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STATUTORY INSTRUMENTS

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**2005 No. 439**

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

**PART VI  
CLAIMS**

**Entitlement to benefit dependant on claim**

**35.**—(1) Except as provided in article 37, no person is entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied, he makes a claim for it in the manner, and within the time, specified in the following provisions of this Part.

(2) Where a person who is in service on or after 6th April 2005 or a surviving spouse, surviving civil partner or surviving adult dependant of such a person makes a claim for a pension for disablement or death under The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983<sup>(1)</sup>, the Secretary of State shall treat that claim as also being a claim for benefit under this Order.

**Manner of making a claim**

**36.** A claim for benefit shall be—

- (a) in writing;
- (b) on a form approved for that purpose by the Secretary of State;
- (c) signed by or on behalf of the person claiming benefit; and
- (d) given or sent to the Veterans Agency within the time specified in article 39, 40 or 41 whichever is applicable.

**Cases where claims are not required**

**37.**—(1) It is not a condition of entitlement to benefit that a claim be made for it where—

- (a) a member of the forces is discharged on medical grounds; or
- (b) a member of the forces dies whilst serving in the forces.

(2) Notwithstanding paragraph (1), where a member of the forces dies in the circumstances specified in that paragraph leaving an eligible child and either—

- (a) leaves no surviving spouse, civil partner or surviving adult dependant; or
- (b) the child is not living with the surviving spouse, civil partner or surviving adult dependant as the case may be on the date on which the member of the forces died

it is a condition of entitlement to child's payment that a claim is made by or on behalf of the child.

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(1) [S.I. 1983/883](#).

(3) Paragraph (1)(a) only applies to injury benefit for the injury which caused the member of the forces to be discharged on medical grounds and any injuries arising from that injury or from the same incident that caused that injury.

#### **Date of claim**

**38.**—(1) Subject to paragraphs (2) and (3), the date on which a claim is made is the date on which it is received by the Veterans Agency.

(2) Where, not more than 3 months before the date on which a claim for benefit is made, the person making the claim, or a person acting on his behalf requests the Secretary of State, orally or in writing, to provide information relating to benefit or a form approved by him for the purpose of claiming benefit, the date of claim shall be the date of that request.

(3) Where article 37(1) applies, the date of claim shall be treated as—

- (a) the day after the day on which the member of the forces is discharged on medical grounds;  
or
- (b) the day after the day on which the member of the forces died

whichever is applicable.

#### **Time for making a claim – general**

**39.**—(1) Subject to articles 40 and 41, the time specified for making a claim for injury benefit is 5 years beginning with the day on which—

- (a) the injury occurs;
- (b) an injury which is not caused by service is made worse by service;
- (c) where the member or former member of the forces is suffering from an illness, he first seeks medical advice in relation to that illness; or
- (d) the service of the member of the forces ends

whichever is the earlier.

(2) Where an illness first presents within the period specified in paragraph (1) but diagnosis of the illness is not made until less than one year before the end of that period, the time for making a claim is extended by one year starting from the date on which diagnosis was made.

(3) The time specified for making a claim for death benefit where—

- (a) the death occurs after the day on which the service of the former member of the forces ends; and
- (b) within a period of 5 years starting with the day on which that service ends;

is one year from the date of the death.

#### **Time for making a claim – exceptional circumstances**

**40.**—(1) Article 39 does not apply where—

- (a) a claim is made by a former member of the forces for a late onset illness and the illness has been diagnosed by an accredited medical specialist;
- (b) the death of a former member of the forces—
  - (i) is caused by a late onset illness
  - (ii) occurs in circumstances specified in article 9(3)(c)(ii).

(2) Where paragraph (1) applies, the time specified for making a claim is one year beginning with the day the late onset illness was first diagnosed or the day on which the death occurred as the case may be.

**Time for making a claim – physical or mental incapacity**

**41.**—(1) Where a person is physically or mentally incapable of making a claim or instructing another person to make it on his behalf throughout the time specified for making a claim in article 39 or 40, that time shall be extended by the Secretary of State for such further period as in all circumstances of the case he considers reasonable.

(2) Where a person—

- (a) has been physically or mentally incapable of making a claim or instructing another to make it on his behalf; but
- (b) becomes so capable within the period referred to in either article 39(1) or paragraph (1) of this article

the Secretary of State may extend the time for making a claim for a period of up to one year if he considers there is insufficient time for the person to make a claim or instruct a person to make it on his behalf within the period referred to in article 39(1) or paragraph (1).

**Withdrawal or amendment of claim**

**42.**—(1) A person who has made a claim may amend it by notice in writing given or sent to the Veterans Agency at any time before notice of the decision on the claim has been given or sent to the claimant, and any claim so amended shall be treated by the Secretary of State as if it had been so amended in the first instance.

(2) A person who has made a claim may withdraw it at any time before notice of the decision on the claim has been given or sent to the claimant, by notice in writing given or sent to the Veterans Agency, and any such notice of withdrawal shall have effect when it is received.

(3) Where a person has withdrawn a claim under paragraph (2), he may not reinstate that claim but may make a further claim in accordance with the provisions of this Order.