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STATUTORY INSTRUMENTS

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**1997 No. 286**

**PENSIONS**

**The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Amendment Order 1997**

<i>Made</i>	- - - -	<i>12th February 1997</i>
<i>Laid before Parliament</i>		<i>24th February 1997</i>
<i>Coming into force</i>	- -	<i>7th April 1997</i>

At the Court at Buckingham Palace, the 12th day of February 1997.

Present,

The Queen's Most Excellent Majesty in Council

WHEREAS Her Majesty deems it expedient to amend the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(1) by Order in Council in pursuance of section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(2):

NOW, THEREFORE, Her Majesty, in exercise of the powers conferred by section 3 of the Naval and Marine Pay and Pensions Act 1865(3), section 2(1) of the Pensions and Yeomanry Pay Act 1884(4), section 2(1) of the Air Force (Constitution) Act 1917(5) and sections 12(1) and 24(3) of the said Act of 1977, 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:—

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Amendment Order 1997 and shall come into force on 7th April 1997.

(2) In this Order “the principal Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 and, except where the context otherwise requires, a reference to a numbered article, Part, Table or Schedule is to the article Part, Table or Schedule in the principal Order which bears that number.

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(1) S.I.1983/883, as amended by S.I. 1983/1116, 1521, 1984/1154, 1687, 1985/1201, 1986/592, 1987/165, 1988/248, 2248, 1989/156, 1990/250, 1308, 1991/766, 1992/710, 3208, 1993/598, 1994/772, 1906, 1995/766, 1996/732, 1638 and 2882.  
(2) 1977 c. 5.  
(3) 28 & 29 Vict c.73.  
(4) 47 & 48 Vict c.55.  
(5) 7 & 8 Geo 5 c.51.

### **Amendment of article 3A**

#### **2. In article 3A(6) (making of claims)**

- (a) in paragraph (1), after the words “or supplement” where they first occur there shall be inserted the words “(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 42(1)(7))”;
- (b) at the end of paragraph (2) there shall be added—
  - “(p) an award of funeral expenses under article 42A (funeral expenses).”.

### **Amendment of article 17**

#### **3. In article 17 (allowance for wear and tear of clothing), for paragraphs (1) and (2) there shall be substituted the following paragraph —**

- “(1) A member of the armed forces who is in receipt of retired pay or a pension may be awarded an allowance in respect of wear and tear of clothing at the rate specified in paragraph 5 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.”.

### **Amendments of articles 18, 21 and 26A**

#### **4.—(1) In the amendments to the principal Order made in paragraphs (2) to (4) below, a claim is a new claim where —**

- (a) the date of the claim occurs on or after 7th April 1997; and
  - (b) 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 or, as the case may be, the supplement in question.
- (2) In article 18 (unemployability allowances) —
- (a) after paragraph (1) there shall be inserted the following paragraph —

“(1A) 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 he attains the age of 65; or
    - (b) where the degree of disablement is assessed at less than 60 per cent.”;
  - (b) in paragraph (2) for the amount “£2,366”(8) there shall be substituted the amount “£2,418”.
- (3) In article 21 (allowance for lowered standard of occupation) —
- (a) in paragraph (1) at the beginning there shall be inserted the words —

“Except in the case of a member to whom paragraph (1B) applies,”; and
  - (b) after paragraph (1A)(9) there shall be inserted the following paragraph —

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(6) Article 3A was inserted by S.I. [1996/2882](#).  
(7) Article 42(1) has been amended by S.I. [1984/1154](#).  
(8) The sum £2,366 was substituted by S.I. [1996/732](#).  
(9) Paragraph (1A) was inserted by S.I. [1985/1201](#).

“(1B) This paragraph applies in the case of a member who submits 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.”.

(4) In article 26A(10) (mobility supplement), after paragraph (1) there shall be inserted the following paragraph —

“(1A) This article shall not apply in the case of a member who submits a new claim where the degree of disablement is assessed at less than 40 per cent.”.

#### **Amendment of article 27**

5. In article 27(11) (awards in respect of death) —

- (a) In paragraph (1), after the words “due to service” there shall be inserted the words “or to which article 42A(2)(b) applies”;
- (b) in paragraph (3), the words from “so however” to the end of the paragraph shall be deleted;
- (c) at the end, there shall be added the following paragraph —

“(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 18 (unemployability allowances) was payable,

shall be regarded as due to service for the purposes of the provisions of this Part.”.

#### **Amendment of article 29**

6. In article 29(12) (pensions to widows) in —

- (a) paragraph (1)(a)(i) after the words “40 years” there shall be inserted “or is the widow of an officer who was a member of the armed forces between 14th August 1914 and 30th September 1921”;
- (b) paragraph (1A) for the amount “£51.71” there shall be substituted the amount “£52.80”.

#### **Amendment of article 42**

7. In article 42(13) (marriage of female persons) —

- (a) after paragraph (1) there shall be inserted the following paragraph —

“(1A) Where —

- (a) in accordance with paragraph (1) an award ceased because the person had another person living with her as her spouse; and
- (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.”;

- (b) paragraphs (3), (6) and (7) shall be omitted.

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(10) Article 26A was inserted by S.I. 1983/1116; such amendments as have been made to article 26A are not relevant to this Order.

(11) Article 27 has been amended by S.I. 1986/592 and 1996/2882.

(12) Article 29 has been amended: relevant amending instruments are S.I. 1993/598, 1994/1906 and 1996/732.

(13) Article 42 has been amended: the relevant amending instruments are S.I. 1993/598 and 1996/732.

## Funeral expenses

8. In Part IV, at the end, there shall be added —

### “Funeral expenses

**42A.**—(1) Where a member of the armed forces dies on or after 7th April 1997 and —

- (a) the funeral took place in the British Islands or the Republic of Ireland,
- (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, including the cost of transporting the body of the deceased member but only within the area of the British Islands and the Republic of Ireland.

(2) The conditions specified in this paragraph are —

- (a) the death of the member was due to service;
- (b) the death of the member occurred whilst, in respect of the disablement which gives rise to an award under this Order, he was—
  - (i) receiving free in-patient treatment within the meaning of regulation 2(2) of the Social Security (Hospital In-Patient Regulations) 1975<sup>(14)</sup> or of any corresponding enactment having effect in Northern Ireland; or
  - (ii) provided with accommodation and services under section 65 of the National Health Service Act 1977<sup>(15)</sup>, section 58 of, or paragraph 14 of Schedule 7A to, the National Health Service (Scotland) Act 1978<sup>(16)</sup> or paragraph 14 of Schedule 2 to the National Health Service and Community Care Act 1990<sup>(17)</sup> or under any corresponding enactment having effect in Northern Ireland.”

## Substitution of article 65

9. For article 65<sup>(18)</sup> there shall be substituted —

### “Commencing dates of awards under this Order

**65.** Schedule 3 has effect with respect to commencing dates of awards under this Order.”.

## Amendment of Schedules

**10.**—(1) In Schedule 1 (rates of retired pay, pensions, gratuities and allowances) —

- (a) for the Table in Part II there shall be substituted the Table set out in Schedule 1 to this Order;

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<sup>(14)</sup> S.I. 1975/555; regulation 2(2) was substituted by S.I. 1992/2595.

<sup>(15)</sup> 1977 c. 49.

<sup>(16)</sup> 1978 c. 29.

<sup>(17)</sup> 1990 c. 19.

<sup>(18)</sup> Article 65 was substituted by article 10 of S.I. 1996/2882.

- (b) for Tables 1 and 2 of Part III there shall respectively be substituted the Tables set out in Schedules 2 and 3 to this Order; and
  - (c) for Part IV there shall be substituted the Part set out in Schedule 4 to this Order.
- (2) In Schedule 2 (rates of pensions and allowances in respect of death) —
- (a) for Tables 1, 2, 3, 4 and 5 of Part II there shall be substituted the Tables set out in Schedule 5 to this Order;
  - (b) for Part III there shall be substituted the Part set out in Schedule 6 to this Order.
- (3) For Schedule 3 (commencing dates of awards of pensions) there shall be substituted the Schedule set out in Schedule 7 to this Order.

### **Revocations**

**11.**—(1) Article 65ZA<sup>(19)</sup> (commencing date of award of widow’s pension where section 168 of the Pensions Act 1995<sup>(20)</sup> applies) is hereby revoked.

(2) Article 10 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Amendment (No.3) Order 1996<sup>(21)</sup> (which inserted article 65ZA) is also revoked.

*N.H. Nicholls*  
Clerk of the Privy Council

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<sup>(19)</sup> Article 65ZA was substituted by article 10 of S.I. 1996/2882.

<sup>(20)</sup> 1995 c. 26.

<sup>(21)</sup> S.I. 1996/2882.

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## SCHEDULE 1

Article 10(1)(a)

Table to be substituted for the table set out in part II of Schedule 1

Article 10

## Table

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

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

<i>Degree of Disability</i> <i>Per cent</i>	<i>Weekly rate</i> <i>£</i>	<i>Yearly rate</i> <i>£</i>
100	107.20	5,594
90	96.48	5,035
80	85.76	4,475
70	75.04	3,916
60	64.32	3,356
50	53.60	2,797
40	42.88	2,238
30	32.16	1,678
20	21.44	1,119

## SCHEDULE 2

Article 10(1)(b)

Table to be substituted for table 1 of part III of schedule 1

Article 11(1)

## Table 1

## GRATUITIES PAYABLE FOR SPECIFIED MINOR INJURIES

<i>Description of Injury</i> <i>For the loss of:</i>	<i>Assessments</i> <i>Per cent</i>	<i>Groups 1-15</i> <i>£</i>
A. Fingers—		
Index Finger—		
More than 2 phalanges including loss of whole finger	14	5,100
More than 1 phalanx but not more than 2 phalanges	11	4,082

<i>Description of Injury For the loss of:</i>	<i>Assessments Per cent</i>	<i>Groups 1-15 £</i>
1 phalanx or part thereof	9	3,400
Guillotine amputation of tip without loss of bone	5	2,036
Middle Finger—		
More than 2 phalanges including loss of whole finger	12	4,418
More than 1 phalanx but not more than 2 phalanges	9	3,400
1 phalanx or part thereof	7	2,718
Guillotine amputation of tip without loss of bone	4	1,700
Ring or little finger—		
More than 2 phalanges including loss of whole finger	7	2,718
More than 1 phalanx but not more than 2 phalanges	6	2,382
1 phalanx or part thereof	5	2,036
Guillotine amputation of tip without loss of bone	2	1,018
B. Toes—		
Great toe— through metatarsophalangeal joint	14	5,100
part, with some loss of bone	3	1,354
1 other toe—		
through metatarsophalangeal joint	3	1,354
part, with some loss of bone	1	682
2 toes, excluding great toe— through metatarsophalangeal joint	5	2,036
part, with some loss of bone	2	1,018
3 toes, excluding		
great toe through metatarsophalangeal joint	6	2,382
part, with some loss of bone	3	1,354
4 toes, excluding		
great toethrough metatarsophalangeal joint	9	3,400

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<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>
part, with some loss of bone	3	1,354

## SCHEDULE 3

Article 10(1)(b)

Table to be substituted for table 2 of part III of schedule 1

Article 11(2)

## 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	Estimated Duration of the disablement within the degree referred to								
	Temporary less than a year			Temporary more than a year			Indeterminate		
	Per Cent			Per Cent			Per Cent		
	1-5	6-14	15-19	1-5	6-14	15-19	1-5	6-14	15-19
£	£	£	£	£	£	£	£	£	
	284	633	1,107	569	1,262	2,209	1,706	3,790	6,632

## SCHEDULE 4

Article 10(1)(c)

part to be substituted for part iv of schedule 1

## part iv

RATES OF ALLOWANCES PAYABLE IN RESPECT OF DISABLEMENT

<i>Description of Allowance</i>	<i>Rate</i>	<i>Groups 1-9</i>	<i>Groups 10-15</i>
1. Education under	allowance £120 per annum (maximum)		£120 per annum article 13 (maximum)
2. Constant allowance	attendance £4,227 per annum (maximum)		£81.00 per week (maximum)
	(a) under article 14(1)(b)		
	(b) (b) under article 14(1)(a)	£2,113 per annum (maximum)	£40.50 per week (maximum)

<i>Description of Allowance</i>	<i>Rate</i>	
	<i>Groups 1-9</i>	<i>Groups 10-15</i>
3. Exceptionally severe disablement allowance under article 15	£2,113 per annum	£40.50 per week
4. Severe disablement occupational allowance under article 16	£1,057 per annum	£20.25 per week
5. Allowance for wear and tear of clothing under article 17(1)	£137 per annum	£137 per annum
6. Unemployability allowances—	£3,457 per annum	£66.25 per week
(a) personal allowance under article 18(1)(a)		
(b) (b) additional allowances for dependants by way of—	£1,949 per annum (maximum)	£37.35 per week article 18(5) (b) (maximum)
(i) increase of allowance in respect of a wife, husband or unmarried dependant living as a spouse or an adult dependant under		
(ii) increase of allowance under article 18(5)(d)—	£517 per annum	£9.90 per week
(a) in respect of the only, elder or the eldest child of a member		
(b) in respect of each other child of a member	£584 per annum	£11.20 per week
(c) where the child does not qualify for child benefit under the Social Security Contributions and Benefits Act 1992(22) or under any legislation in Northern Ireland or the Isle of Man corresponding to that Act	£584 per annum	£11.20 per week

(22) 1992 c. 4.

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<i>Description of Allowance</i>	<i>Rate</i>	
	<i>Groups 1-9</i>	<i>Groups 10-15</i>
7. Invalidation allowance under article 19 –	£686 per annum	£13.15 per week
(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 1979		
(b) (b) if—	£433 per annum	£8.30 per week
(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		

<i>Description of Allowance</i>	<i>Rate</i>	
	<i>Groups 1-9</i>	<i>Groups 10-15</i>
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 1979		
(c) (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	£217 per annum	£4.15 per week
<b>8.</b> Comforts allowance—	£908 per annum	£17.40 per week
(a) under article 20(1)(a)		
(b) (b) under article 20(1)(b)	£454 per annum	£8.70 per week
<b>9.</b> Allowance for lowered standard of occupation under article 21	£2,110 per annum (maximum)	£40.44 per week (maximum)
<b>10.</b> Age allowance under article 22 where the degree of pensioned disablement is—	£373 per annum	£7.15 per week
(a) 40 to 50 per cent		
(b) (b) over 50 per cent, but not exceeding 70 per cent	£577 per annum	£11.05 per week
(c) (c) over 70 per cent, but not exceeding 90 per cent	£822 per annum	£15.75 per week
(d) (d) over 90 per cent	£1,153 per annum	£22.10 per week
<b>11.</b> Treatment allowances increase of personal allowances under article 23(3)	£1,153 per annum (maximum)	£22.10 per week (maximum)

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<i>Description of Allowance</i>	<i>Rate</i>	
	<i>Groups 1-9</i>	<i>Groups 10-15</i>
12. Part-time allowance under article 25	treatment £49.15 per day (maximum)	£49.15 per day (maximum)
13. Mobility under article 26A	supplement £2,012 per annum	£38.55 per week

SCHEDULE 5

Article 10(2)(a)

Tables to be substituted for tables 1, 2, 3, 4 and 5 of part ii of schedule 2

part ii

RATES OF PENSIONS AND ALLOWANCES

Article 29(1)(a)

Table 1

yearly rates of pensions for widows 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>Yearly rate</i> £
1	4,900
2	4,724
3	4,614
4	4,514
5	4,446
6	4,381
7	4,359
8	4,326
9	4,309
10	4,293
11	4,266

Article 29(1)(a)

Table 2

WEEKLY RATES OF PENSIONS FOR WIDOWS OF RATINGS, SOLDIERS OR AIRMEN

<i>Group (1)</i>	<i>Weekly rate (2) £</i>
12	81.25
13	
14	
15	
16	
17	81.00

Article 29(1)(a)

Table 3

YEARLY RATES OF PENSIONS FOR WIDOWS OF OFFICERS WHO WERE MEMBERS OF THE 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 (1)</i>	<i>Yearly rate (2) £</i>
1	5,010
2	4,790
3	4,679
4	4,569
5	4,481
6	4,391
7	4,367
8	4,326
9	4,309
10	4,293
11	4,266

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Article 29(1)(b)

**Table 4**

YEARLY RATES OF PENSIONS FOR WIDOWS OF OFFICERS WHO WERE MEMBERS  
OF THE FORCES BEFORE 14 AUGUST 1914 OR AFTER 30 SEPTEMBER 1921

<i>Group (1)</i>	<i>Yearly rate (2) £</i>
1	4,900
2	4,724
3	4,614
4	4,514
5	4,446
6	4,381
7	4,359
8	1,501
9	1,340
10	1,179
11	1,042

Article 29(1)(b)

**Table 5**

WEEKLY RATES OF PENSION FOR CHILDLESS WIDOWS AGED  
UNDER 40 BEING WIDOWS OF RATINGS, SOLDIERS OR AIRMEN

<i>Group (1)</i>	<i>Weekly rate (2) £</i>
12	19.02
13	
14	
15	
16	
17	18.74

## SCHEDULE 6

Article 10(2)(b)

part to be substituted for part iii of schedule 2

## part iii

RATES OF PENSIONS, OTHER THAN WIDOWS' PENSIONS,  
AND ALLOWANCES PAYABLE IN RESPECT OF DEATH

<i>Description of Pension or Allowance</i>	<i>Rate</i>	
	<i>Groups 1-11</i>	<i>Groups 12-17</i>
1. Pension under article 30 to unmarried dependant who lived as a spouse	£4,120 per annum (maximum)	£78.95 per week (maximum)
2. Rent allowance under article 31	£1,599 per annum (maximum)	£30.65 per week (maximum)
3. Allowance under article 32 to elderly widow or widower or unmarried dependant who lived as a spouse —	£483 per annum	£9.25 per week
(a) if aged 65 but under 70		
(b) (b) if aged 70 but under 80	£926 per annum	£17.75 per week
(c) (c) if aged 80 or over	£1,380 per annum	£26.45 per week
4. Pension to widower under article 34	£5,010 per annum (maximum)	£81.25 per week (maximum)
5. Allowances in respect of children —	£738 per annum	£14.15 per week
(a) under article 35(1) —		
(i) in respect of the only, elder or eldest child of a member		
(ii) in respect of each other child of a member	£806 per annum	£15.45 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	£806 per annum	£15.45 per week

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<i>Description of Pension or Allowance</i>	<i>Rate</i>	
	<i>Groups 1-11</i>	<i>Groups 12-17</i>
Ireland or the Isle of Man corresponding to that Act		
(b) (b) under article 35(3) —	£830 per annum	£15.90 per week
(i) in respect of the only, elder or eldest child of a member		
(ii) in respect of each other child of a member	£897 per annum	£17.20 per week
(iii) 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	£897 per annum	£17.20 per week
<b>6.</b> Pension under article 36 to a motherless or fatherless child of a member —	£830 per annum	£15.90 per week
(a) in respect of the only, elder or eldest child of a member		
(b) (b) in respect of each other child of a member	£897 per annum	£17.20 per week
(c) (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	£897 per annum	£17.20 per week
<b>7.</b> Pension or allowance under article 37(3) to or in respect of a child over the age limit	£3,259 per annum (maximum)	£62.45 per week (maximum)
<b>8.</b> Education allowance under article 38	£120 per annum (maximum)	£120 per annum (maximum)

<i>Description of Pension or Allowance</i>	<i>Rate</i>	
	<i>Groups 1-11</i>	<i>Groups 12-17</i>
<b>9. Pensions to parents —</b>	£15 per annum	£0.25 per week
(a) minimum rate under article 40(3)		
(b) (b) under paragraphs (a) and (b) of article 40(3)	(i) Groups 1-10 £75 per annum (maximum)	£1.00 per week (maximum)
(i) where there is only one eligible parent	(ii) Group 11 £60 per annum (maximum)	
(ii) where there is more than one eligible parent	(i) Groups 1-10 £100 per annum (maximum)	£1.38 per week (maximum)
	(ii) Group 11 £85 per annum (maximum)	
(c) (c) increase under article 40(3)(c)	£20 per annum (maximum)	(i) where there is only one eligible parent £0.38 per week (maximum)
		(ii) where there is more than one eligible parent — £0.62 per week (maximum)
(d) (d) under paragraph (d) — of article 40(4)		£1.00 per week (maximum)
<b>10. Pension to other dependants —</b>	£54 per annum (maximum)	£1.00 per week (maximum)
(a) under article 41(2)		
(b) (b) for each juvenile dependant under article 41(3)	(i) Groups 1-10 £26 per annum (maximum)	£0.30 per week (maximum)
	(ii) Group 11 £20 per annum (maximum)	
(c) (c) aggregate rate under article 41(3)	(i) Groups 1-10 £75 per annum (maximum)	£1.00 per week (maximum)
	(ii) Group 11 £65 per annum (maximum)	

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## SCHEDULE 7

Article 10(3)

schedule to be substituted for schedule 3

## “SCHEDULE 3

**commencing dates of awards under this order**

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 sub-paragraph (2) which is relevant in the claimant’s case.

(2) The date specified in this sub-paragraph is whichever date is the latest in time of the date –

- (a) 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
- (d) of an application for appeal under section 1, 4 or 5 of the Pensions Appeal Tribunals Act 1943<sup>(23)</sup> or section 8 or the War Pensions (Administrative Provisions) Act 1919<sup>(24)</sup>.

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

(4) This sub-paragraph is satisfied where the date of –

- (a) the claim;
- (b) the application for review;
- (c) the application for an appeal under section 1, 4 or 5 of the Pensions Appeal Tribunals Act 1943 or section 8 of the War Pensions (Administrative Provisions) Act 1919,

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

- (i) the date of termination of service or, in the case of an award under Part IV, the date of death of a member, or
- (ii) except where sub-head (i) applies, the date of issue of notification of a decision on the claim, review or, as appropriate, on appeal under section 1, 4 or 5 of the Pensions Appeal Tribunals Act 1943 or section 8 of the War Pensions (Administrative Provisions) Act 1919.

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

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

(7) 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 3B<sup>(25)</sup> on the date on which the relevant conditions of entitlement to the pension or allowance first became satisfied.

(23) 1943 c. 39; section 1 was amended by the Pensions Appeals Tribunals Act 1949 (c. 13), section 1(1). Section 5 was amended by the Chronically Sick and Disabled Persons Act 1970 (c. 44), section 23(2) and the Social Security Act 1980 (c. 30), section 16(3).

(24) 1919 c. 53, section 8 was amended by the War Pensions Act 1920 (c. 27), section 8(2) and the Statute Law (Repeals) Act 1986 (c. 12), section 1(1) and Schedule 1, Part III.

(25) Article 3B was inserted by S.I. 1996/2882.

**2.—(1)** In a case to which section 168 of the Pensions Act 1995<sup>(26)</sup> (war pensions for widows: effect of remarriage) or article 42(1A)<sup>(27)</sup> (eligibility of widow under Part IV upon ceasing to live with another as a spouse) applies, paragraph 1(4)(c)(i) of this Schedule shall have effect as if, for the words “termination of service or, in the case of an award under Part IV, the date of death of a member”, there were substituted the words to “the termination of the claimant’s marriage, judicial separation of the parties or, as the case may be, the date the claimant ceased to live as a spouse with another”.

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

**3.** Where an award is made pursuant to a successful appeal to the High Court<sup>(28)</sup>, 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 adjustment thereto is made following a decision of the President of the Pensions Appeal Tribunals that the decision of a Pensions Appeal Tribunal be treated as set aside –

- (a) subject to paragraph 8, payment shall not be made in respect of any period before the date of the application to the President of the Pensions Appeal Tribunals where the ground for setting the decision of the Pensions Appeal Tribunal aside is the availability of additional evidence<sup>(29)</sup>;
- (b) 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 Tribunals 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<sup>(30)</sup>.

**5.** Where a claimant satisfies the Secretary of State that –

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

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

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

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

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<sup>(26)</sup> 1995 c. 26.

<sup>(27)</sup> Article 42(1A) is inserted by this Order: see above.

<sup>(28)</sup> See section 6(2) of the Pensions Appeals Tribunals Act 1943 (1943 c. 39)

<sup>(29)</sup> See section 6(2A)(b)(i) of the Pensions Appeals Tribunals Act 1943 (1943 c. 39); section 6(2A) was inserted by section 23(1) of the Chronically Sick and Disabled Persons Act 1970 (c. 44) and amended by section 43 of the Social Security and Housing Benefits Act 1982 (c. 24)

<sup>(30)</sup> See section 6(2A)(b)(i) of the Pensions Appeals Tribunals Act 1943 (1943 c. 39).

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- (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 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 was not available to the claimant at the time of the decision which is the subject of the review or appeal because those documents were classified at that time, payment may be made in respect of a period commencing on, 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 10 (pension for disablement) or article 29 (pensions to widows) without a claim having been made for it<sup>(31)</sup> 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, an application for a review or, as the case may be, an application for an appeal on an earlier date than he actually did but for an administrative error on the part of the Secretary of State, the Secretary of State for Defence, or the Secretary of State for the Foreign and Commonwealth Office; and
- (b) that error continued to be the dominant cause of the delay up to the moment the claim or application was made,

any reference in this Schedule to the date of a claim, date of application for review or application for an appeal 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 16 August 1943 and 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.”

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(31) See article 3B which was inserted by article 3 of S.I. 1996/2882.

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## EXPLANATORY NOTE

*This note is not part of the Order)*

This Order further amends the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 (“the principal Order”) which makes provision for pensions and other awards in respect of disablement or death due to service in the naval, military and air forces.

Article 2 amends the principal Order so that it is clear that a claim is necessary to establish entitlement to a funeral payment and to a widow’s pension under the principal Order after a period when the widow was married or had lived with another as a spouse.

Article 3, together with Part IV of Schedule 1 of the principal Order as substituted by this Order, replaces two rates of clothing allowance under article 17 of the principal Order with a single rate of allowance.

Article 4 increases the maximum amount of annual earnings which may be received by a disabled person whilst he is deemed to be unemployable for the purposes of unemployability allowances under article 18 of the principal Order. It also amends the principal Order so that, for claims dated on or after this Order comes into force, (a) an unemployability allowance under article 18 of the principal Order may not be awarded to a claimant who is aged 65 or over, or whose pensioned disablement has been assessed at less than 60 per cent; (b) an allowance for lowered standard of occupation under article 21 of the principal Order may not be awarded to a pensioner aged 65 or over whose pensioned disablement has been assessed at less than 40 per cent; and (c) a mobility supplement under article 26A of the principal Order may not be awarded to a claimant whose pensioned disablement has been assessed at less than 40 per cent.

Article 5 amends the principal Order so that the death of a member, whose degree of disability was assessed at 80 per cent and who was in receipt of an unemployability allowance under article 18 of the principal Order, is regarded as due to service for the purposes of awards under the Order in respect of death.

Article 6 increases the amount of a widow’s pension payable under article 29 of the principal Order. It also amends the principal Order so that provision is made for pensions for women who have not attained the age of 40 and who are the widows of officers who were members of the armed forces between 14th August 1914 and 30th September 1921.

Article 7 amends the principal Order so that a widow, whose pension under the principal Order ceased because she lived with a man as his wife, may claim restoration of an award after that relationship has ended. It also amends the principal Order with the effect that gratuities are not payable to widows in connection with remarriage or cohabitation.

Article 8 inserts into the principal Order provision for the Secretary of State to defray reasonable expenses in respect of the funeral of a member of the armed forces.

Article 10 substitutes Tables in Schedules 1 and 2 to the principal Order, thereby varying the rates of retired pay, pensions, gratuities and allowances in respect of disablement or death due to service in the armed forces. It also makes provision for the commencing dates of awards and adjustments to awards by substituting a new Schedule 3 to the principal Order.

Articles 9 and 11 are consequential amendments.

This Order does not impose any costs on business.

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