment, or (otherwise than for the purpose of undergoing medical or other treatment) is being or has been maintained in an institution which is supported wholly or partly out of public funds, or in which he is being or has been maintained pursuant to arrangements made by the Secretary of State.

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(1) 1977 c. 49.  
(2) 1978 c. 29.  
(3) 1990 c. 19.

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(2) Subject to paragraph (3), in relation to any person to or in respect of whom a pension has been awarded, the Secretary of State may deduct such amount as he may think fit having regard to all the circumstances of the case from the pension payable in respect of the period during which the treatment is received or regarded as received or, as the case may be, during which the person is being so maintained.

(3) Subject to paragraph (4), in relation to any person to or in respect of whom an allowance or pension listed in the Table in Schedule 7 has been awarded, the Secretary of State may make deductions in respect of the allowance or pension in column 1 of that Table from the date and at the relevant rate specified opposite the allowance or pension in columns 2 and 3 respectively of that Table.

(4) For the purposes of paragraph (3) and Schedule 7, any separate periods of time spent as set out in paragraph (1) shall be treated as a continuous period of time where there is less than 28 days between each such period and for this purpose periods of time spent as set out in paragraph (1) before 9th April 2001 may be aggregated with periods so spent after that date.

(5) For the purposes of this article, a person shall be regarded as receiving or having received free in-patient treatment for any period for which he is or has been maintained free of charge while undergoing medical or other treatment as an in-patient—

- (a) in a hospital or similar institution under the National Health Service Act 1977, the National Health Service (Scotland) Act 1978, the National Health Service and Community Care Act 1990, or any corresponding enactment having effect in Northern Ireland; or
- (b) in a hospital or similar institution maintained or administered by the Defence Council,

and such a person shall for the purposes of sub-paragraph (a) or (b) be regarded as being maintained free of charge in a hospital or similar institution unless his accommodation and services are provided under section 65 of the National Health Service Act 1977(4), section 58 of, or paragraph 14 of Schedule 7A to, the National Health Service (Scotland) Act 1978(5), paragraph 14 of Schedule 2 to the National Health Service and Community Care Act 1990, or any corresponding enactment having effect in Northern Ireland or unless he is paying or has paid for any period, in respect of his maintenance, charges which are designed to cover the whole cost of the accommodation or services (other than services by way of treatment) provided for him in the hospital or similar institution for that period.

(6) For the purposes of this article “pension” means any retired pay or pension under this Order or a 1919 to 1921 instrument and “allowance” means any allowance under this Order or a 1919 to 1921 instrument.”.

#### *Amendment of article 58*

15. In article 58 (children whose maintenance is otherwise provided for)—

(a) for paragraph (2) substitute—

“(2) A pension which may be or has been awarded to or in respect of a child of a member of the armed forces may be reduced by the amount of any contributions to the support of the child which are being made by, or which it would be reasonably practicable to obtain from any parent not living in the same household with the child.”; and

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- (4) Section 65 was substituted by section 7(10) of the Health and Medicines Act 1988 (c. 49) and amended by sections 25 and 66(1) of, and paragraph 18(4) of Schedule 9 to, the National Health Service and Community Care Act 1990, and section 2(1) of, and paragraph 38 of Schedule 1 to, the Health Authorities Act 1995 (c. 17).
  - (5) Schedule 7A was amended by Schedule 1 to the Health Authorities Act 1995 and sections 46 and 49 of, and Schedules 4 and 5 to, the Health Act 1999 (c. 8) and section 58(3) was repealed by Schedule 7 to the Health Services Act 1980 (c. 53).

- (b) omit paragraph (3).

*Amendment of article 61*

- 16. In article 61(1) (administration of pensions, etc.)—
  - (a) in sub-paragraph (c) after “institution” insert “or hospital”; and
  - (b) in sub-paragraph (d) omit “or has been restored”.

*Amendment of article 62*

- 17. In article 62 (forfeiture of pensions etc.)—
  - (a) in paragraph (1)—
    - (i) omit “during the 1914 World War or after 2nd September 1939”; and
    - (ii) in sub-paragraph (a) for “or other young offenders institution” substitute “or, in Scotland, a young offenders institution or, in Northern Ireland, a young offenders centre”;
  - (b) for paragraph (2) substitute—

“(2) Where the Secretary of State is satisfied that a dependant will suffer hardship where a pension is withheld or forfeited under paragraph (1), the Secretary of State may pay, with the pensioner’s consent, up to half of the pension awarded under article 10 to the pensioner’s spouse, to an unmarried dependant of the pensioner or to anyone lawfully entitled to give a good receipt in respect of monies payable to the pensioner’s dependant.”; and
  - (c) after paragraph (2) add—

“(3) When paragraph (1) ceases to apply, the Secretary of State may award to the pensioner a sum not exceeding an amount calculated by reference to the number of weeks for which the pension was withheld or forfeited under paragraph (1), or 52 weeks, whichever is the lesser, and after the deduction of any amount paid under paragraph (2).”.

*Amendment of article 67*

- 18. In article 67 (review of decisions, assessments and awards)—
  - (a) in paragraph (1) before “(3)” insert “(2A)”, for “paragraphs (6A) and (8)” substitute “paragraph (8)” and in paragraph (2) omit “(6A),”;
  - (b) after paragraph (2) insert—

“(2A) Any assessment or decision made, given or upheld by the Pensions Appeal Tribunal under section 8 of the War Pensions (Administrative Provisions) Act 1919 or the Pensions Appeal Tribunals Act 1943 and 1949 may be reviewed by the Secretary of State at any time if the Secretary of State is satisfied that there has been a relevant change of circumstances since the assessment or decision was made, including any improvement or deterioration in the disablement in respect of which the assessment was made.”;
  - (c) in paragraph (3) for “paragraphs (7) and (8)” substitute “paragraph (8)”;
  - (d) in paragraph (3)(b) omit “in the case of an interim assessment”;
  - (e) omit paragraphs (6A) and (7); and
  - (f) in paragraph (7A), omit “, in the case of the member being a man, or 60, in the case of the member being a woman”.

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*Amendment of Schedule 1*

**19.** Schedule 1 (rates of retired pay, pensions, gratuities and allowances in respect of disablement due to service in the armed forces) shall be amended as follows—

- (a) for the Table in Part II there shall be substituted the Table set out in Schedule 2 to this Order;
- (b) for Tables 1 and 2 of Part III there shall respectively be substituted the Tables set out in Schedules 3 and 4 to this Order; and
- (c) for Part IV there shall be substituted the Part set out in Schedule 5 to this Order.

*Amendment of Schedule 2*

**20.** In Schedule 2 (rates of provisions and allowances in respect of death due to service in the armed forces)—

- (a) for Tables 1, 2, 3, 4 and 5 of Part II substitute the Tables set out in Schedule 6 to this Order; and
- (b) for Part III substitute the Part set out in Schedule 7 to this Order.

*Amendment of Schedule 3*

**21.** In paragraph 1 of Schedule 3 (commencing dates of awards)—

- (a) omit sub-paragraphs (2)(d) and (4)(c);
- (b) for sub-paragraph (4)(ii) substitute “(ii) except where sub-head (i) applies, the date of notification of a decision on the claim or review.”;
- (c) in sub-paragraph (6) before “Where” insert “Subject to sub-paragraph (6A),”; and
- (d) after sub-paragraph (6) insert—

“(6A) Where an award is reviewed as a result of a decision (“the original decision”) which arose from an official error, the reviewed decision shall take effect from the effective date of the original decision and for this purpose “official error” means an error made by the Secretary of State or any officer of his carrying out functions in connection with war pensions, defence, or foreign and commonwealth affairs, to which no other person materially contributed, including reliance on erroneous medical advice but excluding any error of law which is only shown to have been an error by virtue of a subsequent decision of a court.”.

**22.** In paragraph 4 of Schedule 3 omit sub-paragraph (a).

**23.** In paragraph 5 of Schedule 3—

- (a) in sub-paragraph (a) insert “or” between “claim” and “an application” and omit “or, as the case may be, an application for an appeal”; and
- (b) in the full-out words for “claim, application” substitute “claim or date of application” and omit “or application for an appeal”.

**24.** In paragraph 10 of Schedule 3—

- (a) for sub-paragraph (a) substitute—

“(a) he would have made a claim or an application for a review on an earlier date than he actually did but for an act or omission of the Secretary of State or any officer of his carrying out functions in connection with war pensions, defence, or foreign and commonwealth affairs, which wrongly caused him to delay the claim or application and that act or omission was the dominant cause of the delay.”;

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- (b) in sub-paragraph (b) for “error” substitute “act or omission”; and
- (c) in the full-out words for “claim, date” substitute “claim or date” and omit “or application for an appeal”.

*Amendment of Schedule 4*

**25.** In Schedule 4 (glossary of expressions)—

- (a) for item 15 (definition of “adopted”) substitute—

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| “15 | “adopted” | adopted within the meaning in Part IV of the Adoption Act 1976 <sup>(6)</sup> or, in Scotland, section 38 of the Adoption (Scotland) Act 1978 <sup>(7)</sup> and “adoption” shall be construed accordingly” |
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- (b) for item 19 (definition of “child”) substitute—

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| “19 | “child” | in relation to a member of the armed forces, a child with respect to whom the member— <ul style="list-style-type: none"><li>(a) is in law the mother or father of the child, including by adoption;</li><li>(b) is the child’s step parent; or</li><li>(c) is the child’s foster parent within the meaning in the Children Act 1989<sup>(8)</sup> or, in Scotland, the Foster Children (Scotland) Act 1984;<sup>(9)</sup> and in each case the member—<ul style="list-style-type: none"><li>(i) is regularly maintaining him or contributing to his maintenance or could reasonably be expected to do so;</li><li>(ii) where the member has died, was regularly maintaining him or contributing to</li></ul></li></ul> |
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<sup>(6)</sup> 1976 c. 36.  
<sup>(7)</sup> 1978 c. 28.  
<sup>(8)</sup> 1989 c. 41.  
<sup>(9)</sup> 1984 c. 56.

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- his maintenance up to the date of his death or could reasonably have been expected to do so; or
- (iii) where the child was unborn at the date of the member’s death, would have so maintained him or contributed to his maintenance.”; and

(c) for item 50 (definition of “student”) substitute—

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| “50 | “student” | a person who is aged less than 19 and attending a full-time course of education at a school, university or college, or any other educational establishment recognised by the Secretary of State as being of comparable status, and for the purpose of this Order a person may continue to be a student for a period of up to 13 weeks after he ceases to attend such a course and before he reaches the age of 19 as the Secretary of State may in any particular case determine.”. |
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*Addition of Schedule 7*

**26.** After Schedule 6 add as Schedule 7 the Schedule which is set out in Schedule 8 to this Order.