

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 4

### TRANSITORY PROVISIONS

#### 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<sup>M1</sup> (“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 Parliament

under 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)<sup>M2</sup>.

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

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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 subparagraph (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 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.

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(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.”.

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#### **Marginal Citations**

**M1** [S.I. 1996/1638](#).

**M2** 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.

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- [art. 56\(3\)\(k\)](#) inserted by [S.I. 2024/191 art. 3](#)