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STATUTORY INSTRUMENTS

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**2005 No. 439**

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

**PART VII**

**ADJUDICATION**

**Decisions**

**43.**—(1) The Secretary of State shall determine any claim for benefit and any question arising out of the claim.

(2) The Secretary of State shall give reasons for his decision.

(3) The decision of the Secretary of State on any claim or any question arising out of a claim and the reasons for the decision shall be in writing and shall be sent to the claimant who shall, at the same time, be informed of <sup>[F1]</sup>of any right that he may have—

(a) to a reconsideration of the decision under article 45; and

(b) to appeal <sup>[F2]</sup>that decision] to a Pension Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

**Textual Amendments**

**F1** Words in art. 43(3) substituted (30.6.2006) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), **13(1)**

**F2** Words in art. 43(3)(b) inserted (30.6.2006) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), **13(2)**

**Interim awards**

**44.**—(1) Where the Secretary of State is satisfied that a person is entitled to injury benefit but it appears to him that the prognosis for the injury in that particular case is uncertain in that he is unable finally to decide which level of the tariff is applicable to it, he may make an interim award relating to the specific level of the tariff of such amount as he considers appropriate in all the circumstances of the case.

(2) The Secretary of State shall specify in the interim award the period during which the award has effect and may extend, and further extend, the period during which the interim award has effect but he shall make a final award within the period of two years starting with the date on which an interim award was first made.

(3) The final award shall have effect from the date on which an interim award first had effect.

(4) Where a final award is—

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- (a) higher than the interim award, account shall be taken of the amount of benefit paid in accordance with the interim award and only the difference between the amount of the interim award and the amount of the final award shall be paid;
- (b) lower than the interim award, no amount paid in accordance with the interim award is recoverable.

### Reconsideration

**45.**—(1) A decision of the Secretary of State (“the original decision”), other than [F3 a decision, under article 44(1), to make an interim award or a decision, under article 20(1), to make a temporary award,], shall be reconsidered by him if an application for a reconsideration is given or sent to the Veterans Agency within the period of 3 months starting with the date on which notice of the original decision is given or sent to the claimant.

(2) On a reconsideration of an original decision, the Secretary of State may—

- (a) revise that decision by—
  - (i) awarding benefit where no award of benefit was made in the original decision; or
  - (ii) increasing or decreasing the amount awarded in the original decision; or
  - (iii) changing the date on which awards of benefit become payable
- (b) confirm the original decision.

(3) An application for a reconsideration shall—

- (a) be in writing;
- (b) be signed by or on behalf of the person making the application; and
- (c) specify the ground on which the application is made.

(4) The decision of the Secretary of State on an application for a reconsideration under paragraph (1) and the reasons for that decision shall be in writing and shall be sent to the claimant who shall, at the same time, be informed of his right to appeal to a Pension Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

(5) Where an appeal has been made to a Pensions Appeal Tribunal against an original decision and no application for a reconsideration has been made in respect of that decision under paragraph (1), the Secretary of State shall reconsider the decision.

(6) The decision of the Secretary of State on a reconsideration under paragraph (5) and the reasons for the decision shall be in writing and shall be sent to the claimant and the Pensions Appeal Tribunal.

(7) Article 41 shall have effect in respect of an application for a reconsideration under this article as though a reference to making a claim was a reference to making an application for a reconsideration and reference to the time for making a claim was a reference to the time for making an application for a reconsideration.

#### Textual Amendments

**F3** Words in [art. 45\(1\)](#) substituted (30.6.2006) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), **14**

### Finality of decisions

**46.**—(1) Where the Secretary of State has made a final decision awarding benefit, there shall be no review by him of that decision except in the circumstances specified in articles 47, 48 and 49.

(2) Where the Secretary of State has made a final decision which makes no award of benefit, there shall be no review of that decision except in the circumstances specified in article 49.

(3) In this article and article 48, a final decision is a decision—

(a) under article 43 where either—

(i) there has been no application for a reconsideration under article 45; or

(ii) there has been such an application and the Secretary of State has confirmed the original decision;

(b) revised by the Secretary of State following a reconsideration under article 45;

(c) revised by the Secretary of State under article 47, 48 or 49;

(d) making a final award under article 44.

### Review on discharge on medical grounds

**47.**—(1) This article applies where a member of the forces has been awarded injury benefit and is later discharged on medical grounds for the same injury for which that benefit was awarded.

(2) Where paragraph (1) applies, the Secretary of State may revise the award of benefit where the injury in respect of which it was awarded has either—

(a) become worse; or

(b) caused a further injury to develop

and in both cases—

(i) the worsening or the development is unexpected and exceptional, and

(ii) the injury, or the injury and the further injury together, would, on the date of the review attract an amount specified in column (b) of Table 10 of the tariff which is higher than that awarded for the injury.

(3) The Secretary of State's decision on a review under this article and the reasons for the decision shall be in writing and shall be given or sent to the member of the forces concerned who shall at the same time, be informed of his right—

(a) to a reconsideration under article 45; and

(b) to appeal to a Pensions Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

### Review – exceptional circumstances

**48.**—(1) The Secretary of State may revise an award of injury benefit if the conditions specified in paragraph (2) are satisfied and an application for a review is sent to the Veterans Agency.

(2) The circumstances referred to in paragraph (1) are that, within the period of 10 years starting with the date of the final decision, the injury in respect of which the final decision was made either has—

(a) become worse; or

(b) caused a further injury to develop

and in both cases—

(i) the worsening or the development is unexpected and exceptional, and

(ii) the injury, or the injury and the further injury together, would, on the date of the application for review, attract an amount specified in column (b) of Table 10 of the tariff which is higher than that awarded under the final decision.

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

(3) An application for review under this article may only be made within the period of one year starting with the day on which the worsening or the development began.

(4) The Secretary of State may only review an award under this article once.

(5) An application for a review under this article shall—

(a) be in writing;

(b) <sup>F4</sup>.....

(c) be signed by or on behalf of the person making the application; and

(d) specify the ground on which the application is made.

(6) The decision of the Secretary of State on an application for review under this article and the reasons for the decision shall be in writing and shall be given or sent to the applicant who shall, at the same time, be informed of his right—

(a) to a reconsideration of the decision under article 45; and

(b) to appeal to a Pensions Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

**Textual Amendments**

**F4** Art. 48(5)(b) omitted (30.6.2006) by virtue of [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), **15**

**Review - award of damages**

**48A.**—(1) This article applies where—

(a) the Secretary of State has made an award of benefit to a person;

(b) the person has recovered damages in respect of the injury or death for which the award of benefit is payable; and

(c) the Secretary of State is satisfied that benefit payable under the Order has not been taken into account in the assessment of the damages.

(2) On a review under this article the Secretary of State may—

(a) revise a decision—

(i) given under article 43,

(ii) revised under article 45, 47, 48 or 49, or

(iii) relating to benefit made by the First-tier Tribunal, a Pension Appeal Tribunal, the Upper Tribunal, an appropriate Social Security Commissioner or a court,

in each case by withholding or reducing the amount of the award so as to cancel the award of benefit.

(3) The decision of the Secretary of State on a review under this article and the reasons for the decision shall be in writing and shall be given or sent to the claimant who shall, at the same time, be informed of the right—

(a) to a reconsideration of the decision under article 45; and

(b) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943 .

(4) In this article “damages” has the meaning given in article 32(2).

### Review – ignorance or mistake

49.—(1) Subject to paragraph (2), any decision of the Secretary of State may be reviewed by him at any time (including on the application of the claimant) if he is satisfied that the decision was given in ignorance of, or was based on, a mistake as to a material fact or of a mistake as to the law.

(2) This article only applies—

- (a) if the material fact was knowable at the time the decision was made and was disclosed to the Secretary of State at that time;
- (b) if the ignorance or mistake is the ignorance or mistake of the Secretary of State;
- (c) where the ignorance or mistake relates to the diagnosis of an injury, where the correct diagnosis was knowable given the state of medical knowledge existing at the time the diagnosis was made.

(3) On a review under this article, the Secretary of State may—

(a) revise—

- (i) a decision given under article 43,
- (ii) a decision revised under article 45, 47 or 48, or
- (iii) a decision revised under this article

in each case by increasing or reducing the amount of the award or so as to cancel an award of benefit;

(b) make an award of benefit where no award has been made before; or

(c) confirm the decision referred to in subparagraph (a).

(4) The decision of the Secretary of State on an application for review under this article and the reasons for the decision shall be in writing and shall be given or sent to the claimant who shall, at the same time, be informed of his right—

(a) to a reconsideration of the decision under article 45; and

(b) to appeal to a Pension Appeal Tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

### Burden of proof

50. The burden of proving any issue under this Order shall lie on the claimant.

### Standard of proof

51. The standard of proof applicable in any decision which is required to be made under this Order shall be the balance of probabilities.

### Evidence

52.—(1) For the purposes of determining any issue under this Order, the Secretary of State shall produce such medical or other records of—

- (a) a member of the forces;
- (b) a member of the forces who has died; or
- (c) a former member of the forces

as are in his possession and are relevant to the issues to be decided.

(2) The Secretary of State shall consider any evidence which appears to him to be relevant to the issues which are to be decided and shall determine those issues on that evidence.

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(3) Where any decision required to be made under this Order is, or includes, a decision involving a medical issue, that decision shall be made in accordance with generally accepted medical and scientific knowledge prevailing at the time the decision is made.

### Information and medical examination

**53.**—(1) Where a claim has been made and—

- (a) the Secretary of State sends the person making the claim a request in writing for further information which is reasonably required for the determination of that claim and that information is not given or sent to the Secretary of State within 3 months of the date on which the request is sent without providing a satisfactory explanation for that failure, or
- (b) the person making the claim, or the person in respect of whom the claim is made, has been requested to attend a medical examination at a time and place specified in a notice given or sent to him not less than ten days before the date of the examination and he fails to attend without providing, within three months of the date on which he was requested to attend, a satisfactory explanation for that failure

the claim shall be treated as never having been made.

(2) The treating of a claim as never having been made does not prevent the making of a new claim in accordance with the provisions of this Order.

[<sup>F5</sup>(3) In this article, a reference to a claim includes a reference to an application by a claimant for reconsideration under article 45(1) and an application by a claimant for a review under article 47, 48 or 49.]

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#### Textual Amendments

**F5** Art. 53(3) substituted (30.6.2006) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2006 \(S.I. 2006/1438\)](#), arts. 1(2), **16**

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