

2009 No. 438

PENSIONS

The Personal Injuries (Civilians) (Amendment) Scheme 2009

Made - - - - *2nd March 2009*

Laid before Parliament *4th March 2009*

Coming into force - - *6th April 2009*

The Secretary of State for Defence, with the approval of the Treasury, makes the following Scheme in exercise of the powers conferred by sections 1 and 2 of the Personal Injuries (Emergency Provisions) Act 1939(a) and now vested in him(b).

Citation, commencement and interpretation

1.—(1) This Scheme may be cited as the Personal Injuries (Civilians) (Amendment) Scheme 2009 and shall come into force on 6th April 2009.

(2) In this Scheme, “the principal Scheme” means the Personal Injuries (Civilians) Scheme 1983(c), and a reference to a numbered article, table or Schedule, is a reference to the article, table or Schedule in the principal Scheme which bears that number.

Amendments to the principal Scheme

2. The amendments to the principal Scheme contained in Schedule 1 to this Scheme shall have effect.

Transitional provision

3. Where a claim for funeral expenses in accordance with article 26A or 49A is made in respect of a death which occurred before 6th April 2009, article 26A of the principal Scheme as in force immediately prior to the coming into force of this Scheme shall apply to that claim.

(a) 1939 c. 82.

(b) The functions of the Minister of Pensions were transferred to the Minister of Pensions and National Insurance by virtue of the Transfer of Functions (Ministry of Pensions) Order 1953, S.I. 1953/1198, article 2. The functions of the Minister of Pensions and National Insurance were transferred to the Minister of Social Security by virtue of the Ministry of Social Security Act 1966 (c.20) section 2. The functions of the Minister of Social Security were transferred to the Secretary of State for Social Services by virtue of the Secretary of State for Social Services Order 1968, S.I. 1968/1699, article 2. The functions of the Secretary of State for Social Services were transferred to the Secretary of State for Social Security by virtue of the Transfer of Functions (Health and Social Security) Order 1988, S.I. 1988/1843, article 3. The functions of the Secretary of State for Social Security were transferred to the Secretary of State for Defence by the Transfer of Functions (War Pensions etc.) Order 2001, S.I. 2001/3506, article 2.

(c) S.I. 1983/686; relevant amending instruments are S.I. 1983/1164, 1540, 1984/1289, 1675, 1985/1313, 1986/628, 1987/191, 1988/367, 2260, 1989/415, 1990/1300, 1991/708, 1992/702, 3226, 1993/480, 1994/715, 2021, 1995/445, 1996/502, 1997/812, 1998/278, 1999/262, 2000/301, 2001/420, 2002/672, 2003/637, 2004/717, 2005/655, 1639, 3031, 2006/765, 2007/646 and 2008/592.

Signed by authority of the Secretary of State for Defence

27th February 2009

We approve

2nd March 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

Bob Blizzard
Steve McCabe
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Article 2

AMENDMENTS TO THE PRINCIPAL SCHEME

Amendment to article 20 (Comforts allowance)

1. For article 20(1)(a) substitute—

“(a) at the rate specified in Schedule 3 paragraph 9(a) where either subparagraph (i) or (ii) or both apply—

(i) this subparagraph applies where the disabled person is in receipt of an allowance under article 14 at any rate and an allowance under article 18,

(ii) this subparagraph applies where the disabled person is in receipt of an allowance under either paragraph (4) or (5) of article 14 and is in receipt of a pension in respect of disablement the degree of which is 100%;”.

Amendment to article 26A (Funeral expenses)

2. For article 26A substitute—

“Funeral expenses

26A.—(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 person's war injury or, as the case may be, war service injury causes him to die on or after 6th April 2009;

(b) the funeral of that person has taken place; and

(c) within three months of that person's funeral, 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 on which the claim form is sent in response to the enquiry.”.

Amendment to Schedule 2 (Assessment of disablement caused by specified injuries and of certain other disablements)

3. In Schedule 2 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”.

Amendment to Schedule 3 (Rates of pensions and allowances payable in respect of disablement and earnings or income thresholds)

4. For Schedule 3 substitute the Schedule set out in Schedule 2 to this Scheme.

Amendment to Schedule 4 (Rates of pensions and allowances payable in respect of death)

5. For Schedule 4 substitute the Schedule set out in Schedule 3 to this Scheme.

SCHEDULE 2

Schedule 1 paragraph 4

**SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 3 TO THE
PRINCIPAL SCHEME**

“SCHEDULE 3

Article 11

Table

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

	<i>Description of Pension or Allowance</i>	<i>Rate</i>
1.	Pension for 100 per cent. disablement under article 11	£152.40 per week
2.	Education allowance under article 13	£120.00 per annum ^(*)
3.	Constant attendance allowance under article 14	
	A. For decisions made before 9th April 2001—	
	(a) under the proviso to article 14	£115.00 per week ^(*)
	(b) in any other case under article 14	£57.50 per week ^(*)
	B. For decisions made on or after 9th April 2001—	
	(a) the part day rate of constant attendance allowance under article 14(2)	£28.75 per week
	(b) the full day rate of constant attendance allowance under article 14(3)	£57.50 per week
	(c) the intermediate rate of constant attendance allowance under article 14(4)	£86.25 per week
	(d) the exceptional rate of constant attendance allowance under article 14(5)	£115.00 per week
4.	Exceptionally severe disablement allowance under article 15	£57.50 per week
5.	Severe disablement occupational allowance under article 16	£28.75 per week
6.	Allowance for wear and tear of clothing under article 17(1)	£196.00 per annum
7.	Unemployability allowances—	
	(a) personal allowance under article 18(1)(i)	£94.20 per week
	(b) additional allowances for dependants by way of—	
	(i) increase of allowance in respect of a spouse, civil partner or adult dependant under article 18(5)(b)	£53.10 per week ^(*)
	(ii) increase of allowance under article 18(5)(d)—	
	(aa) in respect of the only, elder or eldest child	£12.35 per week
	(bb) in respect of each other child	£14.50 per week

	(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	£14.50 per week
	For decisions made on or after 9th April 2001	
	(c) the annual earnings figure for the purposes of article 18(2) is £4,784	
	(d) the weekly income figure for the purposes of article 18(5) (b) is £63.53	
8.	Invalidity allowance payable under article 19	
	(a) if—	
	(i) the relevant date fell before 5th July 1948; or	
	(ii) on the relevant date the disabled person was under the age of 35; or	£18.65 per week
	(iii) on the relevant date the disabled person was under the age of 40 and had not attained the age of 65, in the case of a disabled person being a man, or 60, in the case of that person 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	
	(b) if—	
	(i) on the relevant date the disabled person was under the age of 45; or	
	(ii) on the relevant date the disabled person was under the age of 50 and had not attained the age of 65, in the case of a disabled person being a man, or 60 in the case of that person 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	£12.00 per week
	(c) if heads (a) and (b) do not apply and on the relevant date the disabled person was under the age of 60	£6.00 per week
9.	Comforts Allowance—	
	(a) under article 20(1)(a)	£24.70 per week
	(b) under article 20(1)(b) or 45(1)	£12.35 per week
10.	Allowance for lowered standard of occupation under article 21	£57.44 per week ^(*)
11.	Age Allowance under article 22 where the degree of pensioned disablement is—	
	(a) 40 or 50 per cent.	£10.25 per week
	(b) 60 or 70 per cent.	£15.65 per week
	(c) 80 or 90 per cent.	£22.30 per week
	(d) 100 per cent.	£31.30 per week
12.	For decisions made before 9th April 2001, treatment allowance—increase of personal allowance under article 25	£31.30 per week ^(*)
13.	Part-time treatment allowance under article 25	£69.95 per day ^(*)
14.	Mobility supplement under article 25A	£54.85 per week

^(a) 1992 c. 4.

^(*) maximum”

SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 4 OF THE
PRINCIPAL SCHEME

“SCHEDULE 4

Article 27

Table

RATES OF PENSIONS AND ALLOWANCES PAYABLE IN RESPECT OF DEATH

<i>Description of Pension or Allowance</i>	<i>Rate</i>
1. Pension to surviving spouses and surviving civil partners—	
(a) under article 27(1)	£115.55 per week
(b) under article 27(2)	£27.68 per week
(c) under article 27(3)	£77.32 per week
2. Rent allowance under article 28	£43.60 per week ^(*)
3. Allowance under article 29 or 50 to an elderly surviving spouse and elderly surviving civil partner—	
(a) if age 65 but under 70	£13.20 per week
(b) if age 70 but under age 80	£25.30 per week
(c) if age 80 or over	£37.55 per week
4. Pension under article 30 to dependants who lived as spouses and dependants who lived as civil partners	£1.00 per week ^(*)
5. Allowance under article 33 in respect of each child under the age of 15—	
(a) in respect of the only, elder or eldest child	£18.15 per week
(b) in respect of each other child	£20.30 per week
(c) where the child does not qualify for child benefit under the Social Security Contributions and Benefits Act 1992 or under any legislation in Northern Ireland or the Isle of Man corresponding to that Act	£20.30 per week
6. Pension under article 34(1) where the decision is made before 9th April 2001, to a motherless or fatherless child under the age of 15 and, where the decision is made on or after that date, under article 34(2) to a child under the age of 15 with no parents living—	
(a) in respect of the only, or elder or eldest child	£20.70 per week
(b) in respect of each other child	£22.70 per week
(c) where the child does not qualify for child benefit under the Social Security Contributions and Benefits Act 1992 or under any legislation in Northern Ireland or the Isle of Man corresponding to that Act	£22.70 per week
7. Pension or allowance where the decision is made before 9th April 2001, under article 35(3) and, where the decision is made on or after that date, under article 35(2) to or in respect of a child aged 15 or over—	
(a) where the child has attained the age of 18 and is incapable of self-support by reason of an infirmity	£88.75 per week ^(*)

which arose before he attained the age of 15

(b) any other case—	
(i) in respect of the only, elder or eldest child	£20.70 per week ^(*)
(ii) in respect of each other child	£22.70 per week ^(*)
(iii) where the child does not qualify for child benefit under the Social Security Contributions and Benefits Act 1992, or under any legislation in Northern Ireland or the Isle of Man corresponding to that Act	£22.70 per week ^(*)
8. Education allowance under article 36	£120 per annum ^(*)
9. Pensions to parents—	
(a) minimum rate under article 38(4)	£0.25 per week
(b) maximum rate under article 38(4)	
(i) where there is only one eligible parent	£1.00 per week
(ii) where there is more than one eligible parent	£1.38 per week
(c) increase under the proviso to article 38(4)—	
(i) where there is only one eligible parent	£0.38 per week ^(*)
(ii) where there is more than one eligible parent	£0.62 per week ^(*)
10. Pensions to other dependants—	
(a) for each juvenile dependant under article 39(4)	£0.30 per week ^(*)
(b) aggregate rate under article 39(4)	£1.00 per week ^(*)
(c) under article 39(5)	£1.00 per week ^(*)

(*) maximum”

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme further amends the Personal Injuries (Civilians) Scheme 1983 (“the principal Scheme”) which makes provision for the payment of pensions and allowances to or in respect of civilians who were killed or injured during the 1939-45 World War in the manner described below.

Article 2 and paragraph 1 of Schedule 1 substitute a new article 20(1)(a). Article 20(1)(a)(ii) makes provision for the award of the higher rate of comforts allowance where a disabled person is in receipt of constant attendance allowance at either the intermediate or exceptional rate and that person is also in receipt of a pension in respect of disablement the degree of which is 100%. This provision replaces the existing discretion to award the higher rate of comforts allowance where a person has a 100% disablement resulting from multiple injuries.

Article 2 and paragraph 2 of Schedule 1 substitute a new article 26A. The new article simplifies the basis on which payment will be made for funeral expenses. It provides for the payment of a fixed sum of £2,200 where death occurs on or after 6th April 2009 and the other conditions (set out in article 26A(2)) are met. The new version of article 26A will also apply to claims for funeral expenses made under article 49A where the death occurs on or after 6th April 2009. It has not been necessary to make any amendment to the wording of article 49A itself because, as currently worded, it simply applies the provisions of article 26A to claims made under article 49A.

Article 2 and paragraph 3 of Schedule 1 add mesothelioma to the list of “Other Disablements” in Schedule 2 to the principal Scheme and provide that an assessment of 100% will apply in relation to that disablement.

Article 2 and paragraph 4 of Schedule 1 substitute a new Schedule 3 to the principal Scheme. The new Schedule 3 (which varies the rates both of pensions and allowances payable in respect of disablement and of earnings or income thresholds) is contained in Schedule 2 to this Scheme.

Article 2 and paragraph 5 of Schedule 1 substitute a new Schedule 4 to the principal Scheme. The new Schedule 4 (which varies the rates of pensions and allowances in respect of death) is contained in Schedule 3 to this Scheme.

Article 3 makes transitional provision in relation to claims for funeral expenses under articles 26A and 49A where the deceased died before 6th April 2009.

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

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STATUTORY INSTRUMENTS

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PENSIONS

The Personal Injuries (Civilians) (Amendment) Scheme 2009

£5.00