
STATUTORY INSTRUMENTS

2006 No. 606

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

PART VII

REDUCTION AND CANCELLATION OF AWARDS

Interpretation of Part VII

51.—(1) In articles 52, 56, 57 and 60—

- (a) “pension” means any retired pay, pension, allowance, grant or other continuing benefit under this Order or a 1919 to 1921 instrument; and
- (b) “gratuity” includes any gratuity payable under any of the instruments referred to in subparagraph(a).

(2) In articles 54, 55, 61, 62, 63, 64, 65 and 66—

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

Adjustment of awards in respect of other compensation

52.—(1) Where the Secretary of State is satisfied that—

- (a) compensation has been or will be paid to or in respect of a person to or in respect of whom a pension or gratuity is being or may be paid; or
- (b) that any compensation which has been or will be paid will benefit such a person

the Secretary of State may take the compensation into account against the pension or gratuity in such manner and to such extent as he thinks fit and may withhold or reduce the pension or gratuity accordingly.

(2) Where the Secretary of State considers that it is by reason of some act or omission by or on behalf of a person to or in respect of whom a pension or gratuity is being or may be paid that—

- (a) there is no compensation to be taken into account against that pension or gratuity under paragraph (1); or
- (b) the amount of compensation to be taken into account against that pension or gratuity is less than it would otherwise have been; and
- (c) the Secretary of State is of the opinion that such act or omission was unreasonable

the Secretary of State may assess the amount of the compensation which, in his opinion, would have fallen to be taken into account but for such act or omission, and may, for the purpose of paragraph (1), treat that amount as if it were compensation which could be taken into account under that paragraph.

(3) In this article “compensation” means—

- (a) any periodical or lump sum payment in respect of the disablement or death of any person, or in respect of any injury, disease or incapacity sustained or suffered by any person, being a payment—
 - (i) for which provision is made by or under any enactment, Order in Council (including this Order), Warrant, Order, scheme, ordinance, regulation or other instrument; or
 - (ii) which is recoverable as damages at common law; or
- (b) any periodical or lump sum payment which, in the opinion of the Secretary of State, is recoverable or payable—
 - (i) under any enactment, scheme, ordinance, regulation or other instrument whatsoever promulgated or made in any place outside the United Kingdom, or
 - (ii) under the law of any such place
 and is analogous to any payment falling within subparagraph (a) of this paragraph; or
- (c) any periodical or lump sum payment made in settlement or composition of, or to avoid the making of, any claim to any payment falling within subparagraph (a) or (b) of this paragraph, whether liability on any such claim is or is not admitted.

Maintenance in hospital or an institution

53.—(1) Subject to paragraph (3), the Secretary of State shall withhold constant attendance allowance and severe disablement occupational allowance 4 weeks after the date on which the person to whom either allowance is awarded becomes a person described in paragraph (2).

(2) Paragraph (1) applies to a person who—

- (a) is receiving or has received or is regarded as receiving or having received free in-patient treatment; or
- (b) is being or has been maintained in an institution—
 - (i) which is supported wholly or partly out of public funds, or
 - (ii) in which he is being maintained pursuant to arrangements made by the Secretary of State

otherwise than for the purpose of undergoing medical or other treatment.

(3) For the purposes of paragraph (2), any separate periods of time spent as set out in paragraph (2) shall be treated as a continuous period of time where there is less than 28 days between each such period and for this purpose periods of time spent as set out in paragraph (2) before 9th April 2001 may be aggregated with periods so spent after that date.

(4) In this article, a person shall be regarded as receiving or having received free in-patient treatment for any period for which he is or has been maintained free of charge while undergoing medical or other treatment as an in-patient—

- (a) in a hospital or similar institution under the National Health Service Act 1977, the National Health Service (Scotland) Act 1978, the National Health Service and Community Care Act 1990, or any corresponding enactment having effect in Northern Ireland; or
- (b) in a hospital or similar institution maintained or administered by the Defence Council.

(5) In this article a person shall be regarded as being maintained free of charge in a hospital or similar institution unless—

- (a) his accommodation and services are provided under—

- (i) section 65 of the National Health Service Act 1977(1),
 - (ii) section 58 of, or paragraph 14 of Schedule 7A to, the National Health Service (Scotland) Act 1978(2)
 - (iii) paragraph 14 of Schedule 2 to the National Health Service and Community Care Act 1990(3), or
 - (iv) any corresponding enactment having effect in Northern Ireland; or
- (b) unless he is paying or has paid for any period, in respect of his maintenance, charges which are designed to cover the whole cost of the accommodation or services (other than services by way of treatment) provided for him in the hospital or similar institution for that period.

Chelsea pensioners

54. Where a member of the armed forces is, in the case of members of the Naval or Air Forces by virtue of previous service in the military forces, admitted to Chelsea Hospital as an in-pensioner, his pension shall cease but may be restored in the event of his leaving that Hospital.

Children whose maintenance is otherwise provided for

55.—(1) A pension which may be or has been awarded to or in respect of a child may be withheld, or reduced to such an extent as the Secretary of State may think fit, where periodical payments out of public funds are being made to or in respect of the child or the child is being maintained in the Navy, Army or Air Force or in any institution wholly or mainly supported out of public funds.

(2) A pension which may be or has been awarded to or in respect of a child of a member of the armed forces may be reduced by the amount of any contributions to the support of the child which are being made by, or which it would be reasonably practicable to obtain from, any parent not living in the same household with the child.

Abatement of awards of social security benefits

56.—(1) Where a pension is awarded to or in respect of a person for any past period for which benefit under an Act referred to in paragraph (3) has also been paid to or in respect of that person (“the relevant period”), the amount of pension awarded may be abated by an amount calculated in accordance with paragraph (2).

(2) The amount referred to in paragraph (1) is the amount by which the amount of benefit paid during the relevant period exceeds the amount of benefit which would have been payable if the pension had been paid at the same time as the benefit.

(3) The Acts referred to in paragraph (1) are—

- (a) the National Insurance Act 1965(4);
- (b) any legislation in Northern Ireland corresponding to that Act;
- (c) Parts II to VII of the Social Security Contributions and Benefits Act 1992(5);

(1) 1977 c. 49; section 65 was substituted by section 7(10) of the Health and Medicines Act 1988 (c. 49) and amended by sections 25 and 66(1) of, and paragraph 18(4) of Schedule 9 to, the National Health Service and Community Care Act 1990, and section 2(1) of, and paragraph 38 of Schedule 1, to the Health Authorities Act 1995 (c. 17).

(2) 1978 c. 29; Schedule 7A was amended by Schedule 1 to the Health Authorities Act 1995 and sections 46 and 49 of, and Schedules 4 and 5 to, the Health Act 1999 (c. 8) and section 58(3) was repealed by Schedule 7 to the Health Services Act 1980 (c. 53).

(3) 1990 c. 19.

(4) 1965 c. 51.

(5) 1992 c. 4.

- (d) the corresponding provisions of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁶⁾;
- (e) Part I of the Jobseekers Act 1995⁽⁷⁾

Forfeiture of pensions etc.

57.—(1) Where a person to or in respect of whom a pension or gratuity may be or has been awarded in respect of death or disablement due to service—

- (a) is, in pursuance of a sentence or order of a Court upon his being found guilty of an offence, serving a term of imprisonment or detention or is detained in a young offender institution or, in Scotland, a young offenders institution or, in Northern Ireland, a young offenders centre; or
- (b) is, under any enactment deported from, required to leave, or prohibited from entering the United Kingdom or the Isle of Man, or is a person whose certificate of naturalisation has been revoked

the Secretary of State may withhold the award of the pension or gratuity or, if it has been awarded, may direct that it shall be forfeited as from such date (including past date) as he may think fit.

(2) Where the Secretary of State is satisfied that a dependant will suffer hardship where a pension is withheld or forfeited under paragraph (1), the Secretary of State may pay, with the pensioner's consent, up to half of the pension awarded under article 6 to the pensioner's spouse, the pensioner's civil partner, an unmarried dependant of the pensioner, a dependant of the pensioner who has not formed a civil partnership or to anyone lawfully entitled to give a good receipt in respect of monies payable to the pensioner's dependant.

(3) When paragraph (1) ceases to apply, the Secretary of State may award to the pensioner a sum not exceeding an amount calculated by reference to the number of weeks for which the pension was withheld or forfeited under paragraph (1), or 52 weeks, whichever is the lesser, and after the deduction of any amount paid under paragraph (2).

Refusal of treatment

58.—(1) Where—

- (a) the Secretary of State is satisfied that a member of the armed forces should in his own interests receive medical, surgical or rehabilitative treatment for a disablement which is due to service and in respect of which a pension may be or has been awarded to him; and
- (b) the member refuses or neglects to receive the treatment

the Secretary of State may, if he considers that such refusal or neglect is unreasonable, reduce any pension in respect of the member's disablement by such an amount, not exceeding one-half of any such pension, as he thinks fit.

(2) For the purpose of this article—

- (a) any misconduct on the part of the member which, in the opinion of the Secretary of State, renders it necessary for any treatment which he is receiving to be discontinued, may be treated as a refusal of the member to receive the treatment;
- (b) "pension" means retired pay or pension under article 14 of this Order, under Article 1 or 3 of the 1920 Order in Council, of the 1921 (Warrant Officers) Order, of the 1919 Warrant or of the 1920 Order, or under article 1, 3, 23 or 23C of the 1921 (Officers) Order, of the 1920 Warrant or of the 1921 Order.

⁽⁶⁾ 1992 c. 7 (N.I.).

⁽⁷⁾ 1995 c. 18.

Serious negligence or misconduct

59. The Secretary of State may withhold, cancel or reduce any award which may be or has been made under this Order in respect of the disablement or death of a member of the armed forces in any case in which the injury or the death on which the claim to the award is based was caused or contributed to by the serious negligence or misconduct of the member.

Failure to draw pension

60.—(1) Where a person fails to draw his pension for a continuous period of not less than 12 months the award shall be cancelled and payment of any arrears shall be withheld.

(2) The Secretary of State may, in any particular case, make such further award as may be appropriate, and may pay the arrears in whole or in part.

Suspension in individual cases – Pensions Appeal Tribunal

61.—(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 a pension or gratuity 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 the pension or gratuity 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 pension or gratuity by virtue of the decision (“the pensioner”) is given notice in writing that an application for leave to appeal has been made against that decision.

(4) Subject to paragraph (5), where the pensioner has been given 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) A pensioner is to be treated as having been given the notice required by paragraph (3) on the date that it is posted to him at his last known address.

(8) In this article—

(a) “appeal” means an appeal under section 6(A) of the Pensions Appeal Tribunals Act 1943⁽⁸⁾;

(b) “application for leave to appeal” means an application for leave to appeal in the proceedings referred to in subparagraph (a) above, and, in England and Wales, an

(8) 1943 c. 39. Section 6(A) has been inserted by the Armed Forces (Pensions and Compensation Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.

application for leave to appeal under Part 52 of the Civil Procedure Rules 1998⁽⁹⁾, in Scotland under rule 285 of the Act of Sederunt (Rules of Court, consolidation and amendment) 1965⁽¹⁰⁾ or, in Northern Ireland under Rules of the Court of Judicature (Northern Ireland) 1980⁽¹¹⁾;

- (c) “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⁽¹²⁾
- (d) “relevant period” means the period of one month 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 – Social Security Commissioner

62.—(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 of the Pensions Appeal Tribunals Act 1943⁽¹³⁾, he may, subject to paragraph (2), direct that payment of the pension or gratuity 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 the pension or gratuity 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 pension or gratuity by virtue of the decision (“the pensioner”) is given or sent notice in writing that an application for leave to appeal has been made against that decision.

(4) Where the pensioner 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 the 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;
- (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;

⁽⁹⁾ [S.I. 1998/3132](#).

⁽¹⁰⁾ [S.I. 1965/321](#).

⁽¹¹⁾ [S.R. 1980 No.346](#).

⁽¹²⁾ Section 6D(5) was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.

⁽¹³⁾ Section 6C was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.

- (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” has the same meaning as in article 61.

Suspension in individual cases – courts

63.—(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 the pension or gratuity 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 the pension or gratuity 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 pension or gratuity by virtue of the decision (“the pensioner”) is given notice in writing that an application for permission to appeal has been made against that decision.

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

(5) A pensioner is to be treated as having been given the notice required by paragraph (3) on the date that it is posted to him at his last known address.

(6) 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 permission to appeal” means an application or petition for permission 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

64.—(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 pension or gratuity in that case ought to be reviewed

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

- (i) until the time limit for making an application for permission 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 61.

Suspension – failure to comply with request or pensioner not at last known address

65.—(1) Where it appears to the Secretary of State that a decision on an award of a pension, gratuity or supplement (“the award”) should be reviewed under article 44, he may, by notice in writing—

- (a) require the person awarded the pension, gratuity or supplement (“the pensioner”) to provide, within the period of 3 months starting with the date on which the notice is given or sent to the pensioner, such information or evidence which is reasonably required to determine whether the award should be revised; or
- (b) advise the pensioner that he will be required to attend for a medical examination at a time and place to be appointed.

(2) Where it appears to the Secretary of State that a pensioner may no longer be resident at the last address notified to him, he may, by notice in writing, require the pensioner to provide satisfactory evidence of his current residential address and to do so within the period of 3 months starting with the date on which the notice is given or sent to the pensioner.

(3) The Secretary of State may suspend payment of the award if the pensioner fails—

- (a) to provide the information or evidence required under paragraph (1)(a) within the time specified in that subparagraph;
- (b) to attend for a medical examination at the appointed time and place pursuant to paragraph (1)(b); or
- (c) to provide the information or evidence required under paragraph (2) within the time specified in that paragraph

in all cases without supplying a satisfactory explanation for the failure and such suspension shall take effect from the date on which the notice referred to in paragraph (4) is given or sent.

(4) If the Secretary of State suspends payment of the award, he shall notify the pensioner in writing of the decision to suspend, which notification shall inform the pensioner—

- (a) that the award has been suspended;
- (b) of the reasons for the decision to suspend; and
- (c) that his award may be cancelled in the circumstances described in article 66.

(5) Where, within the period of 12 months beginning with the date on which a notice such as is referred to in paragraph (1) or paragraph (2) was given or sent—

- (a) the pensioner complies with the requirements contained in any such notice; or
- (b) the Secretary of State, by notice in writing, informs the pensioner that it is no longer necessary for him to provide the information or to attend the medical examination

the suspension shall cease with effect from the date specified in paragraph (6).

(6) The date of cessation of suspension shall be the date on which—

- (a) the pensioner complies with the requirement (or where there is more than one requirement the date on which the pensioner has complied with the last outstanding requirement); or
 - (b) the date on which the notice referred to at paragraph (5)(b) was given or sent.
- (7) On cessation of the suspension, the award shall be paid in accordance with paragraph 1(8) of Schedule 3.

Cancellation – failure to comply with request

66.—(1) Where a pensioner whose award has been suspended under article 65(3) does not, within the period of 12 months beginning with date on which the notice referred to in article 65(1) or (2) is given or sent to him, comply with a requirement to supply information or evidence or to attend for a medical examination the Secretary of State shall cancel that award.

(2) A pensioner whose award has been cancelled under paragraph (1) may make a further claim in respect of the matters which gave rise to that award.

(3) The Secretary of State shall send written notification of the cancellation of the award, which shall inform the pensioner—

- (a) that the award has been cancelled;
- (b) of the reasons for such cancellation; and
- (c) that he may make a further claim for the award in question in accordance with paragraph (2).

(4) Where a pensioner makes a further claim under paragraph (2), the award shall, if the conditions specified in paragraph (5) are satisfied, be paid in accordance with paragraph 1(9) of Schedule 3.

(5) The conditions referred to in paragraph (4) are that—

- (a) the pensioner has supplied the information or evidence required in a notice given or sent under article 65(1)(a) or article 65(2); or
- (b) the pensioner has attended for a medical examination as required by the Secretary of State; or
- (c) the Secretary of State, by notice in writing, has informed the pensioner that it is no longer necessary for him to supply the information or evidence referred to in subparagraph (a) above, or to attend the medical examination referred to in subparagraph (b) above.