
STATUTORY INSTRUMENTS

2005 No. 439

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

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 19th 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.