

2006 No. 606

PENSIONS

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

<i>Made</i> - - - - -	<i>8th March 2006</i>
<i>Laid before Parliament</i>	<i>20th March 2006</i>
<i>Coming into force</i> - - -	<i>10th April 2006</i>



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At the Court at Buckingham Palace, the 8th day of March 2006

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty deems it expedient to consolidate the provisions concerning pensions and other grants in respect of disablement and death due to service in the naval, marine, military, air forces, nursing and auxiliary forces of the Crown by Order in Council in pursuance of section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977^(a):

ACCORDINGLY, Her Majesty, in exercise of sections 12(1) and 24(3) of that Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 and shall come into operation on 10th April 2006.

(2) In this Order, unless the context otherwise requires and except where otherwise provided in the Order, an expression for which there is an entry in the second column of Schedule 6 shall have the meaning given against it in the third column of that Schedule or, as the case may be, shall be construed in accordance with the instructions given against it in that column.

Interpretation – further provision

2.—(1) In this Order, a person shall be treated as being in receipt of any retired pay, pension, allowance or other continuing benefit awarded to him under this Order notwithstanding that the

^(a) 1977 c.5.

retired pay, pension, allowance or other benefit, or any part of it, is, by virtue of any provision of this Order, being administered or otherwise applied for any purpose or paid to some other person.

(2) Where an allowance awarded under this Order in respect of a child of a deceased member of the armed forces is withheld or reduced under article 55, the member's surviving spouse, surviving civil partner, dependant who lived as a spouse or dependant who lived as a civil partner who has the child under his or her control or in his or her charge shall be treated as being in receipt of the allowance notwithstanding that it is so withheld or reduced.

(3) A condition for the award of any pension, allowance or grant under this Order that a person is, or as the case may be, was, in receipt of retired pay, pension, allowance or other award under this Order or under a 1919 to 1921 instrument, shall be treated as satisfied if that person is, or as the case may be, was, in receipt of any payment made by the Secretary of State with the consent of the Treasury which is analogous to that retired pay, pension, allowance or other award.

(4) In this Order, any question as to whether a person—

- (a) is an adopted child, or is a parent by virtue of having adopted a child, shall be determined as if any adoption effected by a person who at the date of the adoption had a spouse or civil partner and was not separated from that spouse or civil partner, had been effected by those 2 spouses or civil partners jointly;
- (b) is a grandparent, step-parent, brother, sister, half-brother, half-sister, stepbrother, stepsister or grandchild, shall be determined as if—
 - (i) any child adopted jointly by 2 persons who at the date of adoption were spouses or civil partners, or by a person who at that date had a spouse or civil partner and was not separated from that spouse or civil partner, was the legitimate child of those spouses or civil partners,
 - (ii) any child adopted by a person who at the date of adoption had no spouse or civil partner or was separated from his spouse or civil partner, was the legitimate child of that person,
 - (iii) any child born illegitimate had been born the legitimate child of his father and mother.

(5) Subject to article 44(7), any condition or requirement laid down in this Order for an award, or the continuance of an award, or relating to the rate or amount of an award, shall, except where the context otherwise requires, be construed as a continuing condition or requirement, and accordingly the award, rate or amount shall cease to have effect if and when the condition or requirement ceases to be fulfilled.

Rank or status

3.—(1) Where, for the purposes of any award under Part II or III or this Order in respect of the disablement or death of a member of the armed forces, the member's rank has to be determined, it shall be determined by reference to the relevant rank of the member as set out in Part I of Schedule 1 or Part I of Schedule 2 respectively.

(2) Subject to the following provisions of this article, the relevant rank of a member shall be whichever is the highest of the following ranks, namely—

- (a) the substantive rank held by him on the date on which he was last on full pay prior to the termination of his service;
- (b) where on that date he held war substantive rank, or paid temporary or paid acting rank which would then have been allowed to reckon for the purpose of calculating service retired pay or the rank element of a service pension if he were eligible for such retired pay or pension, that war substantive rank, or paid temporary or paid acting rank, as the case may be;
- (c) the substantive, war substantive, paid temporary or paid acting rank held by the member on any of the following dates, namely—
 - (i) the date on which he sustained the wound or injury, or was first removed from duty on account of the disease, on which the claim to the award is based,

- (ii) where the member suffered aggravation of the injury on which the claim to the award is based (being aggravation which, in the case of death, persisted until death) as a result of service after the date mentioned in subparagraph (c)(i) of this paragraph, the date of the removal from duty on account of the aggravation, or, if there was no such removal from duty, the date of the termination of his service;
 - (d) in the case of an award in respect the death of a member of the military forces who held brevet rank, that rank, so however that the brevet rank of colonel shall be treated as being the equivalent rank of lieutenant-colonel;
 - (e) in the case of an officer in the air forces transferred from a non-flying branch to the general duties branch for aircrew duties, or of an airman re-mustered to an aircrew category, the substantive, war substantive or paid temporary rank held immediately before his transfer or re-mustering;
 - (f) in the case of a member of the air forces who, immediately before becoming such a member, was a member of the military forces, and who was transferred to the Royal Air Force for aircrew duties in the general duties branch or for duties in an aircrew category or to the Royal Air Force Regiment, the rank which is equivalent to the substantive or war substantive rank in the military forces which he held immediately before his transfer.
- (3) In the case of a member of the Reserve or Auxiliary Forces, the relevant rank shall be—
- (a) the paid rank held by him or, where pay was not in issue, the rank for which pay would have been in issue if he had been entitled to receive pay, on the date on which he sustained the wound or injury, or on which he was first removed from duty on account of the disease, on which the claim to the award is based; or
 - (b) if there was no such occurrence, the highest rank (ascertained in accordance with the provisions of subparagraph (a) of this paragraph) held by him during the relevant period of service; or
 - (c) where the member suffered aggravation of the injury on which the claim to the award is based (being aggravation which, in the case of death, persisted until death) as a result of service after the date or period mentioned in subparagraphs (a) and (b) of this paragraph, the date of the removal from duty on account of the aggravation, or, if there was no such removal from duty, the highest rank (ascertained in accordance with the provisions of subparagraph (a) of this paragraph) held by him during such service.
- (4) Where death is the result of, or is hastened by, more than one injury and different ranks were held when some or all of the injuries were sustained, an award under Part III shall be at a rate calculated by reference only to the higher or highest of those different ranks.
- (5) For the purposes of an award in respect of the death of a retired officer who has been recalled to service or otherwise taken into employment as a commissioned officer, the relevant rank shall be the rank in which he was employed, or the rank appropriate to the appointment in which he was employed, at the date on which he was last on full pay prior to the termination of his service, or at any of the dates mentioned in paragraph (2)(c), whichever is most favourable.
- (6) As regards members of the naval forces, the provisions contained in the principal Naval Regulations as to equivalent ranks of officers and ratings for the purposes of retired pay, pension or like grant thereunder, and as to the classification of different categories of ratings, shall have effect for the purposes of this Order.
- (7) As regards members of the military forces, the classification of the ranks of soldiers set out in the Pension Warrant shall have effect for the purposes of this Order.
- (8) As regards members of the air forces, any references in this Order to a warrant officer shall be treated as excluding a reference to a warrant officer, 2nd class, and any reference to an aircraftman shall be treated as including a reference to an aircraft apprentice, an apprentice clerk and a boy entrant.
- (9) For the purposes of any award under this Order, a Chaplain to the military forces shall be treated as holding the rank which is laid down as appropriate in his case in the Pay Warrant and a Chaplain to the naval or air forces shall be treated as holding such rank as is, in the opinion of the Secretary of State, appropriate in his case having regard to the length of his service, and the

provisions made in the principal Naval Regulations or, as the case may be, the principal Air Force Regulations, as to the grant of retired pay, pension, allowances or gratuities to or in respect of Chaplains with that length of service.

(10) Where the relevant rank held by the member is not one mentioned in Schedule 2, for the purposes of this Order his relevant rank shall be such as the Secretary of State shall determine in the light of the available evidence.

(11) The foregoing provisions of this article shall, where appropriate, apply in relation to women members, any reference to a rank being treated where necessary as a reference to a status equivalent to that rank.

PART II

AWARDS IN RESPECT OF DISABLEMENT

Interpretation of Part II

4. In this Part—

(a) in articles 8, 11, 14 and 16—

(i) “retired pay” includes wounds pension under the Regulations in respect of the naval forces in force before 4th August 1914, or under the Royal Warrant of 1st December 1914, for the Pay, Appointment, Promotion and Non-Effective pay of the Army and wounds pension received in lieu of retired pay under article 1 of the 1921 Order, retired pay at the half-pay rate under paragraph (1)(a)(iii) of the provision to article 1 of the 1921 (Officers) Order and under article 1(1)(a) of the 1920 Warrant and alternative retired pay under article 3 of the 1921 (Officers) Order, of the 1921 (Warrant Officers) Order, of the 1920 Warrant or of the 1921 Order,

(ii) “pension” in relation to a nurse, includes an alternative pension under article 23C of the 1921 (Officers) Order, of the 1920 Warrant or of the 1921 Order, and

(iii) “pension” in relation to a rating, soldier or airman, includes an alternative pension under the 1919 to 1920 instruments;

(b) a claim is a new claim where—

(i) the date of the claim occurs on or after 7th April 1997; and

(ii) on the day which immediately precedes the date of the claim the member or, where the member has died, the person by or in respect of whom the claim is made does not have an award of the allowance in question.

General conditions for Part II

5.—(1) Under this Part, awards may be made in accordance with this Order in respect of the disablement of a member of the armed forces which is due to service before 6th April 2005 and may be made provisionally or upon any other basis.

(2) An award in respect of the disablement of a member shall not be made to take effect before the termination of his service or, in the case of an officer, while he is an officer on the Active List.

(3) Except where paragraph (4) applies, an award under this Part of this Order shall not be made in respect of—

(a) noise-induced sensorineural hearing loss; or

(b) a related condition or symptom if it is accompanied by noise-induced sensorineural hearing loss

unless the degree of disablement from that loss alone is assessed as being at least 20 per cent.

(4) Where the degree of the disablement in respect of noise-induced sensorineural hearing loss, or in respect of such hearing loss and a related condition or symptom, is assessed at less than 20

per cent, and a claim for an award in respect of that disablement was made prior to 7th January 1993, payment of any award resulting from that claim shall be made as though paragraph (3) were omitted.

Retired pay or pension for disablement

6. A member of the armed forces the degree of whose disablement due to service before 6th April 2005 is not less than 20 per cent may be awarded retired pay or a pension at whichever of the rates set out in the Table in Part II of Schedule 1 is appropriate to his rank or status and the degree of his disablement.

Gratuity for minor disablement

7.—(1) Subject to the provisions of paragraph (2), a member of the armed forces the degree of whose disablement due to service before 6th April 2005 is less than 20 per cent may be awarded a gratuity in accordance with the appropriate table in Part III of Schedule 1 in force at the time of the award.

(2) Subject to article 52, where—

- (a) an award of a gratuity is reviewed on the grounds that, for the purposes of Table 2 of Part III of Schedule 1, it was based on the wrong assumption that the disablement was of uncertain duration;

and subsequently

- (b) the degree of the disablement is increased to 20 per cent or more

the Secretary of State may on review award a gratuity in accordance with the appropriate table in Schedule 1 in force at such date as may seem to him just having regard to all the circumstances of the case, being a date not later than that on which the degree of the disablement increased.

Constant attendance allowance

8.—(1) Subject to article 70(4), where—

- (a) a member of the armed forces is in receipt of retired pay or a pension 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 shall 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 1(a)(i) 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 1(a)(ii) 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 1(a)(iii) of Part IV of Schedule 1.

(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 1(a)(iv) of Part IV of Schedule 1.

Exceptionally severe disablement allowance

9. Where the disablement of a member of the armed forces is, and in the opinion of the Secretary of State is likely permanently to remain, such that he is, or if he were not in a hospital or other institution would be, in receipt of an allowance for constant attendance at a rate payable under article 8(4) or (5), he shall be awarded an allowance at the appropriate rate specified in paragraph 2 of Part IV of Schedule 1.

Severe disablement occupational allowance

10.—(1) Except as provided in paragraph (2), where a member of the armed forces is in receipt of an allowance for constant attendance at a rate payable under article 8(4) or (5), he shall be awarded an allowance at the appropriate rate specified in paragraph 3 of Part IV of Schedule 1 for any period during which he is, in the opinion of the Secretary of State, ordinarily employed in a gainful occupation.

(2) Paragraph (1) does not apply during any period in respect of which the member of the forces is—

- (a) eligible for an award under article 12(1)(a);
- (b) is in receipt of any personal benefit under Part II or Part III of the Social Security Contributions and Benefits Act 1992^(a) or the corresponding provisions of the Social Security Contributions and Benefits (Northern Ireland) Act 1992^(b); or
- (c) any benefits similar to a personal benefit under the law of any place outside the United Kingdom which in the opinion of the Secretary of State is analogous to a personal benefit.

(3) In this article, “personal benefit” means—

- (a) retirement pension;
- (b) incapacity benefit;
- (c) severe disablement allowance;
- (d) carers allowance;
- (e) category A or B retirement pension as provided for by regulation 18 of the Social Security (Widow’s Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979^(c) or any corresponding regulations made in Northern Ireland.

Clothing allowance

11. A member of the armed forces who is in receipt of retired pay or a pension may be awarded a clothing allowance at the rate specified in paragraph 4 of Part IV of Schedule 1, where either—

- (a) he is in receipt of retired pay or pension in respect of an amputation and regularly wears an artificial limb; or
- (b) the Secretary of State is satisfied that as a result of the disablement which gives rise to an award under this Order there is exceptional wear and tear of the member’s clothing.

(a) 1992 c.4.

(b) 1992 c.7 (N.I.).

(c) S.I.1979/643.

Unemployability allowances

12.—(1) Subject to the provisions of this article, where a member of the armed forces is in receipt of retired pay or a pension in respect of disablement so serious as to make him unemployable, he shall be awarded unemployability allowances, being—

- (a) a personal unemployability allowance at the appropriate rate specified in paragraph 5(a) of Part IV of Schedule 1; and
- (b) additional unemployability allowances for dependants in accordance with such of the provisions of paragraph (6) as may be appropriate in his case.

(2) Paragraph (1) shall not apply in the case of a member who submits a new claim for an allowance under this article—

- (a) on or after the date on which he attains the age of 65; or
- (b) where the degree of disablement is assessed at less than 60 per cent.

unless paragraph (3) applies.

(3) If the member—

- (a) was in receipt of a personal unemployability allowance before 7th April 1997;
- (b) became engaged in remunerative work on or after 8th April 2002 and in consequence ceased to be entitled to a personal unemployability allowance;
- (c) had given notice to the Secretary of State that he had become engaged in remunerative work within one week of ceasing to be entitled to that allowance;
- (d) then ceased to be engaged in remunerative work;
- (e) makes a new claim for a personal unemployability allowance within 52 weeks of the termination of the original payment of that allowance; and
- (f) was not engaged in a previous period of remunerative work within 28 weeks of the date subparagraph (b) applied to him

then paragraph (1) shall continue to apply to that new claim subject to the degree of disablement being assessed at not less than 20 per cent.

(4) For the purposes of this article, subject to paragraph (5), a member may be treated as 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 5 (c) of Part IV of Schedule 1.

(5) Where, before 9th April 2001, a member was in receipt of therapeutic earnings immediately before that date, any such earnings he receives on and after that date shall constitute therapeutic earnings for the purpose of paragraph (4) until the member ceases permanently to do the work in respect of which they are received.

(6) Where a member is awarded a personal unemployability allowance, he may also be awarded additional unemployability allowances for dependants as follows—

- (a) subject to paragraph (7), an additional unemployability allowance in respect of a spouse, civil partner, dependant living as a spouse or dependant living as a civil partner at a rate not exceeding the appropriate rate specified in paragraph 5(b)(i) of Part IV of Schedule 1 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 5(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);
- (b) subject to paragraphs (8) and (9), an additional allowance in respect of any child of the member at the appropriate rate specified in paragraph 5(b)(ii) of Part IV of Schedule 1;
- (c) where a child is not a child of the member, but in the opinion of the Secretary of State, having regard to the child's relationship to or connection with the member and the other

circumstances of the case, the child should be treated as his child for the purposes of subparagraph (b), that child shall be so treated for those purposes.

(7) An additional allowance shall not be awarded in respect of more than one adult dependant.

(8) No award of an additional allowance shall be made or continued or shall continue to have effect in respect of a child who has attained the child's age limit, unless he is—

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

and in either case the circumstances are, in the opinion of the Secretary of State, such as to justify the award or its continuance.

(9) For the purposes of paragraph (6)(b) and (c), an award, continuance and amount of an additional allowance under that paragraph in respect of a child who is living apart from the member shall be at the discretion of the Secretary of State.

(10) Where—

- (a) a person to whom a personal allowance may be or has been awarded under the foregoing provisions of this article is eligible for—
 - (i) a category A or B retirement pension, as provided for by regulation 18 of the Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) Transitional Regulations 1979, or by corresponding regulations made in Northern Ireland, or
 - (ii) a widow's pension under Part II of the Social Security Contributions and Benefits Act 1992, or the corresponding provisions of the Social Security (Northern Ireland) Contributions and Benefits Act 1992; or
- (b) a person to or in respect of whom a personal allowance or an additional allowance may be or has been so awarded is eligible for benefit payable out of public funds under the law of any place outside the United Kingdom being benefit which, in the opinion of the Secretary of State, is analogous to benefit under Chapters I or II of Part II of the Social Security Act 1975

the Secretary of State may take into account any pension referred to in subparagraph (a) against the personal allowance and any benefit referred to in subparagraph (b) against the personal allowance and the additional allowance in such manner and to such extent as he may think appropriate having regard, in the case of such benefit, to any adjustment which would be made if the person were eligible for the analogous benefit under Chapters I or II of Part II of the Social Security Act 1975.

Invalidity allowance

13.—(1) Where a member of the armed forces is awarded an allowance under article 12(1)(a) in respect of unemployability and has not on the relevant date attained the age of 60, he shall be awarded an invalidity allowance at the appropriate rate specified in paragraph 6 of Part IV of Schedule 1.

(2) Subject to the following provisions of this article, the relevant date for the purposes of paragraph (1) shall be the commencing date of the period in respect of which an allowance under article 12(1)(a) is awarded and, if there have been 2 or more such periods, the commencing date of the later or last of them.

(3) For the purposes of paragraph (2), where a break between 2 periods in respect of which an allowance under article 12(1)(a) has been awarded does not exceed 8 weeks or the break is by reason of remunerative work where the member of the armed forces is one to whom subparagraphs (b) to (f) of article 12(3) apply, those periods shall not be treated as separate periods.

(4) If the unemployability in respect of which the allowance is awarded forms part of a period of interruption of employment for the purposes of Chapter 1 of Part II of the Social Security Act 1975 or the corresponding provisions of the Social Security (Northern Ireland) Act 1975 which

has continued without a break from a date earlier than the date fixed under paragraphs (2) and (3), the relevant date shall be the first day of incapacity for work for those purposes in that period.

(5) The provisions of article 12(10), in so far as they provide for taking into account any benefit payable out of public funds under the law of any place outside the United Kingdom, shall apply to an allowance awarded under this article as they apply to a personal allowance awarded under that article.

Comforts allowance

14.—(1) A member of the armed forces in receipt of retired pay or a pension shall be awarded a comforts allowance for the provision of comforts—

- (a) at the appropriate rate specified in paragraph 7(a) of Part IV of Schedule 1 where he is in receipt of an allowance under article 8 and is—
 - (i) in receipt of an allowance under article 12, or
 - (ii) in receipt of retired pay or a pension in respect of disablement the degree of which is 100 per cent. resulting from multiple injuries which, in the opinion of the Secretary of State, render his disablement so severe as to justify an award under this subparagraph;
- (b) at the appropriate rate specified in paragraph 7(b) of Part IV of Schedule 1 if he does not qualify for an award under subparagraph (a) of this paragraph but is in receipt of an allowance under article 8 or under article 12.

(2) In this article, a member who would be in receipt of an allowance under article 8 if he were not in a hospital or other institution shall be treated as being in receipt of an allowance under that article.

Allowance for lowered standard of occupation

15.—(1) Except in the circumstances specified in paragraph (2), where a member of the armed forces is—

- (a) in receipt of retired pay or a pension in respect of disablement the degree of which is less than 100 per cent; and
- (b) the disablement is such as to render him incapable, and likely to remain permanently incapable, of following his regular occupation and incapable of following any other occupation with equivalent gross income which is suitable in his case taking into account his education, training and experience

he shall, subject to paragraph (3), be awarded an allowance for lowered standard of occupation at the appropriate rate specified in paragraph 8 of Part IV of Schedule 1.

(2) The circumstances referred to in paragraph (1) are that the member has submitted a new claim for an allowance under this article—

- (a) on or after the date he attained the age of 65; or
- (b) where the degree of disablement is assessed at less than 40 per cent.

(3) The aggregate rate of the member's retired pay or pension together with the allowance under this article shall not exceed the rate of retired pay or pension which would have been appropriate in his case if the degree of his disablement had been 100 per cent.

(4) Subject to the provisions of paragraph (5), an allowance under this article shall not be payable to a member for any period in respect of which an allowance under article 12(1)(a) or article 17 is payable to him.

(5) Where a member is in receipt of an allowance under this article he may continue to receive such allowance if he becomes eligible subsequently for an allowance under article 12(1)(a).

(6) In this article "regular occupation" means—

- (a) where the member's disablement is due to service between 2nd September 1939 and 1st August 1973, the occupation which was his regular occupation before his service; or

- (b) 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.

Age allowance

16.—(1) Where a member of the armed forces who is in receipt of retired pay or a pension in respect of disablement the degree of which is 40 per cent or over has attained the age of 65 years, he shall be awarded an age allowance at the appropriate rate specified in paragraph 9 of Part IV of Schedule 1.

(2) Where a member who is in receipt of retired pay or a pension under this Order is also in receipt of—

- (a) retired pay or a pension payable out of monies provided by Parliament under any other Order in Council or any Royal Warrant, Order or Scheme administered by the Secretary of State; or
- (b) any payment analogous to the retired pay or pension referred to in paragraph(a) made by the Secretary of State with the consent of the Treasury

an allowance under this Order may, subject to paragraph (3), be awarded at a rate appropriate to the degree of disablement which, in the opinion of the Secretary of State, represents the combined effect of all the disablements for which a payment or pension referred to in this paragraph are payable.

(3) Paragraph (2) does not apply unless—

- (a) it is to the member's advantage; and
- (b) it does not result in an allowance awarded by virtue of this paragraph and an age allowance awarded under any other Order in Council, Royal Warrant, Order or Scheme being payable for the same period.

Treatment allowance

17.—(1) Subject to the provisions of this article, a member of the armed forces may be awarded, in respect of any period during which he receives treatment and as a result of such treatment he incurs a loss of earnings, a treatment allowance at the rate of retired pay or pension which would be payable if the degree of his disablement were 100 per cent.

(2) A member who is not normally in employment or who is retired from employment, shall not be entitled to a treatment allowance in respect of treatment which, if he were normally in employment, would in the opinion of the Secretary of State involve no or only occasional interruptions of that employment.

Abstention from work following treatment in a hospital or similar institution

18.—(1) Where the Secretary of State is satisfied that a member of the armed forces should on completion of a course of treatment abstain from work in consequence of the condition which necessitated that treatment and as a result of abstention from work he incurs a loss of earnings, he may be treated as if he were eligible for such period as the Secretary of State may think fit for a treatment allowance under article 17.

(2) This article shall not apply to a member who is in receipt of a personal unemployability allowance under article 12(1)(a).

Part-time treatment allowance

19.—(1) A member of the armed forces who receives treatment which would be treatment as defined in item 61 of Schedule 6 but for the fact that it involves only occasional interruptions of

the member's normal employment and as a result of such treatment he incurs a loss of earnings, may, subject to the provisions of paragraph (2), be awarded a part-time treatment allowance at such rate, not exceeding the appropriate rate specified in paragraph 10 of Part IV of Schedule 1, as the Secretary of State may think fit having regard to any loss of remunerative time by the member as a result of those interruptions.

(2) The amount of an allowance awarded to a member under this article in respect of any period of a week shall not exceed 3 times the appropriate rate.

Mobility Supplement

20.—(1) Subject to the provisions of this article, a mobility supplement shall be awarded at the rate specified in paragraph 11 of Part IV of Schedule 1 to a member of the armed forces who is in receipt of retired pay or a pension in respect of—

- (a) disablement as a result of the amputation of both legs, at levels which are either through or above the ankle; or
- (b) disablement, where the degree of disablement is assessed at 40 per cent or more, due to any other injury which is, and is likely to remain for at least 6 months from the date on which the question of eligibility for a supplement under this article is considered by the Secretary of State (either at first instance or on review), wholly or mainly responsible for—
 - (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,
 - (iii) restricting by physical pain or breathlessness his ability to walk to such an extent that it is of little or no practical use to him, or
 - (iv) rendering the exertion required to walk a danger to his life or a likely cause of serious deterioration in his health; or
- (c) disablement by reason of which, immediately prior to the date on which the question of his eligibility for a supplement under this article is first considered by the Secretary of State, on or after 9th April 2001 he—
 - (i) has had the use of an invalid carriage or other vehicle provided by the Secretary of State under section 5(2) of, and Schedule 2 to, the National Health Service Act 1977^(a) or section 46 of the National Health Service (Scotland) Act 1978^(b), or by the Department of Health and Social Services for Northern Ireland under article 30 of the Health and Personal Social Services (Northern Ireland) Order 1972^(c), which is a vehicle propelled by petrol engine or by electric power for use on the road and to be controlled by the occupant,
 - (ii) has received any payment by way of grant under any of the provisions referred to in subparagraph (c)(i) towards the cost of running a private car, or any payment out of public funds which the Secretary of State is satisfied is analogous thereto, or
 - (iii) has been in receipt of the mobility component of a disability living allowance under section 73 of either the Social Security Contributions and Benefits Act 1992^(d) or the Social Security Contributions and Benefits (Northern Ireland) Act 1992^(e) having been deemed, by virtue of section 74(1) of the relevant Act, to be suffering

(a) 1977 c.49.

(b) 1978 c.29.

(c) S.I. 1972/1265 (N.I. 14), as amended by section 40 of, and paragraph 8 of Schedule 5 to, the Northern Ireland Constitution Act 1973 (c.36).

(d) 1992 c.4.

(e) 1992 c.7 (N.I.).

from such disablement as is mentioned in subsection (1)(a) of section 73 of the relevant Act and to satisfy the requirements of subsection (9) of that section; or

- (d) disablement as a result of his being both blind (with a loss of vision certified in accordance with article 42 as amounting to more than 80 per cent) and deaf (with a loss of hearing so certified as amounting to not less than 80 per cent) where by reason of the effects of those conditions in combination with each other he is unable, without the assistance of another person, to walk to any intended or required destination while out of doors.

(2) Subject to paragraph (3), a mobility supplement under this article shall not be payable to a member for any period in respect of which he has the use of an invalid carriage or other vehicle provided under any of the statutory provisions referred to in paragraph (1)(c)(i).

(3) In a case where the Secretary of State is satisfied—

- (a) that a member has purchased or taken on hire, hire purchase or lease a private car or similar vehicle (in this paragraph called “the car”) for a consideration which is more than nominal;
- (b) that the member intends to retain possession of the car in order to learn to drive it; and
- (c) that the member will use a mobility supplement under this article in whole or in part towards meeting the expenses of acquiring the car

paragraph (2) shall not apply during such period as the Secretary of State may consider reasonable, beginning on the date of his acquisition of the car.

Medical expenses

21.—(1) Subject to paragraph (2), any necessary expenses in respect of—

- (a) the medical, surgical or rehabilitative treatment of a member of the armed forces; or
- (b) appropriate aids and adaptations for disabled living; in both cases
- (c) arising as a result of disablement due to service before 6th April 2005

may be defrayed by the Secretary of State under such conditions and up to such amounts as he may determine.

(2) No expenses shall be defrayed under paragraph (1) in respect of treatment, aids or adaptations provided for, otherwise than on payment of a charge by the member, under legislation of the United Kingdom.

PART III

AWARDS IN RESPECT OF DEATH

General conditions for Part III

22.—(1) Under this Part, awards may be made in accordance with this Order in respect of the death of a member of the armed forces which is due to service before 6th April 2005.

(2) For the purposes of the following provisions of this Part, any death in respect of which a claim to an award has been accepted under or by virtue of article 17A of a 1919 to 1920 other rank instrument or article 16A of a 1920 to 1921 officers instrument (widows of pensioners and others who, before the 1964 instruments came into operation, died from disablement or disease due to service during the 1914 World War) shall be treated as death due to service.

(3) The death of a member occurring after 22nd November 1916 at a time when an allowance in respect of constant attendance was payable to him in respect of a period ending with his death, or would have been so payable if he had not been in hospital or other institution, shall be treated as due to service for the purposes of this Part.

(4) The death of a member—

- (a) whose degree of disablement was assessed at not less than 80 per cent; and
- (b) to whom, in respect of the period ending with his death, an allowance under article 12 was payable

shall be treated as due to service for the purposes of this Part.

(5) For the purposes of paragraph (4), a member of the armed forces shall be treated as if he was in receipt of an allowance under article 12 if—

- (a) at the time of his death subparagraphs (b), (c) and (f) of article 12(3) applied to him; and
- (b) the period of remunerative work had not exceeded a period of 52 weeks.

(6) Subject to paragraph (7), where, after the death of a member of the armed forces, any allowance, grant or other payment out of public funds is paid for any period to or in respect of any person in continuation of any payment made during the member's lifetime in respect of his service as a member, no pension, allowance or other grant under this Part of this Order shall be paid for that period to or in respect of that person.

(7) Where the aggregate amount of any pension, allowance or other grant which might, but for this article, have been paid under this Part is in excess of the aggregate amount of the payments made out of public funds, an amount equal to that excess may be paid.

Pensions to surviving spouses and surviving civil partners

23.—(1) The surviving spouse or surviving civil partner of a member of the armed forces whose death is due to service may be awarded a pension—

- (a) at whichever of the rates specified in column (2) of Tables 1, 2 and 3 in Part II of Schedule 2 is appropriate in the case where—
 - (i) the person has attained the age of 40 years or is the surviving spouse or surviving civil partner of an officer who was a member of the armed forces between 14th August 1914 and 30th September 1921, or
 - (ii) the person is in receipt of an allowance awarded in respect of a child under article 28, 30 or 31, or
 - (iii) the person was in receipt of an allowance awarded under article 28 in respect of a child of whom that person is the parent until the date upon which the child attained the age of 16 years, or where, in the opinion of the Secretary of State in any other case, that person should be treated as having been in receipt of such an allowance until that date, or
 - (iv) a child in respect of whom the person was awarded an allowance under article 28 or 31 dies before attaining the age of 16 years, for a period of 13 weeks beginning with the date of the child's death, or
 - (v) the person is incapable of self-support;
- (b) in any other case, at whichever of the rates specified in column (2) of Tables 4 and 5 in Part II of Schedule 2 is appropriate in the case.

(2) A supplementary pension payable at a rate of £68.42 per week shall be awarded to a surviving spouse or surviving civil partner of a member of the armed forces where—

- (a) the surviving spouse or surviving civil partner is entitled to a pension under paragraph (1) above; and
- (b) the service of that member terminated before 31st March 1973.

Pensions to dependants who lived as spouses and dependants who lived as civil partners

24.—(1) A dependant who lived as a spouse or a dependant who lived as a civil partner of a member of the armed forces whose death is due to service ("dependant") may be awarded a pension in accordance with the following provisions of this article.

(2) Where the child of a member of the armed forces whose death is due to service is in his dependant's charge and the dependant is in receipt of an allowance awarded in respect of that child under the following provisions of this Part of this Order, a pension may, subject to the provisions of paragraph (3), be paid to the dependant until the allowance ceases to be paid or the child ceases to be in the dependant's charge.

(3) For the purposes of paragraph (2), where the child dies before attaining the child's age limit, the dependant shall be treated for the period of 13 weeks from the date of the child's death as if the allowance were still being paid and the child was still in the dependant's charge.

(4) The rate of a pension awarded to a dependant under this article shall be at the discretion of the Secretary of State, but shall not exceed the appropriate rate specified in paragraph 1 of Part III of Schedule 2.

Rent allowance to surviving spouses, surviving civil partners, dependants who lived as spouses and dependants who lived as civil partners, who have children

25.—(1) Where a surviving spouse or surviving civil partner of a member of the armed forces is in receipt of a pension under article 11 of a 1919 to 1921 instrument or under article 23 of this Order, or a dependant who lived as a spouse or a dependant who lived as a civil partner of a member ("dependant") is in receipt of a pension under article 24 and—

- (a) in the case of a surviving spouse or surviving civil partner, the household of the spouse or civil partner includes a child; or
- (b) in the case of a dependant, the household includes a child of the member

the surviving spouse, surviving civil partner or dependant may be awarded a rent allowance at such weekly rate, not exceeding the appropriate rate specified in paragraph 2 of Part III of Schedule 2, as the Secretary of State may think fit having regard to the weekly rent and rates and to any council tax payable by the spouse or dependant.

(2) Subject to paragraph (3), where, but for this provision, an allowance under this article would cease by reason of the household ceasing to include a child, the allowance may be continued for the period of 26 weeks from the date on which the household ceases to include that child, even if the surviving spouse or surviving civil partner or dependant is no longer in receipt of a pension referred to in paragraph(1) for the whole or any part of that period.

(3) Paragraph (2) shall not apply where the pension has ceased by virtue of article 33.

(4) In this article—

- (a) "child" means a child who has not attained the child's age limit, or who, having attained the age limit, is a student or an apprentice or is incapable of self-support by reason of an infirmity which arose before he attained the age limit, and includes any person fulfilling those conditions who should, in the opinion of the Secretary of State, having regard to his relationship or to connection with the member and the other circumstances of the case, be treated as covered by the provisions of this article;
- (b) "weekly rent and rates" means such sum as the Secretary of State may, after taking into account all relevant factors and making all necessary apportionments, consider to be the weekly amount in respect of rent, or the equivalent of rent, and rates which the surviving spouse, surviving civil partner or dependant is paying or providing either directly or indirectly for accommodation for the benefit of himself or herself as the case may be and the child;
- (c) "accommodation" means living accommodation without any service or benefit not ordinarily provided by the landlord to the tenant of an unfurnished dwelling house, but may include accommodation reasonably required for the storage of furniture.

Elderly persons allowance

26. Where a person—

- (a) is in receipt of a pension awarded—

- (i) under or by virtue of a 1919 to 1921 instrument as the surviving spouse or surviving civil partner of a member of the armed forces or as a person who had lived with him as his spouse or civil partner, or
 - (ii) under article 23 or 24 of, or paragraph 2 or 3 of Schedule 4 to, this Order; and
- (b) has attained the age of 65, 70 or, as the case may be, 80

that person shall be awarded an elderly persons allowance at whichever of the rates specified in paragraph 3 of Part III of Schedule 2 is appropriate in the case.

Temporary allowances

27.—(1) Notwithstanding anything in the foregoing provisions of this Order, where a member of the armed forces died or dies on or after 2nd December 1963 and—

- (a) his death is due to service; and
- (b) in respect of any period ending with his death there was payable to him either—
 - (i) an allowance under article 8 or 12(1)(a), or
 - (ii) although concurrently eligible for an allowance under article 12(1)(a), an allowance under article 15; or
- (c) an allowance under article 8 ceased to be payable within 13 weeks of his death following his entry as an inpatient into a hospital or other institution

his surviving spouse or surviving civil partner or dependant who lived as his spouse or dependant who lived as a civil partner (“dependant”) may be awarded a personal allowance and, in respect of children, additional allowances in accordance with the following provisions of this article.

(2) For the purposes of paragraph (1), a member of the armed forces shall be treated as if he was in receipt of an allowance under article 12(1)(a) if—

- (a) at the time of his death subparagraphs (b), (c) and (f) of article 12(3) applied to him; and
- (b) the period of remunerative work had not exceeded a period of 52 weeks.

(3) A personal allowance awarded under this article to a surviving spouse or surviving civil partner shall be payable—

- (a) for the period of 26 weeks commencing, in the case of the surviving spouse or surviving civil partner of an officer with the day, and in the case of the surviving spouse or surviving civil partner of any other member with the Wednesday next following the day of his death; and
- (b) at a weekly rate equal to the total amount of the retired pay, pension, alternative retired pay or pension or treatment allowances and any other allowances payable to the member under this Order or by virtue of a grant under a 1919 to 1921 instrument in respect of the 7 days next preceding the day of his death, with the exception of allowances under article 11 or 12(6) (a) or a mobility supplement under article 20 or any allowance in respect of a child; but
- (c) a personal allowance under this paragraph shall be subject to article 33(1) as if it were a pension under article 23 and shall not be payable for any period after the death of the surviving spouse or surviving civil partner; and
- (d) in calculating the weekly rate of retired pay, pension or allowances for the purposes of the foregoing provisions of this article—
 - (i) a member who was in receipt of an award under Part V of the Service Pensions Order 1983 which was treated by article 33(2)(d)(i) of that Order as being made under article 10 of that Order shall be treated instead to have been in receipt of an award under article 6 of this Order,
 - (ii) an officer who was in receipt of an award under any paragraph of the proviso to article 1 of a 1920 to 1921 instrument shall be treated instead to have been in receipt of an award under article 1 of that instrument without reference to that proviso,

- (iii) as regards a member (whether or not an officer), no account shall be taken of any pension awarded in respect of service or rank (or both) for which the member was eligible under the principal Naval Regulations, the Pensions Warrant or the principal Air Force Regulations or under any Order in Council, Royal Warrant or Order relating to service before 3rd September 1939, and
- (iv) a member who, being concurrently eligible for an allowance under article 12(1)(a), was in receipt of an allowance under article 15 shall be treated instead to have been in receipt of an allowance under article 12(1)(a).

(4) A dependant of a member whose death is due to service and who, at the date of his death, had a child of his in charge may be awarded a personal allowance under this article as if he or, as the case may be, she were the surviving spouse or surviving civil partner of the member, but such an award shall be subject to the following conditions—

- (a) the rate of the allowance payable to the dependant—
 - (i) shall be at the discretion of the Secretary of State, but
 - (ii) shall not in any case exceed the rate which, if the dependant were the member's surviving spouse or surviving civil partner, would be appropriate under paragraph (3); and
- (b) the allowance shall not be payable for any period after the child ceases to be in the dependant's charge.

(5) Where the surviving spouse, surviving civil partner or dependant is awarded a personal allowance under this article, an additional allowance may be awarded in respect of any child for whom an allowance was payable to the member immediately before his death, and any such additional allowance shall be payable at the weekly rate at which the allowance or allowances for that child was or were payable to the member in respect of the 7 days next preceding the day of his death—

- (a) for so long as the personal allowance is payable and the child is alive and has not attained the child's age limit; or
- (b) if he has attained that limit, is a student or an apprentice; or
- (c) is incapable of self-support by reason of an infirmity which arose before he attained that limit; and

in each case the circumstances are such as to justify the continuance of the award.

(6) As respect any payments made to a person under this article for any period for which any pension or allowance (other than an allowance under this article) or grant might, but for the provisions of this paragraph, be awarded to that person under this Part of this Order—

- (a) where the aggregate amount of such payments is equal to, or exceeds, the aggregate amount of such pension, allowance or grant, no award of such pension allowance or grant shall be made;
- (b) where the aggregate amount of such payments is less than the aggregate amount of such pension, allowance or grant, the pension, allowance or grant may be awarded and the payments shall be treated as paid on account thereof.

(7) Notwithstanding anything in the foregoing provisions of this article, the Secretary of State may, if in his opinion the exceptional circumstances of any particular case so require, at his discretion—

- (a) vary the conditions for the award of a personal allowance in so far as they related to a period in respect of which an allowance under article 8 or article 12(1)(a) is required to have been payable;
- (b) award a personal allowance or an additional allowance for any week at a weekly rate other than that prescribed in paragraph (3)(b) or, as the case may be, paragraph (5), but not exceeding the maximum rate which would have been payable in accordance with that subparagraph had the member died at any time not earlier than 13 weeks before the date of his death.

Allowances for children under the child's age limit

28.—(1) A children's allowance shall be awarded 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 29.

(2) A children's allowance shall be—

- (a) at the appropriate rate specified in paragraph 4(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 4(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 articles 23, 24 or 31 in respect of the death of that member.

Pensions for orphans under the child's age limit

29.—(1) An orphan's pension shall be awarded 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 5 of Part III of Schedule 2.

Award for children who have attained the child's age limit

30.—(1) A children's allowance or an orphan's pension may be awarded 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 who is—

- (a) a student or apprentice; or
- (b) 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 28(1)(b) or 29(1)(b) as appropriate; or
- (b) where a child in respect of whom an award was made under article 28 or 29 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 6 of Part III of Schedule 2.

Awards to or in respect of ineligible members of the families of unemployable pensioners

31. Where a member of the armed forces was at the date of his death in receipt of an allowance in respect of a child under article 12(6)(b) by virtue of article 12(6)(c), a pension to, or an allowance in respect of, the child may be awarded at the rate, and subject to the conditions, which would have been appropriate under the foregoing provisions of this Part of this Order if the child had been an eligible member of the family.

Funeral expenses

32.—(1) Where a member of the armed forces dies on or after 7th April 1997 and—

- (a) the funeral of that member has taken place; and

- (b) within three months of the funeral of the deceased member, either—
 - (i) a claim is made for funeral expenses, or
 - (ii) an enquiry is made in person, in writing or orally to the Secretary of State or to an authorised agent about claiming funeral expenses and a claim is made for such expenses within three months of the date the claim form is sent in response to that enquiry; and
- (c) one of the conditions specified in paragraph (2) is satisfied

the Secretary of State may defray so much of any reasonable funeral expenses as he may determine.

(2) The conditions specified in this paragraph are—

- (a) the death of the member was due to service before 6th April 2005;
- (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—
 - (i) under the National Health Service Act 1977(a)
 - (ii) under the National Health Service (Scotland) Act 1978(b)
 - (iii) under the National Health Service and Community Care Act 1990(c)
 - (iv) under any corresponding enactment having effect in Northern Ireland, or
 - (v) in a hospital or similar institution maintained or administered by the Defence Council.

(3) Subject to paragraph (4), 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—

- (a) necessary documentation;
- (b) transportation of the body;
- (c) travelling costs of one return journey by the person responsible for the funeral to arrange or 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.

(4) Reasonable funeral expenses shall not exceed a total of £1,400.

Relationships subsequent to the award of a pension

33.—(1) Subject to the following provisions of this article, any pension or allowance awarded under this Part of this Order or under Part II of a 1919 to 1921 instrument to a person other than a parent shall cease if that person marries or lives with another person as the spouse of that person or forms a civil partnership or lives with another person as the civil partner of that person.

(2) Where—

- (a) in accordance with paragraph (1), an award ceased because the person had another person living with her or, as the case may be, him as a spouse or formed a civil partnership or had another person living with her, or as the case may be, him as a civil partner; and

(a) 1977 c.49.
 (b) 1978 c.29.
 (c) 1990 c.19.

- (b) that person claims an award under this Part in respect of a period which begins after the end of that relationship

the claim shall be determined as though the relationship had never existed.

(3) A pension or allowance awarded under articles 23 to 26 (inclusive) to a person in respect of a member of the armed forces who died or whose service terminated on or before 31st March 1973 shall not cease if that person marries or begins to live with another person as the spouse of that person or forms a civil partnership or begins to live with another person as the civil partner of that person on or after 6th April 2005.

(4) In determining whether a pension is payable to a person as a surviving spouse in respect of any period beginning on or after 19th July 1995, no account may be taken of the fact that the widow has married another if, before the beginning of that period, the marriage has been terminated or the parties have been judicially separated.

(5) A pension or allowance awarded to or in respect of a person under article 28, 29 or 30 shall not cease on the marriage of that person if, having regard to the special circumstances of the case, the Secretary of State so directs.

(6) An allowance awarded in respect of a child shall not be affected by the cessation under this article of a pension awarded to any other person.

(7) For the purposes of paragraph (4)—

- (a) the reference to the termination of a marriage is to the termination of the marriage by death, dissolution or annulment; and
- (b) the reference to judicial separation includes any legal separation obtained in a country or territory outside the British Islands and recognised in the United Kingdom

and for those purposes a divorce, annulment or legal separation obtained in a country or territory outside the British Islands must, if the Secretary of State so determines, be treated as recognised in the United Kingdom even though no declaration as to its validity has been made by any court in the United Kingdom.

PART IV

CLAIMS

Making of claims

34.—(1) Subject to paragraph (4) and article 35, it shall be a condition precedent to the making of any award of any pension, allowance or supplement mentioned in paragraph (2) (including any such award which follows an earlier award or which follows a period which, had there been an award for that period, would have ended in accordance with article 33(1)) that the person making the claim shall have—

- (a) completed and signed a form approved by the Secretary of State for the purpose of claiming that pension, allowance or supplement payable under this Order; and
- (b) delivered that form either to an appropriate office of the Secretary of State or to an office of an authorised agent.

(2) The pensions, allowances and supplement to which paragraph (1) applies are—

- (a) retired pay or a pension payable under article 6;
- (b) a gratuity under article 7;
- (c) a constant attendance allowance payable under article 8;
- (d) a clothing allowance payable under article 11;
- (e) an unemployability allowance payable under article 12;
- (f) an allowance for lowered standard of occupation payable under article 15;
- (g) a treatment allowance payable under article 17;

- (h) an allowance where abstention from work is necessary following treatment in a hospital or similar institution under article 18;
- (i) an allowance for part-time treatment under article 19;
- (j) a mobility supplement payable under article 20;
- (k) a surviving spouse's or surviving civil partner's pension payable under article 23;
- (l) a pension payable to a dependant who lived as a spouse or a dependant who lived as a civil partner under article 24;
- (m) a rent allowance payable to a surviving spouse, surviving civil partner, dependant who lived as a spouse or dependant who lived as a civil partner under article 25;
- (n) a children's allowance payable under article 28;
- (o) a children's allowance or an orphan's pension payable under article 30;
- (p) an award of funeral expenses under article 32.

(3) A claim for a pension for a child under article 29 or article 31 shall be made by the child's guardian or by any other person having parental responsibility (within the meaning of the Children Act 1989(a) for the child).

(4) Subject to paragraph (5), where a claim for injury or death benefit made by or in respect of a member of the armed forces has been refused under the 2005 Order, the Secretary of State may treat the claim under that Order as a claim under this Order.

(5) Paragraph (4) shall not apply to a claim made under the 2005 Order during the claimant's service.

Cases where claims are not required

35.—(1) A claim for the pensions, allowances and supplements mentioned in the following paragraphs of this article shall not be required if the conditions set out in the relevant paragraph are satisfied.

(2) A claim for retired pay or a disablement pension under article 6 or a gratuity under article 7 is not required to be made by the former member of the armed forces if—

- (a) he is discharged from the armed forces on medical grounds; and
- (b) copies of that member's medical and service records are delivered to the Veterans Agency.

(3) A claim for a surviving spouse's or surviving civil partner's pension under article 23 is not required if—

- (a) the member of the armed forces by reference to whose death the pension would be payable died whilst serving in the armed forces; and
- (b) copies of that member's medical and service records are delivered to the Veterans Agency.

(4) A separate claim is not required for an award under this Order for—

- (a) comforts allowance payable under article 14(1)(a)(ii); or
- (b) age allowance payable under article 16

where a pensioner is in receipt of retired pay or a disablement pension under article 6.

(5) A separate claim is not required for an award under this Order of the allowance payable under article 26 where a person is in receipt of a pension under article 23 or article 24.

(6) Where a claim has been made for retired pay or a disablement pension under article 6 on the basis of a particular disablement which is alleged to have been due to an injury which is attributable to or aggravated by service, no separate claim shall be required in respect of any other disablement which appears, upon an examination which is conducted by a medical practitioner

(a) 1989 c.41.

before the claim is determined, to have been so attributable or so aggravated, whether due to that or another injury.

(7) Where a claim for a constant attendance allowance has been made in respect of a former member of the armed forces under article 8, no separate claim shall be required for—

- (a) an exceptionally severe disablement allowance under article 9;
- (b) a severe disablement occupational allowance under article 10;
- (c) a comforts allowance under article 14; or
- (d) a temporary allowance payable under article 27.

(8) Where a claim for an unemployability allowance under article 12 has been made, no separate claim shall be required for—

- (a) an invalidity allowance under article 13;
- (b) a comforts allowance under article 14; or
- (c) a temporary allowance payable under article 27.

(9) Where a claim has been made for—

- (a) a surviving spouse's or surviving civil partner's pension under article 23; or
- (b) a pension payable to a dependant living as a spouse or a dependant living as a civil partner under article 24;

no separate claim for the award of an allowance under article 28 or article 30 shall be required if the claim for that pension provides sufficient information for the making of the award.

Withdrawal of Claims

36.—(1) Where a claim for a pension, allowance or supplement specified in article 34 has been made and—

- (a) the Secretary of State makes a request in writing for further information which is reasonably required for the determination of that claim, and that information is not provided within three months of the date on which the request is given or sent to the person making the claim; or
- (b) the person in respect of whom the claim is made has been requested to attend for a medical examination at a time and place specified in a notice given or sent to him not less than ten days before the date of the examination and he fails without providing, within three months of the date on which he was requested to attend, a satisfactory explanation for that failure

the claim shall be treated as having been withdrawn.

(2) Where a person who has made a claim for a pension, allowance or supplement specified in article 34, and that claim has not been determined, gives written notice to the Secretary of State or, where the claim was made by delivering the claim to an authorised agent, gives written notice to either the Secretary of State or that authorised agent, that he wishes to withdraw the claim, the claim shall thereafter be treated for all purposes of this Order as having been withdrawn.

(3) The treating of a claim as having been withdrawn under this article shall not prejudice the making of a further claim for the pension, allowance or supplement to which the earlier claim related.

Date of claim

37.—(1) In this Order “date of claim” means, subject to the following paragraphs of this article, the date on which a claim is received by the Secretary of State or by an authorised agent.

(2) Where—

- (a) not more than 3 months earlier than the date referred to in paragraph (1), an enquiry is made in person, in writing or orally to the Secretary of State or to an authorised agent

about claiming any pension, retired pay, allowance or supplement for a named person;
and

- (b) that enquiry is made by the person who subsequently makes the claim or by a relative of his or by a representative of a charitable organisation

then “date of claim” means the date on which the enquiry is received by the Secretary of State or, as the case may be, the authorised agent.

(3) Where—

- (a) a person is awarded a disablement pension or retired pay under article 6; and
- (b) within three months of the notification of that award being given or sent to him;
- (c) he makes a claim for an allowance specified in article 34 or a mobility supplement under article 20

then “date of claim” for the purposes of determining entitlement to that allowance or supplement, means the date of claim for the disablement pension or retired pay.

(4) Where—

- (a) a person is awarded a disablement pension or retired pay under article 6; and
- (b) subsequently he makes a claim for an allowance under article 34 or a mobility supplement under article 20;
- (c) but not within three months of the notification of that award being given or sent to him

then “date of claim” for the purpose of determining entitlement to that allowance or supplement means, subject to paragraph (5), the date on which the claim for the allowance or supplement is received by the Secretary of State or, as the case may be, the authorised agent.

(5) Where—

- (a) not more than 3 months earlier than the date referred to in paragraph (4), an enquiry is made in person, in writing or orally to the Secretary of State or to an authorised agent about claiming an allowance specified in article 34 or a mobility supplement under article 20; and
- (b) that enquiry is made by the person who subsequently makes the claim or by a relative of his or by a representative of a charitable organisation

then “date of claim” means the date on which the enquiry is received by the Secretary of State or, as the case may be, the authorised agent.

(6) Where a claim or an enquiry referred to in this article is made by post in the United Kingdom and the arrival of that claim or enquiry at the appropriate office of the Secretary of State or the authorised agent is delayed by postal disruption caused by industrial action, whether within the postal service or elsewhere, the claim shall be treated as having been received on the day on which it would have been received if it has been delivered in the ordinary course of the post.

(7) In this article “charitable organisation” includes a company limited by guarantee with charitable objects.

PART V

ADJUDICATION

Interpretation of Part V

38. In this Part—

- (a) “pension” includes any retired pay, pension, allowance or other continuing benefit under this Order; and
- (b) “gratuity” includes any gratuity under this Order.

Administration of this Order

39. This Order shall be administered by the Secretary of State or, as to any particular provision of the Order which he may select, by such other person or body acting under his directions as he may direct, and, except as otherwise provided by statute, the Secretary of State shall be the sole interpreter of this Order and may issue such instructions with reference to the Order as he may from time to time consider necessary.

Entitlement where a claim is made in respect of a disablement, or death occurs, not later than 7 years after the termination of service

40.—(1) Except where paragraph (2) applies, where, not later than 7 years after the termination of the service of a member of the armed forces, a claim is made in respect of a disablement of that member, or the death occurs of that member and a claim is made (at any time) in respect of that death, such disablement or death, as the case may be, shall be accepted as due to service for the purposes of this Order provided it is certified that—

- (a) the disablement is due to an injury which—
 - (i) is attributable to service, or
 - (ii) existed before or arose during service and has been and remains aggravated thereby;or
- (b) the death was due to or hastened by—
 - (i) an injury which was attributable to service, or
 - (ii) the aggravation by service of an injury which existed before or arose during service.

(2) Where a person is entitled to benefit under the 2005 Order in respect of an injury or death, that injury or death shall not be accepted as due to service for the purposes of this Order.

(3) Subject to the following provision of this article, in no case shall there be an onus on any claimant under this article to prove the fulfilment of the conditions set out in paragraph (1) and the benefit of any reasonable doubt shall be given to the claimant.

(4) Subject to the following provisions of this article, where an injury which has led to a member's discharge or death during service was not noted in a medical report made on that member on the commencement of his service, a certificate under paragraph (1) shall be given unless the evidence shows that the conditions set out in that paragraph are not fulfilled.

(5) The provisions of paragraphs (3) and (4) shall not apply to a claim in respect of the disablement or death of a member of the Reserve or Auxiliary Forces where that disablement is due to, or that death is due to or hastened by, a disease other than a disease caused or aggravated by an accident but—

- (a) such disablement or death shall be certified in accordance with paragraph (1) if it is shown that the conditions set out in this article and applicable thereto are fulfilled;
- (b) where, upon reliable evidence, a reasonable doubt exists where the conditions set out in paragraph (1) are fulfilled, the benefit of that reasonable doubt shall be given to the claimant.

(6) Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

Entitlement where a claim is made in respect of a disablement, or death occurs, more than 7 years after the termination of service

41.—(1) Except where paragraph (2) applies, where, after the expiration of the period of 7 years beginning with the termination of the service of a member of the armed forces, a claim is made in respect of a disablement of that member, or in respect of the death of that member (being a death occurring after the expiration of the said period), such disablement or death, as the case may be, shall be accepted as due to service for the purpose of this Order provided it is certified that—

- (a) the disablement is due to an injury which—

- (i) is attributable to service before 6th April 2005, or
 - (ii) existed before or arose during such service and has been and remains aggravated thereby; or
- (b) the death was due to or substantially hastened by
- (i) an injury which was attributable to service, or
 - (ii) the aggravation by service of an injury which existed before or arose during service.

(2) Where a person is entitled to benefit under the 2005 Order in respect of an injury or death, that injury or death shall not be accepted as due to service for the purposes of this Order.

(3) A disablement or death shall be certified in accordance with paragraph (1) if it is shown that the conditions set out in this article and applicable thereto are fulfilled.

(4) The condition set out in paragraph (1)(a)(ii), namely, that the injury on which the claim is based remains aggravated by service before 6th April 2005 shall not be treated as fulfilled unless the injury remains so aggravated at the time when the claim is made, but this paragraph shall be without prejudice, in a case where an award is made, to the subsequent operation of article 2(5) in relation to that condition.

(5) Where, upon reliable evidence, a reasonable doubt exists whether the conditions set out in paragraph (1) are fulfilled, the benefit of that reasonable doubt shall be given to the claimant.

(6) Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

Determination of degree of disablement

42.—(1) The following provisions of this article shall apply for the purposes of the assessment of the degree of the disablement of a member of the armed forces due to service before 6th April 2005.

(2) Subject to the following provisions of this article—

- (a) the degree of the disablement due to service of a member of the armed forces shall be assessed by making a comparison between the condition of the member as so disabled and the condition of a normal healthy person of the same age and sex, without taking into account the earning capacity of the member in his disabled condition in his own or any other specific trade or occupation, and without taking into account the effect of any individual factors or extraneous circumstances;
- (b) for the purpose of assessing the degree of disablement due to an injury which existed before or arose during service and has been and remains aggravated thereby—
 - (i) in assessing the degree of disablement existing at the date of the termination of the service of the member, account shall be taken of the total disablement due to that injury and existing at that date, and
 - (ii) in assessing the degree of disablement existing at any date subsequent to the date of the termination of his service, any increase in the degree of disablement which has occurred since the said date of termination shall only be taken into account in so far as that increase is due to the aggravation by service of that injury;
- (c) where such disablement is due to more than one injury, a composite assessment of the degree of disablement shall be made by reference to the combined effect of all such injuries;
- (d) the degree of disablement shall be assessed on an interim basis unless the member's condition permits a final assessment of the extent, if any, of that disablement.

(3) Where the average hearing loss at frequencies of 1, 2 and 3 kHz is not 50 dB or more in each ear, the degree of disablement in respect of that loss shall be assessed at less than 20 per cent.

(4) Neither noise-induced sensorineural hearing loss nor a related condition or symptom shall be taken into account in determining a member's total degree of disablement if the degree of disablement in respect of that loss alone is less than 20 per cent.

(5) The degree of disablement assessed under the foregoing provisions of this article shall be certified by way of a percentage, total disablement being represented by 100 per cent (which shall be the maximum assessment) and a lesser degree being represented by such percentage as bears to 100 per cent the same proportion as the lesser degree of disablement bears to total disablement, so however that a degree of disablement of 20 per cent or more shall be certified at a percentage which is a multiple of 10, and a degree of disablement which is less than 20 per cent shall, except in a case to which Table 1 of Part III of Schedule 1 applies, be certified in a manner suitable for the purposes of Table 2 of Part III of that Schedule.

(6) Where a disablement is due to an injury specified in Part V of Schedule 1 or is a disablement so specified, and, in either case, has reached a settled condition, the degree of that disablement shall, in the absence of any special features, be certified for the purposes of this article at the percentage specified in that Part as appropriate to that injury or to that disablement.

(7) An assessment of the degree of disablement due to service in respect of noise-induced sensorineural hearing loss shall be based solely on hearing loss due to service and shall not include any hearing loss due to age or other factors which are not related to service as a member of the armed forces and which arise after service.

(8) Noise-induced sensorineural hearing loss shall be measured by reference to audiometric tests, where available, conducted at or about the termination of the member's service and the degree of disablement due to service shall be assessed in accordance with paragraph (10).

(9) Where no such tests were conducted or are available, the assessment of the degree of disablement due to service shall be informed by the earliest available evidence, whether in terms of audiometric tests or other evidence relevant to the level of hearing loss that existed at termination of service and the assessment shall have regard to the relative percentages of degrees of disablement and measured hearing loss specified in Table 1 of Part VI of Schedule 1 but any hearing loss arising after termination of service shall not be included in the assessment.

(10) Subject to paragraphs (7), (8), (9) and (11), the degree of disablement in respect of noise-induced sensorineural hearing loss which is due to service shall be assessed by—

- (a) determining the average total hearing loss for each ear at 1, 2 and 3kHz frequencies; and then by
- (b) determining the percentage degree of disablement for each ear in accordance with Table 1 of Part VI of Schedule 1; and then by
- (c) determining the average percentage degree of binaural disablement in accordance with the following formula: $(\text{degree of disablement of better ear} \times 4) + (\text{degree of disablement of worst ear})$ divided by 5; and
- (d) in subparagraph (c) "better ear" means that ear in which the claimant's hearing loss is the less and "worse ear" means that ear in which the claimant's hearing loss is the more.

(11) Paragraphs (8), (9) and (10) shall not be applied so as to reduce any award made prior to 12th April 2004.

(12) For the purpose of determining the percentage degree of disablement in Table 1 of Part VI of Schedule 1, any fraction of an average hearing loss shall, where the average hearing loss is over 50dB, be rounded down to the next whole figure.

(13) Where—

- (a) a member has sustained a minor injury specified in Table 1 of Part III of Schedule 1 as well as some other disablement due to service the degree of which is less than 100 per cent; and
- (b) a composite assessment of the degree of the disablement from both causes is no higher than the assessment for the other disablement alone

this article shall have effect so as to authorise an award under article 7 in respect of the minor injury as well as an award under article 6 or 7 in respect of the other disablement.

(14) The degree of disablement certified under this article shall be the degree of disablement for the purposes of any award made under this Order.

Certification

43. Where any matter is required by this Order to be certified, that matter shall be determined—
- (a) where a Tribunal constituted under the War Pensions (Administrative Provisions) Act 1919(a) or the Pensions Appeal Tribunals Act 1943(b) has given a decision on that matter under those Acts, in accordance with that decision, or, if an appeal from that decision is brought under those Acts, in accordance with the decision on that appeal;
 - (b) where no such decision has been given and the matter involves a medical question—
 - (i) in accordance with a certificate on that question of a medical officer or board of medical officers appointed or recognised by the Secretary of State,
 - (ii) in a case where a pension or retired pay was payable in respect of disablement or death due to service before the commencement of the 1914 World War or after 30th September 1921 but before 3rd September 1939, if a certificate on that question has been given before 29th July 1996 by a medical officer or a board of medical officers appointed by the Secretary of State for Defence, in accordance with that certificate, or
 - (iii) where it appears to the Secretary of State that the medical question raises a serious doubt or difficulty and he so desires, in accordance with the opinion thereon obtained from one or more of a panel of independent medical experts nominated by the President of the Royal College of Physicians of London, the Royal College of Surgeons of England or the Royal College of Obstetricians and Gynaecologists.

Review of decisions, assessments and awards

44.—(1) Subject to the provisions of paragraphs (3), (4) and (5) and to the provisions of paragraph (8), any decision—

- (a) accepting or rejecting a claim for pension; or
- (b) any assessment of the degree of disablement of a member of the armed forces; or
- (c) any final decision that there is no disablement or that the disablement has come to an end

may be reviewed by the Secretary of State at any time on any ground.

(2) Subject to the provisions of paragraphs (4), (5), (8) and (9), any award under this Order may be reviewed by the Secretary of State at any time if the Secretary of State is satisfied that—

- (a) the award was made in consequence of ignorance of, or a mistake as to, a material fact, or of a mistake as to the law;
- (b) there has been any relevant change of circumstances since the award was made;
- (c) the award was based on a decision or assessment to which paragraph (1) of this article applies, and that decision or assessment has been revised.

(3) 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 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.

(4) Subject to the provisions of paragraph (9), following a review under paragraph (1) of any decision accepting a claim for pension or any assessment of the degree of disablement of a member of the armed forces, that decision or assessment may be revised by the Secretary of State

(a) 1919 c.53.

(b) 1943 c.39; this Act was amended and modified by the Pensions Appeal Tribunals Act 1949 (c.12); sub-section (3A) was added to section 1 by the Pensions Appeal Tribunals Act (Modification) Order 1947 (S.I. 1947/1143) and sections 5 and 6 were amended by section 23 of the Chronically Sick and Disabled Persons Act 1970 (c.44). Sections 5 and 6 were also amended by section 16 of the Social Security Act 1980 (c.30), and section 6 was also amended by section 43 of the Social Security and Housing Benefits Act 1982 (c.24) and by the Armed Forces (Pensions and Compensation) Act 2004 (c.32).

to the detriment of a member of the armed forces only where the Secretary of State is satisfied that—

- (a) the decision or assessment was given or made in consequence of ignorance of, or a mistake as to, a material fact, or of a mistake as to the law; or
- (b) in the case of a decision accepting a claim for pension—
 - (i) the decision was given after it had been certified pursuant to article 43(b)(i) that the member of the armed forces was suffering from a specified disablement (“the certified condition”) which was attributable to, or aggravated by, his service, and
 - (ii) since the date of the decision it has been further certified, pursuant to article 43(b)(i), that the claimant was not, at the date of the earlier certification, suffering from the certified condition; or
- (c) there has been a change in the degree of disablement due to service since the assessment was made.

(5) An award under this Order may be revised by the Secretary of State to the detriment of a member of the armed forces only where the Secretary of State is satisfied that—

- (a) the award was made in consequence of ignorance of, or a mistake as to, a material fact, or of a mistake as to the law; or
- (b) there has been any relevant change of circumstances since the award was made; or
- (c) the decision or assessment upon which the award was based has been revised under paragraph (4).

(6) Subject to the provisions of paragraphs (4) and (5), on a review under this article, the Secretary of State may maintain or continue, vary or cancel the decision, assessment or award and any revised decision, assessment or award shall be such as may be appropriate having regard to the provisions of this Order.

(7) Notwithstanding the provisions of paragraph (4), (5) and (6), where a decision accepting a claim for pension is revised, the Secretary of State may, if in any case he sees fit, continue any award based on that decision at a rate not exceeding that which may from time to time be appropriate to the assessment of the degree of disablement existing immediately before the date of the revision.

(8) Where a member has attained the age of 65, paragraph (2)(b) shall not apply so as to enable an award of an allowance under article 15 to be reviewed on the ground that the rate of the member’s earnings has, or would, in his regular occupation, have changed since the date of the award.

(9) Subject to paragraphs (10), (11) and (12), paragraphs (1) to (7) shall not apply to any decision, assessment or award made in respect of or relating to the rate of pension or retired pay for the disablement or death of a member which is due to service before or during the 1914 World War.

(10) A permanent pension or permanent retired pay granted under this Order in respect of service before the 1914 World War or under a 1919 to 1921 instrument may be reviewed by the Secretary of State where the person to whom the pension or retired pay has been granted claims that there has been a substantial increase in the extent of the disablement due to the original cause.

(11) In respect of any disablement pension or retired pay under this Order in respect of service before the 1914 World War or under a 1919 to 1921 instrument the Secretary of State may at any time order a review of that pension or retired pay in any case where—

- (a) the pension or retired pay has, by error in interpretation or fact, been granted to a disabled member of the armed forces in excess of the amount appropriate to the degree of his disablement;
- (b) the Secretary of State has reason to believe that the pension or retired pay has been obtained by an improper means; or
- (c) the pension or retired pay has been granted by error.

(12) Any decision rejecting a claim for a pension in respect of the death of a member which is due to service before or during the 1914 World War may be reviewed by the Secretary of State at any time on any ground and may be revised by him as may be appropriate having regard to the provisions of this Order.

PART VI PAYMENT

Interpretation of Part VI

45.—(1) In articles 48 and 49—

- (a) “pension” includes any retired pay, pension, allowance, grant or other continuing benefit payable under this Order or a 1919 to 1921 instrument; and
- (b) “gratuity” includes any gratuity payable under any of the instruments referred to in subparagraph (a).

(2) In articles 47 and 50—

- (a) “pension” includes any retired pay, pension, allowance or other continuing benefit payable under this Order; and
- (b) “gratuity” means any gratuity payable under this Order.

Commencing dates of awards

46. Schedule 3 has effect with respect to commencing dates of awards under this Order.

Payment of Pensions

47.—(1) The provisions of this article, other than paragraph (2), are subject to the provisions of article 48.

(2) Payment of a pension may be made provisionally or upon any other basis.

(3) Subject to paragraph (4), pension awarded in terms of a weekly amount may be paid weekly in advance and pension not awarded in such terms may be paid quarterly or monthly in arrears.

(4) The Secretary of State may in any particular case or class of case determine that pension shall be paid in advance or in arrears or partly in advance and partly in arrears, and for a period different from that specified in paragraph (3).

(5) Pension shall be paid by such means as appears to the Secretary of State to be appropriate in the circumstances of the case or class of case.

(6) The Secretary of State may require such declaration from a person to whom payment of a pension or gratuity is to be made as he may from time to time consider necessary.

(7) Where, by reason of any provision in any instrument which amends a provision of this Order—

- (a) a change falls to be made in the rate of any pension which, by virtue of the preceding provisions of this article, is payable weekly; and
- (b) the date on which that change would, but for this paragraph, fall to be made (“the prescribed date”) is not the day of the week on which payment of pension is normally made (“the weekly pay day”)

that change shall have effect only as from the first weekly pay day immediately following the prescribed date.

Direct credit transfer

48.—(1) The Secretary of State may direct in relation to any particular case or class of case that a pension shall be paid by way of automated or other direct credit transfer into a bank or other account—

- (a) in the name of the person entitled to the pension or a person acting on his behalf; or
- (b) in the joint names of the person entitled to the pension and his spouse or civil partner or the person entitled to the pension and a person acting on his behalf.

(2) Pension paid in accordance with paragraph (1) shall be paid—

- (a) for periods of 4 weeks, or for such other periods as the Secretary of State may in any particular case or class of case determine;
- (b) within 7 days of the last day of each successive period determined in accordance with sub-paragraph(a); and
- (c) in advance, or in arrears, or partly in advance and partly in arrears, as the Secretary of State may in any particular case or class of case determine.

(3) Where pension is payable in accordance with this article, the Secretary of State may make a particular payment by credit transfer otherwise than as provided in paragraph (2) if it appears to him to be appropriate to do so for the purpose of—

- (a) paying any arrears of pension; or
- (b) making a payment of pension at the termination of an award.

(4) Payment of pension in accordance with this article may be terminated by the Secretary of State if the arrangement seems to him to be no longer appropriate to the particular case or class of case.

Administration of pensions etc.

49.—(1) A pension or gratuity awarded to or in respect of any person may be administered by the Secretary of State if that person—

- (a) has not attained the age of 18 years; or
- (b) is, in the opinion of the Secretary of State, incapable of managing his own affairs by reason of mental infirmity; or
- (c) is being maintained in an institution or hospital to which article 53 applies; or
- (d) is a person in whose case the award can be forfeited under article 57

or if, in any other case, the Secretary of State considers that it is in the interests of that person that it should be so administered.

(2) A pension or gratuity which is being administered under this article may, in whole or in part as the Secretary of State thinks fit and at such times as he thinks fit—

- (a) be applied for the benefit of the person to or in respect of whom it has been awarded (“the beneficiary”); or
- (b) be paid to any person whom the Secretary of State considers a fit and proper person to apply the pension or gratuity for the benefit of the beneficiary.

Payment of public claims out of pensions

50.—(1) Where the Secretary of State is satisfied that—

- (a) a sum is due to the Crown, a Secretary of State, Minister or Government Department from a person to or in respect of whom a pension or gratuity may be or has been awarded; or
- (b) that an overpayment has been made to or in respect of any such person by the Crown, a Secretary of State, Minister or Government Department

the Secretary of State may deduct from the pension or gratuity such amounts not exceeding the amount of the sum or overpayment as he thinks fit and at such times as he thinks fit.

(2) Where the Secretary of State deducts an amount from a pension or gratuity under paragraph (1), he shall apply the amount in or towards paying or repaying that sum or overpayment.

(3) Where payment in respect of a pension payable under this Order or the Service Pensions Order 1983 is in arrears for any period and any one or more of the following, that is to say—

- (a) income support under the Social Security Contributions and Benefits Act 1992^(a) or under the Income Support (Transitional) Regulations 1987^(b); or
- (b) any amount payable under any legislation having effect in Northern Ireland or the Isle of Man which corresponds to income support under the 1992 Act, or the Income Support (Transitional) Regulations 1987

has been paid for that period to the person to whom the payment is due, the amount by which the amount of benefit or income support paid (including any corresponding amount mentioned in subparagraph (c)), or both if both have been paid, exceeds what would have been paid had the said payment not fallen into arrears shall be deemed to have been an overpayment for the purposes of paragraph (1), and in the case where benefit or income support or both has been paid under legislation in force in Northern Ireland or the Isle of Man it shall for the purpose of that paragraph be repayable to the authority administering the benefit or as the case may be income support.

PART VII

REDUCTION AND CANCELLATION OF AWARDS

Interpretation of Part VII

51.—(1) In articles 52, 56, 57 and 60—

- (a) “pension” means any retired pay, pension, allowance, grant or other continuing benefit under this Order or a 1919 to 1921 instrument; and
- (b) “gratuity” includes any gratuity payable under any of the instruments referred to in subparagraph(a).

(2) In articles 54, 55, 61, 62, 63, 64, 65 and 66—

- (a) “pension” means any retired pay, pension, allowance or other continuing benefit under this Order; and
- (b) “gratuity” means any gratuity under this Order.

Adjustment of awards in respect of other compensation

52.—(1) Where the Secretary of State is satisfied that—

- (a) compensation has been or will be paid to or in respect of a person to or in respect of whom a pension or gratuity is being or may be paid; or
- (b) that any compensation which has been or will be paid will benefit such a person

the Secretary of State may take the compensation into account against the pension or gratuity in such manner and to such extent as he thinks fit and may withhold or reduce the pension or gratuity accordingly.

(2) Where the Secretary of State considers that it is by reason of some act or omission by or on behalf of a person to or in respect of whom a pension or gratuity is being or may be paid that—

- (a) there is no compensation to be taken into account against that pension or gratuity under paragraph (1); or

(a) 1992 c.4.

(b) S.I. 1987/1969.

- (b) the amount of compensation to be taken into account against that pension or gratuity is less than it would otherwise have been; and
 - (c) the Secretary of State is of the opinion that such act or omission was unreasonable
- the Secretary of State may assess the amount of the compensation which, in his opinion, would have fallen to be taken into account but for such act or omission, and may, for the purpose of paragraph (1), treat that amount as if it were compensation which could be taken into account under that paragraph.
- (3) In this article “compensation” means—
- (a) any periodical or lump sum payment in respect of the disablement or death of any person, or in respect of any injury, disease or incapacity sustained or suffered by any person, being a payment—
 - (i) for which provision is made by or under any enactment, Order in Council (including this Order), Warrant, Order, scheme, ordinance, regulation or other instrument; or
 - (ii) which is recoverable as damages at common law; or
 - (b) any periodical or lump sum payment which, in the opinion of the Secretary of State, is recoverable or payable—
 - (i) under any enactment, scheme, ordinance, regulation or other instrument whatsoever promulgated or made in any place outside the United Kingdom, or
 - (ii) under the law of any such place
 and is analogous to any payment falling within subparagraph (a) of this paragraph; or
 - (c) any periodical or lump sum payment made in settlement or composition of, or to avoid the making of, any claim to any payment falling within subparagraph (a) or (b) of this paragraph, whether liability on any such claim is or is not admitted.

Maintenance in hospital or an institution

53.—(1) Subject to paragraph (3), the Secretary of State shall withhold constant attendance allowance and severe disablement occupational allowance 4 weeks after the date on which the person to whom either allowance is awarded becomes a person described in paragraph (2).

(2) Paragraph (1) applies to a person who—

- (a) is receiving or has received or is regarded as receiving or having received free in-patient treatment; or
- (b) is being or has been maintained in an institution—
 - (i) which is supported wholly or partly out of public funds, or
 - (ii) in which he is being maintained pursuant to arrangements made by the Secretary of State

otherwise than for the purpose of undergoing medical or other treatment.

(3) For the purposes of paragraph (2), any separate periods of time spent as set out in paragraph (2) 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 (2) before 9th April 2001 may be aggregated with periods so spent after that date.

(4) In 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.

(5) In this article a person shall be regarded as being maintained free of charge in a hospital or similar institution unless—

- (a) his accommodation and services are provided under—
 - (i) section 65 of the National Health Service Act 1977(a),
 - (ii) section 58 of, or paragraph 14 of Schedule 7A to, the National Health Service (Scotland) Act 1978(b)
 - (iii) paragraph 14 of Schedule 2 to the National Health Service and Community Care Act 1990(c), or
 - (iv) any corresponding enactment having effect in Northern Ireland; or
- (b) 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.

Chelsea pensioners

54. Where a member of the armed forces is, in the case of members of the Naval or Air Forces by virtue of previous service in the military forces, admitted to Chelsea Hospital as an in-pensioner, his pension shall cease but may be restored in the event of his leaving that Hospital.

Children whose maintenance is otherwise provided for

55.—(1) A pension which may be or has been awarded to or in respect of a child may be withheld, or reduced to such an extent as the Secretary of State may think fit, where periodical payments out of public funds are being made to or in respect of the child or the child is being maintained in the Navy, Army or Air Force or in any institution wholly or mainly supported out of public funds.

(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.

Abatement of awards of social security benefits

56.—(1) Where a pension is awarded to or in respect of a person for any past period for which benefit under an Act referred to in paragraph (3) has also been paid to or in respect of that person (“the relevant period”), the amount of pension awarded may be abated by an amount calculated in accordance with paragraph (2).

(2) The amount referred to in paragraph (1) is the amount by which the amount of benefit paid during the relevant period exceeds the amount of benefit which would have been payable if the pension had been paid at the same time as the benefit.

(3) The Acts referred to in paragraph (1) are—

- (a) the National Insurance Act 1965(d);
- (b) any legislation in Northern Ireland corresponding to that Act;
- (c) Parts II to VII of the Social Security Contributions and Benefits Act 1992(e);

(a) 1977 c.49; 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).

(b) 1978 c.29; 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).

(c) 1990 c.19.

(d) 1965 c.51.

(e) 1992 c.4.

- (d) the corresponding provisions of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a);
- (e) Part I of the Jobseekers Act 1995(b)

Forfeiture of pensions etc.

57.—(1) Where a person to or in respect of whom a pension or gratuity may be or has been awarded in respect of death or disablement due to service—

- (a) is, in pursuance of a sentence or order of a Court upon his being found guilty of an offence, serving a term of imprisonment or detention or is detained in a young offender institution or, in Scotland, a young offenders institution or, in Northern Ireland, a young offenders centre; or
- (b) is, under any enactment deported from, required to leave, or prohibited from entering the United Kingdom or the Isle of Man, or is a person whose certificate of naturalisation has been revoked

the Secretary of State may withhold the award of the pension or gratuity or, if it has been awarded, may direct that it shall be forfeited as from such date (including past date) as he may think fit.

(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 6 to the pensioner’s spouse, the pensioner’s civil partner, an unmarried dependant of the pensioner, a dependant of the pensioner who has not formed a civil partnership or to anyone lawfully entitled to give a good receipt in respect of monies payable to the pensioner’s dependant.

(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).

Refusal of treatment

58.—(1) Where—

- (a) the Secretary of State is satisfied that a member of the armed forces should in his own interests receive medical, surgical or rehabilitative treatment for a disablement which is due to service and in respect of which a pension may be or has been awarded to him; and
- (b) the member refuses or neglects to receive the treatment

the Secretary of State may, if he considers that such refusal or neglect is unreasonable, reduce any pension in respect of the member’s disablement by such an amount, not exceeding one-half of any such pension, as he thinks fit.

(2) For the purpose of this article—

- (a) any misconduct on the part of the member which, in the opinion of the Secretary of State, renders it necessary for any treatment which he is receiving to be discontinued, may be treated as a refusal of the member to receive the treatment;
- (b) “pension” means retired pay or pension under article 14 of this Order, under Article 1 or 3 of the 1920 Order in Council, of the 1921 (Warrant Officers) Order, of the 1919 Warrant or of the 1920 Order, or under article 1, 3, 23 or 23C of the 1921 (Officers) Order, of the 1920 Warrant or of the 1921 Order.

(a) 1992 c.7 (N.I.).
 (b) 1995 c.18.

Serious negligence or misconduct

59. The Secretary of State may withhold, cancel or reduce any award which may be or has been made under this Order in respect of the disablement or death of a member of the armed forces in any case in which the injury or the death on which the claim to the award is based was caused or contributed to by the serious negligence or misconduct of the member.

Failure to draw pension

60.—(1) Where a person fails to draw his pension for a continuous period of not less than 12 months the award shall be cancelled and payment of any arrears shall be withheld.

(2) The Secretary of State may, in any particular case, make such further award as may be appropriate, and may pay the arrears in whole or in part.

Suspension in individual cases – Pensions Appeal Tribunal

61.—(1) Where it appears to the Secretary of State that a question arises whether an appeal ought to be brought against the decision of a Pensions Appeal Tribunal, he may, subject to paragraph (2), direct that payment of a pension or gratuity in accordance with that decision be suspended, in whole or in part, pending the determination of the appeal.

(2) Where it appears to the Secretary of State that a question arises under paragraph (1), he may only give directions that payment of the pension or gratuity in accordance with that decision be suspended within the relevant period.

(3) A suspension under paragraph (1) shall cease unless, within the relevant period, the person awarded the pension or gratuity by virtue of the decision (“the pensioner”) is given notice in writing that an application for leave to appeal has been made against that decision.

(4) Subject to paragraph (5), where the pensioner has been given notice within the relevant period that an application for leave to appeal against a decision of a Pensions Appeal Tribunal has been made, the suspension may continue until that application for leave to appeal and, where leave has been granted, any subsequent appeal is determined.

(5) Where an application for leave to appeal against a decision of a Pensions Appeal Tribunal is made to a Pensions Appeal Tribunal and that application is refused, the suspension shall cease unless the Secretary of State, within a period of 28 days beginning with the date on which notice in writing of the decision of the Pensions Appeal Tribunal refusing leave to appeal is received by him, makes a further application for leave to appeal, and, if he has so applied, the suspension may continue until that application for leave to appeal and any subsequent appeal is determined.

(6) Where, on an appeal against a decision of a Pensions Appeal Tribunal, an appropriate Commissioner remits the matter for rehearing and determination by a Pensions Appeal Tribunal, the appeal is not determined for the purposes of paragraphs (4) and (5) until the matter remitted for rehearing has been determined.

(7) A pensioner is to be treated as having been given the notice required by paragraph (3) on the date that it is posted to him at his last known address.

(8) In this article—

(a) “appeal” means an appeal under section 6(A) of the Pensions Appeal Tribunals Act 1943(a);

(b) “application for leave to appeal” means an application for leave to appeal in the proceedings referred to in subparagraph (a) above, and, in England and Wales, an application for leave to appeal under Part 52 of the Civil Procedure Rules 1998(b), in Scotland under rule 285 of the Act of Sederunt (Rules of Court, consolidation and

(a) 1943 c.39. Section 6(A) has been inserted by the Armed Forces (Pensions and Compensation Act 2004 (c.32), section 5 and Schedule 1, paragraph 4.

(b) S.I. 1998/3132.

amendment) 1965(a) or, in Northern Ireland under Rules of the Court of Judicature (Northern Ireland) 1980(b);

- (c) “an appropriate Commissioner” means a Great Britain Social Security Commissioner or a Northern Ireland Social Security Commissioner and includes a tribunal of Commissioners constituted under section 6D(5) of the Pensions Appeal Tribunals Act 1943(c)
- (d) “relevant period” means the period of one month beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

Suspension - Social Security Commissioner

62.—(1) Where it appears to the Secretary of State that a question arises whether an appeal ought to be brought against the decision of an appropriate Commissioner under section 6C of the Pensions Appeal Tribunals Act 1943(d), he may, subject to paragraph (2), direct that payment of the pension or gratuity in accordance with that decision be suspended, in whole or in part, pending the determination of the appeal.

(2) Where it appears to the Secretary of State that a question arises under paragraph (1), he may only give directions that payment of the pension or gratuity in accordance with that decision be suspended within the relevant period.

(3) A suspension under paragraph (1) shall cease unless, within the relevant period, the person awarded the pension or gratuity by virtue of the decision (“the pensioner”) is given or sent notice in writing that an application for leave to appeal has been made against that decision.

(4) Where the pensioner has been given or sent notice within the relevant period that an application for leave to appeal has been made, the suspension may continue until that application for leave to appeal and any subsequent appeal is determined.

(5) Where an application for leave to appeal against a decision of an appropriate Commissioner is made under section 6C of the Pensions Appeal Tribunals Act 1943 and that application is refused, the suspension shall cease unless the Secretary of State, within the period of 28 days beginning with the date on which notice in writing of the decision under that section refusing leave to appeal is received by him, applies to the appropriate court for leave to appeal, and, if he has so applied, the suspension may continue until that application for leave to appeal and any subsequent appeal has been determined.

(6) In this article—

- (a) “appeal” means an appeal under section 6C of the Pensions Appeal Tribunals Act 1943;
- (b) “application for leave to appeal” means an application for leave to appeal under section 6C(2) of that Act;
- (c) “appropriate court” means—
 - (i) in England, Wales and Northern Ireland, the Court of Appeal or, in Scotland, the Inner House of the Court of Session,
 - (ii) the House of Lords;
- (d) “relevant period” means the period of 6 weeks beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State;
- (e) “an appropriate Commissioner” has the same meaning as in article 61.

(a) S.I. 1965/321.

(b) S.R. 1980 No.346.

(c) Section 6D(5) was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c.32), section 5 and Schedule 1, paragraph 4.

(d) Section 6C was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c.32), section 5 and Schedule 1, paragraph 4.

Suspension in individual cases - courts

63.—(1) Where it appears to the Secretary of State that a question arises whether an appeal ought to be brought against the decision of a court, he may, subject to paragraph (2), direct that payment of the pension or gratuity in accordance with that decision be suspended, in whole or in part, pending the determination of the appeal.

(2) Where it appears to the Secretary of State that a question arises under paragraph (1), he may only give directions that payment of the pension or gratuity in accordance with that decision be suspended within the relevant period.

(3) A suspension under paragraph (1) shall cease unless, within the relevant period, the person awarded the pension or gratuity by virtue of the decision (“the pensioner”) is given notice in writing that an application for permission to appeal has been made against that decision.

(4) Where the pensioner has been given notice within the relevant period that an application for permission to appeal has been made, the suspension may continue until that application for permission to appeal and any subsequent appeal is determined.

(5) A pensioner is to be treated as having been given the notice required by paragraph (3) on the date that it is posted to him at his last known address.

(6) In this article—

(a) “appeal” means

(i) in England, Wales and Northern Ireland an appeal to the Court of Appeal or, in Scotland, a reclaiming motion to the Inner House of the Court of Session, against the determination of an application for judicial review,

(ii) in England, Wales and Northern Ireland an appeal to the House of Lords against a decision of the Court of Appeal in an application referred to in head (i) above, or in Scotland, an appeal to the House of Lords against a decision of the Inner House of the Court of Session in a reclaiming motion in an application referred to in head (i) above;

(b) “application for permission to appeal” means an application or petition for permission to appeal as the case may be in the proceedings referred to in heads (i) and (ii) of subparagraph (a) above;

(c) “relevant period” means the period of three months beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

Suspension in other cases

64.—(1) Where it appears to the Secretary of State that—

(a) an appeal has been brought or a question arises whether an appeal ought to be brought against a decision of a court in relation to a case (“the primary case”); and

(b) if such an appeal were to be allowed a question would arise in relation to another case (“the secondary case”) whether the award of pension or gratuity in that case ought to be reviewed

he may direct that payment of the pension or gratuity under the award in the secondary case be suspended, in whole or in part—

(i) until the time limit for making an application for permission to appeal in the primary case has expired, or

(ii) if such an application is made, until such time as that application and any subsequent appeal has been determined, whichever is the later.

(2) In this article the expressions “appeal” and “application for leave to appeal” have the same meanings as they have in article 61.

Suspension – failure to comply with request or pensioner not at last known address

65.—(1) Where it appears to the Secretary of State that a decision on an award of a pension, gratuity or supplement (“the award”) should be reviewed under article 44, he may, by notice in writing—

- (a) require the person awarded the pension, gratuity or supplement (“the pensioner”) to provide, within the period of 3 months starting with the date on which the notice is given or sent to the pensioner, such information or evidence which is reasonably required to determine whether the award should be revised; or
- (b) advise the pensioner that he will be required to attend for a medical examination at a time and place to be appointed.

(2) Where it appears to the Secretary of State that a pensioner may no longer be resident at the last address notified to him, he may, by notice in writing, require the pensioner to provide satisfactory evidence of his current residential address and to do so within the period of 3 months starting with the date on which the notice is given or sent to the pensioner.

(3) The Secretary of State may suspend payment of the award if the pensioner fails—

- (a) to provide the information or evidence required under paragraph (1)(a) within the time specified in that subparagraph;
- (b) to attend for a medical examination at the appointed time and place pursuant to paragraph (1)(b); or
- (c) to provide the information or evidence required under paragraph (2) within the time specified in that paragraph

in all cases without supplying a satisfactory explanation for the failure and such suspension shall take effect from the date on which the notice referred to in paragraph (4) is given or sent.

(4) If the Secretary of State suspends payment of the award, he shall notify the pensioner in writing of the decision to suspend, which notification shall inform the pensioner—

- (a) that the award has been suspended;
- (b) of the reasons for the decision to suspend; and
- (c) that his award may be cancelled in the circumstances described in article 66.

(5) Where, within the period of 12 months beginning with the date on which a notice such as is referred to in paragraph (1) or paragraph (2) was given or sent—

- (a) the pensioner complies with the requirements contained in any such notice; or
- (b) the Secretary of State, by notice in writing, informs the pensioner that it is no longer necessary for him to provide the information or to attend the medical examination

the suspension shall cease with effect from the date specified in paragraph (6).

(6) The date of cessation of suspension shall be the date on which—

- (a) the pensioner complies with the requirement (or where there is more than one requirement the date on which the pensioner has complied with the last outstanding requirement); or
- (b) the date on which the notice referred to at paragraph (5)(b) was given or sent.

(7) On cessation of the suspension, the award shall be paid in accordance with paragraph 1(8) of Schedule 3.

Cancellation - failure to comply with request

66.—(1) Where a pensioner whose award has been suspended under article 65(3) does not, within the period of 12 months beginning with date on which the notice referred to in article 65(1) or (2) is given or sent to him, comply with a requirement to supply information or evidence or to attend for a medical examination the Secretary of State shall cancel that award.

(2) A pensioner whose award has been cancelled under paragraph (1) may make a further claim in respect of the matters which gave rise to that award.

(3) The Secretary of State shall send written notification of the cancellation of the award, which shall inform the pensioner—

- (a) that the award has been cancelled;
- (b) of the reasons for such cancellation; and
- (c) that he may make a further claim for the award in question in accordance with paragraph (2).

(4) Where a pensioner makes a further claim under paragraph (2), the award shall, if the conditions specified in paragraph (5) are satisfied, be paid in accordance with paragraph 1(9) of Schedule 3.

(5) The conditions referred to in paragraph (4) are that—

- (a) the pensioner has supplied the information or evidence required in a notice given or sent under article 65(1)(a) or article 65(2); or
- (b) the pensioner has attended for a medical examination as required by the Secretary of State; or
- (c) the Secretary of State, by notice in writing, has informed the pensioner that it is no longer necessary for him to supply the information or evidence referred to in subparagraph (a) above, or to attend the medical examination referred to in subparagraph (b) above.

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^(a) under section 1 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939^(b).

(a) 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.
 (b) 1939 c.83.

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—

(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(a) (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.

A.K. Galloway
Clerk of the Privy Council

(a) 1947 c.44.

SCHEDULE 1

Article 3(1)

DISABLEMENT DUE TO SERVICE IN THE ARMED FORCES

PART I

GROUPING OF MEMBERS OF THE ARMED FORCES ACCORDING TO RANK OR STATUS

1. In this Schedule—

- (a) references to a Group shall be construed as references to those members of the armed forces who hold the rank or status listed under that Group; and
- (b) the amount of any award in respect of that Group is that amount shown in the following Parts of this Schedule against that Group.

2. The Groups referred to in the foregoing paragraph comprise:—

<i>GROUP 1:—</i>	
<i>Royal Navy</i>	Rear-Admiral
<i>Royal Marines</i>	Major-General
<i>Army</i>	Major-General
	Chief Controller
<i>RAF</i>	Air Vice-Marshal
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<i>GROUP 2:—</i>	
<i>Army</i>	Brigadier-General
<i>RAF</i>	Air Commodore disabled as a result of service during the 1914 World War
<hr/>	
<i>GROUP 3:—</i>	
<i>Navy</i>	Commodore 1 st or 2 nd Class Captain with 6 or more years seniority whose service terminated on or after 1st April 1970.
<i>Royal Marines</i>	Colonel-Commandant Colonel whose service terminated on or after 1st April 1970.
<i>WRNS</i>	Commandant Member with status of Commodore
<i>Army</i>	Brigadier Senior Controller Member with status of Brigadier
<i>RAF</i>	Air Commodore Air Commandant Member with status of Air Commodore
<hr/>	
<i>GROUP 4:—</i>	
<i>Navy</i>	Captain of less than 6 years seniority or whose service terminated before 1st April 1970.
<i>Royal Marines</i>	Colonel 2 nd Commandant Colonel whose service terminated before 1st April 1970 Lieutenant-Colonel and corresponding ranks, Temporary Marine Officer relinquishing commission etc. prior to 1st

<i>WRNS</i>	April 1919 to be included in Group 5 Superintendent Member with status of Captain RN
<i>Army</i>	Colonel Controller Member with status of Colonel
<i>RAF</i>	Group Captain Group Officer Member with status of Group Captain
<hr/>	
<i>GROUP 5:—</i>	
<i>Navy</i>	Commander
<i>Royal Marines</i>	Major and corresponding ranks, Temporary Marine Officer relinquishing commission etc. prior to 1st April 1919 to be included in Group 6
<i>WRNS</i>	Chief Officer Member with status of Commander RN
<i>Army</i>	Lieutenant-Colonel Chief Commander Member with status of Lieutenant-Colonel
<i>RAF</i>	Wing Commander Wing Officer Member with status of Wing Commander
<hr/>	
<i>GROUP 6:—</i>	
<i>Navy</i>	Lieutenant-Commander
<i>Royal Marines</i>	Captain and corresponding ranks, Temporary Marine Officer relinquishing commission etc. prior to 1st April 1919, to be included in Group 7
<i>WRNS</i>	First Officer Member with status of Lieutenant-Commander RN
<i>Army</i>	Major Senior Commander Member with status of Major
<i>RAF</i>	Squadron Leader Squadron Officer Member with status of Squadron Leader
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<i>GROUP 7:—</i>	
<i>Navy</i>	Lieutenant
<i>Royal Marines</i>	Lieutenant with 4 years commissioned service or over
<i>WRNS</i>	Second Officer Member with status of Lieutenant RN
<i>Army</i>	Captain Junior Commander Member with status of Captain
<i>RAF</i>	Flight Lieutenant Flight Officer Member with status of Flight Lieutenant
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<i>GROUP 8:-</i>	
<i>Navy</i>	Sub-Lieutenant Acting Sub-Lieutenant Senior Commissioned Officer (Branch List) Commissioned Officer from Warrant Rank Midshipman (A) Midshipman or Cadet where service terminated on or

	after 1st January 1957
<i>Royal Marines</i>	Lieutenant with under 4 years commissioned service 2 nd Lieutenant Senior Commissioned Officer (Branch List) Commissioned Officer from Warrant Rank and corresponding ranks
<i>WRNS</i>	Third Officer Woman member with status below Lieutenant RN
<i>Army</i>	Lieutenant (Quartermasters, Assistant Pay Masters and Inspectors of Army Stores) Second Lieutenant Subaltern Second Subaltern
<i>RAF</i>	Member with status below Captain Flying Officer Pilot Officer Acting Pilot Officer Section Officer Assistant Section Officer Member with status below Flight Lieutenant
<hr/>	
<i>GROUP 9:-</i>	
<i>Navy</i>	Commissioned Officer (Branch List) Warrant Officer Midshipman Cadet after completion of shore training where, in the case of any of these ranks, service terminated before 1st January 1957.
<i>Royal Marines</i>	Naval Cadet (Serving with the Fleet) Commissioned Officer (Branch List) Warrant Officer and corresponding ranks
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<i>GROUP 10:-</i>	
<i>Navy</i>	Fleet Chief Petty Officer Fleet Chief Wren Member of a Voluntary Aid Detachment serving as an uncertificated Nurse Grade 1
<i>Royal Marines</i>	Regimental Sergeant-Major
<i>Army</i>	Warrant Officer Class 1
<i>RAF</i>	Warrant Officer Airman Class A Member of a Voluntary Aid Detachment serving as an uncertificated Nurse Grade 1
<hr/>	
<i>GROUP 11:-</i>	
<i>Royal Marines</i>	Quartermaster Sergeant
<i>Army</i>	Warrant Officer Class II Non-Commissioned Officer Class I
<i>RAF</i>	Warrant Officer 2 nd Class Airman Class B
<hr/>	
<i>GROUP 12:-</i>	
<i>Navy</i>	Chief Petty Officer Chief Wren
<i>Royal Marines</i>	Colour Sergeant
<i>Army</i>	Staff Sergeant Non-Commissioned Officer Class II

<i>RAF</i>	Flight Sergeant Airman Class C
<i>GROUP 13:-</i>	
<i>Navy</i>	Petty Officer Petty Officer Wren
<i>Royal Marines</i>	Sergeant
<i>Army</i>	Sergeant Non-Commissioned Officer Class III
<i>RAF</i>	Sergeant Airman Class D
<i>GROUP 14:-</i>	
<i>Navy</i>	Leading Rating Leading Wren
<i>Royal Marines</i>	Corporal
<i>Army</i>	Corporal Non-Commissioned Officer Class IV
<i>RAF</i>	Corporal Airman Class E
<i>GROUP 15:-</i>	
<i>Navy</i>	A B Rating Ordinary Rating Boy Wren
<i>Royal Marines</i>	Marine
<i>Army</i>	Private etc. Class V
<i>RAF</i>	Senior Aircraftman Leading Aircraftman Aircraftsman Airman Class F Senior Aircraftwoman Leading Aircraftwoman Aircraftwoman

PART II

RATES OF RETIRED PAY, PENSIONS, GRATUITIES AND ALLOWANCES

1. WEEKLY RATES OF PENSIONS FOR DISABLED MEMBERS OF THE ARMED FORCES IN GROUPS 10-15 OF PART 1 OF THIS SCHEDULE

2. YEARLY RATES OF RETIRED PAY AND PENSIONS FOR DISABLED MEMBERS OF THE ARMED FORCES IN GROUPS 1-9 OF PART 1 OF THIS SCHEDULE

<i>Degree of Disablement</i> <i>Per cent</i>	<i>Weekly Rate</i> <i>£</i>	<i>Yearly Rate</i> <i>£</i>
100	134.80	7,034
90	121.32	6,331
80	107.84	5,627
70	94.36	4,924
60	80.88	4,220
50	67.40	3,517
40	53.92	2,814
30	40.44	2,110

PART III
GRATUITIES PAYABLE FOR MINOR INJURIES

Table 1

<i>Description of Injury</i>	<i>Assessments</i>	<i>Groups 1-15</i>
<i>For the loss of:</i>	<i>Per cent</i>	<i>£</i>
A. FINGERS		
Index finger—		
More than 2 phalanges including loss of whole finger	14	6,412
More than 1 phalanx but not more than 2 phalanges	11	5,131
1 phalanx or part thereof	9	4,274
Guillotine amputation of tip without loss of bone	5	2,559
Middle finger—		
More than 2 phalanges including loss of whole finger	12	5,554
More than 1 phalanx but not more than 2 phalanges	9	4,274
1 phalanx or part thereof	7	3,417
Guillotine amputation of tip without loss of bone	4	2,137
Ring or little finger—		
More than 2 phalanges including loss of whole finger	7	3,417
More than 1 phalanx but not more than 2 phalanges	6	2,995
1 phalanx or part thereof	5	2,559
Guillotine amputation of tip without loss of bone	2	1,280
B. TOES		
Great toe—		
Through metatarso-phalangeal joint	14	6,412
Part, with some loss of bone	3	1,703
1 other toe—		
Through metatarso-phalangeal joint	3	1,703
Part, with some loss of bone	1	858

2 toes, excluding great toe— Through metatarso-phalangeal joint	5	2,559
Part, with some loss of bone	2	1,280
3 toes, excluding great toe— Through metatarso-phalangeal joint	6	2,995
Part, with some loss of bone	3	1,703
4 toes, excluding great toe— Through metatarso-phalangeal joint	9	4,274
Part, with some loss of bone	3	1,703

Table 2

GRATUITIES PAYABLE TO MEMBERS OF THE ARMED FORCES FOR DISABLEMENT ASSESSED AT LESS THAN 20 PER CENT NOT BEING A MINOR INJURY SPECIFIED IN TABLE 1

Groups 1-15	<i>Estimated duration of the disablement within the degree referred to</i>								
	<i>Temporary less than a year</i>			<i>Temporary more than a year</i>			<i>Indeterminate</i>		
	<i>Per cent</i>			<i>Per cent</i>			<i>Per cent</i>		
	1-5	6-14	15-19	1-5	6-14	15-19	1-5	6-14	15-19
	£	£	£	£	£	£	£	£	£
354	795	1,393	715	1,586	2,777	2,144	4,765	8,337	

PART IV

RATES OF ALLOWANCES PAYABLE IN RESPECT OF DISABLEMENT AND EARNINGS OR INCOME THRESHOLDS

<i>Description of Allowance</i>	<i>Rate</i>	
	<i>Groups 1-9</i>	<i>Groups 10-15</i>

1. Constant attendance allowance—

(a) under article 8—

(i) the part day rate of constant attendance allowance under article 8(2);	£1,328 per annum	£25.45 per week
(ii) the full day rate of constant attendance allowance under article 8(3);	£2,656 per annum	£50.90 per week
(iii) the intermediate rate of constant attendance allowance under article 8(4);	£3,984 per annum	£76.35 per week
(iv) the exceptional rate of constant attendance allowance under article 8(5)	£5,312 per annum	£101.80 per week

(b) under article 71(4)—

(i) the rate under paragraph (4)(a)	£5,312 per annum ^(*)	£101.80 per week ^(*)
(ii) the rate under paragraph (4)(b)	£2,656 per annum ^(*)	£50.90 per week ^(*)
2. Exceptionally severe disablement allowance under article 9	£2,656 per annum	£50.90 per week
3. Severe disablement occupational allowance under article 10	£1,328 per annum	£25.45 per week
4. Allowance for wear and tear of clothing under article 11	£174 per annum	£174 per annum
5. Unemployability allowances—		
(a) personal allowance under article 12(1)(a)	£4,349 per annum	£83.35 per week
(b) additional allowances for dependants by way of—		
(i) increase of allowance in respect of a spouse, civil partner, dependant living as a spouse, dependant living as a civil partner or an adult dependant under article 12(6)(a)	£2,450 per annum ^(*)	£46.95 per week ^(*)
(ii) increase of allowance under article 12(6)(b)—		
(aa) in respect of the only, elder or the eldest child of a member	£569 per annum	£10.95 per week
(bb) in respect of each other child of a member	£671 per annum	£12.85 per week
(cc) where the child does not qualify for child benefit under the Social Security Contributions and Benefits Act 1992 ^(a) , or under any legislation in Northern Ireland or the Isle of Man corresponding to that Act.	£671 per annum	£12.85 per week
For decisions made on or after 9th April 2001		
(c) the annual earnings figure for the purposes of article 12(4) is £4,212		
(d) the weekly income figure for the purposes of article 12(6)(a)(i) is £57.45		
6. Invalidity allowance under article 13—		
(a) if—		
(i) the relevant date fell before 5th July 1948; or		
(ii) on the relevant date the member was under the age of 35; or		
(iii) on the relevant date the member was under the age of 40 and had not attained the age of 65 in the case of the member being a man, or 60 in the case of the member being a woman, before 6th April 1979 and the period in respect of which payment of the allowance is to relate begins on or after 6th April	£861 per annum	£16.50 per week

1979

(b) if—

(i) on the relevant date the member was under the age of 45; or

(ii) on the relevant date the member was under the age of 50 and had not attained the age of 65 in the case of the member being a man, or 60 in the case of a member being a woman, before 6th April 1979 and the period in respect of which payment of the allowance is to relate begins on or after 6th April 1979.

£553 per annum £10.60 per week

(c) If heads (a) and (b) do not apply and on the relevant date the member was a man under the age of 60 or a woman under the age of 55

£277 per annum £5.30 per week

7. Comforts allowance—

(a) under article 14(1)(a) £1,138 per annum £21.80 per week

(b) under article 14(1)(b) £569 per annum £10.90 per week

8. Allowance for lowered standard of occupation under article 15 £2,653 per annum £50.84 per week

9. Age allowance under article 16 where the degree of pensioned disablement is—

(a) 40 to 50 per cent £472 per annum £9.05 per week

(b) over 50 per cent, but not exceeding 70 per cent £723 per annum £13.85 per week

(c) over 70 per cent, but not exceeding 90 per cent £1,031 per annum £19.75 per week

(d) over 90 per cent £1,445 per annum £27.70 per week

10. Part-time treatment allowance under article 19 £61.85 per day^(*) £61.85 per day^(*)

11. Mobility supplement under article 20 £2,533 per annum £48.55 per week

^(*) Maximum

^(a) 1992 c.4.

PART V

ASSESSMENT OF DISABLEMENT CAUSED BY SPECIFIED INJURIES AND OF CERTAIN OTHER DISABLEMENTS

<i>Description of Injury</i>	<i>Assessment per cent</i>
<i>Amputation Cases – Upper Limbs</i>	
Loss of both hands or amputation at higher sites	100
Forequarter amputation	100
Amputation through shoulder joint	90
Amputation below shoulder with stump less than 20.5 centimetres from tip of acromion	80
Amputation from 20.5 centimetres from tip of acromion to less than 11.5 centimetres below tip of olecranon	70

Amputation from 11.5 centimetres below tip of olecranon	60
Loss of thumb	30
Loss of thumb and its metacarpal bone	40
Loss of 4 fingers	50
Loss of 3 fingers	30
Loss of 2 fingers	20
Loss of terminal phalanx of thumb	20
<hr/>	
<i>Amputation Cases – Lower Limbs</i>	<i>per cent</i>
Double amputation through thigh, or through thigh on one side and loss of other foot, or double amputation below thigh to 13 centimetres below knee	100
Double amputation through leg lower than 13 centimetres below knee	100
Amputation of one leg lower than 13 centimetres below knee and loss of other foot	100
Amputation of both feet resulting in end-bearing stumps	90
Amputation through both feet proximal to the metatarso-phalangeal joint	80
Loss of all toes of both feet through the metatarso-phalangeal joint	40
Loss of all toes of both feet proximal interphalangeal joint	30
Loss of all toes of both feet distal to the proximal interphalangeal joint	20
Hindquarter amputation	100
Amputation through hip joint	90
Amputation below hip with stump not exceeding 13 centimetres in length measured from tip of great trochanter	80
Amputation below hip and above knee with stump exceeding 13 centimetres in length measured from tip of great trochanter, or at knee not resulting in end-bearing stump	70
Amputation at knee resulting in end-bearing stump, or below knee with stump not exceeding 9 centimetres	60
Amputation below knee with stump exceeding 9 centimetres but not exceeding 13 centimetres	50
Amputation below knee with stump exceeding 13 centimetres	40
Amputation of one foot resulting in end-bearing stump	30
Amputation through one foot proximal to the metatarso-phalangeal joint	30
Loss of all toes of one foot proximal to the proximal interphalangeal joint, including amputations through the metatarso-phalangeal joint.	20
<hr/>	
<i>Other Specific Injuries</i>	<i>per cent</i>
Loss of a hand and a foot	100
Loss of one eye, without complications, the other being normal	40
Loss of vision of one eye, without complications or disfigurement of the eyeball, the other being normal	30
Loss of sight	100
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<i>Other Disablements</i>	<i>per cent</i>
Very severe facial disfigurement	100
Absolute deafness	100
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Note:- Where the scheduled assessment for a specified injury involving multiple losses differs from the sum of the assessments for the separate injuries, the former is the appropriate assessment.

PART VI

ASSESSMENT OF DISABLEMENT IN RESPECT OF NOISE INDUCED SENSORINEURAL HEARING LOSS

<i>Average of hearing losses (db) at 1,2 and 3 kHz frequencies</i>	<i>Degree of Disablement per cent</i>
50 – 53 dB	20
54 – 60 dB	30
61 – 66 dB	40
67 – 72 dB	50
73 – 79 dB	60
80 – 86 dB	70
87 – 95 dB	80
96 – 105 dB	90
106 dB or more	100

SCHEDULE 2

Article 3(1)

DEATH DUE TO SERVICE IN THE ARMED FORCES

PART I

GROUPING OF MEMBERS OF THE ARMED FORCES ACCORDING TO RANK OR STATUS

1. In this Schedule—

- (a) references to a Group shall be construed as references to those members of the armed forces who held the rank or status listed under that Group; and
- (b) the amount of any award in respect of that Group is the amount shown in the following Parts of this Schedule against that Group.

2. The Groups referred to in the foregoing paragraph comprise:—

<i>GROUP 1:—</i>	
<i>Royal Navy</i>	Admiral of the Fleet
<i>Army</i>	Field Marshal
<i>Royal Air Force</i>	Marshal of the Royal Air Force
<i>GROUP 2:—</i>	
<i>Royal Navy</i>	Admiral
<i>Royal Marines</i>	General
<i>Army</i>	General
<i>Royal Air Force</i>	Air Chief Marshal
<i>GROUP 3:—</i>	
<i>Royal Navy</i>	Vice-Admiral
<i>Royal Marines</i>	Lieutenant-General
<i>Army</i>	Lieutenant-General
<i>Royal Air Force</i>	Air Marshal

<i>GROUP 4—</i>	
<i>Royal Navy</i>	Rear-Admiral
<i>Royal Marines</i>	Major-General
<i>Army</i>	Major-General
<i>Royal Air Force</i>	Air Vice-Marshal
<i>GROUP 5:—</i>	
<i>Royal Navy</i>	Commodore Commodore 1 st or 2 nd Class Captain with 6 or more years seniority whose service terminated on or after 1st April 1970
<i>Royal Marines</i>	Brigadier-General Colonel-Commandant Colonel whose service terminated on or after 1st April 1970
<i>Army</i>	Brigadier-General Brigadier
<i>Royal Air Force</i>	Air Commodore
<i>GROUP 6—</i>	
<i>Royal Navy</i>	Captain where death is due to service in the Navy during the 1914 World War Captain of less than 6 years seniority or whose service terminated before 1st April 1970
<i>Royal Marines</i>	Colonel: where death is due to service in the Army during the 1914 World War, Colonel means a Colonel who has been employed as a substantive Colonel if a combat officer, or in the rank of Colonel if a medical, veterinary or departmental officer Colonel 2 nd Commandant Colonel whose service terminated before 1st April 1970 Lieutenant-Colonel
<i>Army</i>	Colonel: where death is due to service in the Army during the 1914 World War, Colonel means a Colonel who has been employed as a substantive Colonel if a combat officer, or in the rank of Colonel if a medical, veterinary or departmental officer
<i>Royal Air Force</i>	Group Captain
<i>GROUP 7:—</i>	
<i>Royal Navy</i>	Commander
<i>Royal Marines</i>	Major
<i>Army</i>	Lieutenant-Colonel including a Colonel not employed as such where death is due to service in the Army during the 1914 World War
<i>Royal Air Force</i>	Wing Commander
<i>GROUP 8:—</i>	
<i>Royal Navy</i>	Lieutenant-Commander
<i>Royal Marines</i>	Captain
<i>Army</i>	Major
<i>Royal Air Force</i>	Squadron Leader
<i>GROUP 9:—</i>	
<i>Royal Navy</i>	Lieutenant
<i>Royal Marines</i>	Lieutenant with 4 years commissioned service or over
<i>Army</i>	Captain
<i>Royal Air Force</i>	Flight Lieutenant

<i>GROUP 10:—</i>	
<i>Royal Navy</i>	Sub-Lieutenant Acting Sub-Lieutenant Senior Commissioned Officer (Branch List) Commissioned Officer from Warrant rank
<i>Royal Marines</i>	Midshipman (A) and, where service terminated on or after 1st January 1957, Midshipman or Cadet Lieutenant with less than 4 years commissioned service 2 nd Lieutenant Senior Commissioned Officer (Branch List) Commissioned Officer from Warrant rank Quartermaster
<i>Army</i>	Lieutenant and where death is due to service in the Army during the 1914 World War, Quartermasters, Assistant Paymasters and Inspectors of Army Schools, not holding permanent commissions in the Regular Forces may be treated as Lieutenants 2 nd Lieutenant
<i>Royal Air Force</i>	Flying (or Observer) Officer Pilot Officer Acting Pilot Officer
<i>GROUP 11:—</i>	
<i>Royal Navy</i>	Commissioned Officer (Branch List) Midshipman Cadet where in the case of any of these ranks, service terminated before 1st January 1957 Warrant Officer
<i>Royal Marines</i>	Commissioned Officer (Branch List) Warrant Officer
<i>GROUP 12:—</i>	
<i>Royal Navy</i>	Fleet Chief Petty Officer
<i>Royal Marines</i>	Regimental Sergeant-Major Marine Warrant Officer, Class 1
<i>Army</i>	Warrant Officer Class II
<i>Royal Air Force</i>	Warrant Officer Airman Class A
<i>GROUP 13:—</i>	
<i>Royal Marines</i>	Quartermaster Sergeant Marine Warrant Officer, Class II Warrant Officer Class II
<i>Army</i>	Non-Commissioned Officer Class I
<i>Royal Air Force</i>	Warrant Officer 2nd Class Airman Class B
<i>GROUP 14:—</i>	
<i>Royal Navy</i>	Chief Petty Officer
<i>Royal Marines</i>	Colour Sergeant Staff Sergeant
<i>Army</i>	Staff Sergeant Non-Commissioned Officer Class II
<i>Royal Air Force</i>	Flight Sergeant Airman Class C
<i>GROUP 15:—</i>	
<i>Royal Navy</i>	Petty Officer

	First Class Petty Officer (OS)
	Petty Officer (NS)
<i>Royal Marines</i>	Sergeant
<i>Army</i>	Sergeant
	Non-Commissioned Officer Class III
<i>Royal Air Force</i>	Sergeant
	Airman Class D
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<i>GROUP 16:—</i>	
<i>Royal Navy</i>	Second Class Petty Officer
	Leading Rating
<i>Royal Marines</i>	Corporal
<i>Army</i>	Corporal
	Non-Commissioned Officer Class IV
<i>Royal Air Force</i>	Corporal
	Airman Class E
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<i>GROUP 17:—</i>	
<i>Royal Navy</i>	AB Rating
	Ordinary Rating
<i>Royal Marines</i>	Marine
<i>Army</i>	Private, etc. Class V
<i>Royal Air Force</i>	Senior Aircraftman
	Leading Aircraftman
	Aircraftman
	Airman Class F
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PART II

RATES OF PENSIONS AND ALLOWANCES

Table 1

YEARLY RATES OF PENSIONS FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF OFFICERS WHO WERE MEMBERS OF THE ARMED FORCES BEFORE 14 AUGUST 1914 OR AFTER 30 SEPTEMBER 1921

PENSIONS OTHER THAN PENSIONS AWARDED UNDER ARTICLE 11 (1) OR (2) OF THE 1921 (OFFICERS) ORDER OR ARTICLE 11(1) OF THE 1921 (WARRANT OFFICERS) ORDER, OF THE 1920 WARRANT OR OF THE 1921 ORDER

<i>Group</i> <i>(1)</i>	<i>Yearly Rate</i> <i>(2)</i> £
1	6,159
2	5,940
3	5,800
4	5,675
5	5,589
6	5,508
7	5,479
8	5,438
9	5,417
10	5,396
11	5,362

Table 2**WEEKLY RATES OF PENSIONS FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF RATINGS, SOLDIERS OR AIRMEN**

<i>Group</i> (1)	<i>Weekly Rate</i> (2) £
12)	
13)	
14)	102.20
15)	
16)	
17)	

Table 3**YEARLY RATES OF PENSIONS FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF OFFICERS WHO WERE MEMBERS OF THE ARMED FORCES BETWEEN 14 AUGUST 1914 AND 30 SEPTEMBER 1921**

PENSIONS AWARDED UNDER ARTICLE 11(1) OR (2) OF THE 1921 (OFFICERS) ORDER OR ARTICLE 11(1) OF THE 1921 (WARRANT OFFICERS) ORDER, OF THE 1920 WARRANT OR OF THE 1921 ORDER

<i>Group</i> (1)	<i>Yearly Rate</i> (2) £
1	6,298
2	6,020
3	5,881
4	5,743
5	5,634
6	5,521
7	5,489
8	5,438
9	5,417
10	5,396
11	5,362

Table 4**YEARLY RATES OF PENSIONS FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF OFFICERS WHO WERE MEMBERS OF THE ARMED FORCES BEFORE 14 AUGUST 1914 OR AFTER 30 SEPTEMBER 1921**

<i>Group</i> (1)	<i>Yearly Rate</i> (2) £
1	6,159
2	5,940
3	5,800
4	5,675
5	5,589
6	5,508
7	5,479
8	1,889
9	1,683
10	1,481

Table 5**WEEKLY RATES OF PENSION FOR CHILDLESS SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS AGED UNDER 40 BEING SURVIVING SPOUSES OR SURVIVING CIVIL PARTNERS OF RATINGS, SOLDIERS OR AIRMEN**

<i>Group</i> (1)	<i>Weekly Rate</i> (2) £
12)	
13)	
14)	24.49
15)	
16)	
17)	

PART III**RATES OF PENSIONS, OTHER THAN SURVIVING SPOUSES' AND SURVIVING CIVIL PARTNERS' PENSIONS AND ALLOWANCES PAYABLE IN RESPECT OF DEATH**

<i>Description of Pension or Allowance</i>	<i>Rates</i>	
	<i>Groups 1-11</i>	<i>Groups 12-17</i>
1. Pension under article 24 to dependant who lived as a spouse or dependant who lived as a civil partner	£5,210 per annum ^(*)	£99.85 per week ^(*)
2. Rent allowance under article 25	£2,012 per annum ^(*)	£38.55 per week ^(*)
3. Elderly persons allowance under article 26—		
(a) if aged 65 but under 70	£611 per annum	£11.70 per week
(b) if aged 70 but under 80	£1,169 per annum	£22.40 per week
(c) if aged 80 or over	£1,732 per annum	£33.20 per week
4. Allowances in respect of children—		
(a) under article 28(2)(a)—		
(i) in respect of the only, elder or eldest child of a member	£837 per annum	£16.05 per week
(ii) in respect of each other child of a member	£937 per annum	£17.95 per week
(iii) where the child does not qualify for child benefit under the Social Security Contributions and Benefits Act 1992, or any legislation in Northern Ireland or the Isle of Man corresponding to that Act	£937 per annum	£17.95 per week
(b) under article 28(2)(b)—		
(i) in respect of the only, elder or eldest child of a member	£955 per annum	£18.30 per week
(ii) in respect of each other child of a member	£1,049 per annum	£20.10 per week
(iii) where the child does not qualify for child benefit under the Social Security	£1,049 per annum	£20.10 per week

Contributions and Benefits Act 1992,
or any legislation in Northern Ireland or
under the Isle of Man corresponding to
that Act

5. Pension under article 29 to a child of a member
who has no parent living and who has not attained
the child's age limit—

(a) in respect of the only, elder or eldest child of a member £955 per annum £18.30 per week

(b) in respect of each other child of a member £1,049 per annum £20.10 per week

(c) where the child does not qualify for child benefit under the Social Security

Contributions and Benefits Act 1992, or
under any legislation in Northern Ireland or
the Isle of Man corresponding to that Act

6. Allowance under article 30(2)(b) to or in respect of a child who has attained the child's age limit. £4,096 per annum^(*) £78.50 per week^(*)

^(*) Maximum

SCHEDULE 3

Article 46

COMMENCING DATES OF AWARDS

1.—(1) Subject to the following provisions of this Schedule, an award or an adjustment of 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 subparagraph (2) which is relevant in the claimant's case.

(2) The date specified in this subparagraph is whichever date is the latest in time of the date—

(a) following the date of termination of service or, in a case under Part IV, following the date of death of the member;

(b) of the claim;

(c) of the last application for review; or

(3) Where in a case to which subparagraph (1) applies, the claimant satisfies the requirements of subparagraph (4) the award shall have effect from the date the subparagraph is satisfied.

(4) This paragraph is satisfied where the date of claim or application for review is made within 3 months of—

(a) the date of termination of service, or the date of death where an award is made in respect of a member's death; or

(b) except where paragraph (a) applies, the date of notification of a decision on the claim or review.

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

(6) Subject to subparagraphs (7), (8) and (9), where an award is adjusted upon review instigated by the Secretary of State, the adjustment shall take effect from the date of the review.

(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 date of the original decision and for this purpose "official error" means an error made by 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.

(8) Where an award is suspended pursuant to Article 65(3) but, on one of the conditions specified in article 65(5) being satisfied, the Secretary of State reviews the award, the award shall take effect from the date on which the suspension took effect and any payment shall be calculated by reference to the date which was payable on that date—

- (a) apply in respect of the period between the date on which the suspension took effect and the date of the review, and
- (b) be calculated by reference to the rate at which the award was in payment prior to its suspension.

(9) Where, a pensioner's award has been cancelled (pursuant to Article 66(1) but, following submission of a further claim (in accordance with Article 66(2) the Secretary of State has made a further award in the pensioner's favour, such award shall take effect and payment shall be made—

- (a) from the date on which the suspension took effect,
- (b) at such rate as the Secretary of State determines to be appropriate when making the further award.

(10) For the purposes of this paragraph, a claim shall be treated as made for a pension or allowance for which a claim is not required by virtue of article 35 on the date on which the relevant conditions of entitlement to the pension or allowance first became satisfied.

2.—(1) In a case to which section 168 of the Pension Act 1995(a) (war pensions for widows: effect of remarriage) or article 33(2) applies, for paragraph 1(4)(a) of this Schedule substitute “the date of termination of a marriage or civil partnership, the date of judicial separation of the parties to a marriage, the date of a separation order relating to a civil partnership or the date the claimant ceased to live with another as a spouse or as a civil partner”.

(2) In this paragraph—

- (a) in relation to marriage “termination of marriage” and “judicial separation” have the meanings they bear in section 168 of the Pension Act 1995;
- (b) in relation to civil partners—
 - (i) the reference to the termination of a civil partnership is to the termination of a partnership by death, dissolution or annulment, and
 - (ii) the reference to a separation order includes any legal separation obtained in a country or territory outside the British Islands and recognised in the United Kingdom

and for those purposes a dissolution, annulment or legal separation obtained in a country or territory outside the British Islands must, if the Secretary of State so determines, be treated as recognised in the United Kingdom even though no declaration as to its validity has been made in any court in the United Kingdom.

3. Where an award is made pursuant to a successful appeal to the Social Security Commissioners(b), 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 of 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, the Secretary of State shall 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 Tribunal where the ground for setting the decision of the Pensions Appeal Tribunal aside is that the Tribunal's decision was erroneous in point of law(c).

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

- (a) he would have made a claim or an application for a review 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

(a) 1995 c.26.

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

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

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 claim or date of application for review shall be treated as a reference to the later of—

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

6.—(1) Where, upon a 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 is the subject of the review, no payment shall 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 instigated by 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 the claimant would have made a claim at an earlier date but for advice he gave 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, but not in respect of any period before, 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 or a Commissioner in a case to which the claimant is not 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 were not available to the claimant at the time of the decision which is subject to the review or appeal because those documents were classified at the time, payment may be made in respect of a period commencing on, but not in respect of any period before, 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. Notwithstanding paragraph 1(7), where an award is made under article 6 or article 23 without a claim having been made for it, no payment shall be made in respect of a period before whichever is the later of—

- (a) the day following the date of death or termination of service; and
- (b) the date three years before the records were delivered to the Secretary of State by the Secretary of State for Defence.

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

- (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; and

- (b) that act or omission 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 date of application for review shall be treated as a reference to the earlier date referred to in this paragraph.

11. Where the Secretary of State reviews a decision which was made before 16th August 1943 and he is satisfied that an award would have been made in respect of a person provided the onus of proof were not on that person and that person were given the benefit of any reasonable doubt, he may make payment in respect of the period commencing on, but not in respect of any period before, that date.

SCHEDULE 4

Article 71(1)

TRANSITORY PROVISIONS

PART I

CONTINUATION OF TRANSITORY PROVISIONS IN SCHEDULE 5 TO THE SERVICE PENSIONS ORDER 1983

Interpretation of Part I

1. In this Part of this Schedule unless the context otherwise requires—

“1946 instrument” means the Order in Council of 4th June 1946(a), the Royal Warrant of 12th April 1946(b) or, as the case may be, the Order by His Majesty of 12th June 1946;

“1949 instrument” means the Order in Council of 29th September 1949, the Royal Warrant of 24th May 1949(c) or, as the case may be, the Order by His Majesty of 27th September 1949;

“1973 instrument” means the Order in Council of 27th July 1973, the Royal Warrant of 24th July 1973(d) or, as the case may be, the Order by Her Majesty of 25th July 1973(e);

“1974 instrument” means the Order in Council of 28th June 1974, the Royal Warrant of 18th June 1974(f) or, as the case may be, the Order by Her Majesty of 21st June 1974(g)

“1977 instrument” means the Order in Council of 9th March 1977, the Royal Warrant of 11th March 1977(h) or, as the case may be, the Order by Her Majesty of 15th March 1977(i);

“member” means a member of the armed forces;

“unmarried dependant” means an unmarried dependant who lived as a wife of the member;

and the other expressions have the meanings assigned to them in Schedule 6.

Pensions for unmarried dependants of deceased disablement pensioners under a 1946 instrument

2. Where immediately before the death of a member there was payable to him, by virtue of article 71(6)(a) of a 1964 instrument and article 71(1) of and Schedule 4 to the Service Pensions

(a) S.R. and O. 1946/812.
(b) Cmnd 6799 of 1946.
(c) Cmnd 7699 of 1949.
(d) Cmnd 5395 of 1973.
(e) Cmnd 5396 of 1973.
(f) Cmnd 5670 of 1974.
(g) Cmnd 5671 of 1974.
(h) Cmnd 6763 of 1977.
(i) Cmnd 6762 of 1977.

Order 1978, an allowance under article 12(1) of a 1946 instrument (family allowances) in respect of an unmarried dependant, that dependant may, upon the member's death, be awarded a pension for which she would have been eligible under article 28 of the 1946 instrument (pensions for unmarried dependants), if that instrument had not been revoked and for so long as the conditions for an award under that article are fulfilled.

Continuation of pensions for unmarried dependants of deceased pensioners under a 1946 instrument

3. Where immediately before the date on which this Order comes into operation, an unmarried dependant was, by virtue of article 71(6)(b) of a 1964 instrument and article 71(1) of and Schedule 4 to the Service Pensions Order 1978, in receipt of a pension under article 28(3) of a 1946 instrument (pension while in charge of member's child and in receipt of allowance under following provisions of that Part of that instrument in respect of the child) the award of that pension may be continued when she ceases to have that child in her care and to receive an allowance under Part IV of this Order in respect of that child if she is in pecuniary need and incapable of self-support.

Withholding or reduction of disablement pension under a 1949 instrument

4. The Secretary of State may withhold or reduce an award under a 1949 instrument in respect of the disablement of an officer whose service was terminated voluntarily or on account of misconduct.

Transitional provision on abolition of killed in action gratuities

5. Article 28 and column 2 of Schedule 5 to the 1964 instrument shall continue to apply to any deaths occurring before 1st August 1973 as they would have applied but for their revocation by the 1973 instrument.

Assessment of specified disablement under the 1964 instruments

6. Where, on or after 22nd July 1974, it is necessary in any case for an assessment of disablement to be made in accordance with the provisions of Schedule 1 to a 1964 instrument for any period commencing prior to the said 22nd July, the provisions of the said Schedule 1 in force immediately prior to the said 22nd July shall continue to apply as they would have applied had other provision not been substituted for them by the 1974 instrument.

PART II

CONTINUATION OF SAVINGS IN THE 1992 ORDER AND THE 1993 ORDER

Savings provisions made by the 1992 Order in respect of articles 12, 18, 23 and 53 of the Service Pensions Order 1983

7.—(1) Notwithstanding—

- (a) the revocation of article 12 of the Service Pensions Order 1983 (allowance for eligible members of the family), and
- (b) the amendment of—
 - (i) article 18(5) (additional unemployability allowances), and
 - (ii) article 23 (treatment allowance)

of that Order (“the saved provisions”)

by the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1992(a) (“the 1992 Order”), and notwithstanding the revocation of the 1992 Order and the Service Pensions Order 1983 by this Order, in any case where a pension or allowance or any addition to a pension was payable under any of the saved provisions in respect of a period immediately before 6th April 1992 and is still payable immediately before 11th April 2006 by virtue of the savings set out in article 8 of the 1992 Order, the saved provisions shall continue to have effect as though this Order had not come into force.

(2) The rate for the allowance for eligible members of the family, continued by paragraph (1)(a), shall be the rate payable immediately before 6th April 1992(b).

Savings provision made by the 1993 Order in respect of articles 13, 38, 40 and 41 of the Service Pensions Order 1983

8.—(1) Notwithstanding—

(a) the revocation of—

- (i) article 13 (education allowance for disablement),
 - (ii) article 38 (education allowance for death),
 - (iii) article 40 (pensions to parents), and
 - (iv) article 41 (pensions to other dependants)
- of the Service Pensions Order 1983; and

(b) the amendment of—

- (i) article 23 (treatment allowance),
 - (ii) article 24 (allowance where abstention from work is necessary following treatment in a hospital or similar institution), and
 - (iii) article 25 (allowance for part-time treatment)
- of that Order (“the saved provisions”)

by the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1993(c) (“the 1993 Order”), and notwithstanding the revocation of the 1993 Order and the Service Pensions Order 1983 by this Order, in any case where a pension or allowance was awarded under any of the saved provisions in respect of a period immediately before 12th April 1993 and is still payable immediately before 11th April 2006 by virtue of the transitional provisions set out in article 16 of the 1993 Order, the saved provisions shall, for the duration of that award, continue to have effect as though this Order had not come into force.

(2) The rates for the allowances and pensions specified in paragraph (2)(a) and continued by that paragraph shall be the rates payable immediately before 12th April 1993(d).

(3) Notwithstanding the amendments made to articles 23, 24 and 25 of the Service Pensions Order 1983 by the 1993 Order, where treatment began before 12th April 1993 and a claim for an allowance under any of those provisions is made in respect of that treatment on or after 11 April 1993, the Secretary of State shall determine the claim as though this Order had not come into force.

(a) S.I. 1992/710.

(b) See S.I. 1983/883, article 12.

(c) S.I. 1993/598.

(d) See S.I. 1993/598, Schedule 8.

PART III

CONTINUATION OF TRANSITIONAL PROVISIONS IN THE 1996 ORDER

9.—(1) Notwithstanding the revocation of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment (No. 2) Order 1996^(a) (“the 1996 Order”) and the Service Pensions Order 1983 by this Order, article 3 of, and Schedule 2 to, the 1996 Order (transitional provisions) shall continue to have effect as though this Order had not come into force.

(2) The provisions of Schedule 2 to the 1996 Order are set out below and any reference in that Schedule to—

- (a) “this Order” is a reference to the 1996 Order;
- (b) “the Service Pensions Order” is a reference to the Service Pensions Order 1983;
- (c) a numbered article is a reference to the article bearing that number in the Service Pensions Order 1983.

“SCHEDULE 2 TO THE 1996 ORDER

TRANSITIONAL PROVISIONS

1. In this Schedule—

- (a) “commencement date” means the date on which this Order comes into force;
- (b) “first review” means the first review after commencement date of the entitlement of a member of the armed forces to a relevant allowance;
- (c) “relevant allowance” means any allowance, pension, retired pay or supplement payable either—
 - (i) under a provision which is revoked by article 4 of this Order; or
 - (ii) by virtue of a grant made by the Secretary of State for Defence out of monies provided by Parliamentunder conditions analogous to those relating to any allowance, pension, retired pay or supplement payable under the Service Pensions Order other than those formerly laid down in article 13 or 38 (education allowances)^(b).

2. This Schedule applies where, immediately before commencement date a relevant allowance or an allowance analogous to an education allowance under article 13 or 38 was payable to or in respect of a member of the armed forces, and that allowance would have continued to be payable but for the coming into force of this Order.

3.—(1) after commencement date, and until the first review, the decision by virtue of which the relevant allowance was payable immediately before commencement date shall have effect as if it were a decision that the allowance, pension, retired pay or supplement under the Service Pensions Order to which the relevant allowance was analogous, should be payable at the same rate, subject to the same conditions and for the same term (subject to the following provisions of this Schedule) as the relevant allowance would have been if this Order had not come into force.

(2) Where on the first or any subsequent review of a decision referred to in sub-paragraph (1) that decision is reviewed to the disadvantage of the recipient there shall be paid to him under this paragraph an amount equal to the difference between the amount payable under the Service Pensions Order under the reviewed decision and the amount which would have been payable if the decision had not been reviewed, and that amount shall be increased in

(a) S.I. 1996/1638.

(b) These articles were revoked by S.I. 1993/598 but continue to have effect in respect of cases where awards under them were in payment immediately before their revocation.

accordance with any subsequent general increase in the rate of the pension, retired pay, allowance or supplement to which it is analogous, except where—

- (a) it is determined that the decision which is the subject of the review was erroneous in law and that error was attributable to misrepresentation, or failure to disclose a material fact, by the recipient or someone acting on his behalf; or
- (b) he becomes entitled by virtue of another review to a higher total payment under the Service Pensions Order.

(3) In a case where head (a) of subparagraph (2) applies, the amount payable under this paragraph shall be reduced to that which would have been payable but for the misrepresentation or failure to disclose a material fact.

(4) In a case falling within head (b) of subparagraph (2), the amount of the payment under this paragraph shall be reduced by the amount of the increase in the total payment under the Service Pensions Order.

4. Any payment under paragraph 3 shall be in addition to any allowance, pension, retired pay or supplement which would have been payable under the Service Pensions Order if this Order had not been made.

5. Where immediately before the coming into force of this Order a person was in receipt by virtue of—

- (a) a provision revoked by article 4 of this Order; or
- (b) a grant made by the Secretary of State for Defence out of monies provided by Parliament, of an allowance analogous to that payable under article 13 or 38 (education allowances)

there may be paid to him an allowance under paragraph 6 below, subject to paragraphs 7 and 8 below.

6.—(1) Subject to subparagraphs (3), (4) and (5), there may be paid to a member of the armed forces who is in receipt of retired pay or pension, an allowance in respect of a child for the purpose of his education if the child is a child of the member or by virtue of article 18(5)(e) is treated as a child of the member.

(2) Subject to the following provisions of this paragraph, an allowance in respect of a child to whom or in respect of whom an award has or, but for the provisions of article 33, would have been made under article 35, 36, 37 or 39 may be awarded for the purpose of that child's education.

(3) Subject to sub-paragraphs (4) and (5), an allowance under subparagraph (1) or (2) shall be payable only if—

- (a) the child has attained the age of 5 years; and
- (b) the circumstances of the family are such as to require it; and
- (c) the Secretary of State is satisfied that the type of education which the child is receiving or is to receive is suitable for that child.

(4) Where a child begins or is to begin school before the age of 5 years, subparagraph (3)(a) shall have effect as if for "has attained the age of 5 years" there were substituted the words "has commenced the term's attendance at school in the course of which he will attain the age of 5 years".

(5) The amount of an allowance under this paragraph shall be determined by the Secretary of State, but the total payments made in respect of any period of 12 months for any one child shall not exceed £120.

7. An allowance payable under paragraph 6 of this Schedule shall not be payable if at any time after the coming into force of this Order—

- (a) the conditions set out in that paragraph cease to be satisfied; or

- (b) it appears to the Secretary of State that it is for any other reason inappropriate for payment of the allowance to continue.

8. Paragraphs 3 and 6 of this Schedule are without prejudice to any power now exercisable by the Secretary of State with the concurrence of the Treasury to make provision in excess of that permitted by this Order or the Service Pensions Order in exceptional circumstances conferred by—

- (a) the Order in Council dated 19th December 1881 concerning non-effective pay and allowances for the Royal Navy at rates, and under circumstances, other than those laid down in existing Regulations;
- (b) the Royal Warrant dated 27th October 1884 concerning the issue of pay, non-effective pay and allowances for the Army; or
- (c) the Order of His Majesty dated 14th January 1922 concerning the issue of pay, non-effective pay and allowances of the Royal Air Force,

and accordingly those instruments shall have effect as if a reference to those paragraphs of this Schedule were included in each of them.”.

SCHEDULE 5

Article 71(2)

REVOCATIONS

<i>Instruments</i>	<i>References</i>
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983	S.I. 1983/883
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1983	S.I. 1983/1116
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment (No. 2) Order 1983	S.I. 1983/1521
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1984	S.I. 1984/1154
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment (No. 2) Order 1984	S.I. 1984/1687
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1985	S.I. 1985/1201
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1986	S.I. 1986/592
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1987	S.I. 1987/165
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1988	S.I. 1988/248
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment (No. 2) Order	S.I. 1988/2248
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1989	S.I. 1989/156
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1990	S.I. 1990/250
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment (No. 2) Order 1990	S.I. 1990/1308
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1991	S.I. 1991/766
The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1992	S.I. 1992/710
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1992/3208

Service Pensions Amendment (No. 2) Order 1992	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1993/598
Service Pensions Amendment Order 1993	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1994/772
Service Pensions Amendment Order 1994	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1994/1906
Service Pensions Amendment (No. 2) Order 1994	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1995/766
Service Pensions Amendment Order 1995	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1996/732
Service Pensions Amendment Order 1996	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1996/1638
Service Pensions Amendment (No. 2) Order 1996	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1996/2882
Service Pensions Amendment (No. 3) Order 1996	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1997/286
Service Pensions Amendment Order 1997	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1998/262
Service Pensions Amendment Order 1998	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 1999/294
Service Pensions Amendment Order 1999	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 2000/252
Service Pensions Amendment Order 2000	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 2001/409
Service Pensions Amendment Order 2001	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 2002/792
Service Pensions Amendment Order 2002	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 2003/434
Service Pensions Amendment Order 2003	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 2004/708
Service Pensions Amendment Order 2004	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 2005/851
Service Pensions Amendment Order 2005	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 2005/1471
Service Pensions Amendment (No. 2) Order 2005	
The Naval, Military and Air Forces etc. (Disablement and Death)	S.I. 2005/3187
Service Pensions Amendment (No. 3) Order 2005	

SCHEDULE 6

Article 1(2)

INTERPRETATION

PART I

WARRANTS AND ORDERS

<i>Item</i>	<i>Expression</i>	<i>Meaning</i>
1.	“the 1917 Warrant”	the Royal Warrant of 1st August 1917 ^(a) ;
2.	“the 1919 Warrant”	the Royal Warrant of 6th December 1919 ^(b) ;
3.	“the 1920 Warrant”	the Royal Warrant of 2nd July 1920 ^(c) ;
4.	“the 1917 (Officers) Order”	the Order in Council of 29th September 1917 ^(d) ;
5.	“the 1917 (Warrant Officers)”	the Order in Council of 29th September 1917 ^(e) ;

	Order”	
6.	“the 1920 Order in Council”	the Order in Council of 11th June 1920 ^(f) ;
7.	“the 1921 (Officers) Order”	the Order in Council of 9th March 1921 ^(g) ;
8.	“the 1921 (Warrant Officers) Order”	the Order in Council of 9th March 1921 ^(h) ;
9.	“the 1920 Order”	the Order by His Majesty of 11th May 1920 ⁽ⁱ⁾ ;
10.	“the 1921 Order”	the Order by His Majesty of 25th September 1921 ^(j) ;
11.	“the 1919 to 1920 other ranks instruments”	the instruments specified in items 2, 6, and 9 above (and the expression “a 1919 to 1920 other ranks instrument” shall be construed accordingly);
12.	“the 1920 to 1921 (Officers) instruments”	the instruments specified in items 3, 7, 8 and 10 above (and the expression “a 1920 to 1921 instrument” shall be construed accordingly);
13.	“the 1919 to 1921 instruments”	the instruments specified in items 2,3, and 6 to 10 above (and the expression “ a 1919 to 1921 instrument” shall be construed accordingly);
14.	“the 1964 instrument”	the Order in Council of 25th September 1964 ^(k) , or the Royal Warrant of 19th September 1964 ^(l) , or the Order by Her Majesty of 24th September 1964 ^(m) , whichever instrument is appropriate in any particular case, and the expression “1964 instruments” shall be construed accordingly;
15.	“the Service Pensions Order 1978”	the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1978 ⁽ⁿ⁾ ;
16.	“the Service Pensions Order 1983”	the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 ^(o) ;
17.	“the 2005 Order”	the Armed Forces and Reserve Forces Compensation Scheme Order 2005 ^(p) .

^(a) Army Order 268 of 1917.

^(b) Cmnd 457 of 1919; the relevant amending instruments are Cmnd 1701 of 1922; 1752 of 1922; 1852 of 1923; 2467 of 1964; 4134 of 1969; 5395 of 1973; and 5670 of 1974.

^(c) Cmnd 811; the relevant amending instructions are Cmnd 1932 of 1923; 2013 of 1923; 2467 of 1964; 4134 of 1969; 5395 of 1973; and 5670 of 1974.

^(d) S.R. & O. 1917/1022.

^(e) S.R. & O. 1917/1023.

^(f) S.R. & O. 1920/1021; the relevant amending instruments are S.R. & O.1924/505; 1924/1390; 1925/1034; 1928/46; Orders in Council dated 25th September 1964; 31st July 1969; 27th July 1973; and 28th June 1974.

^(g) S.R. & O 1921/360; the relevant amending instruments are S.R. & O. 1925/763; 1928/44; Orders in Council dated 25th September 1964; 31st July 1969; 27th July 1973; and 28th June 1974.

^(h) S.R. & O. 1921/361; the relevant amending instruments are S.R. & O. 1925/764; 1928/45; Orders in Council dated 25th September 1964; 31st July 1969; 27th July 1973; and 28th June 1974.

⁽ⁱ⁾ HC 120 of 1920; the relevant amendments are HC 133 of 1925; 133-1 of 1925; 134 of 1925; Cmnd. 2472 of 1964; 4135 of 1969; 5396 of 1973; and 5671 of 1974.

^(j) The relevant amendments are HC 171 of 1925; 9 or 1928; 2472 of 1964; 4135 of 1969; 5396 of 1973 and 5671 of 1974.

^(k) The relevant amending instruments are Orders in Council dated 22nd December 1964; 24th February 1966; 9th June 1966; 28th July 1966; 23rd August 1967; 14th February 1968; 26th July 1968; 31st July 1969; 4th February 1970; 28th July 1971; 26th July 1972; 27th July 1973; 28th June 1974; 18th March 1975; 17th September 1975; 23rd July 1976; 9th March 1977; S.I. 1977/1630; 1978/278; 1978/1404 and 1978/1405.

^(l) Cmnd 2467; the relevant amending instruments are Cmnd 2553 of 1964; 2926 of 1966; 3023 of 1966; 3072 of 1966; 3385 of 1967; 3530 of 1968; 3728 of 1968; 4134 of 1969; 4287 of 1970; 4742 of 1971; 5077 of 1972; 5395 of 1973; 5670 of 1974; 6001 of 1975; 6247 of 1975; 6583 of 1976; 6763 of 1977 and S.I. 1977/1630; 1978/278; 1978/1404; and 1978/1405.

^(m) Cmnd 2472; the relevant amending instruments are Cmnd 2554 of 1964; 2927 of 1966; 3024 of 1966; 3071 of 1966; 3384 of 1967; 3531 of 1968; 3729 of 1968; 4135 of 1969; 4286 of 1970; 4743 of 1971; 5078 of 1972; 5396 of 1973; 5671 of 1974; 6002 of 1975; 6246 of 1975; 6582 of 1976; 6762 of 1977; and SI 1977/1630; 1978/278; 1978/1404 and 1978/1405.

⁽ⁿ⁾ S.I. 1978/1525.

^(o) S.I. 1983/883.

^(p) S.I. 2005/439.

PART II

GENERAL

<i>Item</i>	<i>Expression</i>	<i>Meaning</i>
18.	“adopted”	adopted within the meaning of Part IV of the Adoption Act 1976 ^(a) or, in Scotland section 38 of the Adoption (Scotland) Act 1978 ^(b) and “adoption” shall be construed accordingly;
19.	“adult dependant”	for the purposes of article 12— (a) a person who resides in the home of a member of the armed forces and who— <ul style="list-style-type: none"> (i) is his grandfather or father (including stepfather) and is incapable of self-support, (ii) is his grandmother or mother (including stepmother) who is incapable of self-support, (iii) is his son (including stepson, adopted son or illegitimate son) and has attained the child’s age limit and is incapable of self-support, (iv) is his daughter (including step-daughter, adopted daughter or illegitimate daughter) and has attained the child’s age limit or is his sister (including half-sister or step-sister) and has attained the age of 16 years who is incapable of self-support; or (b) an adult female person who, in the home of a member, looks after any child of the member in respect of whom an allowance is being paid under article 12 being in each case a person who is in receipt of regular and substantial support or benefit from the member;
20.	“Airman”	(1) in relation to service during the 1914 World War, a person defined as airman in the Air Force Act 1917 ^(c) who was enlisted or entered into service in any portion of the Royal Air Force, Air Force Reserve or Auxiliary Air Force ordinarily maintained by enlistment in the United Kingdom— <ul style="list-style-type: none"> (a) including any such person who was enlisted or entered into service in any troops raised within or without the United Kingdom whose terms of service included or, under due authority, were made to include the pension provisions for the time being for British Air Forces, if such provisions were a charge on British Revenues; but (b) not including any airman who was merely attested and passed to the Reserve of any other person unless or until he actually served as airman in circumstances to which pension rights would normally, or under his conditions or service, have

- attached, had he been in the Royal Navy or the Regular Army;
- (2) in relation to service after 30th September 1921, a member of the air forces who is not an officer;
21. “apprentice” a person undergoing full-time training for any trade, business, profession, office, employment or vocation, and receiving not more than nominal wages;
22. “authorised agent” a person authorised by the Secretary of State for the purpose of receiving claims under this Order, including, without prejudice to the generality of the foregoing, a person exercising consular functions on behalf of Her Majesty’s Government in right of the United Kingdom in the territory or place whether the person making the claim is resident at the time when it is made;
23. “child” in relation to a member of the armed forces, a child with respect to whom the member—
- (a) is in law the mother or father of the child, including by adoption;
 - (b) is the child’s step-parent; or
 - (c) is the child’s foster parent within the meaning in the Children Act 1989^(d) or, in Scotland, the Foster Children (Scotland) Act 1984^(e);
- and in each case the member—
- (i) is regularly maintaining him or contributing to his maintenance or could reasonably be expected to do so;
 - (ii) where the member has died, was regularly maintaining him or contributing to 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;
24. “child’s age limit” in relation to a child or juvenile dependant of a member of the armed forces, the age of 16 years;
25. “dependant living as a spouse” (a) in relation to a member of the armed forces whose disablement is due to service before the commencement of the 1914 World War or after 30th September 1921, a person of the opposite sex who is not married to, but who is wholly or substantially maintained by the member on a permanent bona fide domestic basis throughout the period beginning 6 months prior to the commencement of his service and continuing, where the member is disabled, any award under this Order in respect of his disablement and, where the award is reviewed up to the date of review or, where the member is dead, up to the date of his death;
- (b) in relation to a member whose disablement is due to service during the 1914 World War, a woman living with a soldier, rating or airman, as a wife if she has drawn in respect of him separation allowance as for a wife; (and the expression “dependant who lived as a spouse” shall be construed accordingly);
26. “dependant living as a civil partner” in relation to a member of the armed forces whose disablement is due to service before the commencement of the 1914 World War or after 30th September 1921, a person of the same sex who has not formed a civil

- partnership with, but is wholly or substantially maintained by, the member on a permanent basis throughout the period beginning 6 months prior to the commencement of his service and continuing where the member is disabled, up to the date of any award under this Order in respect of his disablement, and where the award is reviewed, up to the date of review, or where the member is dead, up to the date of his death;
(and the expression “dependant who lived as a civil partner” shall be construed accordingly);
27. “disablement” physical or mental injury or damage or loss of physical or mental capacity (and “disabled” shall be construed accordingly);
28. “earnings” any remuneration or profit derived from employment;
29. “eligible dependant” in relation to a course of treatment as defined in item 61, a person who is an eligible member of the family or who would be an eligible member of the family if for the date specified in items 25 or 26 of this Schedule as the terminating date of the period therein mentioned, there were substituted the date of commencement of that course of treatment;
30. “eligible member of the family” spouse, civil partner, dependant living as a spouse, dependant living as a civil partner or child of a member of the armed forces;
31. “incapable of self-support” in relation to any person, incapable of supporting himself solely by reason of—
(a) physical or mental infirmity of a permanent or prolonged nature; or
(b) old age; or
(c) being a juvenile dependant;
32. “injury” includes wound or disease but excludes any injury due to—
(a) the use or effects of tobacco; or
(b) the consumption of alcohol;
except that paragraph (a) in so far as it relates to the use of tobacco, and paragraph (b) above shall not apply where the person suffers from a mental condition which is attributable to service if—
(i) the degree of disablement in respect of that condition has been assessed at 50% or more; and
(ii) he started or continued to use tobacco or to consume or continue to consume alcohol due to that condition;
33. “juvenile dependant” a brother, sister, half-brother, half-sister, stepbrother, stepsister or grandchild, who has not attained the child’s age limit;
34. “member of the air forces” (1) in relation to service during the 1914 World War, a person defined as officer in paragraph (1)(b) of the 3rd column of item 41 of this Schedule, in so far as that paragraph relates to an officer serving in or with the Royal Air Force, or a person defined as airman in paragraph (1) of the 3rd column of item 20 above;
(2) in relation to service after 30th September 1921, an officer holding a commission in or an airman, of the Royal Air Force, excluding—
(a) a member of a local force raised abroad for

- service with the Royal Air Force;
- (b) a person excluded by the terms of his service from the benefits of this Order, or whose conditions of service include other provisions of a like nature;
- (c) a member of a category or class specifically excluded from the benefits of this Order;
- (d) a member of the Polish Resettlement Corps (Royal Air Force);
35. “member of the armed forces” a member of the naval forces, the military forces or, as the case may be, of the air forces and any provision of this Order relating to a member of the armed forces shall, except where inappropriate, be construed as relating also to a woman member of the armed forces and as relating to a person whose service as a member or woman member has ended, and the expression “member” shall be construed accordingly;
36. “member of the military forces” (1) in relation to service before or during the 1914 World War, a person defined as officer in paragraph (1)(b) of the 3rd column of item 41 of this Schedule, in so far as that paragraph relates to officers, other than air force officers, or a person defined as soldier in paragraph (1) of the 3rd column of item 55 below;
- (2) in relation to service after 30th September 1921, an officer holding a commission in, or a soldier of, the army whose unit is based in the United Kingdom or the Isle of Man, excluding—
- (a) a member of the Army Audit Staff holding a commission in connection with the performance of his duties as such;
- (b) a person to whom article 499 or article 1127 of the Royal Warrant of 29th February 1940 is applicable;
- (c) a person excluded by the terms of his service from the benefits of this Order, or whose conditions of service include other provisions of a like nature;
- (d) a member of a category or class specifically excluded from the benefits of this Order;
- (e) a member of the Polish Resettlement Corps;
37. “member of the naval forces” (1) in relation to service before or during the 1914 World War, a person defined as officer in paragraph (1)(a) of the 3rd column of item 41 of this Schedule or as rating in paragraph (1) of the 3rd column of item 51 below;
- (2) in relation to service after 30th September 1921 an officer or rating of the Royal Navy or the Royal Marines, within the meaning of the principal Naval Regulations, excluding—
- (a) an officer or rating serving under conditions other than those prescribed by the principal Naval Regulations;
- (b) a person entered abroad on a non-continuous service engagement for local service only;
- (c) a non-European Native rating (whether a British subject or not);
- (d) a person excluded by the terms of his service

- from the benefits of this Order, or whose conditions of service include other provisions of a like nature;
- (e) a person serving in one of Her Majesty's ships or in a Fleet Auxiliary or in any other vessel in the service of the Admiralty under an agreement known as Agreement T.124 or a variant of that Agreement or under any other mercantile or special agreement;
- (f) a member of a category or class specifically excluded from the benefits of this Order;
38. "member of the Reserve or Auxiliary Forces" a member of the armed forces after 30th September 1921, but otherwise than during any period during which he is embodied or mobilised or, pursuant to the provisions of the Reserve and Auxiliary Forces (Training) Act 1951^(f) is called up for flying instructor duties, who is—
- (a) a member of the Royal Fleet Reserve;
- (b) a member of the Royal Naval Reserve;
- (c) a member of the Royal Marine Forces Volunteer Reserve;
- (d) a member of the Royal Naval Special Reserve;
- (e) a member of the Royal Naval Volunteer Reserve, including the Royal Naval Volunteer Reserve (Supplementary), the Royal Naval Volunteer (Wireless) Reserve and the Royal Naval Volunteer (Postal) Reserve;
- (f) a member of the Women's Royal Naval Reserve, including the Women's Royal Naval Supplementary Reserve;
- (g) a member of the Women's Royal Naval Volunteer Reserve;
- (h) a member of the Regular Army Reserve of Officers, the Supplementary Reserve of Officers or the Army Emergency Reserve of Officers;
- (i) a member of the Royal Army Reserve, the Regular Reserve, the Supplementary Reserve (including the Militia) or the Army Emergency Reserve;
- (j) a member of the Territorial Army (including the Territorial Army Reserve of Officers) or the Territorial and Army Volunteer Reserve;
- (k) a member of the Auxiliary Territorial Services (Territorial Army), or of the Women's Royal Army Corps (Territorial Army or of the Women's Royal Corps (Territorial and Army Volunteer Reserve);
- (l) a member of the Royal Air Force Reserve (including the Reserve of Air Force Officers), the Women's Royal Air Force Reserve (including the Women's Royal Air Force Reserve of Officers), the Royal Air Force Volunteer Reserve and the Women's Royal Air Force Volunteer Reserve;
- (m) a member of the Royal Auxiliary Air Force, Royal Auxiliary Air Force Reserve (including the Royal Auxiliary Air Force Reserve of Officers), the Women's Royal Auxiliary Air Force Reserve and the Women's Auxiliary Air Force Reserve;

- (n) a member of Queen Alexandra's Royal Naval Nursing Service Reserve;
- (o) a member of the Territorial Army Nursing Service or the reserve thereof or of Queen Alexandra's Royal Army Nursing Corps (Army Emergency Reserve) or of the Queen Alexandra's Royal Army Nursing Corps (Territorial Army) or of the Queen Alexandra's Royal Army Nursing Corps (Territorial and Army Volunteer Reserve);
- (p) a member of Princess Mary's Royal Air Force Nursing Service Reserve;
- (q) a member of the Voluntary Aid Detachment Reserve;
- (r) a person called up for training pursuant to the provisions of the Reserve and Auxiliary Forces (Training) Act 1951;
39. "noise-induced sensorineural hearing loss" damage to the cochlea hair cells of the inner ear which is caused by the exposure of the cochlea to noise, and a condition or a symptom is to be treated as related to such hearing loss if it is another condition, or a symptom, which is the consequence of damage to the cochlea hair cells of the inner ear which is caused by the exposure of the cochlea to noise;
40. "nurse" a person described in paragraph (1) of the 3rd column of item 62 of this Schedule;
41. "officer"
 (1) in relation to service before or during the 1914 World War—
 (a) a commissioned or subordinate officer (including a commissioned officer from a warrant rank and a warrant officer, other than a warrant officer of the Royal Marines) on the permanent, temporary or reserve lists of the Royal Navy, Royal Marines or Reserves or, as the case may be, the Royal Naval Reserve, who served and was in receipt of naval pay as such during some period before or during the said war; or
 (b) a commissioned officer whether he held a permanent, short service, temporary or local commission in the Regular or Reserve Forces or in the Territorial Force or in the Royal Air Force, who served and was in receipt of military or, as the case may be, air force pay as such during some period of the said war, but excluding any officer of the Indian Army or of the Dominion, Colonial or Protectorate Forces, then existing, whether raised for general or local service, unless the terms of his service were made to include the pension rights of the Regular Army or, as the case may be, of the Regular Army or Air Force;
- (2) in relation to service after 30th September 1921, a member of the armed forces who is a commissioned officer therein, including, as may be appropriate, a woman member with officer status, a subordinate officer or warrant officer (other than a sergeant-major) of the Royal Marines or a woman member of the naval forces of warrant officer status;

42. “officer on the Active List” an officer who is on full pay, half pay or otherwise before his retirement but not an officer who has retired and is subsequently re-called to service or is re-employed;
43. “other dependant” grandparent, step-parent, brother, sister, half-brother, half-sister, stepbrother, stepsister or grandchild;
44. “parent” in relation to a deceased member of the armed forces—
 (a) a person of whom the member was a legitimate, legitimated or illegitimate child; or
 (b) a person who had adopted the member; or
 (c) a person who, for a period of 5 years (or such lesser period as the Secretary of State may determine in the exceptional circumstances of any case) during the minority of the member, acted in the place of a parent to, and wholly or mainly maintained, the member; or
 (d) a person who, for such period as is mentioned in paragraph (c) of this item, was the spouse (not being a separated spouse) or civil partner (not being a separated civil partner) of a person fulfilling the conditions set out in that paragraph;
45. “Pay Warrant” The Royal Warrant of 22nd August 1959 (and any reference to a provision of that Warrant shall, where the context so requires, be construed as a reference to any provision of an earlier Warrant replaced, with or without amendment, by the first mentioned provision);
46. “pension” in relation to a rating, soldier or airman, a disablement pension awarded under article 6 or under article 1 of a 1919 to 1920 other rank instrument and in relation to a nurse, a disablement pension or an addition to service retired pay awarded under article 23 of a 1920 to 1921 (officers) instrument or an addition to service pension awarded under column (6) in Schedule 3 to the 1917 (Officers) Order and, where appropriate, any pension referred to in article 4(a)(ii) or (iii);
47. “Pension Warrant” the Royal Warrant of 23rd December 1960 (and any reference to a provision of that Warrant shall, where the context so requires, be construed as a reference to any provision of an earlier Warrant replaced, with or without amendment, by the first mentioned provision);
48. “principal Air Force Regulations” the Queen’s Regulations and Air Council Instructions for the Royal Air Force as amended from time to time, the Regulations governing the various Auxiliary and Reserve Forces and the Nursing Service, as so amended, and any other regulations, instructions and provisions issued or made from time to time in relation to the air forces;
49. “principal Naval Regulations” the Queen’s Regulations and Admiralty Instructions for the government of Her Majesty’s Naval Service, as amended from time to time, the Regulations governing the various Reserve Forces as so amended, the provisions summarised in the Appendix to the Navy List as so amended; and any other regulations, instructions or provisions issued or made from time to time in relation to Her Majesty’s Naval Service;
50. “public funds” (a) moneys provided by Parliament or appropriated by a Measure of the Northern Ireland Assembly;

- (b) moneys, the payment whereof is a charge on the Consolidated Fund of the United Kingdom or of Northern Ireland;
- (c) moneys provided by any general or local rate or by a fund established under or by virtue of any public, general or local Act;
- (d) moneys provided under the Local Government Finance Act 1992^(g) or
- (e) moneys payable under any enactment, ordinance, regulation or other instrument forming part of the law of any place outside the United Kingdom;
51. “rating”
- (1) in relation to service before or during the 1914 World War, a seaman or marine, including Chief Petty or Petty Officer and Warrant Officer (other than a Warrant Officer included in the definition of officer in item 41 of this Schedule) and a Non-Commissioned Officer of the Royal Marines (other than a Royal Marine Gunner) who served or was in receipt of naval or marine pay as such before or during some period of the said war—
- (a) including any man belonging to the Naval and Marine Reserves and also any seaman or marine specially enlisted or deemed to be specially enlisted for the purpose of the said war and transferred forthwith to the Reserve, if—
- (i) he was called into actual service; and
- (ii) served; and
- (iii) was in receipt of naval or marine pay as such during some period of the said war; but
- (b) not including any person who was a seaman or marine of the Royal Indian Marine, or of Dominion, Colonial or Protectorate Forces, whether raised for local or general service;
- (2) in relation to service after 30th September 1921, a member of the naval forces who is not an officer;
52. “remunerative work”
- either—
- (a) work for which payment is made or which is done in expectation of payment, or
- (b) attendance at a training course in respect of which the member receives a training allowance in pursuance of arrangements made under section 2(i) of the Employment and Training Act 1973^(h) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990⁽ⁱ⁾ or corresponding provisions in Northern Ireland;
53. “retired pay”
- (1) in relation to officers, other than any warrant officer member of the naval forces—
- (a) retired pay awarded under article 6 of this Order;
- (b) retired pay or additional retired pay awarded under article 1 of a 1920 to 1921 (Officers) instrument other than the 1921 (Warrant Officers) Order; or
- (c) additional retired pay or half-pay under the 1917 (Officers) Order, Schedule 1, column 8 or the 1917 Warrant, Schedule 1, column 9; or
- (2) in relation to any warrant officer member of the naval

forces—

- (a) retired pay awarded under article 10 of this Order;
 - (b) retired pay or an addition to service retired pay, pension or gratuity awarded under article 1 of the 1921 (Warrant Officers) Order; or
 - (c) an addition to service pension awarded under the 1917 (Warrant Officers) Order, Schedule 1, column (5) or (6); or, where appropriate,
54. “service” (3) any retired pay referred to in article 4(a)(i); service as a member of the armed forces before 6th April 2005 and the word “served” shall be construed accordingly.
55. “soldier” (1) in relation to service before or during the 1914 World War, a person defined as soldier in the Army Act 1881⁽ⁱ⁾, who was enlisted or entered into service in any portion of the Regular Army, the Special Reserve, or the Territorial Force ordinarily maintained by enlistment in the United Kingdom—
- (a) including any such person who was enlisted or entered into service in any troops raised within or without the United Kingdom, whose terms of service included, or, under due authority were made to include, the pension provisions for the time being for British Troops, if such provisions were a charge on British revenues; but
 - (b) not including soldiers who were merely attested and passed to the Reserve, or members of the Volunteer Force, or any other person unless or until he actually served as a soldier in circumstances in which the pension rights of the Regular Army would normally, or under his conditions of service have attached;
56. “student” (2) in relation to service after 30th September 1921, a member of the military forces who is not an officer; a person who is receiving full-time instruction at a university, college, secondary school or technical school, or at any other establishment which, in the opinion of the Secretary of State, is a comparable educational establishment, and for the purposes of this Order a person may continue to be a student for such period (being a period not exceeding 13 weeks) after he ceases to receive full-time instruction as aforesaid and before he attains the age of 19 as the Secretary of State may in any particular case determine;
57. “surviving spouse” the widow or, as the case may be, widower of a member of the armed forces;
58. “surviving civil partner” surviving civil partner of a member of the armed forces;
59. “termination” in relation to service as a member of the armed forces—
- (a) subject to the provisions of paragraph (b) below, termination of service as such a member by reason of—
 - (i) retirement
 - (ii) discharge
 - (iii) demobilisation
 - (iv) transfer to the Emergency List or

- Reserve; or
in any other manner;
- (b) where the member renders service during more than one period, the date, having regard to the foregoing provisions of this item, of the end of the period which is relevant in his case; (and the word “terminated” shall be construed accordingly);
60. “therapeutic earnings” 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;
61. “treatment” (1) any treatment as an in-patient of a hospital or similar institution; or
(2) a course of medical, surgical or rehabilitative treatment of a remedial nature
which in either case the Secretary of State is satisfied that a member of the armed forces should receive in consequence of any disablement in respect of which an award under this Order or any previous Order or Royal Warrant may be or has been made, but does not include any treatment which involves no or only occasional interruptions of the member’s normal employment;
62. “Veterans Agency” an office designated by the Secretary of State for the purpose of receiving and determining applications for a pension, allowance or supplement;
63. “woman member of the armed forces” (1) in relation to service before or during the 1914 World War, a member of—
(a) the Royal Naval Nursing Service;
(b) the Royal Naval Nursing Service Reserve;
(c) Queen Alexandra’s Imperial Military Nursing Service;
(d) the Territorial Force Nursing Service; or
(e) the Royal Air Force Nursing Service;
(2) in relation to service after 30th September 1921, a woman who is—
(a) commissioned or enlisted or enrolled as a member of the armed forces;
(b) enrolled in the Women’s Royal Naval Service or a reserve thereof;
(c) a member of the Army Emergency Reserve or the Territorial Army or the Territorial and Army Volunteer Reserve;
(d) a member of the Women’s Auxiliary Air Force or the reserve thereof (other than a member of the Polish Resettlement Section of the Women’s Auxiliary Air Force);
(e) a medical or dental practitioner employed with the Royal Army Medical Corps or the Royal Army Dental Corps or the Medical or Dental Branches of the Royal Navy or Royal Air Force with relative rank as an officer or with naval status for general service as the case may be;
(f) enrolled in Queen Alexandra’s Royal Naval Nursing Service or Queen Alexandra’s Imperial Military Nursing Service or the Territorial Army Nursing Service or Princess Mary’s Royal Air Force Nursing Service or the respective Reserve or

Auxiliary Sections thereof;
(g) enrolled in the Auxiliary Territorial Service
(other than a member of the Polish Resettlement
Section (Auxiliary Territorial Service));
(h) a member of a Voluntary Aid Detachment
enrolled for employment under the Defence
Council;

64. “the 1914 World War” the war which began on 4th August 1914 and ended on
31st August 1921 (and the expression “during the 1914
World War” shall be construed as a reference to any
period beginning on or after 4th August 1914 and ending
on or before 30th September 1921^(k))

^(a) 1976 c.3.

^(b) 1978 c.28.

^(c) 1917 c.51 see Army Act (1881 c.58) as modified by 1917 c.51, s.12(1)).

^(d) 1989 c.41.

^(e) 1984 c.56.

^(f) 1951 c.23.

^(g) 1992 c.14.

^(h) 1973 c.50.

⁽ⁱ⁾ 1990 c.35.

^(j) 1881 c.58.

^(k) See War Pensions Act 1920 (c.23), sections 1 and 2, and S.R. & O 1921/1276.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order consolidates into a single instrument the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (“the 1983 Order”), which made provision for pensions and other awards in respect of disablement or death due to service in the naval, military or air forces, and subsequent amending Orders.

The provisions in the 1983 Order which prevent a person in receipt of a retirement pension (other than a retirement pension which consists of certain additions) from being eligible for unemployment allowances, are revoked.

Article 53 (maintenance in a hospital or an institution) now only requires deductions to be made from constant attendance allowance and severe disablement occupational allowance while a person to whom those allowances are paid is in hospital or an institution.

Articles 65 and 66 are new provisions. Article 65 gives the Secretary of State power to suspend a pension, gratuity or supplement where a person, having been required to provide evidence or information or to attend for a medical examination, fails to do so after being given reasonable notice. Article 66 requires the Secretary of State to cancel an award which has been suspended under article 65 where the person fails either to provide the evidence or information required or to attend for a medical examination within the period of 12 months starting with the date on which the notice is given or sent to him.

The Order up-rates the rates of retired pay, pensions, gratuities and allowances payable in respect of disablement due to service (Schedule 1) and the rates of pension and allowances payable to spouses and civil partners of members of the armed forces and to persons who lived as spouses or civil partners of members of the armed forces (Schedule 2).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

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