

EXPLANATORY MEMORANDUM TO
THE NAVAL, MILITARY AND AIR FORCES ETC. (DISABLEMENT AND DEATH)
SERVICE PENSIONS (AMENDMENT) ORDER 2016

2016 No. 374

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Defence (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (“the principal Order”) which makes provision for pensions and other awards in respect of disablement or death due to service before 6th April 2005 in a scheme known as the War Pensions Scheme (“WPS”). This Order enables veterans suffering from diffuse mesothelioma to choose whether to receive the pension and other awards currently available under the WPS or a one-off lump sum payment of £140,000 (subject to deductions for WPS payments already made). This Order also makes amendments consequential to the Pensions Act 2014 and updates an annual earnings figure that is relevant to whether a person may be awarded employability allowances under article 12 of the principal Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is not subject to parliamentary procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This Order amends the principal Order, which is made in part in the exercise of prerogative powers which are expressly preserved by section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is not subject to parliamentary procedure, no statement is required.

7. Policy background

What is being done and why

- 7.1 Diffuse mesothelioma lump sums: this Order amends the principal Order to enable the WPS to pay a lump sum to compensate members of the armed forces suffering from diffuse mesothelioma (a terminal illness caused by exposure to asbestos) due to service before 6th April 2005. Currently, there is an entitlement to a WPS pension, supplementary allowances and, in some circumstances war widow(er)'s pension or other eligible dependant's awards. A claimant who elects for the lump sum will forego entitlement to the WPS pension and other awards under the WPS, except for funeral expenses.
- 7.2 This change responds to a campaign by the Royal British Legion ("RBL") for veterans to be given the option of receiving a lump sum under the WPS which takes into account the payment that civilians may receive under the Diffuse Mesothelioma Payment Scheme ("DMPS") established by the Mesothelioma Act 2014. Civilians who have not brought an action against a relevant employer because they are unable to trace the employer may apply under the DMPS, which pays a tariff-based, age-related one-off lump sum payment. For example, for a claimant aged 75, the DMPS lump sum is £142,000. Under the DPMS, eligible dependants of those who died of diffuse mesothelioma may also apply for a lump sum.
- 7.3 RBL expressed concerns that single, widowed or divorced veterans (comprising around 34% of claimants) are disadvantaged financially by being compensated under the WPS, compared to veterans who have dependants who are entitled to the war widow(er)'s pension or other benefits available to eligible dependants. This is because claimants' short life expectancy after diagnosis means they only receive the maximum WPS pension and allowances for a short time relative to the WPS compensation available for other conditions. Additionally, such claimants have no eligible dependants who will receive awards on their death such as the war widow(er)'s pension (which has a value of up to £14,000 per annum tax free for life).
- 7.4 These changes will offer veterans the flexibility to consider whether the lump sum or the usual WPS pension and awards (including the war widow(er)'s pension) is the best option in their individual circumstances. Around 50 existing WPS claimants will be able to elect to receive the lump sum, the amount of which will be reduced by the amount of WPS pension and awards already paid in respect of diffuse mesothelioma. The Department anticipates that around 15 claimants will choose the lump sum each year (of an estimated 30 new claims in respect of diffuse mesothelioma each year).
- 7.5 Amendments consequential to the Pensions Act 2014: this Order amends the principal Order to ensure that the new state pension, which was introduced by the Pensions Act 2014 for people reaching pensionable age on or after 6th April 2015, is taken into account when making awards under articles 10 (severe disablement occupational allowance) and 12 (unemployability allowances) of the principal Order to avoid double recovery.
- 7.6 Up-rating: the Department updates the allowances specified in the principal Order in line with the Consumer Price Index ("CPI") and the Department for Work and Pensions' approach to social security disability benefits. In financial year 2016/17, a negative increase in CPI in September 2015 means the allowances will remain at the current rates. The instrument updates the annual earnings figure that is relevant to

whether a person may be awarded unemployability allowances under article 12 of the principal Order.

Consolidation

- 7.7 The principal Order was last consolidated in 2006. The Department will continue to consolidate it periodically. The informal consolidated text of the principal Order is available to the public free of charge on www.legislation.gov.uk.

8. Consultation outcome

- 8.1 The development of a lump sum option has involved complex consideration of how current WPS entitlement can be converted into a lump sum. The Department has consulted RBL on the proposed amendments and RBL has indicated it is content. The Minister announced the intention to make the lump sum option available to veterans diagnosed with diffuse mesothelioma before 16th December 2015. Service charities were consulted during a bi-annual central advisory committee (CAC) meeting chaired by the Minister of State for Defence Personnel and Veterans on that date. During this meeting, The War Widows Association, Naval Families Federation, the SSAFA (formerly known as the Soldiers, Sailors, Airmen and Families Association) and the Veterans Advisory and Pensions Committees were given details of the proposed changes and given the opportunity to feedback any concerns to the Minister. Following the meeting, the lump sum option was expanded to include veterans diagnosed with diffuse mesothelioma regardless of the date of diagnosis.
- 8.2 The Department has also consulted with the WPS administrator, Defence Business Services Veterans UK (“DBS”), in relation to the implementation of the lump sum option, and the Department for Work and Pensions in relation to the interaction of the payment of the lump sum and social security benefits.

9. Guidance

- 9.1 DBS will administer payment of the lump sum to veterans, and will liaise with the Veterans Welfare Service to ensure eligible veterans suffering from diffuse mesothelioma and their families will be given detailed information about the lump sum option, e.g. the deductions that will be made before the lump sum is paid and the effect of taking the lump sum on the person’s entitlement to other WPS awards. The Department will give DBS guidance on how to implement these changes.

10. Impact

- 10.1 There is no impact on business as the changes will be funded and administered by Government. There will be minimal impact on relevant charities or voluntary bodies. The Department will continue to work with these charities to publicise the reforms.
- 10.2 There is no impact on the public sector. The changes will be administered by the current WPS administrator, DBS, which is a part of the Department.
- 10.3 An Impact Assessment has not been prepared for this instrument. An assessment has been made of the impact of the introduction of the new state pension. Copies of that impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1H 9NA or from the DWP website:
https://www.gov.uk/government/uploads/system/uploads/attachments_data/file/31131

6/pensions-act-ia-annex-a-single-tier-state-pension.pdf . (Annex A contains the assessment for the new state pension.)

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The principal Order is usually amended annually to ensure the pensions and allowances paid by way of the WPS are uprated in line with the CPI each year. Any further amendments required to the principal Order in relation to the diffuse mesothelioma lump sum reforms can be made during this annual process. When this Order comes into force, DBS will monitor new and existing claims in respect of diffuse mesothelioma and the take up and implementation of the lump sum option, and inform the Department of any concerns. An annual operations review is conducted by the Department's war pensions policy team prior to the annual uprating WPS pensions and allowances. This annual review, which will begin in October 2016, will include a review of the diffuse mesothelioma lump sum scheme in consultation with DBS. Defence Statistics publish WPS statistical data annually; the update in March 2017 will contain data relevant to the introduction of the diffuse mesothelioma lump sum scheme.

13. Contact

13.1 Please contact Angela Owen at the Armed Forces Compensation Scheme, Ministry of Defence; Telephone 0207 218 9681 or Email: People-SPSupport-AFCPol4@mod.uk, with queries regarding the instrument.