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STATUTORY INSTRUMENTS

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**2005 No. 439**

**The Armed Forces and Reserve Forces  
(Compensation Scheme) Order 2005**

**PART VIII**

**PAYMENT**

**Date on which awards of benefit become payable**

**54.**—(1) A lump sum and a bereavement grant shall be paid in accordance with an award as soon as is reasonably practicable after the award has been made.

(2) An award of guaranteed income payment becomes payable—

- (a) where a member of the forces is discharged from the forces on medical grounds and the award is for the injury which caused him to be discharged on medical grounds, on the day after the discharge;
- (b) where a member of the forces is awarded injury benefit which includes an award of guaranteed income payment, on the day after the day on which his service ends;
- (c) in any case where subparagraph (a) or (b) does not apply, on the date of claim.

(3) Where a person who is entitled to a pension for disablement or death under The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 (“the 1983 Order”) subsequently becomes entitled to benefit under this Order for the same injury or death for which there was entitlement under the 1983 Order, the date on which benefit under this Order becomes payable is the date on which—

- (a) a claim for benefit is determined under article 43;
- (b) a final award is made under article 44;
- (c) a decision of the Secretary of State is revised under article 45, 48 or 49;
- (d) a decision relating to benefit is revised by a Pensions Appeal Tribunal, an appropriate Social Security Commissioner or a court as the case may be.

(4) Where a member of the forces dies in service, an award of survivor’s guaranteed income payment and an award of child’s payment become payable on the day after his death.

(5) Subject to article 14(7), an award—

- (a) revised under article 45 becomes payable on the date of claim;
- (b) revised under article 48 becomes payable on the date the application for review is sent to the Secretary of State;

(6) Subject to article 14(7) where a decision of the Secretary of State is revised under article 49 so as to award benefit or increase the amount of benefit awarded, the revised award becomes payable from the beginning of a period starting 6 years before the date on which the application for review is sent to the Secretary of State or, where no application for a review has been made, 6 years before the date on which the award is revised.

(7) Where an award is increased under article 15(4), the increased guaranteed income payment becomes payable from the date on which the further claim was made.

(8) Where the amount of an award is reduced following a review under article 49, the reduced amount becomes payable on the date on which the award is revised.

(9) Notwithstanding paragraph (6), no benefit is payable for any period before the date of claim.

### **Time of payment**

**55.** Guaranteed income payment, survivor's guaranteed income payment and child's payment shall be paid monthly in arrears unless, in any particular case, the Secretary of State arranges otherwise.

### **Suspension – Pensions Appeal Tribunal**

**56.**—(1) Where it appears to the Secretary of State that a question arises whether an appeal ought to be brought against the decision of a Pensions Appeal Tribunal, he may, subject to paragraph (2), direct that payment of benefit in accordance with that decision be suspended, in whole or in part, pending the determination of the appeal.

(2) Where it appears to the Secretary of State that a question arises under paragraph (1), he may only give directions that payment of benefit in accordance with that decision be suspended within the relevant period.

(3) A suspension under paragraph (1) shall cease unless, within the relevant period, the person awarded benefit by virtue of the decision (“the beneficiary”) is given or sent notice in writing that an application for leave to appeal has been made against that decision.

(4) Subject to paragraph (5), where the beneficiary has been given or sent notice within the relevant period that an application for leave to appeal against a decision of a Pensions Appeal Tribunal has been made, the suspension may continue until that application for leave to appeal and, where leave has been granted, any subsequent appeal is determined.

(5) Where an application for leave to appeal against a decision of a Pensions Appeal Tribunal is made to a Pensions Appeal Tribunal and that application is refused, the suspension shall cease unless the Secretary of State, within a period of 28 days beginning with the date on which notice in writing of the decision of the Pensions Appeal Tribunal refusing leave to appeal is received by him, makes a further application for leave to appeal, and, if he has so applied, the suspension may continue until that application for leave to appeal and any subsequent appeal is determined.

(6) Where, on an appeal against a decision of a Pensions Appeal Tribunal, an appropriate Commissioner remits the matter for rehearing and determination by a Pensions Appeal Tribunal, the appeal is not determined for the purposes of paragraphs (4) and (5) until the matter remitted for rehearing has been determined.

(7) In this article,

- (a) “appeal” means an appeal under section 6A of the Pensions Appeal Tribunals Act 1943(1)
- (b) “application for leave to appeal” means an application for leave to appeal under section 6A(6) of that Act; and
- (c) “relevant period” means the period of six weeks beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

(1) 1943 (c. 39), section 6A was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.

### **Suspension – Social Security Commissioner**

57.—(1) Where it appears to the Secretary of State that a question arises whether an appeal ought to be brought against the decision of an appropriate Commissioner under section 6C(2) of the Pensions Appeal Tribunals Act 1943, he may, subject to paragraph (2), direct that payment of benefit in accordance with that decision be suspended, in whole or in part, pending the determination of the appeal.

(2) Where it appears to the Secretary of State that a question arises under paragraph (1), he may only give directions that payment of benefit in accordance with that decision be suspended within the relevant period.

(3) A suspension under paragraph (1) shall cease unless, within the relevant period, the person awarded the benefit by virtue of the decision (“the beneficiary”) is given or sent notice in writing that an application for leave to appeal has been made against that decision.

(4) Where the beneficiary has been given or sent notice within the relevant period that an application for leave to appeal has been made, the suspension may continue until that application for leave to appeal and any subsequent appeal is determined.

(5) Where an application for leave to appeal against a decision of an appropriate Commissioner is made under section 6C of the Pensions Appeal Tribunals Act 1943 and that application is refused, the suspension shall cease unless the Secretary of State, within a period of 28 days beginning with the date on which notice in writing of the decision under that section refusing leave to appeal is received by him, applies to the appropriate court for leave to appeal, and, if he has so applied, the suspension may continue until that application for leave to appeal and any subsequent appeal has been determined.

(6) In this article—

- (a) “appeal” means an appeal under section 6C of the Pensions Appeal Tribunals Act 1943
- (b) “application for leave to appeal” means an application for leave to appeal under section 6C(2) of that Act; and
- (c) “appropriate court” means—
  - (i) in England, Wales and Northern Ireland, the Court of Appeal or, in Scotland, the Inner House of the Court of Session,
  - (ii) the House of Lords;
- (d) “relevant period” means the period of 6 weeks beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State;
- (e) “an appropriate Commissioner” means a Great Britain Social Security Commissioner or a Northern Ireland Social Security Commissioner and includes a tribunal of Commissioners constituted under section 6D(5) of the Pensions Appeal Tribunals Act 1943(3).

### **Suspension – courts**

58.—(1) Where it appears to the Secretary of State that a question arises whether an appeal ought to be brought against the decision of a court, he may, subject to paragraph (2), direct that payment of benefit in accordance with that decision be suspended, in whole or in part, pending the determination of the appeal.

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(2) Section 6C was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.

(3) Section 6D was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.

(2) Where it appears to the Secretary of State that a question arises under paragraph (1), he may only give directions that payment of benefit in accordance with that decision be suspended within the relevant period.

(3) A suspension under paragraph (1) shall cease unless, within the relevant period, the person awarded the benefit by virtue of the decision (“the beneficiary”) is given or sent notice in writing that an application for leave to appeal has been made against that decision.

(4) Where the beneficiary has been given or sent notice within the relevant period that an application for leave to appeal has been made, the suspension may continue until that application for leave to appeal and any subsequent appeal is determined.

(5) In this article—

(a) “appeal” means—

(i) in England, Wales and Northern Ireland an appeal to the Court of Appeal or, in Scotland, a reclaiming motion to the Inner House of the Court of Session, against the determination of an application for judicial review;

(ii) in England, Wales and Northern Ireland an appeal to the House of Lords against a decision of the Court of Appeal in an application referred to in head (i) above, or in Scotland, an appeal to the House of Lords against a decision of the Inner House of the Court of Session in a reclaiming motion in an application referred to in head (i) above;

(b) “application for leave to appeal” means an application or petition for leave to appeal as the case may be in the proceedings referred to in heads (i) and (ii) of subparagraph (a) above;

(c) “relevant period” means the period of three months beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

### **Suspension in other cases**

**59.**—(1) Where it appears to the Secretary of State that—

(a) an appeal has been brought or a question arises whether an appeal ought to be brought against a decision of a court in relation to a case (“the primary case”); and

(b) if such an appeal were to be allowed a question would arise in relation to another case (“the secondary case”) whether the award of benefit in that case ought to be reviewed,

he may direct that payment of the benefit under the award in the secondary case be suspended, in whole or in part—

(i) until the time limit for making an application for leave to appeal in the primary case has expired, or;

(ii) if such an application is made, until such time as that application and any subsequent appeal has been determined, whichever is the later.

(2) In this article the expressions “appeal” and “application for leave to appeal” have the same meanings as they have in article 56.

### **Payments on death**

**60.**—(1) On the death of a person who has made a claim for benefit, the Secretary of State may appoint such person as he thinks fit to proceed with the claim.

(2) Any sum which is payable under an award on a claim proceeded with under paragraph (1) shall be paid to the personal representatives of the deceased or to such other persons as the Secretary of State considers fit.

(3) An award on a claim proceeded with under paragraph (1) shall not provide for payment of benefit for any period after the date of death.