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STATUTORY INSTRUMENTS

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**2005 No. 439**

**PENSIONS**

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

<i>Made</i>	- - - -	<i>8th March 2005</i>
<i>Laid before Parliament</i>		<i>14th March 2005</i>
<i>Coming into operation</i>		<i>6th April 2005</i>

The Secretary of State, in exercise of his powers under sections 1(2) and 10(2) and (3) of the Armed Forces (Pensions and Compensation) Act 2004<sup>(1)</sup> hereby makes the following Order:

**PART I**  
**GENERAL**

**Citation and commencement**

**1.** This Order may be cited as the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 and shall come into force on 6th April 2005.

**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<sup>(2)</sup>,
- (b) the Army Pensions Warrant 1977<sup>(3)</sup> and
- (c) Orders and regulations made under section 2 of the Air Force (Constitution) Act 1917<sup>(4)</sup> or any instrument amending or replacing any of those instruments;

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(1) 2004 c. 32.

(2) 1865 c. 73; section 3 was amended by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 4.

(3) which is available from Her Majesty's Stationery Office.

(4) 1917 c. 51.

“the AFPS 2005” means the Scheme established in the Armed Forces Pension Scheme Order 2005<sup>(5)</sup>;

“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;<sup>(6)</sup>

“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;

“Gurkha” means a member of the Brigade of Gurkhas who was recruited in Nepal;

“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;

“illness” means a physical or mental disorder included either in the International Statistical Classification of Diseases and Related Health Problems<sup>(7)</sup> or in the Diagnostic and Statistical Manual of Mental Disorders;<sup>(8)</sup>

“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<sup>(9)</sup>, Chapter 38, Section 2, regulation 2938(2) or Chapter 39, Section 1, regulation 3023(2);
- (f) the Order in Council<sup>(10)</sup> 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 (a), (b) or (c);

“lump sum” means the sum referred to in article 14(1)(a);

“predominant” means more than 50 per cent;

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

(5) S.I. 2005/438.

(6) S.I. 1995/3208.

(7) World Health Organisation, Geneva. 10th Revision (1992).

(8) American Psychiatric Association, Washington DC. 4th Edition, Text Revision (2000).

(9) which is available from the Defence Storage and Distribution Centre, Mwrwg Road, Llangennech, Llanelli, Carmarthenshire, SA14 8YP.

(10) which is available from Service Personnel Policy (Pensions), Ministry of Defence, Main Building, Whitehall, London, SW1A 2HB.

“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) in the case of a regular member, is as a result entitled to an invaliding pension or ill health pension,
- (b) in the case of a Gurkha, is as a result entitled to a disability pension under the pension arrangements applicable to Gurkhas by virtue of their service.

### **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 5 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 5 years before the onset of the illness; or
- (c) a mental disorder capable of being caused by an incident occurring less than five 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 5 years of the date of onset of the illness.

### **Definition of “salary”**

4.—(1) Subject to paragraph (3), in this Order “salary”, in relation to a member or former member of the forces in respect of whom benefit is payable, means—

- (a) basic pay for a person of his rank and seniority, and
- (b) any other amount if and to the extent that the Secretary of State has determined that it is to be treated as salary.

(2) Subject to paragraph (1)(b), “salary” does not include—

- (a) any allowances,
- (b) any additional amounts payable in respect of particular qualifications or duties, the location of service or the conditions in which service is temporarily performed, or
- (c) without prejudice to subparagraphs (a) and (b), any additional amounts payable to medical or dental officers as such.

(3) “Salary” does not include any description of payment that the Secretary of State has determined is not to be treated as salary.

### **Service of documents**

5. Where by any provision of this Order—
- (a) any notice or other document is required to be given or sent to the Veterans Agency, that notice or document shall be treated as having been given or sent on the day it is received by that Agency; and
  - (b) any notice or other document is required to be given or sent to any person, that notice or document shall, if sent by post to that person’s last known address, be treated as having been given or sent on the day that it was posted.

## **PART II**

### **THE COMPENSATION SCHEME**

#### **The Compensation Scheme**

6.—(1) The Compensation Scheme set out in the following provisions of this Order shall be known as the Armed Forces and Reserve Forces Compensation Scheme 2005.

(2) Subject to the paragraph 3, the rules of the Scheme are to be construed without reference to any other scheme applicable to the armed forces.

(3) Paragraph 2 does not apply where this Scheme makes express reference to any other scheme.

#### **Injury caused by service**

7.—(1) Benefit is payable in accordance with this Order to or in respect of a member or former member of the forces by reason of an injury which is caused (wholly or partly) by service where the cause of the injury occurred on or after 6<sup>th</sup> April 2005.

(2) Where injury is not wholly caused by service, benefit is only payable if service is the predominant cause of the injury.

#### **Injury made worse by service**

8.—(1) Subject to the following provisions of this article, benefit is payable in accordance with this Order to or in respect of a former member of the forces by reason of an injury made worse by service if the injury—

- (a) was sustained before he entered service and was recorded in the report of his medical examination when he entered service;
- (b) was sustained before he entered service but without his knowledge and the injury was not found at that examination; or
- (c) arose during service but was not caused by service

and in each case the injury was made worse by service on or after 6th April 2005.

(2) Benefit is only payable under paragraph (1) if, in each case, the injury has been worsened by service and remains worsened by service on—

- (i) the day on which the member of the forces' service ends, or
- (ii) the date of claim if that date is later.

- (3) Subject to paragraph (4), in the case of paragraph (1)(a) and (b), benefit is only payable if—
- (a) the member of the forces or former member of the forces was downgraded within the period of 5 years starting on the day on which he entered service;
  - (b) the downgrading lasted for a period of at least 6 months (except where the member of the forces was discharged on medical grounds within that period);
  - (c) the member or former member of the forces remains continually downgraded until his service ends; and
  - (d) the worsening was the predominant cause of the downgrading.
- (4) No benefit is payable where the injury which was sustained before the day on which the member of the forces entered service is worsened—
- (a) within the period of 6 months; or
  - (b) after the period of 5 years
- in both cases starting on that day.
- (5) In the case of paragraph (1)(c), benefit is only payable if the member of the forces—
- (a) was downgraded within the period of 5 years starting on the day on which he sustained the injury and remains continually downgraded until his service ends; and
  - (b) the worsening was the predominant cause of the downgrading.

#### **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 5 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 5 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.

#### **Injury and death – inclusions**

- 10.—**(1) Benefit is payable in accordance with this Order to or in respect of a person by reason of an injury sustained or death occurring, while participating in—
- (a) sporting activities as a player, a referee, an organiser or a representative of a particular sport or sporting organisation where—

- (i) the Secretary of State has approved the sport as being a sport which enhances the fitness, initiative and endurance of members of the forces, and
  - (ii) the relevant Service has recognised the particular event and the organisation and training for it;
  - (b) activities approved by the relevant Service which are undertaken for the purpose of meeting and maintaining the physical standards required of members of the forces; or
  - (c) adventurous training courses or adventurous expeditions approved by the relevant Service;
- in each case where service is the predominant cause of the injury or death.

(2) For the purposes of paragraph (1)(a)(i), the Secretary of State may approve a single sporting activity or a class of such activities and may approve such activities unconditionally or subject to any specified condition.

(3) The activities referred to in paragraph (1) do not include social events or free time associated with those activities.

(4) Benefit is payable in accordance with this Order to or in respect of a person by reason of an injury sustained or a death occurring while travelling from—

- (a) his home or his place of work to the place where an activity referred to in paragraph (1) is to happen or while travelling back again;
- (b) his home or his regular place of work or while travelling back again in both cases where one of the circumstances specified in paragraph (5) applies and service is the predominant cause of the injury or death.

(5) The circumstances referred to in paragraph (4)(b) are where the member of the forces—

- (a) is travelling from his home or his regular place of work to a place of work outside the United Kingdom or back again;
- (b) is travelling from his home or his regular place of work to another place of work in the United Kingdom which is not his regular place of work or while travelling back again; or
- (c) is required to reside in accommodation provided by the Ministry of Defence for families of members of the forces at a distance of over 50 miles from his regular place of work and is travelling by a reasonably direct route from that accommodation to that place of work or while travelling back again.

(6) Benefit is payable in accordance with this Order to or in respect of a person by reason of an injury sustained or a death occurring—

- (a) as a result of acts of terrorism or other warlike activities in each case directed towards him as a member of the forces as such; or
- (b) while called out to and travelling to an emergency

but only where service is the predominant cause of the injury or death.

(7) This article does not apply unless the cause of the injury, or the cause of the death, occurred on or after 6th April 2005.

(8) In this article, “the relevant Service” means the Army, the Navy, the Air Force or the Reserve Forces as the case may be.

### **Injury and death - exclusions**

**11.** No benefit is payable under this Order to or in respect of a person by reason of—

- (a) an injury which is predominantly caused or predominantly made worse by, or death which is predominantly caused by—
  - (i) the use or effect of tobacco,

- (ii) the consumption of alcohol,
  - (iii) medical treatment of the injury except where the treatment is provided while the person sustaining the injury is on military operations outside the United Kingdom and in circumstances relating to service where medical facilities are limited,
  - (iv) the non-therapeutic use of drugs,
  - (v) consensual sexual activities,
  - (vi) except where article 8 applies, events, experiences, exposures and activities occurring before the member of the forces entered service;
- (b) an illness which is—
- (i) caused by a single gene defect or is predominantly hereditary in origin;
  - (ii) a personality disorder;
  - (iii) an endogenous infection;
  - (iv) an exogenous infection except where the infection is endemic to a tropical or a subtropical region and the person infected has been exposed to the infection in the course of his service or where, in a temperate region, there has been an outbreak of the infection in service accommodation or a workplace.
- (c) a self-inflicted injury whether or not causing death except where the self-inflicting of injury is a result of a mental illness caused by service.

**Modifications of provisions for members or former members of the reserve forces and Gurkhas**

12.—(1) Schedule 2 shall have effect for the modification of certain provisions of this Order in relation to the reserve forces.

(2) Schedule 3 shall have effect for the modification of certain provisions of this Order in relation to Gurkhas.

## PART III

### BENEFITS PAYABLE FOR INJURY

#### Interpretation of Part III

13. In Part III—

- (a) “first injury” means, in a case where more than one injury is sustained in one incident, the injury in relation to which the highest amount specified in column (b) of Table 10 is payable and “second injury” and “third injury” shall be construed accordingly;
- (b) any reference to an amount specified in column (b) of Table 10 means the amount specified in that column on the day on which—
  - (i) a claim for benefit is determined under article 43,
  - (ii) a final award is made under article 44
  - (iii) a decision of the Secretary of State is revised under article 45, 47, 48 or 49

- (iv) a decision relating to benefit is revised by a Pension Appeal Tribunal, an appropriate Social Security Commissioner<sup>(11)</sup> or a court as the case may be.

### **Description of benefits – injury**

**14.**—(1) Benefits payable for injury are—

- (a) a lump sum;
- (b) a guaranteed income payment payable until death.

(2) The tariff shall have effect for the purpose of determining the amount of lump sum and the guaranteed income payment as follows—

- (a) in Tables 1 to 9 (inclusive) the injuries in column (b) shall be regarded as giving rise to entitlement at the corresponding tariff level in column (a).
- (b) in Table 10 the amount in column (b) shall be the relevant amount in relation to the injuries of the tariff level referred to in column (a).

(3) Subject to article 20, benefits for injury are only payable in respect of injuries specified in column (b) of Tables 1 to 9 (inclusive).

(4) Guaranteed income payment is not payable in respect of injuries giving rise to entitlement at levels 12 to 15 of the Tables 1 to 9 (inclusive) of the tariff.

(5) A person is only entitled to one guaranteed income payment regardless of the number of injuries which are sustained;

(6) If a member of the forces has sustained more than one injury in separate incidents the amount which is payable is the highest such payment which has been awarded.

(7) Guaranteed income payment is not payable until the day after the day on which the service of the member of the forces to whom it was awarded ends and no such payment is payable in respect of any period before that day.

### **Amount of lump sum**

**15.**—(1) Where one injury is sustained in one incident, the amount of the lump sum is the relevant amount, described in article 14 (2)(b), applicable to that injury.

(2) Subject to paragraph (3), where more than one injury is sustained in one incident, the amount of the lump sum shall be calculated as follows—

- (a) for the first injury, 100 per cent. of the relevant amount applicable to that injury;
- (b) for the second injury, 30 per cent. of the relevant amount applicable to that injury;
- (c) for the third injury, 15 per cent. of the relevant amount applicable to that injury;

and no further amount shall be paid where four or more injuries are sustained in one incident.

(3) The total amount payable under paragraph (2) shall not exceed the amount specified at level 1 in column (a) of table 10.

(4) Subject to paragraph (6) where—

- (a) more than one injury has been sustained in one incident;
- (b) a claim for injury benefit (“the first claim”) is made for some but not all the injuries; and

<sup>(11)</sup> See section 6A(9) of the Pensions Appeal Tribunals Act 1943 (c. 39) inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.



- (c) after notice of the decision on the first claim has been given or sent to the claimant, a further claim for injury benefit is made for other injuries sustained in that incident, the Secretary of State shall determine the further claim by recalculating the amount of the lump sum in accordance with paragraphs (2) and (3) taking into account all the injuries sustained in that incident which have been the subject of a claim.
- (5) In determining the further claim under paragraph (4) the Secretary of State may
  - (a) increase the amount of the lump sum awarded in respect of the first claim; or
  - (b) award no, or no further, amount of benefit.
- (6) Where the Secretary of State increases the amount of the lump sum awarded in respect of the first claim, account shall be taken of the amount of benefit paid in respect of the first claim and only the difference between the earlier award and the later award shall be paid.
- (7) Paragraphs (4), (5) and (6) shall not apply to a further claim for injury benefit referred to in paragraph (4)(a) unless that claim is made within the time specified in articles 39, 40 and 41 for making a claim.

#### **Amount of guaranteed income payment**

**16.—**(1) The annual amount of guaranteed income payment is the relevant percentage of the base figure.

- (2) The base figure is calculated by multiplying the relevant salary by the relevant factor.
- (3) In this article—
  - (a) where one injury is sustained in one incident, “the relevant percentage” is—
    - (i) 100 per cent. where the injury gives rise to entitlement at level 1, 2, 3 or 4 of table 10 of the tariff (band A),
    - (ii) 75 per cent. where the injury gives rise to entitlement at level 5 or 6 of table 10 of the tariff (band B),
    - (iii) 50 per cent. where the injury gives rise to entitlement at level 7 or 8 of table 10 of the tariff (band C), and
    - (iv) 30 per cent. where the injury gives rise to entitlement at level 9, 10 or 11 of table 10 of the tariff (band D);
  - (b) where more than one injury is sustained in one incident and the first and second injuries are specified in the same band, “the relevant percentage” is the percentage specified in the band immediately above the band in which the injuries are specified (except where the injuries are specified in band A in which case “the relevant percentage” is 100 per cent.);
  - (c) where more than one injury is sustained in one incident and the first and second injuries are specified in different bands, “the relevant percentage” is the percentage specified in respect of the band in which the injury attracting the highest lump sum is specified.
- (4) Where the Secretary of State recalculates the amount of a lump sum under article 15(4) and, as a result, the first injury falls within a higher band of Table 10 of the tariff than it did before the recalculation, the Secretary of State shall then recalculate the amount of guaranteed income payment payable under paragraph (3)(b) or (c) of this article on the basis of the increased lump sum.

(5) In this article—

“the relevant salary” is the salary of the member of the forces on the day on which his service ends or, in the case of a former member of the forces, his salary on that day up-rated for inflation to the date of claim;

“the relevant factor” is the figure specified in column (b) of the table set out in Schedule 5 in relation to the relevant age specified in column (a); and

“the relevant age” is the age of the member of the forces on the day on which his service ends or, in the case of a former member of the forces, the date of claim.

(6) Up-rating a former member of the forces' salary for inflation for the purposes of determining “the relevant salary” under this article shall be carried out in accordance with article 64.

### **More than one injury - general**

**17.**—(1) Except where article 18 or 19 applies, this article applies where a member of the forces sustains an injury on more than one occasion and in each case the injury is caused by service.

(2) Where a lump sum is payable for a second or subsequent injury, that sum is payable in full and guaranteed income payment is payable with reference to that lump sum but subject to article 14(5) and (6).

### **Injury to a pair of like parts of the body**

**18.**—(1) This article applies where a member of the forces loses, or loses the function of, first one (“the first injury”) and later, in another incident, the other (“the second injury”) of a pair of like parts of the body specified in paragraph (4) and—

- (a) both the injuries are caused by service; and
- (b) an award of injury benefit has been made for the first injury.

(2) Where paragraph (1) applies—

- (a) the lump sum for the second injury is  $Y - X$ ;
- (b) any award of guaranteed income payment made for the first injury ceases to have effect; and
- (c) subject to article 14(5) and (6), guaranteed income payment is payable for the second injury as if the lump sum for that injury was for injury to both of the pair of like parts of the body.

(3) In this article—

- (a)  $Y$  is the amount in column (b) of Table 10 of the tariff corresponding with the tariff level specified in column (a) of the relevant table for the loss of both of the pair of like parts of the body; and
- (b)  $X$  is the amount in column (b) of Table 10 of the tariff corresponding with the tariff level specified in column (a) of the relevant table for the loss of one of the pair of like parts of the body.

(4) The pairs of like parts of the body to which this article applies are—

- arms or part of an arm,
- feet (but not toes),
- hands (but not fingers),
- kidneys,
- legs or part of a leg,
- total loss of sight in both eyes,
- total loss of hearing in both ears.

### **More than one injury to the same part of the body**

**19.**—(1) This article does not apply to an injury which is a fracture or a dislocation.

(2) Paragraphs (3) and (4) of this article apply where a member of the forces sustains an injury to a part of the body (“the first injury”) and later, in another incident, sustains another injury to the same part of the body (“the second injury”) and—

- (a) both injuries are caused by service; and
- (b) an award of injury benefit has been made for the first injury.

(3) Subject to article 14(5) and (6) where the second injury is sustained after the relevant period has ended, injury benefit is payable in accordance with this Order.

(4) Where the second injury is sustained before the relevant period ends—

- (a) if the second injury is an injury which gives rise to entitlement at the same or a lower level of column (a) of Table 10 of the tariff compared with the first injury, the lump sum payable for the second injury is the relevant percentage of the lump sum which would, but for this article, be payable for that injury;
- (b) if the second injury is an injury which gives rise to an entitlement at a higher level in column (a) of Table 10 of the tariff compared with the first injury, the lump sum payable for the second injury under this article is  $(A - B) + P$ ; and
- (c) subject to article 14(5) and (6), guaranteed income payment is payable in accordance with this Order and, for the purposes of determining under article 14(5) which is the highest guaranteed income payment that has been awarded, subparagraphs (a) and (b) of this paragraph have no effect.

(5) Paragraph (6) of this article applies where a member of the forces sustains a third or a fourth or more injuries to the same part of the body and all the injuries are caused by service.

(6) Where paragraph (5) applies, paragraph (2) to (4) apply as though references in those paragraphs to—

- (a) the first injury were references to the second injury (or to the third or fourth injury and so on where further injuries are sustained to the same part of the body);
- (b) the second injury were references to the third injury (or to the fourth or fifth injury and so on where further injuries are sustained to the same part of the body); and
- (c) the relevant period were references to the period of 9 years starting with the date on which the injury referred to in subparagraph (a) of this paragraph was sustained.

(7) In this article—

- (a) A is the lump sum which would, but for this article, be payable for the second injury;
- (b) B is the lump sum which has been awarded for the first injury;
- (c) P is the relevant percentage of the lump sum which would be awarded for the second injury if that injury gave rise to entitlement at the same level in column (a) of Table 10 of the tariff as the first injury;
- (d) “a part of the body” means shoulder, elbow, wrist, hip, knee, ankle joints and associated ligaments or cervical, thoracic or lumbosacral sections of the back;
- (e) “relevant period” means a period of 9 years starting with the date on which the first injury is sustained;
- (f) “relevant percentage” means the percentage specified in column (b) of the following table in relation to the number of whole years specified in paragraph (a) of that table being the number of whole years the second injury is sustained after the first injury was sustained.

The number of whole years (a)	The percentage paid (b)
Less than 1	10 per cent.

The number of whole years (a)	The percentage paid (b)
1	20 per cent.
2	30 per cent.
3	40 per cent.
4	50 per cent.
5	60 per cent.
6	70 per cent.
7	80 per cent.
8	90 per cent.

### Temporary Awards

20.—(1) Where the Secretary of State considers that—

- (a) a person has sustained an injury of a description for which no provision is made in the tariff; and
- (b) that injury is sufficiently serious to warrant an award of injury benefit; and
- (c) that injury is listed in the International Statistical Classification of Diseases and Related Health Problems(12) or in the Diagnostic and Statistical Manual of Mental Disorders(13)

he shall make a temporary award in respect of that person relating to the level of the tariff which he considers appropriate for that injury.

(2) The amount of the lump sum payable under a temporary award is the amount which would have been payable had the injury been included in the level of the tariff which the Secretary of State considers appropriate for the injury.

(3) Where guaranteed income payment is payable under a temporary award, the amount payable is that which would have been payable had the injury been included in the tariff at the level which the Secretary of State considers appropriate for the injury.

(4) If the Secretary of State—

- (a) does not, within the period of one year starting with the date on which the temporary award is given or sent to the claimant, amend this Order by including the injury for which the temporary award is made in the level of the tariff which he considers appropriate for that injury, guaranteed income payment shall cease to be payable under the temporary award at the end of the period but no amount, either lump sum or guaranteed income payment, paid in accordance with that award is recoverable;
- (b) does, within that period, so amend this Order—
  - (i) the temporary award becomes a permanent award on the day on which the amending Order comes into force, and
  - (ii) guaranteed income payment shall continue to be paid in accordance with this Order.

(12) World Health Organisation Press, Geneva. 10th Revision (1992).

(13) American Psychiatric Association, Washington DC 20005 USA. 4th Edition, Text Revision (2000).

## PART IV

### BENEFITS PAYABLE FOR DEATH

#### **Description of benefits - death**

**21.**—(1) Benefits payable for the death of a member of the forces or a former member of the forces are—

- (a) a survivor’s guaranteed income payment payable until death to his surviving spouse, civil partner or his surviving adult dependant;
- (b) a bereavement grant payable to his surviving spouse, civil partner or surviving adult dependant;
- (c) a child’s payment payable to or in respect of an eligible child.

(2) If the member or former member of the forces and the surviving spouse married less than 6 months before the death of the member or former of the forces, the Secretary of State may withhold benefit under this article.

(3) If the member or former member of the forces and the civil partner formed their partnership less than 6 months before the death of the member or former member, the Secretary of State may withhold benefit under this article.

(4) Where a member was a member of the AFPS 2005 and dies in service, a bereavement grant is not payable except in the circumstances specified in paragraph (5).

(5) The circumstances referred to in paragraph (4) are that the salary of the member of the forces on the day on which he died is less than the amount of the bereavement grant.

#### **Meaning of “surviving adult dependant”**

**22.** A person is a surviving adult dependant in relation to a member or former member of the forces if, at the time of the member’s death—

- (a) the person and the member were cohabiting as partners in a substantial and exclusive relationship;
- (b) the member leaves no surviving spouse or civil partner;
- (c) the person and the member were not prevented from marrying or forming a civil partnership; and
- (d) either the person was financially dependent on the member or they were financially interdependent.

#### **Meaning of “eligible child”**

**23.**—(1) In this Order, “eligible child” in relation to a deceased member of the forces or a deceased former member of the forces, means—

- (a) a child or an adopted child of the member who meets any of the conditions specified in paragraph (2); and
- (b) any other child or young person who—
  - (i) meets any of those conditions, and
  - (ii) was financially dependent on the member or former member of the forces on the day of his death.

(2) The conditions referred to in paragraph (1) are that the person is—

- (a) aged under 18;

- (b) in full-time education or vocational training and is aged under 23; or
- (c) unable to engage in gainful employment because of physical or mental disability from which the person began to suffer before the age of 23.

#### **Eligible child - further provisions**

**24.**—(1) A person who is aged under 19 on the day on which he ceases to be in full-time education is treated as being in such education until the first of the following days after he so ceases—

- (a) the second Monday in January;
- (b) the second Monday after Easter Monday;
- (c) the second Monday in September;
- (d) his 19<sup>th</sup> birthday;
- (e) the day on which he becomes engaged full-time in gainful employment.

(2) A person who, on the day of the death of a member or former member of the forces, is aged under 23 and taking a break from full-time education or vocational training not exceeding one academic year is treated as continuing such education or training during the break for the purpose of determining whether the person is an eligible child on that day.

(3) A person who, on the day of the death of a member or former member of the forces—

- (a) has finished full-time education at school;
- (b) has not started further full-time education or vocational training; and
- (c) is taking a break not exceeding 15 months

is treated as continuing such education or training during the break for the purposes of determining whether the person is an eligible child on that day.

(4) An eligible child—

- (a) who takes a break from full-time education or vocational training not exceeding one academic year; or
- (b) who—
  - (i) finishes full-time education at school,
  - (ii) takes a break not exceeding 15 months before starting further full-time education or vocational training,

shall be treated as continuing such education or training during one academic year in the case of paragraph (a) and during 15 months in the case of paragraph (b) for the purpose of determining whether the person is an eligible child during the break.

(5) A person aged over 17 and under 23 who has ceased full-time education or vocational training because of ill health is treated, for the purpose of determining whether he is an eligible child, as continuing such education or training until either—

- (a) he resumes such education or training; or
- (b) he is no longer ill and does not resume such education or training; or
- (c) his ill health is such that he is unable to resume such education or training.

(6) Nothing in paragraphs (2), (3) or (4) requires child's payment to be paid in respect of such a child during the break.

(7) A person is no longer treated as an eligible child if a break referred to in paragraph (2), (3), (4) or (5) lasts for longer than the periods mentioned in those paragraphs.

### **Children born after the death of a member or former member of the forces**

**25.**—(1) A child who is born after the death of a member or a former member of the forces is only treated as an eligible child of that member if the child is born before the first anniversary of the death of the member or former member.

(2) No child's payment is payable in respect of any period before the birth of such a child.

### **Amount of survivor's guaranteed income payment**

**26.**—(1) Subject to paragraph (5) the annual amount of survivors' guaranteed income payment is 60 per cent. of the base figure.

(2) The base figure is calculated by multiplying the relevant salary by the relevant factor.

(3) In this article—

“the relevant salary” is the salary of the member of the forces on the day on which he died or, in the case of a former member of the forces, his salary on the day on which his service ends up-rated for inflation to the date of claim;

“the relevant factor” is the figure specified in column (b) of the table set out in Schedule 5 in relation to the relevant age specified in column (a);

“the relevant age” is the age of the member or former member of the forces as the case may be on the day on which he died.

(4) Up-rating a former member of the forces salary for inflation for the purposes of determining “relevant salary” under this article shall be carried out in accordance with article 64.

(5) In the event that there is more than one surviving spouse entitled to the survivor's guaranteed income payment, the annual amount to which each such surviving spouse is entitled shall be 60 per cent. of the base figure, 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.

### **Amount of bereavement grant**

**27.**—(1) Subject to the following provisions of this article, the amount of the bereavement grant payable in respect of the death of a member or former member of the forces is £20,000.

(2) Where a member of the forces dies in service—

(a) if he was a member of the AFPS 1975, the bereavement grant is paid in full;

(b) if he was a member of the AFPS 2005, the amount of the bereavement grant is the difference between the salary of the member of the forces on the day on which he died and the bereavement grant.

(3) Where a former member of the forces dies, the bereavement grant is payable in full

(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 £20,000, 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.

### **Amount of child's payment**

**28.**—(1) The annual amount of child's payment is the relevant percentage of the base figure or, in the circumstances specified in paragraphs (3)(b) and (4)(b), the amount referred to in those subparagraphs.

(2) The base figure is calculated by multiplying the relevant salary by the relevant factor.

(3) Where a member of the forces or former member of the forces dies leaving a surviving spouse, a civil partner or a surviving adult dependant—

- (a) the relevant percentage is—
  - (i) 15 per cent. for each of the first 2 eligible children;
  - (ii) 10 per cent. for the third eligible child; and
- (b) where there are more than 3 eligible children, the amount referred to in paragraph (1) is an amount obtained by dividing 40 per cent. of the base figure by the number of eligible children left by the member or former member of the forces.

(4) Where a member or a former member of the forces dies without leaving a surviving spouse, a civil partner or a surviving adult dependant but leaves—

- (a) no more than 4 eligible children, the relevant percentage is 25 per cent.;
- (b) more than 4 eligible children, the amount referred to in paragraph (1) is an amount obtained by dividing the base figure by the number of eligible children.

(5) Where a child ceases to be an eligible child, there shall be no adjustment in the amount of child's payment payable to the other children who receive child's payment as a result of the same calculation.

(6) In this article—

“the relevant salary” is the salary of the member of the forces on the day on which he died or, in the case of a former member of the forces, his salary on the day on which his service ends up-rated for inflation to the date of claim;

“the relevant factor” is the figure specified in column (b) of the table set out in Schedule 5 in relation to the relevant age specified in column (a);

“the relevant age” is the age of the member of the forces or the former member of the forces on the day on which he died.

(7) Up-rating a former member of the forces' salary for the purposes of determining “the relevant salary” under this article shall be carried out in accordance with article 64.

#### **Awards of child's payment: later adjustment**

**29.—**(1) This article applies where, after the death of a member or former member of the forces—

- (a) a child's payment is paid in respect of one or more persons under this Part on the basis that they were eligible children at the date of the member's death and that there were then no other eligible children; and
- (b) subsequently it appears—
  - (i) that a person in respect of whom such a payment has been paid was not then an eligible child, or
  - (ii) that a further person was then an eligible child, or
  - (iii) that a child who was born after the member's death is an eligible child.

(2) The Secretary of State may make such adjustments in the amount of the child's payment payable in respect of the children in question as are required in view of the facts as they subsequently appear.

(3) Paragraph (2) does not affect the Secretary of State's right to recover a payment or overpayment in any case where he considers it appropriate to do so.



### **Children entitled to three or more awards of child's payment**

**30.**—(1) This paragraph applies if, apart from this paragraph, child's payment would be payable in respect of the same child under article 21(1) as a result of the death of more than two members of the forces or former members of the forces.

(2) Only child's payments payable as a result of the death of two of the members of the forces or former members of the forces which together result in the payment of the greatest annual amount in respect of the child are payable.

## **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<sup>(14)</sup> ("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.

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

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

**32.**—(1) 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

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<sup>(14)</sup> S.I. 2005/437.

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

(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<sup>(15)</sup>;
- (b) under the Criminal Injuries (Compensation)(Northern Ireland) Order 1988<sup>(16)</sup>; 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.

#### **Abatement of awards in respect of Social Security benefits**

**33.** Where benefit is awarded under this scheme to or in respect of a person for any past period for which benefit under the Social Security and Contributions and Benefits Act 1992<sup>(17)</sup> or the Jobseekers Act 1995<sup>(18)</sup>, or any legislation in Northern Ireland corresponding thereto, had been paid to or in respect of that person, the total amount of benefit so awarded may be abated by the amount by which the amount of benefit so paid exceeds what would have been payable for that period had the benefit been concurrently payable.

#### **Negligence or misconduct**

**34.** The Secretary of State may withhold up to 40 per cent. of benefit where the negligence or misconduct of a member or former member of the forces contributed to his injury or death.

## **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

<sup>(15)</sup> 1995 c. 53.

<sup>(16)</sup> 1988/793 (N.I. 4).

<sup>(17)</sup> 1992 c. 4.

<sup>(18)</sup> 1995 c. 18.

Pensions Order 1983(19), the Secretary of State shall treat that claim as also being a claim for benefit under this Order.

### **Manner of making a claim**

**36.** A claim for benefit shall be—

- (a) in writing;
- (b) on a form approved for that purpose by the Secretary of State;
- (c) signed by or on behalf of the person claiming benefit; and
- (d) given or sent to the Veterans Agency within the time specified in article 39, 40 or 41 whichever is applicable.

### **Cases where claims are not required**

**37.—**(1) It is not a condition of entitlement to benefit that a claim be made for it where—

- (a) a member of the forces is discharged on medical grounds; or
- (b) a member of the forces dies whilst serving in the forces.

(2) Notwithstanding paragraph (1), where a member of the forces dies in the circumstances specified in that paragraph leaving an eligible child and either—

- (a) leaves no surviving spouse, civil partner or surviving adult dependant; or
- (b) the child is not living with the surviving spouse, civil partner or surviving adult dependant as the case may be on the date on which the member of the forces died

it is a condition of entitlement to child's payment that a claim is made by or on behalf of the child.

(3) Paragraph (1)(a) only applies to injury benefit for the injury which caused the member of the forces to be discharged on medical grounds and any injuries arising from that injury or from the same incident that caused that injury.

### **Date of claim**

**38.—**(1) Subject to paragraphs (2) and (3), the date on which a claim is made is the date on which it is received by the Veterans Agency.

(2) Where, not more than 3 months before the date on which a claim for benefit is made, the person making the claim, or a person acting on his behalf requests the Secretary of State, orally or in writing, to provide information relating to benefit or a form approved by him for the purpose of claiming benefit, the date of claim shall be the date of that request.

(3) Where article 37(1) applies, the date of claim shall be treated as—

- (a) the day after the day on which the member of the forces is discharged on medical grounds; or
- (b) the day after the day on which the member of the forces died

whichever is applicable.

### **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 5 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 one year 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 5 years starting with the day on which that service ends;

is one year from the date of the death.

#### **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 one year 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 either article 39(1) or paragraph (1) of this article

the Secretary of State may extend the time for making a claim for a period of up to one year 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(1) or paragraph (1).

#### **Withdrawal or amendment of claim**

**42.**—(1) A person who has made a claim may amend it by notice in writing given or sent to the Veterans Agency at any time before notice of the decision on the claim has been given or sent to the claimant, and any claim so amended shall be treated by the Secretary of State as if it had been so amended in the first instance.

(2) A person who has made a claim may withdraw it at any time before notice of the decision on the claim has been given or sent to the claimant, by notice in writing given or sent to the Veterans Agency, and any such notice of withdrawal shall have effect when it is received.

(3) Where a person has withdrawn a claim under paragraph (2), he may not reinstate that claim but may make a further claim in accordance with the provisions of this Order.

## 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 of his right—

- (a) to a reconsideration of the decision under article 45; and
- (b) to appeal to a Pension Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

### Interim awards

**44.**—(1) Where the Secretary of State is satisfied that a person is entitled to injury benefit 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.

(4) Where a final award is—

- (a) higher than 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 the interim award and the amount of the final award shall be paid;
- (b) lower than the interim award, no amount paid in accordance with the interim award is recoverable.

### Reconsideration

**45.**—(1) A decision of the Secretary of State (“the original decision”), other than a decision under article 44(1), 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 a Pension Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.
- (5) Where an appeal has been made to a Pensions Appeal 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 Pensions Appeal 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.

### **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 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 or 49;
  - (d) making a final award under article 44.

### **Review on discharge on medical grounds**

- 47.**—(1) This article applies where a member of the forces has been awarded injury benefit and is later discharged on medical grounds for the same injury for which that benefit 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 a Pensions Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

#### **Review – exceptional circumstances**

**48.**—(1) The Secretary of State may revise an award of injury benefit 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, 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) be on a form approved by the Secretary of State;
- (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 a Pensions Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

**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 article

in 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 a Pension Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

**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.

(3) In this article, a reference to a claim includes a reference to a reconsideration under article 45 and a review under article 47, 48 or 49.

## **PART VIII**

### **PAYMENT**

#### **Date on which awards of benefit become payable**

**54.**—(1) A lump sum and a bereavement grant shall be paid in accordance with an award as soon as is reasonably practicable after the award has been made.

(2) An award of guaranteed income payment becomes payable—

- (a) where a member of the forces is discharged from the forces on medical grounds and the award is for the injury which caused him to be discharged on medical grounds, on the day after the discharge;
- (b) where a member of the forces is awarded injury benefit which includes an award of guaranteed income payment, on the day after the day on which his service ends;
- (c) in any case where subparagraph (a) or (b) does not apply, on the date of claim.

(3) Where a person who is entitled to a pension for disablement or death under The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 (“the 1983 Order”) subsequently becomes entitled to benefit under this Order for the same injury or death for which there was entitlement under the 1983 Order, the date on which benefit under this Order becomes payable is the date on which—

- (a) a claim for benefit is determined under article 43;
- (b) a final award is made under article 44;
- (c) a decision of the Secretary of State is revised under article 45, 48 or 49;
- (d) a decision relating to benefit is revised by a Pensions Appeal Tribunal, an appropriate Social Security Commissioner or a court as the case may be.

(4) Where a member of the forces dies in service, an award of survivor's guaranteed income payment and an award of child's payment become payable on the day after his death.

(5) Subject to article 14(7), an award—

(a) revised under article 45 becomes payable on the date of claim;

(b) revised under article 48 becomes payable on the date the application for review is sent to the Secretary of State;

(6) Subject to article 14(7) where a decision of the Secretary of State is revised under article 49 so as to award benefit or increase the amount of benefit awarded, the revised award becomes payable from the beginning of a period starting 6 years before the date on which the application for review is sent to the Secretary of State or, where no application for a review has been made, 6 years before the date on which the award is revised.

(7) Where an award is increased under article 15(4), the increased guaranteed income payment becomes payable from the date on which the further claim was made.

(8) Where the amount of an award is reduced following a review under article 49, the reduced amount becomes payable on the date on which the award is revised.

(9) Notwithstanding paragraph (6), no benefit is payable for any period before the date of claim.

### **Time of payment**

**55.** Guaranteed income payment, survivor's guaranteed income payment and child's payment shall be paid monthly in arrears unless, in any particular case, the Secretary of State arranges otherwise.

### **Suspension – Pensions Appeal Tribunal**

**56.**—(1) Where it appears to the Secretary of State that a question arises whether an appeal ought to be brought against the decision of a Pensions Appeal Tribunal, he may, subject to paragraph (2), direct that payment of benefit in accordance with that decision be suspended, in whole or in part, pending the determination of the appeal.

(2) Where it appears to the Secretary of State that a question arises under paragraph (1), he may only give directions that payment of benefit in accordance with that decision be suspended within the relevant period.

(3) A suspension under paragraph (1) shall cease unless, within the relevant period, the person awarded benefit by virtue of the decision ("the beneficiary") is given or sent notice in writing that an application for leave to appeal has been made against that decision.

(4) Subject to paragraph (5), where the beneficiary has been given or sent notice within the relevant period that an application for leave to appeal against a decision of a Pensions Appeal Tribunal has been made, the suspension may continue until that application for leave to appeal and, where leave has been granted, any subsequent appeal is determined.

(5) Where an application for leave to appeal against a decision of a Pensions Appeal Tribunal is made to a Pensions Appeal Tribunal and that application is refused, the suspension shall cease unless the Secretary of State, within a period of 28 days beginning with the date on which notice in writing of the decision of the Pensions Appeal Tribunal refusing leave to appeal is received by him, makes a further application for leave to appeal, and, if he has so applied, the suspension may continue until that application for leave to appeal and any subsequent appeal is determined.

(6) Where, on an appeal against a decision of a Pensions Appeal Tribunal, an appropriate Commissioner remits the matter for rehearing and determination by a Pensions Appeal Tribunal, the appeal is not determined for the purposes of paragraphs (4) and (5) until the matter remitted for rehearing has been determined.

- (7) In this article,
- (a) “appeal” means an appeal under section 6A of the Pensions Appeal Tribunals Act 1943<sup>(20)</sup>
  - (b) “application for leave to appeal” means an application for leave to appeal under section 6A(6) of that Act; and
  - (c) “relevant period” means the period of six weeks beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

### **Suspension – Social Security Commissioner**

57.—(1) Where it appears to the Secretary of State that a question arises whether an appeal ought to be brought against the decision of an appropriate Commissioner under section 6C<sup>(21)</sup> of the Pensions Appeal Tribunals Act 1943, he may, subject to paragraph (2), direct that payment of benefit in accordance with that decision be suspended, in whole or in part, pending the determination of the appeal.

(2) Where it appears to the Secretary of State that a question arises under paragraph (1), he may only give directions that payment of benefit in accordance with that decision be suspended within the relevant period.

(3) A suspension under paragraph (1) shall cease unless, within the relevant period, the person awarded the benefit by virtue of the decision (“the beneficiary”) is given or sent notice in writing that an application for leave to appeal has been made against that decision.

(4) Where the beneficiary has been given or sent notice within the relevant period that an application for leave to appeal has been made, the suspension may continue until that application for leave to appeal and any subsequent appeal is determined.

(5) Where an application for leave to appeal against a decision of an appropriate Commissioner is made under section 6C of the Pensions Appeal Tribunals Act 1943 and that application is refused, the suspension shall cease unless the Secretary of State, within a period of 28 days beginning with the date on which notice in writing of the decision under that section refusing leave to appeal is received by him, applies to the appropriate court for leave to appeal, and, if he has so applied, the suspension may continue until that application for leave to appeal and any subsequent appeal has been determined.

- (6) In this article—
- (a) “appeal” means an appeal under section 6C of the Pensions Appeal Tribunals Act 1943
  - (b) “application for leave to appeal” means an application for leave to appeal under section 6C(2) of that Act; and
  - (c) “appropriate court” means—
    - (i) in England, Wales and Northern Ireland, the Court of Appeal or, in Scotland, the Inner House of the Court of Session,
    - (ii) the House of Lords;
  - (d) “relevant period” means the period of 6 weeks beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State;

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<sup>(20)</sup> 1943 (c. 39), section 6A was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.

<sup>(21)</sup> Section 6C was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.

- (e) “an appropriate Commissioner” means a Great Britain Social Security Commissioner or a Northern Ireland Social Security Commissioner and includes a tribunal of Commissioners constituted under section 6D(5) of the Pensions Appeal Tribunals Act 1943(22).

### **Suspension – courts**

**58.**—(1) Where it appears to the Secretary of State that a question arises whether an appeal ought to be brought against the decision of a court, he may, subject to paragraph (2), direct that payment of benefit in accordance with that decision be suspended, in whole or in part, pending the determination of the appeal.

(2) Where it appears to the Secretary of State that a question arises under paragraph (1), he may only give directions that payment of benefit in accordance with that decision be suspended within the relevant period.

(3) A suspension under paragraph (1) shall cease unless, within the relevant period, the person awarded the benefit by virtue of the decision (“the beneficiary”) is given or sent notice in writing that an application for leave to appeal has been made against that decision.

(4) Where the beneficiary has been given or sent notice within the relevant period that an application for leave to appeal has been made, the suspension may continue until that application for leave to appeal and any subsequent appeal is determined.

(5) In this article—

(a) “appeal” means—

- (i) in England, Wales and Northern Ireland an appeal to the Court of Appeal or, in Scotland, a reclaiming motion to the Inner House of the Court of Session, against the determination of an application for judicial review;
- (ii) in England, Wales and Northern Ireland an appeal to the House of Lords against a decision of the Court of Appeal in an application referred to in head (i) above, or in Scotland, an appeal to the House of Lords against a decision of the Inner House of the Court of Session in a reclaiming motion in an application referred to in head (i) above;

(b) “application for leave to appeal” means an application or petition for leave to appeal as the case may be in the proceedings referred to in heads (i) and (ii) of subparagraph (a) above;

(c) “relevant period” means the period of three months beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

### **Suspension in other cases**

**59.**—(1) Where it appears to the Secretary of State that—

(a) an appeal has been brought or a question arises whether an appeal ought to be brought against a decision of a court in relation to a case (“the primary case”); and

(b) if such an appeal were to be allowed a question would arise in relation to another case (“the secondary case”) whether the award of benefit in that case ought to be reviewed,

he may direct that payment of the benefit under the award in the secondary case be suspended, in whole or in part—

(i) until the time limit for making an application for leave to appeal in the primary case has expired, or;

(22) Section 6D was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 4.

(ii) if such an application is made, until such time as that application and any subsequent appeal has been determined, whichever is the later.

(2) In this article the expressions “appeal” and “application for leave to appeal” have the same meanings as they have in article 56.

### **Payments on death**

**60.**—(1) On the death of a person who has made a claim for benefit, the Secretary of State may appoint such person as he thinks fit to proceed with the claim.

(2) Any sum which is payable under an award on a claim proceeded with under paragraph (1) shall be paid to the personal representatives of the deceased or to such other persons as the Secretary of State considers fit.

(3) An award on a claim proceeded with under paragraph (1) shall not provide for payment of benefit for any period after the date of death.

## **PART IX**

### **THIRD PARTIES**

### **Persons under 18**

**61.**—(1) Where a child is less than the age of 18, a claim for child’s payment shall be made by the child’s parent or by a person having legal responsibility for the child and such a person may exercise on behalf of the child the powers specified in articles 42, 45 and 49 and has the duty imposed by article 53(1)(a).

(2) Where the Secretary of State is satisfied that a claim for child’s payment made by a person referred to in paragraph (1) cannot be determined because the person making the claim has not provided information requested under article 53(1)(a), the Secretary of State shall appoint a person to pursue the claim on the child’s behalf.

(3) Where the Secretary of State has made an appointment under paragraph (2)

- (a) he may at any time revoke it and make another appointment under paragraph (2); and
- (b) the person appointed may resign his office after having given one month’s notice in writing to the Secretary of State of his intention to do so.

(4) Child’s payment awarded in respect of an eligible child aged less than 18 shall be paid to the child’s parent or the person having legal responsibility for the child or, if the Secretary of State considers that it is in the interests of the child that a person other than the parent or person having legal responsibility for the child should be paid the child’s payment, to a person (who, if a natural person, is over the age of 18) appointed by the Secretary of State in writing and the person receiving the child’s payment shall apply the payment for the benefit of the child.

(5) Where the Secretary of State has made an appointment under paragraph (4)

- (a) he may at any time revoke it and either—
  - (i) make another appointment under paragraph (4); or
  - (ii) pay the child’s payment to the parent or the person having legal responsibility for the child; and
- (b) the person appointed may resign his office after having given one month’s notice in writing to the Secretary of State of his intention to do so.

(6) The Secretary of State may, before appointing a person under paragraph (4), require that person to give such undertaking as the Secretary of State considers necessary as to the use of the child's payment.

### **Persons who are mentally infirm**

**62.**—(1) Where—

- (a) a person is, or is alleged to be, entitled to benefit, whether or not a claim for benefit has been made by him or on his behalf; and
- (b) that person is, in the opinion of the Secretary of State incapable of managing his own affairs by reason of mental infirmity; and
- (c) no person has legal authority to act on his behalf

the Secretary of State may in writing appoint a person (who, if a natural person, is over the age of 18) to act for that person in respect of this Order.

(2) A person appointed under paragraph (1) shall—

- (a) exercise, on behalf of the mentally infirm person, any right to which that person may be entitled under this Order and fulfill on his behalf any duty imposed on that person by this Order;
- (b) receive and deal with any sums payable to him; and
- (c) apply those sums for the benefit of the mentally infirm person.

(3) Where the Secretary of State has made an appointment under paragraph (1)—

- (a) he may at any time revoke it and make another appointment under paragraph (1); and
- (b) the person appointed may resign his office after having given one month's notice in writing to the Secretary of State of his intention to do so.

(4) The Secretary of State may, before appointing a person under paragraph (1), require that person to give such undertaking as the Secretary of State considers necessary as to the use of the sums paid to him.

## **PART X**

### **UP-RATING**

#### **Annual up-rating of guaranteed income payment, survivor's guaranteed income payment and child's payment**

**63.** In every tax year the sums which are payable to a person by way of guaranteed income payment, survivor's guaranteed income payment or child's payment shall be increased by the same amount as that by which an annual pension of an amount equal to the guaranteed income payment, survivor's guaranteed income payment or child's payment would have been increased under the Pensions (Increase) Act 1971(23) if it were an annual pension eligible to be increased under that Act.

#### **Up-rating of relevant salary for the purposes of articles 16, 26 and 28**

**64.**—(1) Where, in the definition of "relevant salary" in articles 16, 26 and 28, the salary of a former member of the forces on the day his service ends or the day on which he died as the case may be ("the departure day"), is required to be up-rated for inflation, the Secretary of State shall

(23) 1971 c. 56.

review that salary in order to determine whether it would have retained its value in relation to the general level of prices obtaining in the United Kingdom, estimated in such manner as the Secretary of State thinks fit, had it been paid on the date on which guaranteed income payment, survivor's guaranteed income payment or child's payment as the case may be is to be paid for the first time ("the payment date").

(2) Where it appears to the Secretary of State that the general level of prices is greater on the payment day than it was on the departure day, the relevant salary for the purposes of articles 16, 26 and 28 shall be the amount of the former member of the forces' salary on the departure day increased by the percentage by which the general level of prices is greater on the payment day than it was on the departure day.

(3) The Secretary of State may, in providing for an increase in pursuance of paragraph (2), adjust the increased amount so as to round it up or down to the nearest pound as the case may be.

## PART XI

### TRANSITORY PROVISION

#### **Transitory provision: Coming into force of the Civil Partnership Act 2004**

65. Until such time as Section 1 of the Civil Partnerships Act 2004(24) comes into force, this Order has effect with the omission of references to civil partners and civil partnerships.

Signed by authority of the Secretary of State for Defence

8th March 2005

*Ivor Caplin*  
Parliamentary Under Secretary of State Ministry  
of Defence

SCHEDULE 1

Article 2(1)

MEANING OF “SUBSTANTIAL AND EXCLUSIVE RELATIONSHIP”

PART I

SUBSTANTIAL RELATIONSHIP

In deciding whether a relationship of a deceased member of the forces (“the deceased”) and the claimant is a substantial relationship, the Secretary of State shall have regard to any evidence which the claimant considers demonstrates that the relationship is substantial and shall in particular have regard to the following examples of evidence which could, either alone or together, indicate that the relationship is substantial.

1. Evidence of regular financial support by the deceased.
2. Evidence of a valid will or life insurance policy, valid at the time of the deceased’s death, in which—
  - (1) the deceased nominates the claimant as principal beneficiary or co-beneficiary with children; or
  - (2) the claimant nominates the deceased as the principal beneficiary.
3. Evidence indicating that the deceased and the claimant were purchasing accommodation as joint owners or evidence of joint ownership of other valuable property, such as a car or land.
4. Evidence of a joint savings plan or joint investments of a substantial nature.
5. Evidence that the deceased and the claimant operated a joint account for which they were co-signatories.
6. Evidence of joint financial arrangements such as joint repayment of a loan or payment of each other’s debts.
7. Evidence that the deceased or the claimant had given the other a power of attorney.
8. If the deceased and the claimant lived in rented accommodation, evidence that both their names appeared on the lease or rental agreement.
9. Evidence that the deceased and the claimant shared responsibility for children.
10. The length of the relationship.

PART II

EXCLUSIVE RELATIONSHIP

A relationship is not an exclusive relationship if—

- (a) one or both of the parties to the relationship is married to, or is the civil partner of, someone other than the other party to the relationship; or
- (b) one or both of the parties is a party to another relationship which is, or could be considered to be, a substantial and exclusive relationship having regard to the provisions of this Schedule.



SCHEDULE 2

Article 12(1)

MODIFICATIONS FOR RESERVE FORCES

1. The following definitions are inserted in article 2(1) in the appropriate alphabetical order—
  - “relevant service” has the same meaning as in regulations made under sections 83 and 84 of the Reserve Forces Act 1996~~(25)~~;
  - “Reserve Forces Pension Scheme” means the occupational pension scheme established by regulations made by the Defence Council, in exercise of the powers conferred on them by sections 4(2) and 8(1)(a) of the Reserve Forces Act 1996;
  - “reservist’s award” means an award payable to a member of a reserve force by virtue of regulations made under sections 83 and 84 or the Reserve Forces Act 1996 in respect of financial loss suffered by him during relevant service, but does not include—
    - (a) any award payable to a self-employed member of a reserve force in respect of his status as an employer,
    - (b) any amount payable to a reservist as a result of expenses incurred by him during a period of relevant service, or
    - (c) any payments made into his civilian occupational pension scheme;
- 2.—(1) For paragraph (1) of article 4 there is substituted the following paragraph—
  - “(1) Subject to paragraph (3), in this Order “salary”, in relation to a member of the reserve forces in respect of whom benefit is payable, means—
    - (a) the basic pay of a regular member of the forces who is of equivalent rank and seniority,
    - (b) an amount which represents any reservist’s award to which he is entitled on the day he leaves the service by virtue of him being in relevant service on that day,
    - (c) where he is not in relevant service on the day he leaves service, an amount which represents any reservist’s award he would have been entitled to had he been in relevant service on that day, and
    - (d) any other amount if and to the extent that the Secretary of State has determined that it is to be treated as salary.”
  - (2) In paragraph (2) of article 4 for “(1)(b)” there is substituted “(1)(d)”.
3. For article 31 there is substituted the following article—
  - “**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 he is also entitled to—
    - (a) a pension under the AFPS 1975 or the AFPS 2005 (“a pension”);
    - (b) a payment under the Armed Forces Early Departure Payments Scheme Order 2005 (“a payment”);
    - (c) a pension under the Reserve Forces Pension Scheme (“a reserve forces pension”);  
or
    - (d) benefit under an occupational pension scheme or a personal pension scheme in respect of the same injury or death for which guaranteed income payment, survivor’s guaranteed income payment or child’s payment is paid (“a civilian pension”)

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(25) 1996 c. 14.

*Status: This is the original version (as it was originally made).*

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

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

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

(3) Where a person is entitled to a survivor’s guaranteed income payment or a child’s payment for any period during which he is also entitled to a pension, reserve forces pension or civilian 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, reserve forces pension or civilian pension.

(4) In this article—

- (a) any reference to a pension, payment, reserve forces pension, civilian pension, invaliding pension or ill-health pension means the gross amount of that pension, payment, reserve forces pension, civilian pension, invaliding pension or ill-health pension;
- (b) “invaliding pension” means a pension payable to a member of the AFPS 1975 by virtue of him being medically discharged from the reserve forces.
- (c) “ill-health pension” means a pension under rules D5 or D6 of Schedule 1 to the AFPS 2005 and the corresponding provisions of the Reserve Forces Pension Scheme;
- (d) “occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993<sup>(26)</sup>;
- (e) “personal pension scheme” means a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 which has been approved under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988<sup>(27)</sup> or provisionally approved under section 655(5) of that Act.”

### SCHEDULE 3

Article 12(2)

#### MODIFICATIONS FOR GURKHAS

1. The definition of “salary” in article 4 is modified as follows—

(1) in paragraph (1) for “member or former member of the forces” there is substituted “Gurkha”, and

(2) for sub-paragraph (a) of paragraph (1) there is substituted—

“(a) basic pay in the Brigade of Gurkhas for a Gurkha of his rank and seniority, and”

<sup>(26)</sup> 1993 c. 48 as amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 18 and Schedule 2, paragraph 3(1)(a).

<sup>(27)</sup> 1988 c. 1.

2. Where a Gurkha is discharged into Nepal, the definition of “relevant factor” in articles 16(5), 26(3) and 28(6) has effect as if the reference to the table set out in Schedule 5 was a reference to the table set out at the end of this Schedule.

3. Where—

- (a) the surviving spouse or surviving adult dependant of a Gurkha or former Gurkha who was discharged into the United Kingdom; or
- (b) any child of his who is an eligible child

is resident in Nepal, the definition of “relevant factor” in articles 26(3) and 28(6) has effect as if the reference to the table set out in Schedule 5 was a reference to the table set out at the end of this Schedule.

4. For article 31 there is substituted—

“31.—(1) This article applies where a Gurkha is discharged into Nepal or where his surviving spouse or surviving adult dependant or any child of his who is an eligible child resides in Nepal.

(2) Where a former Gurkha is entitled to a guaranteed income payment for any period during which he is also entitled to a pension by virtue of the pension arrangements applicable to Gurkhas as a result of their service, guaranteed income payment is reduced by the amount of that pension.

(3) Where the surviving spouse or surviving adult dependant of a Gurkha or former Gurkha is entitled to a survivor’s guaranteed income payment for any period during which he is also entitled to a family pension in respect of the deceased Gurkha by virtue of the pension arrangements applicable to Gurkhas as a result of their service, survivor’s guaranteed income payment is reduced by the amount of that pension.

(4) Where a Gurkha or former Gurkha dies—

- (a) without leaving a surviving spouse or surviving adult dependant but leaves at least one eligible child; and
- (b) a family pension is payable as a result of his death

the total amount of child’s payment payable to his eligible children shall be reduced by the amount of the family pension.

(5) Where paragraph (4) applies—

- (a) the amount of the family pension shall be divided by the number of eligible children; and
- (b) the child’s payment paid to or in respect of each eligible child shall be reduced by the amount resulting from the division”.

**Table of Guaranteed Income Payment Factors for Gurkhas**

<i>Age at last birthday</i>	<i>GIP Factor</i>	<i>Age at last birthday</i>	<i>GIP Factor</i>
16	1.127	37	0.831
17	1.118	38	0.808
18	1.109	39	0.784
19	1.100	40	0.758
20	1.090	41	0.730
21	1.080	42	0.701

**Status:** This is the original version (as it was originally made).

<i>Age at last birthday</i>	<i>GIP Factor</i>	<i>Age at last birthday</i>	<i>GIP Factor</i>
22	1.069	43	0.671
23	1.057	44	0.638
24	1.046	45	0.604
25	1.034	46	0.566
26	1.021	47	0.527
27	1.008	48	0.484
28	0.993	49	0.439
29	0.978	50	0.390
30	0.963	51	0.339
31	0.947	52	0.282
32	0.931	53	0.221
33	0.913	54	0.155
34	0.894	55	0.083
35	0.874	Over 55	0.083
36	0.853		

SCHEDULE 4

Article 14

THE TARIFF

**Table 1– Burns\***

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
4	Burns, with deep second degree, third degree, or full thickness burns affecting 70 per cent or more of whole body surface area.
5	Burns, with deep second degree, third degree, or full thickness burns affecting 50 to 69 per cent of whole body surface area.
6	Burns, with deep second degree, third degree, or full thickness burns affecting 15 to 49 per cent of whole body surface area.

\*Awards for all burns include compensation for any residual scarring or pigmentation.

\*Awards for deep second degree, third degree or full thickness burns include compensation for actual or expected metabolic or cardiovascular consequences.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

<i>Column (a)</i> <i>Level</i>	<i>Column (b)</i> <i>Injury</i>
7	Burns, with deep second degree, third degree, or full thickness burns to the face or face and neck resulting in or expected to result in residual scarring and poor cosmetic results despite treatment and camouflage.
8	Burns, with deep second degree, third degree, or full thickness burns affecting 9 to 15 per cent of whole body surface area.
9	Burns, with deep second degree, third degree, or full thickness burns to the face or face and neck resulting in or expected to result in residual scarring and satisfactory cosmetic results with camouflage.
11	Burns, with deep second degree, third degree, or full thickness burns affecting 4.5 to 8.9 per cent of whole body surface area.
12	Burns, with deep second degree, third degree, or full thickness burns affecting less than 4.5 per cent of whole body surface area.
12	Burns, with first degree or superficial second degree burns affecting more than 15 percent of whole body surface area.
13	Burns, with first degree or superficial second degree burns to the face or face and neck.
14	Burns, with first degree or superficial second degree burns affecting 4.5 to 15 percent of whole body surface area.
15	Burns, with first degree or superficial second degree burns affecting 1 to 4.4 per cent of whole body surface area.

\*Awards for all burns include compensation for any residual scarring or pigmentation.

\*Awards for deep second degree, third degree or full thickness burns include compensation for actual or expected metabolic or cardiovascular consequences.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Table 2 - Injury, Wounds and Scarring\***

<i>Column (a)</i> <i>Level</i>	<i>Column (b)</i> <i>Injury</i>
5	Complex injury covering all or most of the area from thigh to ankle or shoulder to wrist, with complications, causing permanent functional limitation and restriction.

**Status:** This is the original version (as it was originally made).

<i>Column (a)</i> <i>Level</i>	<i>Column (b)</i> <i>Injury</i>
5	Loss of both kidneys or chronic renal failure.
6	Complex injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, with complications, causing permanent functional limitation and restriction.
6	Injury covering all or most of the area from thigh to ankle or shoulder to wrist, with complications, causing permanent functional limitation and restriction.
6	Complex injury to chest, with complications, causing permanent functional limitation and restriction.
7	Complex injury covering all or most of the area from thigh to ankle or shoulder to wrist, causing permanent functional limitation and restriction.
7	Injury covering all of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, with complications, causing permanent functional limitation and restriction.
7	Injury to chest, with complications, causing permanent functional limitation and restriction.
7	Complex injury to abdomen, including pelvis, with complications, causing permanent functional limitation and restriction.
8	Injury covering all or most of the area from thigh to ankle or shoulder to wrist, causing permanent functional limitation and restriction.
8	Complex injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, causing permanent functional limitation and restriction.
8	Severe facial lacerations which produce poor cosmetic result despite camouflage and have required, or are expected to require, operative treatment.
8	Injury to abdomen, including pelvis, with complications, causing permanent functional limitation and restriction.
8	Injury to chest, causing permanent major functional limitation and restriction.
9	Injury to abdomen, including pelvis, causing permanent functional limitation and restriction.

<i>Column (a)</i> <i>Level</i>	<i>Column (b)</i> <i>Injury</i>
9	Injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, causing permanent functional limitation and restriction.
10	Serious permanent damage to, or loss of, one kidney.
10	Severe facial lacerations, which have required, or are expected to require, operative treatment resulting in or expected to result in a satisfactory cosmetic result.
11	Complex injury covering all or most of the area from thigh to ankle or shoulder to wrist, causing or expected to cause functional limitation and restriction at 26 weeks with substantial recovery beyond that date.
11	Traumatic damage to spleen which has required splenectomy and where there is, or where there is a high risk of, overwhelming post-splenectomy infection.
11	Severe facial scarring which produces a poor cosmetic result despite camouflage.
12	Complex injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, causing or expected to cause functional limitation and restriction at 26 weeks with substantial recovery beyond that date.
12	Severe scarring of face, or face and neck, or neck, scalp, torso or limb, where camouflage produces a good cosmetic result.
12	Injury to chest with complications, causing or expected to cause functional limitation and restriction at 26 weeks, with substantial recovery beyond that date.
12	Injury covering all or most of the area thigh to ankle or shoulder to wrist, causing or expected to cause functional limitation and restriction at 26 weeks, with substantial recovery beyond that date.
12	High velocity gun shot wound affecting skin, subcutaneous tissue and muscle of the abdomen, chest or limbs.
13	Injury to abdomen including pelvis, with complications, causing or expected to cause

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
	functional limitation and restriction at 26 weeks with substantial recovery beyond that date.
13	Injury to all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, causing or expected to cause functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
13	Injury to chest, causing or expected to cause functional limitation or restriction at 26 weeks, where the claimant has made or is expected to make a substantial recovery beyond that date.
13	Moderate facial scarring where camouflage produces a good cosmetic result.
13	Lung damage due to toxic fumes, smoke inhalation or blast, where symptoms have continued, or are expected to continue beyond 6 weeks and where the claimant has made or is expected to make a substantial recovery within 26 weeks.
13	Traumatic tension or open pneumothorax.
14	Injury to abdomen including pelvis, causing or expected to cause functional limitation and restriction at 26 weeks, with substantial recovery beyond that date.
14	Moderate scarring of scalp, neck, torso or limbs where camouflage produces a good cosmetic result.
14	Minor facial scarring.
14	Flesh wound which has required, or is expected to require operative treatment.
14	Fractured tooth which has required, or is expected to require root resection.
14	Loss of two or more front teeth.
15	Minor scarring of scalp, neck, torso or limbs.
15	Damage to one front tooth which has required, or is expected to require a crown or root canal surgery.
15	Damage to two or more teeth other than front which has required, or is expected to require crowns or root canal surgery.
15	Loss of one front tooth.
15	Loss of two or more teeth other than front.



**Status:** This is the original version (as it was originally made).

\*When applied to limb injuries the expression “complex injury” means that the injury affects all or most of the following structures: skin, subcutaneous tissues, muscle, bone, blood vessels and nerves.

\*When applied to limb injuries the expression “with complications” means that the injury is complicated by at least one of septicaemia, osteomyelitis, vascular or neurological injury, avascular necrosis, gross shortening of the limb, mal-united or non-united fracture, or the fact that the claimant has required, or is expected to require a bone or skin graft.

\*When applied to chest and abdominal (including pelvis) injuries the expression “complex injury” means that there is damage to vital structures and organs including two or more of the following: trachea, lungs, heart, oesophagus, great vessels, diaphragm, chest or abdominal wall, liver, kidneys, spleen or ovaries.

\*When applied to chest and abdominal (including pelvis) injuries the expression “with complications” means that management of the injury has required two or more of the following: resuscitation, ventilation, thoracic or abdominal drainage or a laparotomy with repair and/or removal of organs and structure.

\*An award for an injury to limbs, chest or abdomen includes compensation for related damage to or removal of structures.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Table 3- Mental disorders\***

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
8	Permanent mental disorder, causing severe functional limitation and restriction.
10	Permanent mental disorder, causing moderate functional limitation and restriction.
11	Mental disorder, which is functionally limiting and restricting, and has continued, or is expected to continue for 5 years.
12	Mental disorder, which has caused or is expected to cause functional limitation and restriction at 2 years, from which the claimant has made or is expected to make a substantial recovery within 5 years.
13	Mental disorder, which has caused, or is expected to cause, functional limitation and restriction, at 26 weeks, from which the claimant has made, or is expected to make a substantial recovery within 2 years.
14	Mental disorder, which has caused or is expected to cause, functional limitation and

\*In assessing functional limitation and restriction for mental disorders account shall be taken of psychological, social and occupational function.

\*Functional limitation and restriction is likely to be severe where symptoms or behaviours include mania, delusions, hallucinations, severe depression with suicidal preoccupations or abnormal rituals.

\*Mental disorders must be diagnosed by a relevant accredited medical specialist.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
	restriction at 6 weeks, from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
*In assessing functional limitation and restriction for mental disorders account shall be taken of psychological, social and occupational function.	
*Functional limitation and restriction is likely to be severe where symptoms or behaviours include mania, delusions, hallucinations, severe depression with suicidal preoccupations or abnormal rituals.	
*Mental disorders must be diagnosed by a relevant accredited medical specialist.	
*Any reference to duration of effects in column (b) are from date of injury or onset of illness.	

**Table 4 - Physical disorders including infectious diseases\***

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
6	Physical disorder causing severe functional limitation and restriction where life expectancy is less than five years.
7	Physical disorder causing severe functional limitation and restriction where life expectancy is reduced, but is more than 5 years.
8	Infertility.
9	Physical disorder causing permanent severe functional limitation and restriction.
11	Physical disorder which has caused, or is expected to cause severe functional limitation and restriction at 26 weeks where the claimant has made, or is expected to make, a substantial recovery beyond that date.
11	Physical disorder causing permanent moderate functional limitation and restriction.
13	Physical disorder which has caused, or is expected to cause, severe functional limitation and restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
13	Physical disorder which has caused, or is expected to cause, moderate functional limitation and restriction at 26 weeks, from which the claimant has made, or is expected to make, a substantial recovery beyond that date.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
14	Physical disorder which has caused, or is expected to cause, severe functional limitation and restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
14	Physical disorder which has caused, or is expected to cause, moderate functional limitation and restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
15	Physical disorder which has caused, or is expected to cause, moderate functional limitation and restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Table 5 – Amputations\***

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
1	Loss of both legs (above or below knee) and both arms (above or below elbow).
1	Loss of both eyes or sight in both eyes and loss of either both legs (above or below knee), or both arms (above or below elbow).
1	Total deafness and loss of either both legs or both arms.
2	Loss of both legs above knee (hip disarticulation or hemipelvectomy).
2	Loss of both arms above elbow (shoulder disarticulation or forequarter).
2	Loss of both legs (above or below knee) and one arm (above or below elbow).

\*Loss of a finger means that amputation has taken place at the metacarpophalangeal joint.

\*Loss of a toe means that amputation has taken place at the metatarsophalangeal joint.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

<i>Column (a)</i> <i>Level</i>	<i>Column (b)</i> <i>Injury</i>
2	Loss of both arms (above or below elbow) and one leg (above or below knee).
3	Loss of both legs at or above knee (trans-femoral or knee disarticulation).
3	Loss of both arms at or above elbow (trans-humeral or elbow disarticulation).
3	Loss of one leg above knee (hip disarticulation or hemipelvectomy).
3	Loss of one arm above elbow (shoulder disarticulation or forequarter).
4	Loss of both legs below knee (trans-tibial).
4	Loss of both arms below elbow (trans-radial).
4	Loss of both hands (wrist disarticulation).
4	Loss of one leg at or above knee and one leg below knee.
4	Loss of one arm at or above elbow, and one arm below elbow.
5	Loss of both feet at ankle.
5	Loss of one leg at or above knee (trans-femoral or knee disarticulation).
5	Loss of one arm at or above elbow (trans-humeral or elbow disarticulation).
6	Loss of one leg below knee (trans-tibial).
6	Loss of one arm below elbow (trans-radial).
6	Loss of one hand (wrist disarticulation).
7	Loss of both thumbs.
8	Loss of one foot at ankle.
10	Loss of both great toes.
10	Loss of thumb.
10	Loss of both index fingers.
10	Partial loss of thumbs and index fingers of both hands.

\*Loss of a finger means that amputation has taken place at the metacarpophalangeal joint.

\*Loss of a toe means that amputation has taken place at the metatarsophalangeal joint.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

<i>Column (a)</i> <i>Level</i>	<i>Column (b)</i> <i>Injury</i>
11	Loss of two or more fingers other than thumb or index finger from one hand.
12	Loss of great toe.
12	Loss of index finger from one hand.
12	Partial loss of thumb and index finger from one hand.
12	Partial loss of thumb or index finger of both hands.
12	Persistent phantom limb pain.
12	Stump neuroma with trigger point stump pain.
13	Loss of two or more toes, other than great toe, from one foot.
13	Partial loss of both great toes.
13	Loss of one finger other than thumb or index finger.
13	Partial loss of two or more fingers, other than thumb or index finger, from one hand.
13	Partial loss of thumb or index finger from one hand.
14	Partial loss of great toe.
14	Partial loss of one finger, other than thumb or index finger, from one hand.
15	Loss of one toe, other than great toe, from one foot.

\*Loss of a finger means that amputation has taken place at the metacarpophalangeal joint.

\*Loss of a toe means that amputation has taken place at the metatarsophalangeal joint.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

**Table 6 - Neurological disorders, including spinal cord, head or brain injuries\***

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
1	Spinal cord injury, at or above vertebra C3.
1	Brain injury with persistent vegetative state. <sup>(a)</sup>
1	Brain injury where epilepsy is present (or where there is a high risk of epilepsy) and the claimant has reflex activity but has little or no meaningful response to the environment and requires full-time skilled nursing care. <sup>(b)</sup>
2	Spinal cord injury at vertebra C4 or C5.
3	Spinal cord injury at vertebra C6.
3	Brain injury where epilepsy is present (or where there is a high risk of epilepsy) where the claimant has limited response to environment and substantial physical, sensory, personality, behavioural or cognitive problems and requires regular skilled nursing care. <sup>(c)</sup>
3	Paralysis of both arms.
3	Paralysis of both legs.
4	Spinal cord injury at vertebra C7 or C8.
4	Brain injury where epilepsy is either present (or where there is a high risk of epilepsy) where the claimant has some limitation on response to environment and some sensory, personality, behavioural or cognitive problems but does not require skilled nursing care. <sup>(d)</sup>
5	Spinal cord injury at vertebra T1.
5	Hemiplegia.
6	Uncontrolled post-head-injury epilepsy.
7	Paralysis of one leg.

**(a)** The claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 5.

**(b)** The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 5.

**(c)** The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 6-8.

**(d)** The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 9-12.

**(e)** The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 13-15.

**(f)** The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 13-15.

\*An award for brain injury in levels 1, 3 or 4 includes compensation for associated epilepsy.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
7	Paralysis of one arm.
9	Permanent damage to brachial plexus.
9	Permanent isolated damage to one cranial nerve.
10	Permanent foot or wrist drop.
11	Brain injury from which the claimant has made, or is expected to make, a substantial recovery beyond 26 weeks, except for residual vertigo. <sup>(e)</sup>
11	Brain haemorrhage or stroke which has caused, or is expected to cause, persistent functional limitation and restriction at 26 weeks, but where there has been, or is expected to be, a substantial recovery beyond that date.
12	Brain injury from which the claimant has made, or is expected to make, a substantial recovery beyond 26 weeks, except for problems with memory or concentration. <sup>(f)</sup>
12	Controlled post-head-injury epilepsy.
12	Permanent substantial peripheral sensory nerve damage.
12	Entrapment neuropathy which has not responded to treatment.
13	Permanent facial numbness including lip.
13	Entrapment neuropathy which has responded, or is expected to respond, to treatment.
14	Permanent facial numbness which does not include the lip.
14	Minor head injury which has caused or is expected to cause, impaired balance or post-traumatic syndrome for more than 6 weeks from which the claimant has made, or is

(a) The claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 5.

(b) The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 5.

(c) The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 6-8.

(d) The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 9-12.

(e) The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 13-15.

(f) The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 13-15.

\*An award for brain injury in levels 1, 3 or 4 includes compensation for associated epilepsy.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
15	expected to make, a substantial recovery within 26 weeks.  Permanent minor peripheral sensory nerve damage.
(a)	The claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 5.
(b)	The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 5.
(c)	The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 6-8.
(d)	The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 9-12.
(e)	The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 13-15.
(f)	The Claimant is likely to have had a post-resuscitation Glasgow Coma scale of less than 13-15.
*An award for brain injury in levels 1, 3 or 4 includes compensation for associated epilepsy.	
*Any reference to duration of effects in column (b) are from date of injury or onset of illness.	
*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.	

**Table 7 - senses\***

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
1	Total deafness and loss of both eyes, or blindness in both eyes, or loss of one eye and blindness in the other eye.
2	Loss of eyes.
2	Blindness in both eyes.
2	Loss of one eye and blindness in the other eye.
5	Loss of one eye and permanent damage to the other eye, where visual acuity is correctable to 6/36.
6	Deafness in both ears.
8	Loss of one eye or blindness in one eye.
9	Bilateral permanent hearing loss of more than 75dB averaged over 1, 2 and 3kHz, with severe persistent tinnitus.

\*For the purposes of the scheme the following definitions apply:

“Blindness” means that the claimant must have been diagnosed as being blind by an accredited medical specialist, and have a visual acuity of 3/60 or worse in both eyes; and  
 “Total deafness”, means that the claimant’s bilateral average hearing threshold level is 90 dB or more averaged over 1, 2 and 3 kHz as measured by appropriately calibrated equipment meeting British Standards, and using quality assured pure tone audiometry.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.



<i>Column (a) Level</i>	<i>Column (b) Injury</i>
9	Partial loss of vision where binocular visual acuity is correctable to 6/60.
9	Permanent and inoperable cataracts in both eyes.
10	Deafness in one ear.
10	Partial loss of vision where binocular visual acuity is correctable to 6/36.
10	Bilateral permanent hearing loss of more than 75dB averaged over 1, 2 and 3kHz, with mild or no tinnitus.
11	Detached retina in both eyes.
11	Bilateral permanent hearing loss of 50-75dB averaged over 1, 2 and 3kHz, with severe tinnitus.
11	Partial loss of vision where binocular visual acuity is correctable to 6/24.
12	Partial loss of vision where binocular visual acuity is correctable to 6/18.
12	Permanent and inoperable cataract in one eye.
12	Operable cataracts in both eyes.
13	Bilateral permanent hearing loss of 50-75dB averaged over 1, 2 and 3kHz, with mild or no tinnitus.
13	Significant penetrating injury to both eyes.
13	Detached retina in one eye.
13	Retinal damage (not detached) to both eyes.
13	Partial loss of vision where binocular visual acuity is correctable to 6/12.
13	Dislocation of lens in one eye.
13	Degeneration of optic nerve in both eyes.
13	Permanent diplopia.

\*For the purposes of the scheme the following definitions apply:

“Blindness” means that the claimant must have been diagnosed as being blind by an accredited medical specialist, and have a visual acuity of 3/60 or worse in both eyes; and  
 “Total deafness”, means that the claimant’s bilateral average hearing threshold level is 90 dB or more averaged over 1, 2 and 3 kHz as measured by appropriately calibrated equipment meeting British Standards, and using quality assured pure tone audiometry.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
14	Blast injury to ears.
14	Diplopia which is present, or is expected to be present, at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery beyond that date.
14	Operable cataract in one eye.
14	Corneal abrasions in both eyes.
14	Hyphaema in both eyes which has required, or is expected to require, operative treatment.
14	Retinal damage (not detached) in one eye.
14	Significant penetrating injury in one eye.
15	Diplopia from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
15	Corneal abrasions in one eye.
15	Hyphaema in one eye which has required, or is expected to require, operative treatment.

\*For the purposes of the scheme the following definitions apply:

“Blindness” means that the claimant must have been diagnosed as being blind by an accredited medical specialist, and have a visual acuity of 3/60 or worse in both eyes; and  
 “Total deafness”, means that the claimant’s bilateral average hearing threshold level is 90 dB or more averaged over 1, 2 and 3 kHz as measured by appropriately calibrated equipment meeting British Standards, and using quality assured pure tone audiometry.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Table 8 - Fractures and dislocations\***

<i>Column (a) Level</i>	<i>Column(b) Injury</i>
10	Fractured heels of both feet causing permanent significant functional limitation and restriction.
10	Fractures or dislocations of both hips, both ankles, both shoulders, both elbows or both wrists causing permanent significant functional limitation and restriction.

\*The tariff values for fractures refer to closed fractures. Where the fracture is open the award shall be increased by £1,000.

\*An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

<i>Column (a) Level</i>	<i>Column(b) Injury</i>
10	Multiple face fractures causing permanent significant cosmetic effect and functional limitation and restriction despite treatment.
11	Fractures or dislocations of both hips, both ankles, both shoulders, both elbows or both wrists which have caused, or are expected to cause, significant functional limitation and restriction at 26 weeks, from which the claimant has made, or is expected to make a substantial recovery beyond that date.
11	Fracture of pelvis which has caused or is expected to cause significant functional limitation and restriction beyond 26 weeks.
11	Fractures of both great toes which have caused or are expected to cause significant functional limitation and restriction beyond 26 weeks.
11	Fractures of tarsal bones of both feet which have caused, or are expected to cause, significant functional limitation and restriction beyond 26 weeks.
11	Fractures of both femurs, both tibiae, both humeri, both ulnae or both radii which have caused, or are expected to cause, continuing significant functional limitation and restriction beyond 26 weeks.
11	Multiple fractures to face, or face and neck where treatment has led, or is expected to lead, to a good cosmetic and functional outcome.
11	Fracture or dislocation of one hip, elbow, wrist, ankle or shoulder causing permanent significant functional limitation and restriction.
12	Fracture of one humerus, femur, radius, ulna or tibia which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Fracture of mandible or maxilla which has required or is expected to require operative treatment and which has caused, or is expected

\*The tariff values for fractures refer to closed fractures. Where the fracture is open the award shall be increased by £1,000.

\*An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column(b) Injury</i>
	to cause, significant functional limitation and restriction beyond 26 weeks.
12	Fracture of both hands which have caused, or are expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Fracture of both scapulae or both clavicles which have caused, or are expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Fracture of the skull with sub-dural or extra-dural haematoma which has required evacuation, from which the claimant has made, or is expected to make, a substantial functional recovery within 26 weeks.
12	Fractures or dislocations of both thumbs which have caused, or are expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Fracture or dislocation of one hip, elbow, wrist, ankle or shoulder which has caused or is expected to cause significant functional limitation and restriction at 26 weeks with recovery thereafter.
12	Fractures or dislocations of index fingers on both hands which have caused, or are expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Fracture of great toe which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Fracture of tarsal bones on one foot which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Fracture of heel which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.

\*The tariff values for fractures refer to closed fractures. Where the fracture is open the award shall be increased by £1,000.

\*An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

<i>Column (a) Level</i>	<i>Column(b) Injury</i>
12	Dislocated patellae in both knees which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Fracture of both femurs, both ulna, both tibiae, both humeri or both radii from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
13	Fractured metatarsal bones on both feet which have caused, or are expected to cause, significant functional limitation and restriction beyond 26 weeks.
13	Fracture of tarsal bones on both feet from which the claimant has made or is expected to make a substantial functional recovery within 26 weeks.
13	Fracture of both great toes from which the claimant has made or is expected to make a substantial functional recovery within 26 weeks.
13	Fracture of one femur, ulna, tibiae, humeri or radii from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
13	Fracture of skull with sub-dural or extra-dural haematoma which has not required evacuation.
13	Fracture of ethmoid which has required or is expected to require operative treatment.
13	Fracture of zygoma which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
13	Fracture or dislocation of one hip, ankle, shoulder, elbow or wrist from which the claimant has made or is expected to make a substantial recovery within 26 weeks.
13	Fracture of one hand which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.

\*The tariff values for fractures refer to closed fractures. Where the fracture is open the award shall be increased by £1,000.

\*An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column(b) Injury</i>
13	Fractured of both heels where the claimant has made, or is expected to make a substantial recovery within 26 weeks.
13	Fracture of both hands from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
13	Blow-out fracture of orbit which has required, or is expected to require, operative treatment.
13	Dislocated jaw which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
13	Fractured scapula or clavicle which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
13	Fracture of both clavicles or both scapulae where the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
13	Fracture of pelvis from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
13	Fracture of sternum which has, or is expected to have, symptoms continuing beyond 26 weeks.
13	Fractures of two or more toes, other than great, of both feet which have caused, or are expected to cause, significant functional limitation and restriction beyond 26 weeks.
13	Fracture or dislocation of thumb on one hand which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
13	Fracture or dislocation of both thumbs from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
13	Fractures or dislocations of index finger on both hands, from which the claimant has made,

\*The tariff values for fractures refer to closed fractures. Where the fracture is open the award shall be increased by £1,000.

\*An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

<i>Column (a)</i> <i>Level</i>	<i>Column(b)</i> <i>Injury</i>
	or is expected to make, a substantial recovery within 26 weeks.
13	Fractures or dislocations of 2 or more fingers, other than index, on both hands which have caused, or are expected to cause, significant functional limitation and restriction beyond 26 weeks.
13	Fracture or dislocation of index finger on one hand which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
13	Fracture or dislocation of one finger, other than index, on both hands which has caused, or is expected to cause significant functional limitation and restriction beyond 26 weeks.
13	Fractures of metatarsal bones on both feet, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
13	Fractures of metatarsal bones on one foot which have caused, or are expected to cause, significant functional limitation and restrictions beyond 26 weeks.
13	Dislocated patella which has caused, or is expected to cause significant functional limitation continuing beyond 26 weeks.
14	Dislocated jaw from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
14	Fractured zygoma from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Fracture of index finger on both hands from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Fractured ethmoid which has not, or is not expected to require operative treatment.

\*The tariff values for fractures refer to closed fractures. Where the fracture is open the award shall be increased by £1,000.

\*An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column(b) Injury</i>
14	Fracture of mandible or maxilla from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Fracture of hand from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Deviated nasal septum requiring corrective surgery.
14	Displaced fracture of nasal bones.
14	Simple skull fracture with no brain injury.
14	Fractured fibula which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
14	Fracture or dislocation of thumb on one hand from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
14	Fracture or dislocation of index finger from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
14	Fracture or dislocation of one finger, other than index, of one hand which has caused, or is expected to cause continuing functional limitation and restriction beyond 26 weeks.
14	Fracture or dislocation of one finger, other than index, of both hands from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Fractures or dislocations of two or more fingers, other than index, on one hand, which have caused, or are expected to cause significant functional limitation and restriction beyond 26 weeks.
14	Fractures or dislocations of two or more fingers, other than index, on both hands from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.

\*The tariff values for fractures refer to closed fractures. Where the fracture is open the award shall be increased by £1,000.

\*An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.



<i>Column (a) Level</i>	<i>Column(b) Injury</i>
14	Fractures of two or more toes, other than great toe, on one foot which has caused, or is expected to cause significant functional limitation and restriction beyond 26 weeks.
14	Fracture of two or more toes, other than great toe, on both feet from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Fracture of great toe from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Dislocated acromio-clavicular joint from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
14	Fracture of coccyx from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
14	Fracture of clavicle or scapulae from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Fracture of sternum from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Fractures of tarsal or metatarsal bones on one foot from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Fracture of heel from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Dislocated patellae in both knees from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
15	Fracture of mastoid.
15	Undisplaced fracture of nasal bones.

\*The tariff values for fractures refer to closed fractures. Where the fracture is open the award shall be increased by £1,000.

\*An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column(b) Injury</i>
15	Deviated nasal septum which has not required or is not expected to require operative treatment.
15	Dislocated patella from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
15	Fracture of three or more ribs.
15	Fractures of two or more toes in one foot from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
15	Stress fracture where symptoms have lasted, or are expected to last for, more than 6 weeks, where the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
15	Fractures of two or more fingers, other than index, on one hand from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
15	Fracture of one finger on two hands from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
15	Fracture of index finger on one hand from which the claimant has made, or is expected to make a substantial recovery within 13 weeks.
15	Fracture of fibula from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.

\*The tariff values for fractures refer to closed fractures. Where the fracture is open the award shall be increased by £1,000.

\*An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Table 9 - Musco-skeletal disorders\***

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
10	Permanent severely impaired grip in both hands.
10	Ligament injury which has resulted in rupture, affecting both knees, ankles, shoulders or elbows, causing permanent significant functional limitation and restriction.
11	Ligament injury which has resulted in rupture, affecting one knee, ankle, shoulder or elbow, causing permanent significant functional limitation and restriction.
11	Ligament injury which has resulted in rupture, affecting both knees, both ankles, both shoulders or both elbows, which has caused, or is expected to cause significant functional limitation and restriction at 26 weeks, from which the claimant is expected to make a substantial recovery beyond that date.
11	Traumatic back injury (with medically verified neurological signs and vertebral damage) extending over several levels of vertebrae, which has required, or is expected to require operative treatment and which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
11	Radiologically confirmed juxta-articular aseptic necrosis of hip or shoulder.
11	Ligament injury short of rupture, to both knees, ankles, shoulders or elbows, causing permanent significant functional limitation and restriction.
12	Two frozen shoulders which have caused, or are expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Ligament injury short of rupture, to both knees, ankles, shoulders or elbows, which has caused, or is expected to cause, significant functional limitation and restriction at 26 weeks, from which the claimant has made or is expected to make a substantial recovery beyond that date.

\*Award for an injury in this table includes any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
12	Ligament injury which has resulted in rupture, affecting one knee, ankle, shoulder or elbow, which has caused, or is expected to cause, significant functional limitation at 26 weeks, from which the claimant has made, or is expected to make a substantial recovery beyond that date.
12	Full thickness muscle or tendon unit rupture which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
12	Traumatic back injury including prolapsed intervertebral discs (with medically verified neurological signs and vertebral damage), which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
12	Radiologically confirmed osteoarthritis of both knees, hips, ankles, shoulders or elbows (caused by a repetitive or attrition injury), causing permanent significant functional limitation and restriction.
12	Permanent severely impaired grip in one hand.
13	Frozen shoulder, which has caused, or is expected to cause, continuing significant functional limitation and restriction beyond 26 weeks.
13	Two frozen shoulders, which have caused or are expected to cause significant functional limitation at 6 weeks from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
13	Ligament injury short of rupture, to both knees, ankles, shoulders or elbows from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
13	Muscle or tendon unit injury short of full thickness rupture, which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.

\*Award for an injury in this table includes any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
13	Two muscle or tendon unit injuries, short of full thickness rupture, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
13	Full thickness muscle or tendon unit rupture from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
13	Ligament injury short of rupture, to one knee, shoulder, ankle or elbow which has caused, or is expected to cause, significant functional limitation and restriction at 26 weeks with substantial recovery beyond that date.
13	Back sprain or strain, with either more than one inter-vertebral disc prolapse, or more than one vertebral fracture, which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.
13	Radiologically confirmed osteoarthritis of knee, hip, ankle, shoulder or elbow (caused by repetitive and attrition injury) causing permanent significant functional limitation and restriction.
13	Compartment syndrome which has lasted, or is expected to last, beyond 6 weeks and which has required, or is expected to require, operative treatment.
14	Frozen shoulder which has caused, or is expected to cause, significant functional limitation at 6 weeks from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
14	Ligament injury short of rupture to one knee, ankle, shoulder or elbow from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
14	Muscle or tendon unit injury short of full thickness rupture from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.

\*Award for an injury in this table includes any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Status:** This is the original version (as it was originally made).

<i>Column (a) Level</i>	<i>Column (b) Injury</i>
14	Knee meniscus injury which has required, or is expected to require, operative treatment.
14	Tendon rupture of finger or thumb which has required, or is expected to require, operative reconstruction.
14	Back sprain or strain, with one vertebral fracture, which has caused, or is expected to cause significant functional limitation and restriction at 13 weeks, from which the claimant has made, or is expected to make a substantial recovery within 2 years.
14	Low back pain syndrome.
14	Anterior knee pain syndrome in both knees which has caused, or is expected to cause significant functional restriction and limitation at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
15	Knee meniscus injury which has caused, or is expected to cause, significant functional limitation and restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
15	Anterior knee pain syndrome in one knee which has caused, or is expected to cause, significant functional restriction and limitation at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
15	Direct hernia which has required operative treatment.
15	Frozen shoulder which has caused, or is expected to cause, significant functional limitation at 6 weeks from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.

\*Award for an injury in this table includes any expected consequential osteoarthritis.

\*Any reference to duration of effects in column (b) are from date of injury or onset of illness.

\*Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.

**Table 10**

<i>Column (a) Level</i>	<i>Column (b) Amount</i>
1	£285,000
2	£201,250
3	£115,000
4	£86,250
5	£57,500
6	£46,000
7	£34,500
8	£28,750
9	£22,000
10	£16,500
11	£11,000
12	£8,250
13	£5,250
14	£2,625
15	£1,050

SCHEDULE 5

Article 16(2)

TABLE OF FACTORS

**Table of Guaranteed Income Payment Factors**

<i>Age at last birthday</i>	<i>GIP Factor</i>	<i>Age at last birthday</i>	<i>GIP Factor</i>
16	0.905	37	0.790
17	0.902	38	0.781
18	0.898	39	0.772
19	0.894	40	0.762
20	0.891	41	0.751
21	0.887	42	0.740
22	0.882	43	0.728
23	0.878	44	0.715
24	0.873	45	0.702
25	0.869	46	0.687

*Status: This is the original version (as it was originally made).*

<i>Age at last birthday</i>	<i>GIP Factor</i>	<i>Age at last birthday</i>	<i>GIP Factor</i>
26	0.864	47	0.672
27	0.859	48	0.656
28	0.853	49	0.638
29	0.847	50	0.619
30	0.841	51	0.599
31	0.835	52	0.577
32	0.829	53	0.554
33	0.822	54	0.528
34	0.814	55	0.500
35	0.807	Over 55	0.500
36	0.799		

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order establishes a scheme – The Armed Forces and Reserve Forces Compensation Scheme 2005 (“the Scheme”) – which provides for benefits to be payable to or in respect of a person by reason of his illness or injury (whether physical or mental), or his death, which is caused (wholly or partly) by his service in the armed forces or the reserve forces.

Part I provides for citation, commencement and, together with Schedule 1, interpretation of the Order.

Part II establishes the Scheme by providing for compensation to be payable in respect of injuries caused by service and the worsening of non-service injuries and for death caused by service. Certain sporting, fitness and adventurous training activities and injury and death caused by travelling in specified circumstances are included in the Scheme and certain specified injuries are excluded. Provision is made for the modification of the Scheme for the reserve forces and the Brigade of Gurkhas, the modifications being set out in Schedules 2 and 3.

Part III sets out the benefits which are payable for injury caused by service and the conditions attaching to the payment. The benefits are a lump sum and guaranteed income payment payable for life. The lump sum is calculated with reference to the severity of the injury sustained. A tariff, set out in Schedule 4, contains tables which list injuries and tariff levels and table which gives amounts corresponding to those levels. The amount of guaranteed income payment is calculated by means of a formula based on the age of the member of the forces, his salary, the amount of the lump sum payable to him and a “relevant factor” set out in a table in Schedule 5. This Part also contains provision for cases where more than one injury is sustained. The circumstances are where a person sustains more than one injury in one incident and where a person sustains injury in different incidents to different parts of the body, to the same part of the body and to a pair of like parts of the body, for example, to one leg and then the other leg. This part also contains a provision for temporary awards



where a person has sustained an injury of a description for which no provision is made in the tariff, provided that that injury is sufficiently serious to warrant an award of injury and is listed in the International Statistical Classification of Diseases and Related Health Problems or in the Diagnostic and Statistical Manual of Mental Disorders.

Part IV sets out the benefits which are payable in respect of a member of the forces whose death is caused by service. Survivor's guaranteed income payment and a bereavement grant are payable to his surviving spouse, surviving adult dependent or surviving civil partner. Child's payment is payable to his "eligible" children. An eligible child is a child or adopted child of the deceased or a child dependent on him who is under 18 or under 23 and in full-time education or vocational training. Provision is also made for children over 18 who are unable, due to physical or mental disability, to support themselves. Bereavement grant is £20,000 but may be reduced depending on which armed forces pension scheme the member the forces belonged to. Survivor's guaranteed income payment and child's payment are calculated in a similar way to guaranteed income payment and are a percentage of the amount resulting from the calculation.

Part V makes provision for reducing the amount of benefit payable in specified circumstances. The amount of benefit payable under the Scheme is reduced by the amount received under an armed forces pension scheme. Benefit may also be reduced if a person receives damages in respect of the same injury or death and where the negligence or misconduct of a member of the forces has contributed to the injury or death or in respect of social security benefit.

Part VI deals with the manner of making a claim, specifies circumstances where a claim is not required and provides for the date of a claim and time limits for making claims. For injury, the time limit is 5 years from the date of the injury or the worsening of a non-service injury and in the case of an illness, the date on which medical advice is first sought or the date on which service ends whichever is the earlier. For death, the time limit is one year from the date of death. There are exceptions to the time limits where a person is unable, due to physical or mental illness, to make a claim or instruct another to make it on his behalf or in specified exceptional circumstances.

Part VII makes provision for the adjudication of claims. Provision is made for the manner of making decisions and the information to be provided with a decision, for interim awards and for reconsideration and review of decisions. The burden of proving any issue under the Scheme lies on the claimant and the standard of proof is on a balance of probabilities. Provision is also made for evidence with the Secretary of State being required to produce relevant medical or other records which are in his possession.

Part VIII makes provision for the payment of benefit. This provision includes the date on which benefit becomes payable, suspension of benefit in certain circumstances, and a power to appoint persons to act on behalf of persons under 18 and persons unable to act for themselves.

Part IX provides a power to up-rate guaranteed income payment, survivor's guaranteed income payment and child's payment. It also provides a mechanism for a notional up-rating of a person's salary to take account of inflation for the purposes of calculating those benefits where a member of the forces makes a claim or dies after his service ends.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.