STATUTORY INSTRUMENTS

1978 No. 1405

PENSIONS

The War Pensions (Pre-Consolidation Amendment) Order 1978

Made - - - -	*29th September* 1978
Laid before Parliament	*9th October* 1978
Coming into Operation	*1st January* 1979

At the Court at Balmoral, the 29th day of September 1978

Present,

The Queen's Most Excellent Majesty in Council

WHEREAS, in anticipation of a consolidation of the provisions concerning pensions and other grants in respect of disablement and death due to service in the naval, marine, military and air forces of the Crown and the nursing and auxiliary forces thereof during the period beginning with 4th August 1914 and ending on 30th September 1921 and the period after 2nd September 1939, Her Majesty deems it expedient to make further provisions concerning such pensions and other grants and to do so by Order in Council in pursuance of section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(**a**):

NOW, THEREFORE, Her Majesty, in exercise of powers conferred by the said section 12(1) 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 War Pensions (Pre-Consolidation Amendment) Order 1978 and shall come into operation on 1st January 1979.

(2) In this Order, unless the context otherwise requires, the expression "the 1964 instruments" means the Order in Council of 25th September 1964, as amended(**b**), the Royal Warrant of 19th September 1964(**c**), as amended(**d**) and

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(**a**) 1977 c.5.

(**b**) Orders in Council of 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, 1404.

(**c**) Cmnd. 2467.

(**d**) Cmnd. 2553, 2926, 3023, 3072, 3385, 3530, 3728, 4134, 4287, 4742, 5077, 5395, 5670, 6001, 6247, 6583, 6763, S.I. 1977/1630; 1978/278, 1404.

the Order by Her Majesty of 24th September 1964(a), as amended(b) (which instruments, when hereinafter individually referred to, are respectively referred to as "the 1964 Order", "the 1964 Warrant" and "the 1964 Order by Her Majesty").

(3) Subject as aforesaid, each provision of this Order, in so far as it amends the 1964 Order, the 1964 Warrant or, as the case may be, the 1964 Order by Her Majesty, shall, except so far as the context otherwise requires, be read as one with the Order, Warrant or, as the case may be, the Order by Her Majesty which it amends.

(4) This Order shall be construed and shall operate as it would fall to be construed and to operate by virtue of section 23(1) of the Interpretation Act 1978(c) if it were made after the commencement of that Act.

Amendment of articles 5(1) *and* 7(1) *of the* 1964 *instruments*

2. In articles 5(1) and 7(1) of the 1964 instruments (entitlement where claim is made in respect of disablement, or death occurs, more than 7 years after termination of service; and rank or status), there shall respectively be deleted the words "Subject to the provisions of Article 71(7)" and "Subject to the provisions of paragraph (9) of this Article".

Amendment of article 7(7) *of the* 1964 *Order in Council*

3. In article 7(7) of the 1964 Order (rank or status) there shall be deleted the words "his denomination and" and "of that denomination".

Amendment of article 9(2) *and* (3) *of the* 1964 *instruments*

4.—(1) Paragraphs (2) and (3) of article 9 of the 1964 instruments (determination of degree of disablement) shall be amended in accordance with the following provisions of this article.

(2) In proviso (ii) to paragraph (2)(*a*)—

(*a*) after the words "the date of the termination of his service" there shall be deleted the words "account shall only be taken of";

(*b*) after the words "the said date of termination" there shall be inserted the words "shall only be taken into account".

(3) In paragraph (3) for the words "in the manner required by" there shall be substituted the words "in a manner suitable for the purposes of".

Amendment of article 11 *of the* 1964 *instruments*

5. In article 11 of the 1964 instruments (gratuity for minor disablement)—

(*a*) at the beginning of the article there shall be inserted the words "Subject to the provisions of paragraph (2) below";

(*b*) after the words "in accordance with the appropriate Table in Schedule 3" there shall be added the words "in force at the time of the award" and the following new paragraph—

(a) Cmnd. 2472.
(b) Cmnd. 2554, 2927, 3024, 3071, 3384, 3531, 3729, 4135, 4286, 4743, 5078, 5396, 5671, 6002, 6246, 6582, 6762, S.I. 1977/1630; 1978/278, 1404.
(c) 1978 c.30.

"(2) Where an award of a gratuity is reviewed on the grounds that, for the purposes of Table 2 or, as the case may be, Table 3 of Schedule 3, the award was based on the erroneous estimation that the disablement would be of less than indeterminate duration, but subsequently the degree of the disablement increased to 20 per cent or more, the Secretary of State may on review and subject to the provisions of article 56 (adjustment of awards in respect of other compensation) award a gratuity in accordance with the appropriate Table in the said Schedule 3 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 so increased."

Substitution for article 24 *of the* 1964 *instruments*

6.—(1) For article 24 of the 1964 Order (medical expenses) there shall be substituted the following article:—

"24. Any necessary expenses in respect of the medical, surgical or rehabilitative treatment of a member of the naval forces and of appropriate aids and adaptations for disabled living may, in so far as not provided under legislation of the United Kingdom (other than any enactment under or by virtue of which this instrument is made), be defrayed by the Secretary of State under such conditions and up to such amounts as he may determine."

(2) In article 24 of the 1964 Warrant and article 24 of the 1964 Order by Her Majesty there shall be substituted the same provision as is specified in the last foregoing paragraph, save that for the words "naval forces"—

(*a*) in the 1964 Warrant there shall be substituted the words "military forces";

(*b*) in the 1964 Order by Her Majesty there shall be substituted the words "air forces".

Amendment of article 27(4) *of the* 1964 *instruments*

7. In article 27(4) of the 1964 instruments (pensions to widows) for the words "may be or has been awarded" at the end of that article there shall be substituted the words "has been awarded".

Amendment of article 30(1) *of the* 1964 *instruments*

8. In article 30(1) of the 1964 instruments (pensions to unmarried dependants who lived as wives) there shall be deleted the words "after 2nd September 1939".

Amendment of article 32 *of the* 1964 *instruments*

9. In article 32 of the 1964 instruments (allowance to elderly widows and unmarried dependants who lived as wives) for the expression "Article 71(6)" there shall be substituted the expression "Article 30 or 71(6)".

Amendment of article 32 *of the* 1964 *Warrant*

10. In article 32 of the 1964 Warrant there shall be deleted all the words from and including the words "or a widow" to "Our Army".

Amendment of article 33(1), (2) *and* (6) *of the* 1964 *instruments*

11. In article 33 of the 1964 instruments (temporary allowances to widows and unmarried dependants who lived as wives of severely disabled pensioners) there shall be deleted—

(*a*) in paragraph (1), the expression "after 2nd September 1939";

(*b*) in paragraph (2)(*a*), the words "13 weeks, or where the member dies on or after 6th July 1966";

(*c*) in paragraph (6) and in the proviso thereto—

(i) in the case of the 1964 Order, the words "or under the 1920 Order or the 1921 (Officers) Order or the 1921 (Warrant Officers) Order";

(ii) in the case of the 1964 Warrant, the words "or under the 1919 Warrant or the 1920 Warrant"; and

(iii) in the case of the 1964 Order by Her Majesty, the words "or under the 1920 Order or the 1921 Order".

Amendment of article 40 *of the* 1964 *instruments*

12. In article 40 of the 1964 instruments (pensions to parents)—

(*a*) in paragraph (2) after the words "under this Part of this Order" in the case of the 1964 Order and the 1964 Order by Her Majesty and after the words "under this Part of this Our Warrant" in the case of the 1964 Warrant, there shall be inserted—

(i) in the 1964 Order, the words "or under Part II of the 1920 Order, the 1921 (Officers) Order or, as the case may be, the 1921 (Warrant Officers) Order";

(ii) in the 1964 Warrant, the words "or under Part II of the 1920 Warrant or, as the case may be, the 1921 Warrant";

(iii) in the 1964 Order by Her Majesty, the words "or under Part II of the 1920 Order or, as the case may be, the 1921 Order"; and

(iv) in each of those instruments, after the inserted words, the description "(pensions to widows and other dependants)"; and

(*b*) paragraphs (3) and (7)(*b*) shall be deleted.

Amendment of article 41 *of the* 1964 *instruments*

13. In article 41 of the 1964 instruments (pensions to other dependants)—

(*a*) in paragraph (1) after the words "incapable of self-support", there shall be inserted the words "and, in a case where the death of the member is due to service in the 1914 World War, the member died or dies on or after 1st October 1964";

(*b*) immediately after the last aforesaid insertion there shall be inserted—

(i) in the 1964 Order and 1964 Order by Her Majesty "(the date on which this Order came into operation)"; and

(ii) in the 1964 Warrant "(the date on which this Warrant came into operation)";

(*c*) in proviso (*a*) to paragraph (1) the expression "after 2nd September 1939" shall be deleted;

(*d*) in paragraph (4), after the word "service", the expression "after 2nd September 1939" shall be deleted.

Amendment of article 43(1) *of the* 1964 *instruments*

14. In article 43(1) of the 1964 instruments (application and interpretation of Part V of those instruments) there shall be deleted the words "or, in a case to which Article 52 applies, during the 1914 World War".

Amendment of article 57(2) *of the* 1964 *instruments*

15. In article 57(2)(*a*) and (*b*) of the 1964 instruments (maintenance in hospital or institution) for the words "under the National Health Service Acts 1946 to 1973" there shall be substituted the words "under the National Health Service Act 1977(**a**) or the enactments consolidated thereby" and for "the National Health Service (Scotland) Acts 1947 to 1973" there shall be substituted "the National Health Service (Scotland) Acts 1947 to 1976".

Amendment of article 62 *of the* 1964 *instruments*

16. In article 62 of the 1964 instruments (forfeiture of pensions, etc)—

(*a*) in paragraph (1) after the words "a pension or gratuity may be or has been awarded" there shall be added the words "in respect of death or disablement due to service during the 1914 World War or after 2nd September 1939";

(*b*) in paragraph (2) for the words "is suspended" there shall be substituted the words "was suspended".

Amendment of article 65 *of the* 1964 *instruments*

17. In article 65 of the 1964 instruments (commencement date of awards)—

(*a*) in paragraph (*b*)—

(i) for the words "as a result of which a pension is awarded or restored" there shall be substituted the words "or a review under article 67 below as a result of which a pension is awarded or, as the case may be, restored";

(ii) in heads (i), (ii) and (iii) after the word "commenced" there shall be inserted the words "or, as the case may be, the review is applied for";

(iii) in head (iv) after the word "appeal" there shall be added the words "or, as the case may be, of the application for such review";

(*b*) after paragraph (*c*) there shall be added the following paragraph—

"(*d*) in the case of an application under article 67 for a review of an assessment as a result of which the rate of pension is increased—

(i) the date of the commencement of the assessment of the degree of disablement where the application for review is made within 3 months of the date of the notification of an interim assessment, or 12 months in the case of a final assessment; or

(ii) in any other case the date of the application for the review."

Amendment of article 66 *of the* 1964 *instruments*

18. After paragraph (2) of article 66 of the 1964 instruments (payment of pensions) there shall be inserted the following paragraph—

(**a**) 1977 c. 49.

"(3) Any payment of a pension shall be at the rate specified in the appropriate provisions of Schedule 2, 4, 6 or, as the case may be, 7 hereof in force for the period in respect of which the payment is made."

Amendment of article 67 of the 1964 instruments

19.—(1) Article 67 of the 1964 instruments (review of decisions, assessments and awards) shall be amended in accordance with the following provisions of this article.

(2) In article 67 of the 1964 Order—

(*a*) in paragraph (5)—

(i) before the words "This article" there shall be inserted the words "The foregoing provisions of";

(ii) after the expression "1914 World War" there shall be inserted the words "but in respect of such service the following provisions of this article shall apply";

(*b*) after paragraph (5) there shall be inserted the following paragraphs: —

"(6) A permanent pension or permanent retired pay granted under a 1914 World War 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, but, save as aforesaid and except as provided in the next succeeding paragraph, neither such pension nor retired pay shall be subject to review.

(7) In respect of any disablement pension or retired pay under a 1914 World War 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 naval 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 any improper means; or

(*c*) the pension or retired pay has been granted by error.

(8) In paragraphs (6) and (7) the reference to "a 1914 World War instrument" means the 1920 Order, the 1921 (Officers) Order or, as the case may be, the 1921 (Warrant Officers) Order."

(3) In article 67 of the 1964 Warrant and the 1964 Order by Her Majesty the same amendments shall be made as those specified in the last foregoing paragraph, save that—

(*a*) in the new paragraphs (7) and (8) of that article of the 1964 Warrant, for the expressions "the naval forces" and "the 1920 Order, the 1921 (Officers) Order or, as the case may be, the 1921 (Warrant Officers) Order" there shall respectively be substituted "the military forces" and "the 1919 Warrant or, as the case may be, the 1920 Warrant";

(*b*) in the new paragraphs (7) and (8) of that article of the 1964 Order by Her Majesty, for the said expressions there shall respectively be substituted "the air forces" and "the 1920 Order or, as the case may be, the 1921 Order".

Revocations

20. The instruments specified in column 2 of the Schedule to this Order are hereby revoked to the extent mentioned in column 4 of that Schedule.

Transitional provisions

21.—(1) Where under or by virtue of an award made under an instrument specified in items 7 to 13 (inclusive) of the Schedule hereto, a person was immediately before the date on which this Order comes into operation entitled to receive payment of retired pay, pension or allowance or an addition to retired pay or pension at a rate specified in a provision of Schedules 2, 4 or 6 to a 1964 instrument, any such retired pay, pension, allowance or addition shall, for so long as it remains payable, be payable at the rate specified in that provision and be subject to the provisions of article 66(3) of that instrument (pension to be payable at the rate in force for period in respect of which payment is made).

(2) Where before the date on which article 20 (revocations) comes into operation—

(*a*) a claim has been made for a pension or other benefit under an instrument revoked by this Order; or

(*b*) an appeal has been brought under section 1 or 5 of the Pensions Appeal Tribunals Act 1943(a) against a decision of such a claim; or

(*c*) review proceedings have been instituted in relation to such a decision; and

(*d*) by that date a decision on such claim, appeal or, as the case may be, review has not been given;

the revocation of such instrument shall not affect the decision of such claim, appeal or review, and proceedings therein may continue and a decision may be given as though that instrument had not been revoked.

(3) 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 amendments made by this Order or the supercession by the 1964 instruments of any of previous Order or Warrant, be reassessed to that person's disadvantage.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1943 c. 39.

Article 20

SCHEDULE

REVOCATIONS

Col 1	Column 2	Column 3	Column 4
Item	*Instruments*	*References*	*Extent of Revocation*
1	The Order in Council of 30th March 1917	SR and 0 1917/361	The whole instrument
2	The Royal Warrant of 1st August 1917	(See Appendix to Army Order No.268 of September 1917)	The whole instrument
3	The Order in Council of 29th September 1917	SR and O 1917/1022	The whole instrument
4	The Order in Council of 29th September 1917	SR and 0 1917/1023	The whole instrument
5	The Royal Warrant of 17th April 1918	Cd. 9040 of 1918	The whole instrument
6	The Order in Council of 14th January 1919	SR and 0 1919/62	The whole instrument
7	The Royal Warrant of 6th December 1919	Cmd. 457 of 1919	The whole instrument
8	The Order by His Majesty of 11th May 1920	HC 120 of 1920	The whole instrument
9	The Order in Council of 11th June 1920	SR and 0 1920/1021	The whole instrument
10	The Royal Warrant of 2nd July 1920	Cmd. 811 of 1920	The whole instrument
11	The Order in Council of 9th March 1921	SR and 0 1921/360	The whole instrument
12	The Order in Council of 9th March 1921	SR and 0 1921/361	The whole instrument
13	The Order by His Majesty of 25th September 1921	S.I. 1964 III, p. 5447	The whole instrument
14	The Order by His Majesty of 14th January 1922	—	The whole instrument
15	The Royal Warrant of 21st June 1922	Cmd. 1701 of 1922	The whole instrument
16	The Royal Warrant of 26th August 1922	Cmd. 1752 of 1922	The whole instrument

Col 1	Column 2	Column 3	Column 4
Item	*Instruments*	*References*	*Extent of Revocation*
17	The Royal Warrant of 26th March 1923	Cmd. 1847 of 1923	The whole instrument
18	The Royal Warrant of 9th April 1923	Cmd. 1852 of 1923	The whole instrument
19	The Royal Warrant of 26th July 1923	Cmd. 1932 of 1923	The whole instrument
20	The Royal Warrant of 28th September 1923	Cmd. 1970 of 1923	The whole instrument
21	The Royal Warrant of 9th November 1923	Cmd. 2013 of 1923	The whole instrument
22	The Royal Warrant of 14th January 1924	Cmd. 2030 of 1924	The whole instrument
23	The Order in Council of 16th April 1924	SR and O 1924/505	The whole instrument
24	The Order in Council of 16th April 1924	SR and O 1924/525	The whole instrument
25	The Royal Warrant of 2nd September 1924	Cmd. 2251 of 1924	The whole instrument
26	The Royal Warrant of 2nd September 1924	Cmd. 2252 of 1924	The whole instrument
27	The Order in Council of 8th December 1924	SR and O 1924/1390	The whole instrument
28	The Royal Warrant of 23rd May 1925	—	The whole instrument
29	The Order by His Majesty of 19th June 1925	HC 133 of 1925	The whole instrument
30	The Order by His Majesty of 22nd June 1925	HC 133–1 of 1925	The whole instrument
31	The Order by His Majesty of 26th June 1925	HC 134 of 1925	The whole instrument
32	The Order in Council of 24th July 1925	SR and O 1925/763	The whole instrument
33	The Order in Council of 24th July 1925	SR and O 1925/764	The whole instrument
34	The Order in Council of 12th October 1925	SR and O 1925/1021	The whole instrument

Col 1	Column 2	Column 3	Column 4
Item	*Instruments*	*References*	*Extent of Revocation*
35	The Order in Council of 12th October 1925	SR and 0 1925/1034	The whole instrument
36	The Order by His Majesty of 14th October 1925	HC 171 of 1925	The whole instrument
37	The Royal Warrant of 27th October 1925	Cmd. 2523 of 1925	The whole instrument
38	The Order in Council of 28th June 1926	SR and 0 1926/828	The whole instrument
39	The Royal Warrant of 4th November 1927	Cmd. 2981 of 1927	The whole instrument
40	The Royal Warrant of 4th November 1927	Cmd. 2982 of 1927	The whole instrument
41	The Order by His Majesty of 28th January 1928	HC 9 of 1928	The whole instrument
42	The Order in Council of 6th February 1928	SR and 0 1928/44	The whole instrument
43	The Order in Council of 6th February 1928	SR and 0 1928/45	The whole instrument
44	The Order in Council of 6th February 1928	SR and 0 1928/46	The whole instrument
45	The Royal Warrant of 5th March 1936	—	The whole instrument
46	The Royal Warrant of 15th September 1939	Cmd. 6105 of 1939	The whole instrument
47	The Order in Council of 21st September 1939	SR and 0 1939/1221	The whole instrument
48	The Order by His Majesty of 22nd September 1939	HC 176 of 1939	The whole instrument
49	The Royal Warrant of 29th June 1940	Cmd. 6205 of 1939	The whole instrument
50	The Order in Council of 7th August 1940	SR and 0 1940/1469	The whole instrument
51	The Order by His Majesty of 22nd October 1940	HC 169 of 1940	The whole instrument
52	The Royal Warrant of 17th May 1944	Cmd. 6528 of 1944	The whole instrument

Col 1	Column 2	Column 3	Column 4
Item	*Instruments*	*References*	*Extent of Revocation*
53	The Royal Warrant of 19th September 1964	Cmnd. 2467 of 1964	in the last paragraph of preamble, all the words following "treated of" and articles 2(3), 7(9), 40 (3), 52, 66(2), 71(2), (3), (6) (*a*) and (*d*) to (*f*), (7) and (8) and Schedules 8 and 9.
54	The Order by Her Majesty of 24th September 1964	Cmnd. 2472 of 1964	
55	The Order in Council of 25th September 1964	S.I. 1964 III, p. 5466	

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order revokes the 1919 to 1921 Orders in Council, Royal Warrants and Orders by His Majesty which, in conjunction with the Order in Council of 25th September 1964, the Royal Warrant of 19th September 1964 and the Order by Her Majesty of 24th September 1964, made provision for disablement and death due to service in the armed forces during the 1914 World War and, by amendment of the aforementioned instruments of 1964 (which also and primarily make provision for disablement and death due to service in the armed forces after 2nd September 1939) makes provision for like cover under those instruments as was previously provided under the revoked instruments.

The Order also revokes other Orders and Royal Warrants which have either been replaced or otherwise become otiose, but have not previousiy been expressly revoked or declared to be of no effect.

The Order also makes new provision (article 5) for the date at which the amount of an award of a gratuity is to be calculated and (article 6) amends the power of the Secretary of State to defray the necessary expenses for medical, surgical and rehabilitative treatment for members of the naval, military and air forces and makes provision also for similar defrayment of the necessary expenses of appropriate aids and adaptations for disabled living. It also adds (article 17) express provision as to the commencement of awards on review.

The other provisions of this Order are of a formal, transitional or minor nature only.

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