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STATUTORY INSTRUMENTS

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**2005 No. 439**

**The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (Revoked 9.5.2011)**

**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 (“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.

(3A) Where the amount of a pension or a payment increases or decreases, including coming into payment or ceasing, after an award of benefit is made, the Secretary of State shall make such adjustments to the amount of guaranteed income payment, survivor's guaranteed income payment or child's payment as are required to satisfy the rules for reduction of benefit specified in this article.

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

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

**32.**—(1) Subject to paragraph (1A), Where the Secretary of State is satisfied that—

*Changes to legislation: There are currently no known outstanding effects for the The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (Revoked 9.5.2011), PART V. (See end of Document for details)*

- (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

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

(1A) The Secretary of State shall not—

- (a) take the damages into account where he is satisfied that benefit payable under this Order has been taken into account in the assessment of the damages;
- (b) withhold or reduce a bereavement grant payable under article 21(1)(b).

(1B) In calculating the amount of benefit to withhold or reduce under paragraph (1), the Secretary of State may take account of the full value of any damages which have been or will be recovered.

(1C) The Secretary of State may require a person who has made a claim to provide—

- (a) details of any steps taken or planned to obtain damages in respect of the same injury, condition or death for which benefit is payable;
- (b) a written undertaking that if the person recovers damages the person shall notify the Secretary of State and repay any benefit paid under this Order.

(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 ;
- (b) under the Criminal Injuries (Compensation)(Northern Ireland) Order 1988 ; 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.

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**Changes to legislation:**

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