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STATUTORY INSTRUMENTS

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**2005 No. 439**

**The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (Revoked 9.5.2011)**

**PART I**

**GENERAL**

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**Interpretation**

2.—(1) In this Order —

“the AFPS 1975” means the occupational pension scheme arrangements, other than the AFPS 2005, that are open to members of the forces and set out in —

- (a) Orders in Council made under section 3 of the Naval and Marine Pay and Pensions Act 1865 ,
- (b) the Army Pensions Warrant 1977 and
- (c) Orders and regulations made under section 2 of the Air Force (Constitution) Act 1917 or any instrument amending or replacing any of those instruments;

“the AFPS 2005” means the Scheme established in the Armed Forces Pension Scheme Order 2005 ;

“accredited medical specialist” means a medical practitioner whose name is included in the specialist register kept and published by the General Medical Council as required by the European Specialist Medical Qualifications Order 1995;

“additional lump sum” means the sum referred to in article 15C;

“additional multiple injury lump sum” means the sum referred to in article 15B(2);

“appropriate tribunal” means the appropriate tribunal as defined in section 12(1) of the Pensions Appeal Tribunals Act 1943;

“benefit” means a benefit payable under this Order;

“bereavement grant” means the grant referred to in article 21(1)(b);

“child's payment” means the payment referred to in article 21(1)(c);

“claimant” means a person who has claimed benefit, a person to whom benefit has been paid and a person affected by any decision of the Secretary of State made under this Order;

“claim form” means the form referred to in article 36(b);

“death benefit” means a benefit referred in article 21;

“downgraded” means downgraded for medical reasons as a result of which the person downgraded undertakes a reduced range of duties but retains his rank and pay;

“eligible child” has the meaning given in article 23;

“forces” means the armed forces and the reserve forces;

“the FTRSPS 2010” means the occupational pension scheme for members of the Full-Time Reserve Service established by regulations made by the Defence Council in exercise of the powers conferred on them by sections 4(2) and (3) and 8(2) and (3) of the Reserve Forces Act 1996 ;

“Gurkha” means a member of the Brigade of Gurkhas . . . ;

“Gurkha Pension Scheme” means the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949);

“guaranteed income payment” is the payment referred to in article 14(1)(b);

“ill-health pension” means a pension paid under rule D5 or D6 of the AFPS 2005 or the equivalent provisions of the NRPSPS or the RFPS 2005;;

“illness” means a physical or mental disorder included either in the International Statistical Classification of Diseases and Related Health Problems or in the Diagnostic and Statistical Manual of Mental Disorders;

“injury” includes illness;

“injury benefit” means the benefits referred to in article 14(1);

“interim award” means an award under article 44(1) and (2);

“invaliding pension” means a pension paid under the AFPS 1975 under the following:

- (d) the Army Pensions Warrant 1977, Part 2, Section 2, article 45 or Part 3, Section 7, article 149;
- (e) the Queen's Regulations for the Royal Air Force , Chapter 38, Section 2, regulation 2938(2) or Chapter 39, Section 1, regulation 3023(2);
- (f) the Order in Council made under the Naval and Marine Pay and Pensions Act 1865, Schedule II, Section 1, Clause 9 or Schedule III Clause 19.

or any later provisions corresponding to the provisions referred to in sub-paragraphs (d), (e) or (f), or the equivalent provisions of the FTRSPS 2010;

“lump sum” means, except in the expressions “additional multiple injury lump sum” and “additional lump sum”, the sum referred to in article 14(1)(a);

“the NRPSPS” means the occupational pension scheme for members of the Non- Regular Permanent Staff set out in Chapter 9 of the Territorial Army Regulations 1978 made by the Defence Council in exercise of the powers conferred on them by sections 4(2) and (3) and 8(2) and (3) of the Reserve Forces Act 1996;

“predominant” means more than 50 per cent;

“the RFPS 2005” means the occupational pension scheme for members of the reserve forces established by regulations made by the Defence Council in exercise of the powers conferred on them by sections 4(2) and (3) and 8(2) and (3) of the Reserve Forces Act 1996;

“service” means service as a member of the forces, except as provided in article 10;

“substantial and exclusive relationship” shall be construed in accordance with Schedule 1;

“surviving adult dependant” has the meaning given in article 22;

“survivor's guaranteed income payment” is the payment referred to in article 21(1)(a);

“tariff” means the tables of injuries and amounts set out in Schedule 4;

“temporary award” means an award referred to in article 20;

“Veterans Agency” means an office designated by the Secretary of State for the purpose of receiving and determining applications for benefit.

(2) In this Order, any reference to claiming a benefit or to a claim

- (a) shall be treated as including a case where, by virtue of article 37, it is not a condition of entitlement to benefit that a claim be made;
  - (b) in the case of a claim for injury benefit, means a claim for one injury even where claims for more than one injury are made on the same claim form.
- (3) In this Order, a person is “discharged on medical grounds” if he is required to be discharged on the grounds that he is medically unfit to continue in service, and—
- (a) . . . is as a result entitled to an invaliding pension or ill health pension, or
  - (b) in the case of a Gurkha who is a member of the Gurkha Pension Scheme, is as a result entitled to a disability pension

**Definition of “late onset illness”**

3. A “late onset illness” is—
- (a) a malignancy, or a disorder of the liver, kidneys or central nervous system, in each case which is capable of being caused by an occupational exposure occurring more than 7 years before the onset of the illness or the date of death as the case may be;
  - (b) a mental disorder which is capable of being caused by an incident occurring more than 7 years before the onset of the illness; or
  - (c) a mental disorder capable of being caused by an incident occurring less than 7 years before the date of onset of the illness, which disorder is capable of causing the person suffering from it to be unable to seek medical help for the disorder within 7 years of the date of onset of the illness.

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**PART II**

**THE COMPENSATION SCHEME**

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**Death caused by service**

- 9.—(1) Benefit is payable in accordance with this Order in respect of a member or former member of the forces by reason of his death where—
- (a) the death was caused (wholly or partly) by service;
  - (b) the cause of the death occurred on or after 6<sup>th</sup> April 2005; and
  - (c) one of the conditions specified in paragraph (3) is satisfied.
- (2) Where the death is not wholly caused by service, benefit is only payable if service is predominant cause of the death.
- (3) The conditions referred to in paragraph (1) are that the death—
- (a) occurred in service;
  - (b) occurred within the period of 7 years beginning with the day on which service ends and was caused by:
    - (i) an injury which was caused by service, or

- (ii) the worsening by service of an injury which existed before or arose during service and which was not caused by service; or
- (c) occurred more than 7 years after the day on which service ends and—
  - (i) the death is caused by a late onset illness which was caused by service, or
  - (ii) the predominant cause of the death is an injury for which an award of injury benefit has been made where the lump sum fell within levels 1 to 9 of the tariff.

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### **PART III**

#### **BENEFITS PAYABLE FOR INJURY**

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### **PART IV**

#### **BENEFITS PAYABLE FOR DEATH**

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#### **Amount of bereavement grant**

27.—(1) Subject to paragraph (2), the amount of the bereavement grant payable in respect of the death of a person who was a member of the armed forces on the date of death is £25,000.

(2) Where the person was a member of the AFPS 2005, the amount of the bereavement grant is the difference between the salary of the member of the armed forces on the date of death and the amount specified in paragraph (1).

(3) Where a former member of the forces dies, the bereavement grant is £37,500.

(4) In the event that there is more than one surviving spouse entitled to the bereavement grant, the amount to which each such surviving spouse is entitled shall be the amount payable at paragraphs (2) or (3), divided by the number of surviving spouses so entitled at the time of the death of the member or former member of the armed forces.

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## PART V

### REDUCTION OF BENEFIT

#### **Reduction of guaranteed income payment, survivor's guaranteed income payment and child's payment to take account of other amounts.**

**31.**—(1) Where a person is entitled to guaranteed income payment, survivor's guaranteed income payment or child's payment for any period during which the person is also entitled to—

- (a) a pension under the AFPS 1975 or the AFPS 2005 (“a pension”); or
- (b) a payment under the Armed Forces Early Departure Payments Scheme Order 2005 (“a payment”)

the guaranteed income payment, the survivor's income payment or the child's payment as the case may be is reduced in accordance with paragraphs (2) and (3).

(2) Where a person is entitled to guaranteed income payment for any period during which he is also entitled—

- (a) to a payment, or to a pension which is not an invaliding pension or ill-health pension paid for the same injury for which the guaranteed income payment is paid, then the amount of the guaranteed income payment is reduced by 75 per cent. of the amount of that pension or payment;
- (b) to an invaliding pension or ill-health pension which is paid for the same injury for which the guaranteed income payment is paid then the amount of guaranteed income payment is reduced by the full amount of the invaliding pension or ill-health pension.

(3) Where a person is entitled to survivor's guaranteed income payment or child's payment for any period during which he is also entitled to a pension then the amount of the survivor's guaranteed income payment or child's payment is reduced by 75 per cent. of the amount of that pension.

(3A) Where the amount of a pension or a payment increases or decreases, including coming into payment or ceasing, after an award of benefit is made, the Secretary of State shall make such adjustments to the amount of guaranteed income payment, survivor's guaranteed income payment or child's payment as are required to satisfy the rules for reduction of benefit specified in this article.

(4) In this article any reference to a pension, invaliding pension, ill-health pension or a payment means the gross amount, irrespective of any commutation, of that pension, invaliding pension, ill-health pension or payment.

#### **Reduction in benefit to take account of awards of damages**

**32.**—(1) Subject to paragraph (1A), Where the Secretary of State is satisfied that—

- (a) damages have been or will be recovered by any person in respect of an injury or condition for which benefit is payable; or
- (b) damages have been or will be recovered by any person in respect of the death of a person for which benefit is payable

he shall take those damages into account against any benefit which might otherwise be payable under this Order and shall withhold or reduce any such benefit accordingly.

(1A) The Secretary of State shall not—

- (a) take the damages into account where he is satisfied that benefit payable under this Order has been taken into account in the assessment of the damages;
- (b) withhold or reduce a bereavement grant payable under article 21(1)(b).

(1B) In calculating the amount of benefit to withhold or reduce under paragraph (1), the Secretary of State may take account of the full value of any damages which have been or will be recovered.

(1C) The Secretary of State may require a person who has made a claim to provide—

- (a) details of any steps taken or planned to obtain damages in respect of the same injury, condition or death for which benefit is payable;
- (b) a written undertaking that if the person recovers damages the person shall notify the Secretary of State and repay any benefit paid under this Order.

(2) For the purposes of this article, damages include any payment received as a result of a claim made—

- (a) in respect of an injury or condition for which benefit is payable; or
- (b) in respect of the death of a person for which benefit is payable

whether or not the payment is made in pursuance of a judgement or order of a court of any jurisdiction or by way of settlement or compromise of the claim and whether or not proceedings are instituted to enforce the claim.

(3) Where compensation is paid—

- (a) under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995 ;
- (b) under the Criminal Injuries (Compensation)(Northern Ireland) Order 1988 ; or
- (c) under the scheme established by the Ministry of Defence for the purposes of paying compensation to members of the forces who suffer injury as a result of a crime committed outside the United Kingdom

the person to whom or for whose benefit the compensation is paid shall be treated as recovering damages and the compensation paid shall be treated as the damages recovered.

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## PART VA

### CESSATION OF BENEFIT

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## PART VI

### CLAIMS

#### Entitlement to benefit dependant on claim

**35.**—(1) Except as provided in article 37, no person is entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied, he makes a claim for it in the manner, and within the time, specified in the following provisions of this Part.

(2) Where a person who is in service on or after 6th April 2005 or a surviving spouse, surviving civil partner or surviving adult dependant of such a person makes a claim for a pension for disablement or death under The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 , the Secretary of State may treat that claim as also being a claim for benefit under this Order.

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**Time for making a claim – general**

**39.**—(1) Subject to articles 40 and 41, the time specified for making a claim for injury benefit is 7 years beginning with the day on which—

- (a) the injury occurs;
- (b) an injury which is not caused by service is made worse by service;
- (c) where the member or former member of the forces is suffering from an illness, he first seeks medical advice in relation to that illness; or
- (d) the service of the member of the forces ends

whichever is the earlier.

(2) Where an illness first presents within the period specified in paragraph (1) but diagnosis of the illness is not made until less than one year before the end of that period, the time for making a claim is extended by 3 years starting from the date on which diagnosis was made.

(3) The time specified for making a claim for death benefit where—

- (a) the death occurs after the day on which the service of the former member of the forces ends; and
- (b) within a period of 7 years starting with the day on which that service ends;

is 3 years beginning with the day on which death occurred..

**Time for making a claim – exceptional circumstances**

**40.**—(1) Article 39 does not apply where—

- (a) a claim is made by a former member of the forces for a late onset illness and the illness has been diagnosed by an accredited medical specialist;
- (b) the death of a former member of the forces—
  - (i) is caused by a late onset illness
  - (ii) occurs in circumstances specified in article 9(3)(c)(ii).

(2) Where paragraph (1) applies, the time specified for making a claim is 3 years beginning with the day the late onset illness was first diagnosed or the day on which the death occurred as the case may be.

**Time for making a claim – physical or mental incapacity**

**41.**—(1) Where a person is physically or mentally incapable of making a claim or instructing another person to make it on his behalf throughout the time specified for making a claim in article 39 or 40, that time shall be extended by the Secretary of State for such further period as in all circumstances of the case he considers reasonable.

(2) Where a person—

- (a) has been physically or mentally incapable of making a claim or instructing another to make it on his behalf; but
- (b) becomes so capable within the period referred to in article 39 or 40

the Secretary of State may extend the time for making a claim for a period of up to 3 years if he considers there is insufficient time for the person to make a claim or instruct a person to make it on his behalf within the period referred to in article 39 or 40.

## PART VII

### ADJUDICATION

#### Decisions

**43.**—(1) The Secretary of State shall determine any claim for benefit and any question arising out of the claim.

(2) The Secretary of State shall give reasons for his decision.

(3) The decision of the Secretary of State on any claim or any question arising out of a claim and the reasons for the decision shall be in writing and shall be sent to the claimant who shall, at the same time, be informed o <sup>F85</sup>of any right that he may have]—

- (a) to a reconsideration of the decision under article 45; and
- (b) to appeal <sup>F86</sup>that decision] to <sup>F87</sup>the appropriate tribunal] under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

#### Textual Amendments

- F85** Words in art. 43(3) substituted (30.6.2006) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), **13(1)**
- F86** Words in art. 43(3)(b) inserted (30.6.2006) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), **13(2)**
- F87** Words in art. 43(3)(b) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), arts. 1, 6(1), **Sch. 1 para. 280**

#### Interim awards

**44.**—(1) Where the Secretary of State is satisfied that a person is entitled to injury benefit <sup>F88</sup>or to an additional multiple injury lump sum] but it appears to him that the prognosis for the injury in that particular case is uncertain in that he is unable finally to decide which level of the tariff is applicable to it, he may make an interim award relating to the specific level of the tariff of such amount as he considers appropriate in all the circumstances of the case.

(2) The Secretary of State shall specify in the interim award the period during which the award has effect and may extend, and further extend, the period during which the interim award has effect but he shall make a final award within the period of two years starting with the date on which an interim award was first made.

(3) The final award shall have effect from the date on which an interim award first had effect.

<sup>F89</sup>(4) Where the final award is at a level of the tariff which is—

- (a) at the same level or is higher than the level of the tariff awarded in the interim award, account shall be taken of the amount of benefit paid in accordance with the interim award and only the difference between the amount of benefit paid in accordance with the interim award and the amount of the final award shall be paid;
- (b) lower than the level of the tariff awarded in the interim award, no further amount of benefit will be paid in accordance with the final award and no amount of benefit paid in accordance with the interim award is recoverable.



[<sup>F90</sup>(5) For the purposes of paragraph (4), the amount of benefit paid in accordance with the interim award means the amount of the lump sum awarded in the interim award together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that interim award.]]

#### Textual Amendments

- F88** Words in art. 44(1) inserted (8.2.2008) by The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2008 (S.I. 2008/39), arts. 1(1), **11**
- F89** Art. 44(4) substituted (15.12.2008) by The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 3) Order 2008 (S.I. 2008/2942), arts. 1(1), **13(a)**
- F90** Art. 44(5) inserted (15.12.2008) by The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 3) Order 2008 (S.I. 2008/2942), arts. 1(1), **13(b)**

#### Reconsideration

**45.**—(1) A decision of the Secretary of State (“the original decision”), other than [<sup>F91</sup>a decision, under article 44(1), to make an interim award or a decision, under article 20(1), to make a temporary award,], shall be reconsidered by him if an application for a reconsideration is given or sent to the Veterans Agency within the period of 3 months starting with the date on which notice of the original decision is given or sent to the claimant.

- (2) On a reconsideration of an original decision, the Secretary of State may—
- (a) revise that decision by—
    - (i) awarding benefit where no award of benefit was made in the original decision; or
    - (ii) increasing or decreasing the amount awarded in the original decision; or
    - (iii) changing the date on which awards of benefit become payable
  - (b) confirm the original decision.
- (3) An application for a reconsideration shall—
- (a) be in writing;
  - (b) be signed by or on behalf of the person making the application; and
  - (c) specify the ground on which the application is made.

(4) The decision of the Secretary of State on an application for a reconsideration under paragraph (1) and the reasons for that decision shall be in writing and shall be sent to the claimant who shall, at the same time, be informed of his right to appeal to [<sup>F92</sup>the appropriate tribunal] under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

(5) Where an appeal has been made to [<sup>F93</sup>an appropriate tribunal] against an original decision and no application for a reconsideration has been made in respect of that decision under paragraph (1), the Secretary of State shall reconsider the decision.

(6) The decision of the Secretary of State on a reconsideration under paragraph (5) and the reasons for the decision shall be in writing and shall be sent to the claimant and the [<sup>F94</sup>appropriate tribunal].

(7) Article 41 shall have effect in respect of an application for a reconsideration under this article as though a reference to making a claim was a reference to making an application for a reconsideration and reference to the time for making a claim was a reference to the time for making an application for a reconsideration.

[<sup>F95</sup>(8) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the amount of the original award and the amount of the revised award shall be paid.

(9) For the purposes of paragraph (8), the original award means the amount of the lump sum awarded in the original decision together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that original decision.]

#### Textual Amendments

- F91** Words in art. 45(1) substituted (30.6.2006) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), **14**
- F92** Words in art. 45(4) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), arts. 1, 6(1), **Sch. 1 para. 281(a)**
- F93** Words in art. 45(5) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), arts. 1, 6(1), **Sch. 1 para. 281(b)**
- F94** Words in art. 45(6) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), arts. 1, 6(1), **Sch. 1 para. 281(c)**
- F95** Art. 45(8)(9) inserted (15.12.2008) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment No. 3\) Order 2008 \(S.I. 2008/2942\)](#), arts. 1(1), **14**

#### Finality of decisions

**46.—**(1) Where the Secretary of State has made a final decision awarding benefit, there shall be no review by him of that decision except in the circumstances specified in articles 47, 48 [<sup>F96</sup>, 48A] and 49.

(2) Where the Secretary of State has made a final decision which makes no award of benefit, there shall be no review of that decision except in the circumstances specified in article 49.

(3) In this article and article 48, a final decision is a decision—

- (a) under article 43 where either—
  - (i) there has been no application for a reconsideration under article 45; or
  - (ii) there has been such an application and the Secretary of State has confirmed the original decision;
- (b) revised by the Secretary of State following a reconsideration under article 45;
- (c) revised by the Secretary of State under article 47, 48 [<sup>F97</sup>, 48A] or 49;
- (d) making a final award under article 44.

#### Textual Amendments

- F96** Words in art. 46(1) inserted (3.8.2010) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2010 \(S.I. 2010/1723\)](#), arts. 1(1), **8(a)** (with art. 12)
- F97** Words in art. 46(3)(c) inserted (3.8.2010) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2010 \(S.I. 2010/1723\)](#), arts. 1(1), **8(b)** (with art. 12)

## Review on discharge on medical grounds

**47.**—(1) This article applies where a member of the forces has been awarded injury benefit [<sup>F98</sup>or an additional multiple injury lump sum] and is later discharged on medical grounds for the same injury for which [<sup>F99</sup>the injury benefit or additional multiple injury lump sum] was awarded.

(2) Where paragraph (1) applies, the Secretary of State may revise the award of benefit where the injury in respect of which it was awarded has either—

- (a) become worse; or
- (b) caused a further injury to develop

and in both cases—

- (i) the worsening or the development is unexpected and exceptional, and
- (ii) the injury, or the injury and the further injury together, would, on the date of the review attract an amount specified in column (b) of Table 10 of the tariff which is higher than that awarded for the injury.

(3) The Secretary of State's decision on a review under this article and the reasons for the decision shall be in writing and shall be given or sent to the member of the forces concerned who shall at the same time, be informed of his right—

- (a) to a reconsideration under article 45; and
- (b) to appeal to [<sup>F100</sup>the appropriate tribunal] under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

[<sup>F101</sup>(4) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the amount of the original award and the amount of the revised award shall be paid.

(5) For the purposes of paragraph (4), the original award means the amount of the lump sum awarded in the original decision together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that original decision.]

### Textual Amendments

- F98** Words in art. 47(1) inserted (8.2.2008) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2008 \(S.I. 2008/39\)](#), arts. 1(1), **12(a)**
- F99** Words in art. 47(1) substituted (8.2.2008) by virtue of [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2008 \(S.I. 2008/39\)](#), arts. 1(1), **12(b)**
- F100** Words in art. 47(3)(b) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), arts. 1, 6(1), **Sch. 1 para. 282**
- F101** Art. 47(4)(5) inserted (15.12.2008) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment No. 3\) Order 2008 \(S.I. 2008/2942\)](#), arts. 1(1), **15**

## Review – exceptional circumstances

**48.**—(1) The Secretary of State may revise an award of injury benefit [<sup>F102</sup>or of an additional multiple injury lump sum] if the conditions specified in paragraph (2) are satisfied and an application for a review is sent to the Veterans Agency.

(2) The circumstances referred to in paragraph (1) are that, within the period of 10 years starting with the date of the final decision [<sup>F103</sup>to award injury benefit], the injury in respect of which the final decision was made either has—

- (a) become worse; or
- (b) caused a further injury to develop

and in both cases—

- (i) the worsening or the development is unexpected and exceptional, and
- (ii) the injury, or the injury and the further injury together, would, on the date of the application for review, attract an amount specified in column (b) of Table 10 of the tariff which is higher than that awarded under the final decision.

(3) An application for review under this article may only be made within the period of one year starting with the day on which the worsening or the development began.

(4) The Secretary of State may only review an award under this article once.

(5) An application for a review under this article shall—

- (a) be in writing;
- (b) <sup>F104</sup> .....
- (c) be signed by or on behalf of the person making the application; and
- (d) specify the ground on which the application is made.

(6) The decision of the Secretary of State on an application for review under this article and the reasons for the decision shall be in writing and shall be given or sent to the applicant who shall, at the same time, be informed of his right—

- (a) to a reconsideration of the decision under article 45; and
- (b) to appeal to [<sup>F105</sup>the appropriate tribunal] under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

[<sup>F106</sup>(7) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the amount of the original award and the amount of the revised award shall be paid.

(8) For the purposes of paragraph (7), the original award means the amount of the lump sum awarded in the original decision together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that original decision.]

**Textual Amendments**

- F102** Words in art. 48(1) inserted (8.2.2008) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2008 \(S.I. 2008/39\)](#), arts. 1(1), **13(1)**
- F103** Words in art. 48(2) inserted (8.2.2008) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2008 \(S.I. 2008/39\)](#), arts. 1(1), **13(2)**
- F104** Art. 48(5)(b) omitted (30.6.2006) by virtue of [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), **15**
- F105** Words in art. 48(6)(b) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), arts. 1, 6(1), **Sch. 1 para. 283**
- F106** Art. 48(7)(8) inserted (15.12.2008) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment No. 3\) Order 2008 \(S.I. 2008/2942\)](#), arts. 1(1), **16**

**Review - award of damages**

**48A.**—(1) This article applies where—

- (a) the Secretary of State has made an award of benefit to a person;

- (b) the person has recovered damages in respect of the injury or death for which the award of benefit is payable; and
  - (c) the Secretary of State is satisfied that benefit payable under the Order has not been taken into account in the assessment of the damages.
- (2) On a review under this article the Secretary of State may—
- (a) revise a decision—
    - (i) given under article 43,
    - (ii) revised under article 45, 47, 48 or 49, or
    - (iii) relating to benefit made by the First-tier Tribunal, a Pension Appeal Tribunal, the Upper Tribunal, an appropriate Social Security Commissioner or a court,in each case by withholding or reducing the amount of the award so as to cancel the award of benefit.
- (3) The decision of the Secretary of State on a review under this article and the reasons for the decision shall be in writing and shall be given or sent to the claimant who shall, at the same time, be informed of the right—
- (a) to a reconsideration of the decision under article 45; and
  - (b) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943 <sup>M24</sup>.
- (4) In this article “damages” has the meaning given in article 32(2).

#### Marginal Citations

**M24** 1943 c. 39, [section 5A\(1A\)](#) was inserted by the [Armed Forces \(Pensions and Compensation\) Act 2004](#) (c. 32), [section 5](#) and Schedule 1, paragraph 2.

#### Review – ignorance or mistake

**49.**—(1) Subject to paragraph (2), any decision of the Secretary of State may be reviewed by him at any time (including on the application of the claimant) if he is satisfied that the decision was given in ignorance of, or was based on, a mistake as to a material fact or of a mistake as to the law.

- (2) This article only applies—
- (a) if the material fact was knowable at the time the decision was made and was disclosed to the Secretary of State at that time;
  - (b) if the ignorance or mistake is the ignorance or mistake of the Secretary of State;
  - (c) where the ignorance or mistake relates to the diagnosis of an injury, where the correct diagnosis was knowable given the state of medical knowledge existing at the time the diagnosis was made.
- (3) On a review under this article, the Secretary of State may—
- (a) revise—
    - (i) a decision given under article 43,
    - (ii) a decision revised under article 45, 47 or 48, or
    - (iii) a decision revised under this articlein each case by increasing or reducing the amount of the award or so as to cancel an award of benefit;
  - (b) make an award of benefit where no award has been made before; or

(c) confirm the decision referred to in subparagraph (a).

(4) The decision of the Secretary of State on an application for review under this article and the reasons for the decision shall be in writing and shall be given or sent to the claimant who shall, at the same time, be informed of his right—

(a) to a reconsideration of the decision under article 45; and

(b) to appeal to [<sup>F107</sup>the appropriate tribunal] under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

[<sup>F108</sup>(5) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the amount of the original award and the amount of the revised award shall be paid.

(6) For the purposes of paragraph (5), the original award means the amount of the lump sum awarded in the original decision together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that original decision.]

#### Textual Amendments

**F107** Words in art. 49(4)(b) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), arts. 1, 6(1), **Sch. 1 para. 284**

**F108** Art. 49(5)(6) inserted (15.12.2008) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment No. 3\) Order 2008 \(S.I. 2008/2942\)](#), arts. 1(1), **17**

#### Burden of proof

**50.** The burden of proving any issue under this Order shall lie on the claimant.

#### Standard of proof

**51.** The standard of proof applicable in any decision which is required to be made under this Order shall be the balance of probabilities.

#### Evidence

**52.—**(1) For the purposes of determining any issue under this Order, the Secretary of State shall produce such medical or other records of—

- (a) a member of the forces;
- (b) a member of the forces who has died; or
- (c) a former member of the forces

as are in his possession and are relevant to the issues to be decided.

(2) The Secretary of State shall consider any evidence which appears to him to be relevant to the issues which are to be decided and shall determine those issues on that evidence.

(3) Where any decision required to be made under this Order is, or includes, a decision involving a medical issue, that decision shall be made in accordance with generally accepted medical and scientific knowledge prevailing at the time the decision is made.

#### Information and medical examination

**53.—**(1) Where a claim has been made and—

- (a) the Secretary of State sends the person making the claim a request in writing for further information which is reasonably required for the determination of that claim and that information is not given or sent to the Secretary of State within 3 months of the date on which the request is sent without providing a satisfactory explanation for that failure, or
- (b) the person making the claim, or the person in respect of whom the claim is made, has been requested to attend a medical examination at a time and place specified in a notice given or sent to him not less than ten days before the date of the examination and he fails to attend without providing, within three months of the date on which he was requested to attend, a satisfactory explanation for that failure

the claim shall be treated as never having been made.

(2) The treating of a claim as never having been made does not prevent the making of a new claim in accordance with the provisions of this Order.

[<sup>F109</sup>(3) In this article, a reference to a claim includes a reference to an application by a claimant for reconsideration under article 45(1) and an application by a claimant for a review under article 47, 48 or 49.]

**Textual Amendments**

**F109** Art. 53(3) substituted (30.6.2006) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), 16

**PART VIII**

PAYMENT

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**PART IX**

THIRD PARTIES

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**PART X**

UP-RATING

.....

**PART XI**

TRANSITORY PROVISION

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**Changes to legislation:** There are currently no known outstanding effects for the The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (Revoked 9.5.2011). (See end of Document for details)

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Signed by authority of the Secretary of State for Defence

Ministry of Defence  
8th March 2005

*Ivor Caplin*  
Parliamentary Under Secretary of State



**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (Revoked 9.5.2011).