
STATUTORY INSTRUMENTS

2006 No. 606

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

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⁽¹⁾ or the corresponding provisions of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽²⁾; 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⁽³⁾ or any corresponding regulations made in Northern Ireland.

(1) 1992 c. 4.

(2) 1992 c. 7 (N.I.).

(3) S.I.1979/643.

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.

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 unemployment 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(4) or section 46 of the National Health Service (Scotland) Act 1978(5), 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(6), 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(7) or the Social Security Contributions and Benefits (Northern Ireland) Act 1992(8) having been deemed, by virtue of section 74(1) of the relevant Act, to be suffering 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—

(4) 1977 c. 49.

(5) 1978 c. 29.

(6) 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).

(7) 1992 c. 4.

(8) 1992 c. 7 (N.I.).

- (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.