

2728. Categories.*Sponsor: DDP(P&A)(RAF)*

The categories of Personal Status Category are as follows:

Category 1. A member of the Armed Forces who is legally married / registered in a Civil Partnership and who lives with his/her spouse/civil partner, or would do but for his/her service in the Armed Forces.

Category 2. A Service person who has parental responsibility within the terms of the Children Act 1989 for a child or children and who satisfies all the following conditions:

- (a) They can properly be regarded as the centre and prime mover in the life of the child or children. (See note 4).
- (b) They provide a home where they will normally live with the child or children except where unable to do so for reasons attributable to their service in the Armed Forces. (See note 4).
- (c) They provide, where the child is unable to care for itself, an agent who can look after the child during the Service person's absences attributable to their service in the Armed Forces. The agent must not be the other natural parent of the child. The other natural parent should normally only have staying access to the child for up to an aggregate of 56 days in any 12 month period. Staying access greater than this may render the Service person ineligible for CATEGORY 2. (These restrictions on access do not apply whilst on recognised Unaccompanied Duty).
- (d) They accept financial responsibility for the child or children.

Category 3. A member of the Armed Forces who is not in CATEGORY 1 or 2 and who provides financial support for their spouse/civil partner or former spouse/civil partner or child or children by voluntary agreement. In this case, voluntary agreement means financial support provided other than pursuant to and order made by a court, or a Child Support Agency Maintenance Assessment, or the MOD under the relevant Service Act.

Category 4. A member of the Armed Forces who is not in CATEGORY 1 or 2 and who provides financial support for their spouse/civil partner or former spouse/civil partner or child or children under an order made by a court, or a Child Support Agency Maintenance Assessment, or the MOD under the relevant Service Act.

Category 5. All other members of the Armed Forces.

Notes:

1. **Service or Civil Service Spouses/Civil Partners.** When the spouse/civil partner of a member of the Armed Forces in Category 1 is a member of the Armed Forces or the UK Civil Service then the category is to bear the additional suffix of "S" or "C" respectively. Also, the Service spouse/civil partner or spouses/civil partners will decide which spouse/civil partner will be CATEGORY 1 or the Civil Service equivalent and which will be CATEGORY 5. The chosen option will be notified and can only be changed subsequently:

- (a) On the occasion of substantive promotions, reversion or relinquishment of rank of either spouse/civil partner
- (b) when either spouse/civil partner leaves the Service/Civil Service
- (c) when either spouse/civil partner goes over zone for promotion
- (d) when either spouse/civil partner is appointed or drafted to Local Foreign Service
- (e) when either spouse/civil partner is posted in the UK - although there may be restrictions in these circumstances on the frequency of eligibility for Removal Expenses, Disturbance Allowance and legal expenses for house Sale/Purchase/Tenancy Agreement/Repossessing Costs
- (f) when the Servicewoman is on paid maternity leave
- (g) in other, exceptional circumstances.

Options must be exercised within six months of the operative date of the change in circumstances.

2. *Children and the Children Act 1989* These regulations are framed against the background of the Children Act 1989, which lays down a general principle for the courts, namely that the child's welfare shall be the paramount consideration when the court determines any question with respect to the upbringing or property of a child. It aims to have Court Orders made only when the court considers that doing so would be better for the child than making no orders at all.

3. *Definitions of a Child.* For the purposes of status categorisation, a child must be below the age of majority (18) or if over that age, and under 25, the child must be unmarried and in receipt of full-time education at a school, college or university (reading for a first degree only) or being out of full education for up to 1 year immediately between secondary and further education. However, the age limit does not apply to a child who is physically or mentally incapable of contributing to his/her own support.

4. *Category 2 – Guidance.* Whether the Service person can properly be regarded as the centre and prime mover in the life of their child or children will depend on a number of factors about which it may be necessary to make enquiries. The following points should be borne in mind:

(1) A Court Order requiring a Service person to make regular payments to another person for the child, indicates, *prima facie*, that they are not the prime mover. If tax reasons are given as an explanation the following points are to be considered:

(a) From a tax point of view an order requiring payment to be made to a wife for a child is no different from an order requiring payments to be made simply to the wife. Payments directly to the child under a Court Order are treated as the child's income.

(b) If the child is being looked after by the Service parent there is unlikely to be any tax advantage in an order requiring him/her to make payments to the child. To be effective from a tax point of view the money has actually to leave the Service parent's control and come under the control of either the child itself or someone who can receive it on the child's behalf. Buying things for the child is not sufficient, nor is paying money to the ex-spouse/civil partner if it is not being done with the intention that it is to be used for the child's maintenance. Cases of doubt should be referred, via the Chain of Command to the MOD.

(2) If anyone other than the Service parent draws Child Benefit, because of DSS rules, this is a *prima facie* indication that the Service parent is not the centre and prime mover and the onus is on him to substantiate their claim.

(3) The Service parent must maintain a home of their own. If they do not, and the child is normally resident with some other person(s), the disadvantages of Service life will not affect the child. It is for the parent to show that this is not the case.

(4) If the other natural parent has reasonable access to the child, up to an aggregate of 56 days in any 12 month period may be spent with him. Access greater than this may prejudice the Service parent's entitlement to CATEGORY 2. (These restrictions on access do not apply during recognised Unaccompanied Duty).

(5) There may be difficulties during transition from CATEGORY 1 to CATEGORY 2, particularly until a separate home has been established. There is provision for a 3 month reconciliation period which allows time to arrange affairs but, until a parent has shown that they are acting as the centre and prime mover, there is no entitlement to CATEGORY 2, as the child is not subject to the exigencies of Service life. Future intentions can be taken into account only if there is actual evidence of intent, eg the setting up of a separate home.

(6) The requirement to provide a home may be relaxed following approval from MOD through normal staff channels. In such cases individuals may not be eligible for the full range of married benefits; entitlement will be decided on a case by case basis and will depend upon the circumstances.

5. *Notification of Change in Status*

(1) In order to ensure that Pay Regulations are properly applied, all Service personnel are to inform the appropriate Service Authority on a change of status category.

(2) A change in category is effective from the date of the event or the legal order and not from the date of declaration, although retrospective application of benefits may be withheld when the MOD considers that notification of change has been unreasonably postponed.