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## 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.

**Status:** This is the original version (as it was originally made).

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.