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STATUTORY INSTRUMENTS

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**2006 No. 606**

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

**PART V**

**ADJUDICATION**

**Interpretation of Part V**

**38.** In this Part—

- (a) “pension” includes any retired pay, pension, allowance or other continuing benefit under this Order; and
- (b) “gratuity” includes any gratuity under this Order.

**Administration of this Order**

**39.** This Order shall be administered by the Secretary of State or, as to any particular provision of the Order which he may select, by such other person or body acting under his directions as he may direct, and, except as otherwise provided by statute, the Secretary of State shall be the sole interpreter of this Order and may issue such instructions with reference to the Order as he may from time to time consider necessary.

**Entitlement where a claim is made in respect of a disablement, or death occurs, not later than 7 years after the termination of service**

**40.—**(1) Except where paragraph (2) applies, where, not later than 7 years after the termination of the service of a member of the armed forces, a claim is made in respect of a disablement of that member, or the death occurs of that member and a claim is made (at any time) in respect of that death, such disablement or death, as the case may be, shall be accepted as due to service for the purposes of this Order provided it is certified that—

- (a) the disablement is due to an injury which—
  - (i) is attributable to service, or
  - (ii) existed before or arose during service and has been and remains aggravated thereby;or
- (b) the death was due to or hastened by—
  - (i) an injury which was attributable to service, or
  - (ii) the aggravation by service of an injury which existed before or arose during service.

(2) Where a person is entitled to benefit under the 2005 Order in respect of an injury or death, that injury or death shall not be accepted as due to service for the purposes of this Order.

(3) Subject to the following provision of this article, in no case shall there be an onus on any claimant under this article to prove the fulfilment of the conditions set out in paragraph (1) and the benefit of any reasonable doubt shall be given to the claimant.

(4) Subject to the following provisions of this article, where an injury which has led to a member's discharge or death during service was not noted in a medical report made on that member on the commencement of his service, a certificate under paragraph (1) shall be given unless the evidence shows that the conditions set out in that paragraph are not fulfilled.

(5) The provisions of paragraphs (3) and (4) shall not apply to a claim in respect of the disablement or death of a member of the Reserve or Auxiliary Forces where that disablement is due to, or that death is due to or hastened by, a disease other than a disease caused or aggravated by an accident but—

- (a) such disablement or death shall be certified in accordance with paragraph (1) if it is shown that the conditions set out in this article and applicable thereto are fulfilled;
- (b) where, upon reliable evidence, a reasonable doubt exists where the conditions set out in paragraph (1) are fulfilled, the benefit of that reasonable doubt shall be given to the claimant.

(6) Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

**Entitlement where a claim is made in respect of a disablement, or death occurs, more than 7 years after the termination of service**

**41.**—(1) Except where paragraph (2) applies, where, after the expiration of the period of 7 years beginning with the termination of the service of a member of the armed forces, a claim is made in respect of a disablement of that member, or in respect of the death of that member (being a death occurring after the expiration of the said period), such disablement or death, as the case may be, shall be accepted as due to service for the purpose of this Order provided it is certified that—

- (a) the disablement is due to an injury which—
  - (i) is attributable to service before 6th April 2005, or
  - (ii) existed before or arose during such service and has been and remains aggravated thereby; or
- (b) the death was due to or substantially hastened by
  - (i) an injury which was attributable to service, or
  - (ii) the aggravation by service of an injury which existed before or arose during service.

(2) Where a person is entitled to benefit under the 2005 Order in respect of an injury or death, that injury or death shall not be accepted as due to service for the purposes of this Order.

(3) A disablement or death shall be certified in accordance with paragraph (1) if it is shown that the conditions set out in this article and applicable thereto are fulfilled.

(4) The condition set out in paragraph (1)(a)(ii), namely, that the injury on which the claim is based remains aggravated by service before 6th April 2005 shall not be treated as fulfilled unless the injury remains so aggravated at the time when the claim is made, but this paragraph shall be without prejudice, in a case where an award is made, to the subsequent operation of article 2(5) in relation to that condition.

(5) Where, upon reliable evidence, a reasonable doubt exists whether the conditions set out in paragraph (1) are fulfilled, the benefit of that reasonable doubt shall be given to the claimant.

(6) Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

### **Determination of degree of disablement**

42.—(1) The following provisions of this article shall apply for the purposes of the assessment of the degree of the disablement of a member of the armed forces due to service before 6th April 2005.

(2) Subject to the following provisions of this article—

- (a) the degree of the disablement due to service of a member of the armed forces shall be assessed by making a comparison between the condition of the member as so disabled and the condition of a normal healthy person of the same age and sex, without taking into account the earning capacity of the member in his disabled condition in his own or any other specific trade or occupation, and without taking into account the effect of any individual factors or extraneous circumstances;
- (b) for the purpose of assessing the degree of disablement due to an injury which existed before or arose during service and has been and remains aggravated thereby—
  - (i) in assessing the degree of disablement existing at the date of the termination of the service of the member, account shall be taken of the total disablement due to that injury and existing at that date, and
  - (ii) in assessing the degree of disablement existing at any date subsequent to the date of the termination of his service, any increase in the degree of disablement which has occurred since the said date of termination shall only be taken into account in so far as that increase is due to the aggravation by service of that injury;
- (c) where such disablement is due to more than one injury, a composite assessment of the degree of disablement shall be made by reference to the combined effect of all such injuries;
- (d) the degree of disablement shall be assessed on an interim basis unless the member's condition permits a final assessment of the extent, if any, of that disablement.

(3) Where the average hearing loss at frequencies of 1, 2 and 3 kHz is not 50 dB or more in each ear, the degree of disablement in respect of that loss shall be assessed at less than 20 per cent.

(4) Neither noise-induced sensorineural hearing loss nor a related condition or symptom shall be taken into account in determining a member's total degree of disablement if the degree of disablement in respect of that loss alone is less than 20 per cent.

(5) The degree of disablement assessed under the foregoing provisions of this article shall be certified by way of a percentage, total disablement being represented by 100 per cent (which shall be the maximum assessment) and a lesser degree being represented by such percentage as bears to 100 per cent the same proportion as the lesser degree of disablement bears to total disablement, so however that a degree of disablement of 20 per cent or more shall be certified at a percentage which is a multiple of 10, and a degree of disablement which is less than 20 per cent shall, except in a case to which Table 1 of Part III of Schedule 1 applies, be certified in a manner suitable for the purposes of Table 2 of Part III of that Schedule.

(6) Where a disablement is due to an injury specified in Part V of Schedule 1 or is a disablement so specified, and, in either case, has reached a settled condition, the degree of that disablement shall, in the absence of any special features, be certified for the purposes of this article at the percentage specified in that Part as appropriate to that injury or to that disablement.

(7) An assessment of the degree of disablement due to service in respect of noise-induced sensorineural hearing loss shall be based solely on hearing loss due to service and shall not include any hearing loss due to age or other factors which are not related to service as a member of the armed forces and which arise after service.

(8) Noise-induced sensorineural hearing loss shall be measured by reference to audiometric tests, where available, conducted at or about the termination of the member's service and the degree of disablement due to service shall be assessed in accordance with paragraph (10).

(9) Where no such tests were conducted or are available, the assessment of the degree of disablement due to service shall be informed by the earliest available evidence, whether in terms of audiometric tests or other evidence relevant to the level of hearing loss that existed at termination of service and the assessment shall have regard to the relative percentages of degrees of disablement and measured hearing loss specified in Table 1 of Part VI of Schedule 1 but any hearing loss arising after termination of service shall not be included in the assessment.

(10) Subject to paragraphs (7), (8), (9) and (11), the degree of disablement in respect of noise-induced sensorineural hearing loss which is due to service shall be assessed by—

- (a) determining the average total hearing loss for each ear at 1, 2 and 3kHz frequencies; and then by
- (b) determining the percentage degree of disablement for each ear in accordance with Table 1 of Part VI of Schedule 1; and then by
- (c) determining the average percentage degree of binaural disablement in accordance with the following formula: (degree of disablement of better ear  $\times$  4) + (degree of disablement of worst ear) divided by 5; and
- (d) in subparagraph (c) “better ear” means that ear in which the claimant’s hearing loss is the less and “worse ear” means that ear in which the claimant’s hearing loss is the more.

(11) Paragraphs (8), (9) and (10) shall not be applied so as to reduce any award made prior to 12th April 2004.

(12) For the purpose of determining the percentage degree of disablement in Table 1 of Part VI of Schedule 1, any fraction of an average hearing loss shall, where the average hearing loss is over 50dB, be rounded down to the next whole figure.

(13) Where—

- (a) a member has sustained a minor injury specified in Table 1 of Part III of Schedule 1 as well as some other disablement due to service the degree of which is less than 100 per cent; and
- (b) a composite assessment of the degree of the disablement from both causes is no higher than the assessment for the other disablement alone

this article shall have effect so as to authorise an award under article 7 in respect of the minor injury as well as an award under article 6 or 7 in respect of the other disablement.

(14) The degree of disablement certified under this article shall be the degree of disablement for the purposes of any award made under this Order.

## **Certification**

**43.** Where any matter is required by this Order to be certified, that matter shall be determined—

- (a) where a Tribunal constituted under the War Pensions (Administrative Provisions) Act 1919(1) or the Pensions Appeal Tribunals Act 1943(2) has given a decision on that matter under those Acts, in accordance with that decision, or, if an appeal from that decision is brought under those Acts, in accordance with the decision on that appeal;
- (b) where no such decision has been given and the matter involves a medical question—
  - (i) in accordance with a certificate on that question of a medical officer or board of medical officers appointed or recognised by the Secretary of State,

(1) 1919 c. 53.

(2) 1943 c. 39; this Act was amended and modified by the Pensions Appeal Tribunals Act 1949 (c. 12); sub-section (3A) was added to section 1 by the Pensions Appeal Tribunals Act (Modification) Order 1947 (S.I. 1947/1143) and sections 5 and 6 were amended by section 23 of the Chronically Sick and Disabled Persons Act 1970 (c. 44). Sections 5 and 6 were also amended by section 16 of the Social Security Act 1980 (c. 30), and section 6 was also amended by section 43 of the Social Security and Housing Benefits Act 1982 (c. 24) and by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32).

- (ii) in a case where a pension or retired pay was payable in respect of disablement or death due to service before the commencement of the 1914 World War or after 30<sup>th</sup> September 1921 but before 3rd September 1939, if a certificate on that question has been given before 29th July 1996 by a medical officer or a board of medical officers appointed by the Secretary of State for Defence, in accordance with that certificate, or
- (iii) where it appears to the Secretary of State that the medical question raises a serious doubt or difficulty and he so desires, in accordance with the opinion thereon obtained from one or more of a panel of independent medical experts nominated by the President of the Royal College of Physicians of London, the Royal College of Surgeons of England or the Royal College of Obstetricians and Gynaecologists.

### **Review of decisions, assessments and awards**

44.—(1) Subject to the provisions of paragraphs (3), (4) and (5) and to the provisions of paragraph (8), any decision—

- (a) accepting or rejecting a claim for pension; or
- (b) any assessment of the degree of disablement of a member of the armed forces; or
- (c) any final decision that there is no disablement or that the disablement has come to an end

may be reviewed by the Secretary of State at any time on any ground.

(2) Subject to the provisions of paragraphs (4), (5), (8) and (9), any award under this Order may be reviewed by the Secretary of State at any time if the Secretary of State is satisfied that—

- (a) the award was made in consequence of ignorance of, or a mistake as to, a material fact, or of a mistake as to the law;
- (b) there has been any relevant change of circumstances since the award was made;
- (c) the award was based on a decision or assessment to which paragraph (1) of this article applies, and that decision or assessment has been revised.

(3) Any assessment or decision made, given or upheld by the Pensions Appeal Tribunal under section 8 of the War Pensions (Administrative Provisions) Act 1919 or the Pensions Appeal Tribunals Act 1943 may be reviewed by the Secretary of State at any time if the Secretary of State is satisfied that there has been a relevant change of circumstances since the assessment or decision was made, including any improvement or deterioration in the disablement in respect of which the assessment was made.

(4) Subject to the provisions of paragraph (9), following a review under paragraph (1) of any decision accepting a claim for pension or any assessment of the degree of disablement of a member of the armed forces, that decision or assessment may be revised by the Secretary of State to the detriment of a member of the armed forces only where the Secretary of State is satisfied that—

- (a) the decision or assessment was given or made in consequence of ignorance of, or a mistake as to, a material fact, or of a mistake as to the law; or
- (b) in the case of a decision accepting a claim for pension—
  - (i) the decision was given after it had been certified pursuant to article 43(b)(i) that the member of the armed forces was suffering from a specified disablement (“the certified condition”) which was attributable to, or aggravated by, his service, and
  - (ii) since the date of the decision it has been further certified, pursuant to article 43(b)(i), that the claimant was not, at the date of the earlier certification, suffering from the certified condition; or

(c) there has been a change in the degree of disablement due to service since the assessment was made.

(5) An award under this Order may be revised by the Secretary of State to the detriment of a member of the armed forces only where the Secretary of State is satisfied that—

(a) the award was made in consequence of ignorance of, or a mistake as to, a material fact, or of a mistake as to the law; or

(b) there has been any relevant change of circumstances since the award was made; or

(c) the decision or assessment upon which the award was based has been revised under paragraph (4).

(6) Subject to the provisions of paragraphs (4) and (5), on a review under this article, the Secretary of State may maintain or continue, vary or cancel the decision, assessment or award and any revised decision, assessment or award shall be such as may be appropriate having regard to the provisions of this Order.

(7) Notwithstanding the provisions of paragraph (4), (5) and (6), where a decision accepting a claim for pension is revised, the Secretary of State may, if in any case he sees fit, continue any award based on that decision at a rate not exceeding that which may from time to time be appropriate to the assessment of the degree of disablement existing immediately before the date of the revision.

(8) Where a member has attained the age of 65, paragraph (2)(b) shall not apply so as to enable an award of an allowance under article 15 to be reviewed on the ground that the rate of the member's earnings has, or would, in his regular occupation, have changed since the date of the award.

(9) Subject to paragraphs (10), (11) and (12), paragraphs (1) to (7) shall not apply to any decision, assessment or award made in respect of or relating to the rate of pension or retired pay for the disablement or death of a member which is due to service before or during the 1914 World War.

(10) A permanent pension or permanent retired pay granted under this Order in respect of service before the 1914 World War or under a 1919 to 1921 instrument may be reviewed by the Secretary of State where the person to whom the pension or retired pay has been granted claims that there has been a substantial increase in the extent of the disablement due to the original cause.

(11) In respect of any disablement pension or retired pay under this Order in respect of service before the 1914 World War or under a 1919 to 1921 instrument the Secretary of State may at any time order a review of that pension or retired pay in any case where—

(a) the pension or retired pay has, by error in interpretation or fact, been granted to a disabled member of the armed forces in excess of the amount appropriate to the degree of his disablement;

(b) the Secretary of State has reason to believe that the pension or retired pay has been obtained by an improper means; or

(c) the pension or retired pay has been granted by error.

(12) Any decision rejecting a claim for a pension in respect of the death of a member which is due to service before or during the 1914 World War may be reviewed by the Secretary of State at any time on any ground and may be revised by him as may be appropriate having regard to the provisions of this Order.