

2009 No. 706

PENSIONS

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

Made - - - - - *18th March 2009*

Laid before Parliament *25th March 2009*

Coming into force - - - *6th April 2009*

At the Court at Buckingham Palace, the 18th day of March 2009

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty considers it expedient to amend the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006^(a).

ACCORDINGLY, Her Majesty, in exercise of the powers conferred upon Her by sections 12(1) and 24(3) of the Social Security (Miscellaneous Provisions) Act 1977^(b), and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order as follows:—

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).

(a) S.I. 2006/606 as amended by S.I. 2006/1455, 2007/909, 2008/679 and 2008/2683.

(b) 1977 c. 5, sub-section 24(3) of which was amended by the Social Security (Consequential Provisions) Act 1992 (c. 6), section 4 and Schedule 2, paragraph 46.

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(a)”.

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,

(a) 2007 c. 2 (N.I.).

- (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^(a) or the corresponding provisions of the Social Security Contributions and Benefits Act (Northern Ireland) 1992^(b),
 - (bb) employment and support allowance under Part 1 of the Welfare Reform Act 2007^(c) 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.”.

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)”;
- (b) after paragraph (2) insert—

(a) 1992 c. 4.
 (b) 1992 c. 7. (N.I.).
 (c) 2007 c. 5.

“(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(a) 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(b)” and for “section 13” substitute “section 11(c)”;
- (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”.

-
- (a) 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.
 - (b) 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.
 - (c) 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.

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—

“58A. “terminal illness” a progressive disease where, in consequence of that disease, death can reasonably be expected within 6 months (and “terminally ill” shall be construed accordingly);”.

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.

Judith Simpson
Clerk of the Privy Council

SCHEDULE 1

Article 15(a)

TABLE TO BE SUBSTITUTED FOR THE TABLE SET OUT AT
PART II OF SCHEDULE 1

“1. WEEKLY RATES OF PENSIONS FOR DISABLED MEMBERS OF THE ARMED FORCES IN GROUPS 10-15 OF PART 1 OF THIS SCHEDULE

2. YEARLY RATES OF RETIRED PAY AND PENSIONS FOR DISABLED MEMBERS OF THE ARMED FORCES IN GROUPS 1-9 OF PART 1 OF THIS SCHEDULE

<i>Degree of Disablement</i> <i>Per cent</i>	<i>Weekly Rate</i> £	<i>Yearly Rate</i> £
100	152.40	7,952
90	137.16	7,157
80	121.92	6,362
70	106.68	5,566
60	91.44	4,771
50	76.20	3,976
40	60.96	3,181
30	45.72	2,386
20	30.48	1,590”

SCHEDULE 2

Article 15(b)

TABLES TO BE SUBSTITUTED FOR TABLES 1 AND 2 SET OUT
AT PART III OF SCHEDULE 1

“Table 1

GRATUITIES PAYABLE FOR SPECIFIED MINOR INJURIES

<i>Description of Injury</i>	<i>Assessments</i>	<i>Groups 1-15</i>
<i>For the loss of:</i>	<i>Per cent</i>	<i>£</i>
A. FINGERS		
Index finger—		
More than 2 phalanges including loss of whole finger	14	7,247
More than 1 phalanx but not more than 2 phalanges	11	5,799
1 phalanx or part thereof	9	4,831
Guillotine amputation of tip without loss of bone	5	2,892
Middle finger—		
More than 2 phalanges including loss of whole finger	12	6,277

More than 1 phalanx but not more than 2 phalanges	9	4,831
1 phalanx or part thereof	7	3,862
Guillotine amputation of tip without loss of bone	4	2,415
Ring or little finger—		
More than 2 phalanges including loss of whole finger	7	3,862
More than 1 phalanx but not more than 2 phalanges	6	3,385
1 phalanx or part thereof	5	2,892
Guillotine amputation of tip without loss of bone	2	1,447

B. TOES

Great toe—		
Through metatarso-phalangeal joint	14	7,247
Part, with some loss of bone	3	1,925
1 other toe—		
Through metatarso-phalangeal joint	3	1,925
Part, with some loss of bone	1	970
2 toes, excluding great toe—		
Through metatarso-phalangeal joint	5	2,892
Part, with some loss of bone	2	1,447
3 toes, excluding great toe—		
Through metatarso-phalangeal joint	6	3,385
Part, with some loss of bone	3	1,925
4 toes, excluding great toe—		
Through metatarso-phalangeal joint	9	4,831
Part, with some loss of bone	3	1,925

Table 2

GRATUITIES PAYABLE TO MEMBERS OF THE ARMED FORCES FOR DISABLEMENT ASSESSED AT LESS THAN 20 PER CENT. NOT BEING A MINOR INJURY SPECIFIED IN TABLE 1

Assessment of degree of disablement			
Groups 1-15	1 to 5 per cent	6 to 14 per cent	15 to 19 per cent
	£2,423	£5,387	£9,423"

SCHEDULE 3

Article 15(c)

TABLE TO BE SUBSTITUTED FOR THE TABLE SET OUT AT
PART IV OF SCHEDULE 1

“Table

RATES OF ALLOWANCES PAYABLE IN RESPECT OF DISABLEMENT AND
EARNINGS OR INCOME THRESHOLDS

<i>Description of Allowance</i>	<i>Rate</i>	
	Groups 1-9	Groups 10-15
1.Constant attendance allowance under article 8—		
(a) under article 8—		
(i) the part day rate of constant attendance allowance under article 8(2);	£1,500 per annum	£28.75 per week
(ii) the full day rate of constant attendance allowance under article 8(3);	£3,000 per annum	£57.50 per week
(iii) the intermediate rate of constant attendance allowance under article 8(4);	£4,501 per annum	£86.25 per week
(iv) the exceptional rate of constant attendance allowance under article 8(5)	£6,001 per annum	£115.00 per week
(b) under article 71(4)—		
(i) the rate under paragraph 4(a)	£3,000 per annum ^(*)	£57.50 per week ^(*)
(ii) the rate under paragraph 4(b)	£6,001 per annum ^(*)	£115.00 per week ^(*)
2.Exceptionally severe disablement allowance under article 9	£3,000 per annum	£57.50 per week
3.Severe disablement occupational allowance under article 10	£1,500 per annum	£28.75 per week
4.Allowance for wear and tear of clothing under article 11	£196 per annum	£196 per annum
5. Unemployability allowances—		
(a) personal allowance under article 12(1)(a)	£4,915 per annum	£94.20 per week
(b) additional allowances for dependants by way of—		
(i) increase of allowance in respect of a spouse, civil partner, dependant living as a spouse, dependant living as a civil partner or an adult dependant under article 12(6)(a)	£2,771 per annum ^(*)	£53.10 per week ^(*)
(ii) increase of allowance under article 12(6)(b)—		
(aa) in respect of the only, elder or the eldest child of a member	£644 per annum	£12.35 per week
(bb) in respect of each other child of a member	£757 per annum	£14.50 per week

<p>(cc) where the child does not qualify for child benefit under the Social Security Contributions and Benefits Act 1992(a), or under any legislation in Northern Ireland or the Isle of Man corresponding to that Act</p> <p>For decisions made on or after 9th April 2001</p> <p>(c) the annual earnings figure for the purposes of article 12(4) is £4,602</p> <p>(d) the weekly income figure for the purposes of article 12(6)(a)(i) is £60.50</p>	<p>£757 per annum</p>	<p>£14.50 per week</p>
<p>6. Invalidity allowance under article 13—</p>		
<p>(a) if—</p>		
<p>(i) the relevant date fell before 5th July 1948; or</p> <p>(ii) on the relevant date the member was under the age of 35; or</p> <p>(iii) on the relevant date the member was under the age of 40 and had not attained the age of 65 in the case of the member being a man, or 60 in the case of the member being a woman, before 6th April 1979 and the period in respect of which payment of the allowance is to relate begins on or after 6th April 1979</p>	<p>£973 per annum</p>	<p>£18.65 per week</p>
<p>(b) if—</p>		
<p>(i) on the relevant date the member was under the age of 45; or</p> <p>(ii) on the relevant date the member was under the age of 50 and had not attained the age of 65 in the case of the member being a man, or 60 in the case of a member being a woman, before 6th April 1979 and the period in respect of which payment of the allowance is to relate begins on or after 6th April 1979</p>	<p>£626 per annum</p>	<p>£12.00 per week</p>
<p>(c) If heads (a) and (b) do not apply and on the relevant date the member was a man under the age of 60 or a woman under the age of 55</p>	<p>£313 per annum</p>	<p>£6.00 per week</p>
<p>7. Comforts allowance—</p>		
<p>(a) under article 14(1)(a)</p>	<p>£1,289 per annum</p>	<p>£24.70 per week</p>
<p>(b) under article 14(1)(b)</p>	<p>£644 per annum</p>	<p>£12.35 per week</p>
<p>8. Allowance for lowered standard of occupation under article 15</p>	<p>£2,997 per annum^(*)</p>	<p>£57.44 per week^(*)</p>
<p>9. Age allowance under article 16 where the degree</p>		

(a) 1992 c. 4.

of pensioned disablement is—

(a) 40 to 50 per cent	£535 per annum	£10.25 per week
(b) over 50 per cent, but not exceeding 70 per cent	£817 per annum	£15.65 per week
(c) over 70 per cent, but not exceeding 90 per cent	£1,164 per annum	£22.30 per week
(d) over 90 per cent	£1,633 per annum	£31.30 per week
10. Part-time treatment allowance under article 19	£69.95 per day ^(*)	£69.95 per day ^(*)
11. Mobility supplement under article 20	£2,862 per annum	£54.85 per week

^(*) maximum.”

SCHEDULE 4

Article 16(a)

TABLES TO BE SUBSTITUTED FOR TABLES 1, 2, 3, 4 AND 5 SET OUT AT PART II OF SCHEDULE 2

“Table 1

YEARLY RATES OF PENSIONS FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF OFFICERS WHO WERE MEMBERS OF THE ARMED FORCES BEFORE 14 AUGUST 1914 OR AFTER 30 SEPTEMBER 1921

PENSIONS OTHER THAN PENSIONS AWARDED UNDER ARTICLE 11(1) OR (2) OF THE 1921 (OFFICERS) ORDER OR ARTICLE 11(1) OF THE 1921 (WARRANT OFFICERS) ORDER, OF THE 1920 WARRANT OR OF THE 1921 ORDER

<i>Group</i>	<i>Yearly Rate</i>
<i>(1)</i>	<i>(2)</i>
	<i>£</i>
1	6,962
2	6,714
3	6,555
4	6,413
5	6,317
6	6,225
7	6,192
8	6,147
9	6,123
10	6,098
11	6,061

Table 2

WEEKLY RATES OF PENSIONS FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF RATINGS, SOLDIERS OR AIRMEN

<i>Group</i>	<i>Weekly Rate</i>
<i>(1)</i>	<i>(2)</i>
	<i>£</i>
12)	
13)	
14)	115.55
15)	
16)	
17)	

Table 3

YEARLY RATES OF PENSIONS FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF OFFICERS WHO WERE MEMBERS OF THE ARMED FORCES BETWEEN 14 AUGUST 1914 AND 30 SEPTEMBER 1921

PENSIONS AWARDED UNDER ARTICLE 11(1) OR (2) OF THE 1921 (OFFICERS) ORDER OR ARTICLE 11(1) OF THE 1921 (WARRANT OFFICERS) ORDER, OF THE 1920 WARRANT OR OF THE 1921 ORDER

<i>Group</i> (1)	<i>Yearly Rate</i> (2) £
1	7,118
2	6,804
3	6,648
4	6,491
5	6,368
6	6,240
7	6,204
8	6,147
9	6,123
10	6,098
11	6,061

Table 4

YEARLY RATES OF PENSIONS FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF OFFICERS WHO WERE MEMBERS OF THE ARMED FORCES BEFORE 14 AUGUST 1914 OR AFTER 30 SEPTEMBER 1921

<i>Group</i> (1)	<i>Yearly Rate</i> (2) £
1	6,962
2	6,714
3	6,555
4	6,413
5	6,317
6	6,225
7	6,192
8	2,135
9	1,903
10	1,674
11	1,481

Table 5

WEEKLY RATES OF PENSION FOR CHILDLESS SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS AGED UNDER 40 BEING SURVIVING SPOUSES OR SURVIVING CIVIL PARTNERS OF RATINGS, SOLDIERS OR AIRMEN

<i>Group</i> (1)	<i>Weekly Rate</i> (2) £
12)	
13)	
14)	27.68
15)	
16)	
17)	

Table 6

YEARLY RATE OF SUPPLEMENTARY PENSION FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF OFFICERS WHO WERE MEMBERS OF THE ARMED FORCES AND WHOSE SERVICE TERMINATED ON OR BEFORE 31 MARCH 1973

<i>Group</i> (1)	<i>Yearly Rate</i> (2) £
(1–11)	4,034.56

Table 7

WEEKLY RATE OF SUPPLEMENTARY PENSION FOR SURVIVING SPOUSES AND SURVIVING CIVIL PARTNERS OF RATINGS, SOLDIERS OR AIRMEN WHO WERE MEMBERS OF THE ARMED FORCES AND WHOSE SERVICE TERMINATED ON OR BEFORE 31 MARCH 1973

<i>Group</i> (1)	<i>Weekly Rate</i> (2) £
(12–17)	77.32
	”

SCHEDULE 5

Article 16(b)

TABLE TO BE SUBSTITUTED FOR THE TABLE SET OUT AT
PART III OF SCHEDULE 2

“Table

RATES OF PENSIONS, OTHER THAN SURVIVING SPOUSES’ AND SURVIVING CIVIL PARTNERS’ PENSIONS AND ALLOWANCES PAYABLE IN RESPECT OF DEATH

<i>Description of Pension or Allowance</i>	<i>Rates</i>	
	<i>Groups 1-11</i>	<i>Groups 12-17</i>
1. Pension under article 24 to dependant who lived as a spouse or dependant who lived as a civil partner	£5,907 per annum ^(*)	£113.20 per week ^(*)
2. Rent allowance under article 25	£2,275 per annum ^(*)	£43.60 per week ^(*)
3. Elderly persons allowance under article 26—		
(a) if aged 65 but under 70	£689 per annum	£13.20 per week
(b) if aged 70 but under 80	£1,320 per annum	£25.30 per week
(c) if aged 80 or over	£1,959 per annum	£37.55 per week
4. Allowances in respect of children—		
(a) under article 28(2)(a)—		
(i) in respect of the only, elder or eldest child of a member	£947 per annum	£18.15 per week
(ii) in respect of each other child of a member	£1,059 per annum	£20.30 per week
(iii) where the child does not qualify for child benefit under the Social Security Contributions and Benefits Act 1992 or any legislation in Northern Ireland or the Isle of Man corresponding to that Act	£1,059 per annum	£20.30 per week
(b) under article 28(2)(b)—		
(i) in respect of the only, elder or eldest child of a member	£1,080 per annum	£20.70 per week
(ii) in respect of each other child of a member	£1,184 per annum	£22.70 per week
iii) where the child does not qualify for child benefit under the Social Security Contributions and Benefits Act 1992, or any legislation in Northern Ireland or under the Isle of Man corresponding to that Act	£1,184 per annum	£22.70 per week
5. Pension under article 29 to a child of a member who has no parent living and has not attained the child’s age limit—		
(a) in respect of the only, elder or eldest child of a member	£1,080 per annum	£20.70 per week
(b) in respect of each other child of a member	£1,184 per annum	£22.70 per week
(c) where the child does not qualify for child benefit under the Social Security	£1,184 per annum	£22.70 per week

Contributions and Benefits Act 1992, or under any legislation in Northern Ireland or the Isle of Man corresponding to that Act		
6.Allowance under article 30(2)(b) to or in respect of a child who has attained the child's age limit	£4,631 per annum ^(*)	£88.75 per week ^(*)

^(*) maximum”

EXPLANATORY NOTE

(This note is not part of the Order)

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 the naval, military and air forces.

Article 2 revokes article 7(2) of the principal Order. Article 7 provides for the award of a gratuity where the degree of disablement is assessed at less than 20% at the rates specified in Table 2 of Part III of Schedule 1 to the principal Order. A new Table 2, substituted by article 15(b), enables all gratuities to be awarded on the assumption that disablement is of indeterminate duration. Hitherto, lower rates of gratuities have been applied to temporary disablement. Paragraph (2) of article 7 contained powers relating to the award of a gratuity for temporary disablement, which are no longer required.

Article 3 amends article 8 of the principal Order, introducing a new provision allowing for automatic payment of constant attendance allowance at the intermediate rate where a pensioner’s degree of disablement in respect of one or more injuries is assessed at not less than 80%, and one of those injuries is a terminal illness. By an amendment to article 34, made in article 10 of this Order, a claim can be made on behalf of a terminally ill pensioner without his knowledge or authority. Article 17 inserts the definition of “terminal illness” in Schedule 6 to the principal Order.

Articles 4, 11 and 13 supplement references to the Welfare Reform Act 2007 in articles 10, 50 and 56 of the principal Order by adding references to corresponding legislation in Northern Ireland. In addition, article 13 amends the heading to article 56, correcting an error made in the drafting of the principal Order on consolidation in 2006.

Article 5 amends article 14 of the principal Order. It provides for the automatic payment of higher rate comforts allowance where disablement is assessed at 100%, and the pensioner is in receipt of the intermediate or exceptional rate of constant care allowance.

Article 6 amends article 15 of the principal Order, adding new conditions for the payment of an allowance for lowered standard of occupation. A pensioner in receipt of incapacity benefit, employment and support allowance or an analogous benefit or allowance will not be eligible to receive the allowance where a claim is made on or after 6th April 2009.

The amendment to article 22 of the principal Order made in article 7, increases the period from 52 to 104 weeks in which a deceased member could have been engaged in remunerative work in order to be treated as if he was in receipt of unemployability allowance. This ensures consistency with changes to the conditions for payment of that allowance made in 2007.

Article 23 of the principal Order is amended by article 8. The rates of supplementary pensions for surviving spouses and civil partners are contained in Tables 6 and 7 in Schedule 2 to the principal Order (Schedule 4 to this Order).

A new article 32 of the principal Order is inserted by article 9. It simplifies the qualifying conditions for funeral expenses. Where a former member of the armed forces dies on or after 6 April 2009, death is due to service before 6th April 2005, and a claim made within three months of the funeral, the Secretary of State will make an award of £2,200.

Article 12 revokes article 55 of the principal Order. Where a claim is made on or after 6th April 2009, a child’s pension will no longer be withheld or reduced on the grounds that the child’s maintenance is otherwise provided for.

The amendments to article 61 of the principal Order, contained in article 14, reflect changes to the tribunal system following the coming into force of the Tribunals, Courts and Enforcement Act 2007, and correct errors made in the drafting of the principal Order on consolidation in 2006.

Articles 15 and 16 substitute Tables in Schedules 1 and 2 to the principal Order thereby varying the rates of retired pay, pensions, gratuities and allowances in respect of disablement or death due to service in the armed forces. In addition, article 15 adds mesothelioma to the list of disablements attracting an automatic assessment of 100%.

Article 18 makes various transitory provisions and savings.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2009 No. 706

PENSIONS

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

£5.00