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STATUTORY INSTRUMENTS

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**2016 No. 374**

**The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) Order 2016**

**PART 5**

**INSERTION OF SCHEDULE 1A (DIFFUSE MESOTHELIOMA LUMP SUMS) IN THE PRINCIPAL ORDER**

**Insertion of Schedule 1A (diffuse mesothelioma lump sums)**

**12.** Insert after Schedule 1 to the principal Order—

“SCHEDULE 1A

Article 21A(1)

**DIFFUSE MESOTHELIOMA LUMP SUMS**

**Interpretation**

**1.** In this Schedule, the following expressions have the following meanings—

“commencement date” means 11th April 2016; and

“diffuse mesothelioma lump sum” means a lump sum payment to which a member of the armed forces is entitled under paragraph 2.

**Entitlement to diffuse mesothelioma lump sum**

**2.—(1)** A member of the armed forces is entitled to a diffuse mesothelioma lump sum if sub-paragraph (2) applies.

(2) This sub-paragraph applies where—

- (a) a consultant respiratory physician or consultant oncologist makes or has made a diagnosis that the member has diffuse mesothelioma;
- (b) the member makes or has made a claim under article 34(1) and (2) (making of claims) in respect of disablement due to diffuse mesothelioma which was caused by service in the period before 6th April 2005;
- (c) the Secretary of State accepts or has accepted that claim under article 40 or 41 (whichever is applicable); and
- (d) after the claim is or was accepted, the member elects or has elected to receive a diffuse mesothelioma lump sum under paragraph 3.

**Election to receive diffuse mesothelioma lump sum**

**3.** A member of the armed forces elects or has elected to receive a diffuse mesothelioma lump sum by—

- (a) completing and signing a form approved by the Secretary of State for the purpose of electing to receive a diffuse mesothelioma lump sum; and
- (b) delivering that form either to an appropriate office of the Secretary of State or to an office of an authorised agent.

#### **Period for making an election**

4.—(1) Subject to sub-paragraph (2), a member who has not made an election before the commencement date is not entitled to elect to receive a diffuse mesothelioma lump sum unless the member makes an election within the period of three months beginning with whichever is the later of—

- (a) the commencement date; and
  - (b) the date on which the Secretary of State notifies or notified the member that his or her claim has been accepted.
- (2) Sub-paragraph (3) applies to a member of the armed forces—
- (a) to whom an award under Part 2 of the Order in respect of disablement due to diffuse mesothelioma is in payment on the commencement date; and
  - (b) who has not made an election before that date.

(3) The member is not entitled to elect to receive a diffuse mesothelioma lump sum unless he or she makes an election within the period of three months beginning with whichever is the later of—

- (a) the commencement date; and
- (b) the date on which the Secretary of State provides the member with a written estimate of the amount of the diffuse mesothelioma lump sum to which the member will be entitled if the member makes an election.

#### **Calculation of the diffuse mesothelioma lump sum**

5.—(1) Subject to sub-paragraph (2), the amount of the diffuse mesothelioma lump sum to which a member is entitled under paragraph 2 is £140,000.

- (2) The amount of the diffuse mesothelioma lump sum must be reduced by—
- (a) the total amount of any award under Part 2 of this Order in respect of the member's disablement due to diffuse mesothelioma paid to the member before the date on which the diffuse mesothelioma lump sum is paid;
  - (b) the total amount of any award under Part 3 of this Order paid in respect of the death of the member before the date on which the diffuse mesothelioma lump sum is paid, except for an award under article 32 (funeral expenses); and
  - (c) any payment that the Secretary of State has made or will make to Motability Operations Limited<sup>(1)</sup> pursuant to an agreement entered into by, or on behalf of, the member for the hire or hire-purchase of a vehicle.

#### **Payment of diffuse mesothelioma lump sum**

6. The Secretary of State must pay to the member the diffuse mesothelioma lump sum to which he or she is entitled under paragraph 2.

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(1) "Motability Operations Limited" is a company (Company No. 1373876) set up under the Companies Act 1985 (c.6). It is directed and overseen by Motability, a registered charity (Registered Charity No. 299745).

**Circumstances in which a person may be required to repay**

7.—(1) The Secretary of State may require a member of the armed forces or the designated person to repay all or part of the diffuse mesothelioma lump sum where the Secretary of State is satisfied that relevant evidence shows that—

- (a) the payment was made in error;
- (b) whether fraudulently or otherwise, any person has misrepresented or failed to disclose a material fact and the Secretary of State makes the payment in consequence of the misrepresentation or failure;
- (c) the member was for any other reason not entitled to receive a diffuse mesothelioma lump sum; or
- (d) the member or the designated person has received or may receive compensation which will benefit the member or designated person.

(2) The Secretary of State must send a written notice to the person required to make the repayment which states—

- (a) the amount required to be repaid;
- (b) the reason why the repayment is required; and
- (c) that the member (or, if the member has died, the designated person) may request a review of the decision.

(3) For the purposes of this paragraph, the “designated person” has the meaning given in article 68(5)(b).

(4) The reference in sub-paragraph (1) to “relevant evidence” is to evidence which—

- (a) is relevant to the question whether the member was entitled to a diffuse mesothelioma lump sum under paragraph 2; and
- (b) is received by the Secretary of State only after the diffuse mesothelioma lump sum has been paid to the member or designated person.

(5) The reference in sub-paragraph (1) to “compensation” means the compensation referred to in article 52 (adjustment of awards in respect of other compensation) which is paid in respect of the member’s disablement due to diffuse mesothelioma.”.