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STATUTORY INSTRUMENTS

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**2009 No. 706**

**The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) Order 2009**

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) Order 2009 and shall come into force on 6th April 2009.

(2) In this Order, “the principal Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, and a reference to a numbered article, Part, Table or Schedule is a reference to the article, Part, Table or Schedule in the principal Order which bears that number.

**Amendment of article 7 (Gratuity for minor disablement)**

2. Article 7 is amended as follows—

- (a) in paragraph (1) omit “Subject to the provisions of paragraph (2),”;
- (b) omit paragraph (2).

**Amendment of article 8 (Constant attendance allowance)**

3. Article 8 is amended as follows—

- (a) in paragraph (1) for “Subject to article 71(4)” substitute “Subject to paragraph (6) and article 71(4)”;
- (b) after paragraph (5) add—

“(6) Where—

- (a) a member of the armed forces is in receipt of retired pay or pension in respect of disablement, due to one or more injuries, the degree of which is not less than 80%, and
- (b) one of those injuries is a terminal illness,

the member shall be taken to satisfy or likely to satisfy the necessary attendance specified in paragraph (4) for so much of the period for which he is terminally ill as does not fall before the date of claim, and the rate of the allowance shall be the intermediate rate specified in paragraph 1(a)(iii) of Part IV of Schedule 1.”

**Amendment of article 10 (Severe disablement occupational allowance)**

4. In article 10(2)(c) after “Welfare Reform Act 2007” add “or the corresponding provisions of the Welfare Reform Act (Northern Ireland) 2007(1)”.

### **Amendment of article 14 (Comforts allowance)**

5. Article 14(1) is amended as follows—

(a) for subparagraph (a) substitute—

“(a) where subparagraph (a)(i) or (ii) or both apply, an allowance shall be payable at the appropriate rate specified in paragraph 7(a) of Part IV of Schedule 1—

(i) this subparagraph applies where the member is in receipt of an allowance under article 8 at any rate, and an allowance under article 12,

(ii) this subparagraph applies where the member is in receipt of an allowance under article 8 at the rates specified in either paragraph 1(a)(iii) or (iv) of Part IV of Schedule 1, and in receipt of retired pay or a pension in respect of disablement the degree of which is 100 per cent;”;

(b) in subparagraph (b) after “article 8” insert “at any rate”.

### **Amendment of article 15 (Allowance for lowered standard of occupation)**

6. Article 15 is amended as follows—

(a) in paragraph (1) for “Except in the circumstances specified in” substitute “Subject to”;

(b) for paragraph (2) substitute—

“(2) No award of an allowance under this article shall be made where subparagraphs (a) or (b) or both apply—

(a) this subparagraph applies where a member submits a new claim (as defined in article 4(b))—

(i) on or after the date he attained the age of 65, or

(ii) where the degree of disablement is assessed at less than 40 per cent;

(b) this subparagraph applies where—

(i) a member submits a claim on or after 6th April 2009,

(ii) on the day which immediately precedes the date of claim the member or, where the member has died, the person by or in respect of whom a claim is made does not have an award of the allowance, and

(iii) the member is in receipt of—

(aa) incapacity benefit under Part II of the Social Security Contributions and Benefits Act 1992<sup>(2)</sup> or the corresponding provisions of the Social Security Contributions and Benefits Act (Northern Ireland) 1992<sup>(3)</sup>,

(bb) employment and support allowance under Part 1 of the Welfare Reform Act 2007<sup>(4)</sup> or the corresponding provisions of the Welfare Reform Act (Northern Ireland) 2007, or

(cc) any benefit or allowance under the law of any place outside the United Kingdom which in the opinion of the Secretary of State is analogous to incapacity benefit or employment and support allowance.”.

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(2) 1992 c. 4.

(3) 1992 c. 7. (N.I.).

(4) 2007 c. 5.

### **Amendment of article 22 (General conditions for Part III)**

7. In article 22(5)(b) for “52” substitute “104”.

### **Amendment of article 23 (Pensions to surviving spouses and surviving civil partners)**

8. In article 23(2) for “a rate of £73.64 per week” substitute “whichever of the rates specified in column (2) of Tables 6 and 7 in Part II of Schedule 2 as is appropriate in the case”.

### **Amendment of article 32 (Funeral expenses)**

9. For article 32 substitute—

#### **“Funeral expenses**

**32.—**(1) Where paragraph (2) applies the Secretary of State shall make an award for funeral expenses of £2,200.

(2) This paragraph applies where—

- (a) a member of the armed forces dies on or after 6th April 2009;
- (b) the death of the member was due to service before 6th April 2005;
- (c) the funeral of that member has taken place; and
- (d) within three months of the funeral of the deceased member, either—
  - (i) a claim is made for funeral expenses, or
  - (ii) an enquiry is made in person, in writing or orally to the Secretary of State or to an authorised agent, about claiming funeral expenses and a claim is made for such expenses within three months of the date the claim form is sent in response to the enquiry.”.

### **Amendment of article 34 (Making of claims)**

10. Article 34 is amended as follows—

- (a) in paragraph (1) for “paragraph (4)” substitute “paragraphs (2A), (4)”; and
- (b) after paragraph (2) insert—

“(2A) A claim for constant attendance allowance under article 8(6) (on the grounds that a member of the armed forces has a terminal illness) may be made on behalf of the member, and shall be regarded as having been made by the member, notwithstanding that it is made without his knowledge or authority.”.

### **Amendment of article 50 (Payment of public claims out of pension)**

11. In article 50(3)(b)—

- (a) after “the 1992 Act” omit “or”;
- (b) after “the Income Support (Transitional) Regulations 1987” insert “, or the Welfare Reform Act 2007”.

### **Revocation of article 55 (Children whose maintenance is otherwise provided for)**

12. Article 55 is revoked.

### **Amendment of article 56 (Abatement of awards of social security benefits)**

13. Article 56 is amended as follows—

- (a) in the heading after “awards” insert “in respect”;
- (b) after subparagraph (3)(f) add—
  - “(g) the corresponding provisions of the Welfare Reform Act (Northern Ireland) 2007.

### **Amendment of article 61 (Suspension in individual cases-Tribunal)**

14. Article 61(5) is amended as follows—

- (a) in the heading for “Tribunal” substitute “an appropriate tribunal”;
- (b) in paragraph (8)(a) for “section 6(A)” substitute “section 6A(6)” and for “section 13” substitute “section 11(7)”;
- (c) for paragraph (8)(b) substitute—
  - ““application for leave to appeal” means an application for leave under section 6A(6) of the Pensions Appeal Tribunals Act 1943 or, as the case may be, section 11 of the Tribunals, Courts and Enforcement Act 2007;”;
- (d) in paragraph (8)(d) for “one month” substitute “six weeks”.

### **Amendment of Schedule 1 (Disablement due to service in the armed forces)**

15. In Schedule 1—

- (a) for the Table in Part II substitute the Table set out in Schedule 1 to this Order;
- (b) for Tables 1 and 2 in Part III substitute Tables 1 and 2 set out in Schedule 2 to this Order;
- (c) for the Table in Part IV substitute the Table set out in Schedule 3 to this Order; and
- (d) in the Table in Part V of Schedule 1 in the category “Other Disablements” after the entries for “Absolute deafness” insert into the first column the word “Mesothelioma” and insert into the second column in the corresponding place the figure “100”.

### **Amendment of Schedule 2 (Death due to service in the armed forces)**

16. In Schedule 2—

- (a) for Tables 1, 2, 3, 4 and 5 of Part II substitute Tables 1, 2, 3, 4, 5, 6 and 7 set out in Schedule 4 to this Order;
- (b) for the Table in Part III substitute the Table set out in Schedule 5 to this Order.

### **Amendment of Schedule 6 (interpretation)**

17. In Part II of Schedule 6, insert at the appropriate place—

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“58A.	“terminal illness”	a progressive disease where, in consequence of that disease, death can reasonably be expected within
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- (5) Article 61 was amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008, *S.I. 2008/2683*, article 6(1) and Schedule 1, paragraph 312.
- (6) Section 6A of the Pensions Appeal Tribunals Act 1943 (*c. 39*); section 6A was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (*c. 32*), and amended by the Transfer of Tribunal Functions Order 2008 *S.I. 2008/2833*, article 9 and Schedule 3, paragraph 13.
- (7) Section 11 of the Tribunals, Courts and Enforcement Act 2007 (*c.15*) provides for the right of appeal from the First-tier Tribunal to the Upper Tribunal.

6 months (and “terminally ill” shall be construed accordingly);”.

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### **Transitory provisions and savings**

**18.**—(1) The amendments to articles 8, 10 and 14 of the principal Order shall not apply where a claim for constant attendance allowance under article 8 was made before 6th April 2009.

(2) Where a member of the armed forces died before 6th April 2009, article 32 of the principal Order in force immediately before the coming into force of this Order shall apply to a claim for funeral expenses.

(3) For the purposes of a deemed overpayment under article 50(3) or an abatement in respect of social security benefits under article 56, no account shall be taken of an amount payable under the Welfare Reform Act (Northern Ireland) 2007 for any period before 6th April 2009.

(4) Where a claim was made before 6th April 2009, the Secretary of State may withhold or reduce a pension to or in respect of a child whose maintenance is otherwise provided for in accordance with the provisions of article 55 of the principal Order in force immediately before the coming into force of this Order.

(5) Where a notice in writing of a decision of an appropriate tribunal was received by the Secretary of State before 6th April 2009, the relevant period to suspend payment of a pension or a gratuity under article 61 of the principal Order shall be one month.

(6) In paragraph (5) “appropriate tribunal” and “relevant period” have the same meaning as in article 61 of the principal Order.

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