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STATUTORY INSTRUMENTS

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**2005 No. 439**

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

**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.