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STATUTORY INSTRUMENTS

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**2005 No. 439**

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

**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>M1</sup>,

(b) the Army Pensions Warrant 1977 <sup>M2</sup> and

(c) Orders and regulations made under section 2 of the Air Force (Constitution) Act 1917 <sup>M3</sup> or any instrument amending or replacing any of those instruments;

“the AFPS 2005” means the Scheme established in the Armed Forces Pension Scheme Order 2005 <sup>M4</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>M5</sup>

[<sup>F1</sup>“additional lump sum” means the sum referred to in article 15C;]

[<sup>F2</sup>“additional multiple injury lump sum” means the sum referred to in article 15B(2);]

[<sup>F3</sup>“appropriate tribunal” means the appropriate tribunal as defined in section 12(1) of the Pensions Appeal Tribunals Act 1943;]

“benefit” means a benefit payable under this Order;

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

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

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

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

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

*Status: Point in time view as at 15/12/2008.*

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

- “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 <sup>F4</sup> . . . ;
- [<sup>F5</sup>“Gurkha Pension Scheme” means the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949);]
- “guaranteed income payment” is the payment referred to in article 14(1)(b);
- “ill-health pension” means a pension paid under rule D5 or D6 of the AFPS 2005;
- “illness” means a physical or mental disorder included either in the International Statistical Classification of Diseases and Related Health Problems <sup>M6</sup> or in the Diagnostic and Statistical Manual of Mental Disorders; <sup>M7</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>M8</sup>, Chapter 38, Section 2, regulation 2938(2) or Chapter 39, Section 1, regulation 3023(2);
  - (f) the Order in Council <sup>M9</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);
- [<sup>F6</sup>“lump sum” means, except in the expressions “additional multiple injury lump sum” and “additional lump sum”, the sum referred to in article 14(1)(a);]
- “predominant” means more than 50 per cent;
- “service” means service as a member of the forces, except as provided in article 10;
- “substantial and exclusive relationship” shall be construed in accordance with Schedule 1;
- “surviving adult dependant” has the meaning given in article 22;
- “survivor's guaranteed income payment” is the payment referred to in article 21(1)(a);
- “tariff” means the tables of injuries and amounts set out in Schedule 4;
- “temporary award” means an award referred to in article 20;
- “Veterans Agency” means an office designated by the Secretary of State for the purpose of receiving and determining applications for benefit.
- (2) In this Order, any reference to claiming a benefit or to a claim
- (a) shall be treated as including a case where, by virtue of article 37, it is not a condition of entitlement to benefit that a claim be made;
  - (b) in the case of a claim for injury benefit, means a claim for one injury even where claims for more than one injury are made on the same claim form.
- (3) In this Order, a person is “discharged on medical grounds” if he is required to be discharged on the grounds that he is medically unfit to continue in service, and—

- (a) <sup>F7</sup> . . . is as a result entitled to an invaliding pension or ill health pension,<sup>F8</sup> or
- (b) in the case of a Gurkha who is a member of the Gurkha Pension Scheme, is as a result entitled to a disability pension]

### Textual Amendments

- F1** Words in art. 2(1) inserted (15.12.2008) by The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 3) Order 2008 (S.I. 2008/2942), arts. 1(1), **3(a)**
- F2** Words in art. 2(1) inserted (8.2.2008) by The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2008 (S.I. 2008/0039), arts. 1(1), **3(a)**
- F3** Words in art. 2 inserted (3.11.2008) by The Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683), arts. 1, 6(1), **Sch. 1 para. 277**
- F4** Words in art. 2(1) omitted (1.10.2007) by virtue of The Armed Forces (Gurkha Compensation) Order 2007 (S.I. 2007/2609), arts. 1(2), **2(2)(a)**
- F5** Words in art. 2(1) inserted (1.10.2007) by The Armed Forces (Gurkha Compensation) Order 2007 (S.I. 2007/2609), arts. 1(2), **2(2)(b)**
- F6** Words in art. 2(1) substituted (15.12.2008) by The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 3) Order 2008 (S.I. 2008/2942), arts. 1(1), **3(b)**
- F7** Words in art. 2(3)(a) omitted (1.10.2007) by virtue of The Armed Forces (Gurkha Compensation) Order 2007 (S.I. 2007/2609), arts. 1(2), **2(3)(a)**
- F8** Art. 2(3)(b) and word substituted (1.10.2007) by The Armed Forces (Gurkha Compensation) Order 2007 (S.I. 2007/2609), arts. 1(2), **2(3)(b)**

### Marginal Citations

- M1** 1865 c. 73; section 3 was amended by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 4.
- M2** which is available from Her Majesty's Stationery Office.
- M3** 1917 c. 51.
- M4** S.I. 2005/438.
- M5** S.I. 1995/3208.
- M6** World Health Organisation, Geneva. 10th Revision (1992).
- M7** American Psychiatric Association, Washington DC. 4th Edition, Text Revision (2000).
- M8** which is available from the Defence Storage and Distribution Centre, Mwrwg Road, Llangennech, Llanelli, Carmarthenshire, SA14 8YP.
- M9** which is available from Service Personnel Policy (Pensions), Ministry of Defence, Main Building, Whitehall, London, SW1A 2HB.

### 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.

*Status: Point in time view as at 15/12/2008.*

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

### **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.

**Status:**

Point in time view as at 15/12/2008.

**Changes to legislation:**

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