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STATUTORY INSTRUMENTS

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**2016 No. 374**

**PENSIONS**

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

<i>Made</i>	- - - -	<i>15th March 2016</i>
<i>Laid before Parliament</i>		<i>21st March 2016</i>
<i>Coming into force</i>	- -	<i>11th April 2016</i>

At the Court at Buckingham Palace, the 15th day of March 2016

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(1):

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(2), 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:

**PART 1**

**PRELIMINARY**

**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 2016 and comes into force on 11th April 2016.

(2) In this Order “the principal Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006.

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(1) S.I. 2006/606; relevant amending instruments are S.I. 2006/1455, 2007/909, 2008/679, 2009/706, 2011/1740, 2012/359, 2014/107, 2014/505, 2014/3229 and 2015/208, and by S.I. 2010/240 and 2011/235 (both spent).  
(2) 1977 c.5; section 24(3) was amended by the Social Security (Consequential Provisions) Act 1992 (c.6), Schedule 2, paragraph 46(b) and (c).

## PART 2

### AMENDMENT OF PART 2 OF THE PRINCIPAL ORDER (AWARDS IN RESPECT OF DISABLEMENT) CONSEQUENTIAL TO THE PENSIONS ACT 2014

#### **Amendment of article 10 (severe disablement occupational allowance)**

2. In article 10 (severe disablement occupational allowance) of the principal Order insert after paragraph (2)(b)—

“(ba) in receipt of a state pension under Part 1 of the Pensions Act 2014~~(3)~~”.

#### **Amendment of article 12 (unemployability allowances)**

3. In article 12 (unemployability allowances) of the principal Order insert after paragraph (10)(a)(ii)—

“(iii) a state pension under Part 1 of the Pensions Act 2014; or”.

## PART 3

### INSERTION OF PART 2A IN THE PRINCIPAL ORDER

#### **Insertion of Part 2A (entitlement of recipients of diffuse mesothelioma lump sums)**

4. After Part 2 of the principal Order insert—

### “PART 2A

#### ENTITLEMENT OF RECIPIENTS OF DIFFUSE MESOTHELIOMA LUMP SUMS

##### **Entitlement of recipients of diffuse mesothelioma lump sums to other awards**

**21A.**—(1) Schedule 1A (diffuse mesothelioma lump sums) has effect and applies in determining the entitlement of a member of the armed forces to a diffuse mesothelioma lump sum.

(2) Where a member of the armed forces is entitled to a diffuse mesothelioma lump sum by virtue of paragraph 2 of Schedule 1A—

- (a) any award in payment under Part 2 in respect of the disablement of the member must stop;
- (b) no award may be paid under Part 3 in respect of the death of the member, except for funeral expenses in accordance with article 32; and
- (c) in addition to Schedule 1A, only the provisions of the Order specified in paragraph (3) apply to the member.

(3) The provisions referred to in paragraph (2)(c) are—

- (a) Part 2A (entitlement of recipients of diffuse mesothelioma lump sums);

- (b) in Part 3 (awards in respect of death), article 32;
- (c) Part 4 (claims), except for article 35;
- (d) Part 5 (adjudication), except for article 44;
- (e) Part 6 (payment);
- (f) in Part 7 (reduction and cancellations of awards), articles 51, 52, 57 and 59;
- (g) Part 8 (miscellaneous provisions);
- (h) Schedule 3; and
- (i) Schedule 6.

(4) Paragraphs (2) and (3) apply on and after the date on which the Secretary of State pays the diffuse mesothelioma lump sum in accordance with the Order.”.

## PART 4

### MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ORDER

#### **Amendment of Part 4 (claims)**

5.—(1) Part 4 of the principal Order is amended as follows.

(2) In article 34(1)—

- (a) for “allowance or supplement”, where it first occurs, substitute “allowance, supplement or lump sum payment”; and
- (b) for “that pension, allowance or supplement” in paragraph (1)(a), substitute “an award”.

(3) In article 34(2)—

- (a) for “allowances and supplement” substitute “allowances, supplement and lump sum payment”;
- (b) at the end of paragraph (2)(p) delete the full stop and substitute a semi-colon; and
- (c) after paragraph (2)(p), insert—

“*(q)* a diffuse mesothelioma lump sum under Schedule 1A.”.

(4) In article 36—

- (a) in paragraphs (1) and (2) for “for a pension, allowance or supplement specified in article 34” substitute “under article 34”; and
- (b) in paragraph (3) for “pension, allowance or supplement” substitute “award”.

(5) In article 37(2)(a) for “allowance or supplement” substitute “allowance, supplement or lump sum payment”.

#### **Amendment of Part 5 (adjudication)**

6. In article 38(a) of the principal Order for “allowance or other continuing benefit” substitute “allowance, other continuing benefit or lump sum payment”.

#### **Amendment of Part 6 (payment)**

7. In article 45 of the principal Order—

- (a) in paragraph (1)(a) for “grant or other continuing benefit” substitute “grant, other continuing benefit or lump sum payment”; and

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- (b) in paragraph (2)(a) for “allowance or other continuing benefit” substitute “allowance, other continuing benefit or lump sum payment”.

**Amendment of Part 7 (reduction and cancellation of awards)**

- 8. After article 51(2) of the principal Order insert—  
“(3) In articles 52, 57 and 59, “pension” includes a lump sum payment under this Order.”.

**Amendment of Part 8 (miscellaneous provisions)**

- 9.—(1) Part 8 of the principal Order is amended as follows.  
(2) In article 67 for “allowance or gratuity” substitute “allowance, gratuity or lump sum payment”.  
(3) After article 68(1) insert—  
“(1A) Where the claimant has made an election for an award of a diffuse mesothelioma lump sum and dies before the lump sum is paid, the Secretary of State may, notwithstanding the claimant’s death, make the payment in accordance with the provisions of this Order.”.  
(4) In article 68(2) for “award” substitute “award or payment”.  
(5) In article 68(5)(a) after “pension” insert “or an election for an award of a diffuse mesothelioma lump sum”.

**Amendment of Schedule 1 (disablement due to service in the armed forces)**

- 10. In item 5(c) of the table in Part 4 of Schedule 1 to the principal Order for “the annual earnings figure for the purposes of article 12(4) is £5,408” substitute “the annual earnings figure for the purposes of article 12(4) is £5,590”.

**Amendment of Schedule 6 (interpretation)**

- 11. Insert after item 26 in the table in Part 2 of Schedule 6 to the principal Order—

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“26A	“diffuse mesothelioma lump sum”	the meaning given in paragraph 1 of Schedule 1A.”
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**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>(4)</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.

### **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.

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(4) “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).

(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.”.

*Ceri King*  
Deputy Clerk of the Privy Council

## 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. The principal Order contains the scheme which provides the pensions and other awards. This scheme is known as the War Pensions Scheme (“WPS”).

Articles 2 and 3 make amendments to the principal Order, which are consequential to the introduction of the new state pension for people reaching pensionable age on or after 6th April 2015 by the Pensions Act 2014 (c.19).

- Article 2 amends article 10 of the principal Order so a person’s receipt of a state pension is considered in deciding whether the person should receive a severe disablement occupational allowance under article 10 of the principal Order.
- Article 3 amends article 12 of the principal Order so a person’s eligibility for a state pension may be taken into account by the Secretary of State in making an award of a personal allowance under article 12(1)(a) of the principal Order.

Parts 3, 4 and 5 of this Order amend the principal Order to enable a person who has diffuse mesothelioma to elect to receive a lump sum payment under the WPS (“diffuse mesothelioma lump sum”) if this condition was caused by service in the period before 6th April 2005.

Part 3 of this Order inserts a new Part 2A, comprising a new article 21A, into the principal Order. Article 21A provides that awards under the WPS will not be paid to or in respect of a person who has elected to receive a diffuse mesothelioma lump sum, except for funeral expenses in accordance with article 32. Article 21A specifies which provisions of the principal Order will apply to a person who elects to receive a diffuse mesothelioma lump sum.

Part 4 of this Order makes miscellaneous amendments to enable certain provisions of the principal Order to apply to a person who has elected to receive a diffuse mesothelioma lump sum. In addition, article 10 of this Order substitutes the annual earnings figure specified in Part 4 of Schedule 1 of the principal Order. Article 12(4) of the principal Order provides that a person may be awarded unemployability allowances under article 12 if they are in receipt of therapeutic earnings (as defined in Schedule 6 to the principal Order) that are unlikely to exceed that annual earnings figure.

Part 5 of this Order inserts new Schedule 1A (diffuse mesothelioma lump sums) in the principal Order. Schedule 1A sets out the circumstances in which a person will be entitled to a diffuse mesothelioma lump sum, the requirements for electing to receive a lump sum, and how the amount of the lump sum is calculated.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen. 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/311316/pensions-act-ia-annex-a-single-tier-state-pension.pdf](https://www.gov.uk/government/uploads/system/uploads/attachments_data/file/311316/pensions-act-ia-annex-a-single-tier-state-pension.pdf) . (Annex A contains the assessment for the new state pension.)



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