

**2001 No. 419**

**PENSIONS**

**The War Pensions (Mercantile Marine) (Amendment)  
Scheme 2001**

*Made* - - - - - *14th February 2001*

*Coming into force* - - - *9th April 2001*

The Secretary of State for Social Security, with the consent of the Treasury, in exercise of the powers conferred by sections 3, 4 and 7 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(a), and now vested in him(b) and of all other powers enabling him in that behalf, hereby makes the following Scheme:

**Citation, commencement and interpretation**

1. This Scheme may be cited as the War Pensions (Mercantile Marine) (Amendment) Scheme 2001 and, subject to article 3, shall come into force on 9th April 2001.

2. This Scheme shall be read as one with the War Pensions (Mercantile Marine) Scheme 1964(c) (“the principal Scheme”).

**Amendments to the principal Scheme**

3.—(1) Schedule 7 to the principal Scheme (commencing dates of awards of benefit)(d) shall be amended as provided in this article for the purposes of decisions made and notified on or after 9th April 2001.

(2) In paragraph 1—

- (a) omit sub-paragraphs (2)(c) and (4)(c);
- (b) in sub-paragraph 4(iii) omit “of issue”, for “claim, review” substitute “claim or review” and omit from “or, as appropriate” to the end;
- (c) in sub-paragraph (6) before “Where” insert “Subject to sub-paragraph (7)”; and
- (d) after sub-paragraph (6) insert—

“(7) 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.”.

(3) In paragraph 4 omit sub-paragraph (a).

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(a) 1939 c. 83. The Act was amended by the Pensions (Mercantile Marine) Act 1942 c. 26.

(b) 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, the Secretary of State for Social Services Order 1968 (S.I. 1968/1699), article 2, and the Transfer of Functions (Health and Social Security) Order 1988 (S.I. 1988/1843), article 3.

(c) 1964/2058. Amending instruments are S.I. 1987/585, 1988/639, 1989/540, 1993/692 and 1997/811.

(d) Schedule 7 was substituted by S.I. 1997/811.

- (4) In paragraph 5—
- (a) in sub-paragraph (a) for “claim, an application” substitute “claim or 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 an application” and omit “or application for an appeal”.
- (5) In paragraph 9—
- (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;”
  - (b) in sub-paragraph (b) for “error” substitute “act or omission”; and
  - (c) in the full-out words for “an appeal” substitute “a review”.

12th February 2001

We consent

*Hugh Bayley*  
Parliamentary Under-Secretary of State,  
Department of Social Security

14th February 2001

*Jim Dowd*  
*Clive Betts*  
Two of the Lords Commissioners of Her Majesty’s Treasury

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#### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Scheme amends the War Pensions (Mercantile Marine) Scheme 1964 (“the principal Scheme”).

Article 3 amends Schedule 7 to the principal Scheme as regards commencing dates for awards. References to appeals are removed to reflect changes to other war pension instruments following amendments to section 8 of the Pensions Appeal Tribunals Act 1943 (c. 39) by section 58 of the Child Support, Pensions and Social Security Act 2000 (c. 19). Paragraphs (2)(d) and (3) of article 3 amend paragraphs 1 and 4 of Schedule 7 respectively, to clarify what is meant by official error and regarding backdating where there is additional evidence. Article 3(5) substitutes wording in paragraph 9 of Schedule 7 concerning administrative error.

This Order does not impose any costs on business.

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