

2008 No. 2942

PENSIONS

**The Armed Forces and Reserve Forces (Compensation Scheme)
(Amendment No. 3) Order 2008**

<i>Made</i>	- - - -	<i>13th November 2008</i>
<i>Laid before Parliament</i>		<i>18th November 2008</i>
<i>Coming into force</i>	- -	<i>15th December 2008</i>

The Secretary of State, in exercise of the powers conferred by sections 1(2) and 10(2) and (3) of the Armed Forces (Pensions and Compensation) Act 2004(a), makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 3) Order 2008 and shall come into force on 15th December 2008.

(2) In this Order “the principal Order” means the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(b) and a reference to a numbered article or Schedule is a reference to the article or Schedule in the principal Order which bears that number.

Amendments to the principal Order

2. The principal Order is amended as follows.

Amendment of article 2 (interpretation)

3. Article 2(1) is amended as follows—

(a) after the definition of “accredited medical specialist” insert—

““additional lump sum” means the sum referred to in article 15C;”;

(b) for the definition of “lump sum” substitute—

““lump sum” means, except in the expressions “additional multiple injury lump sum” and “additional lump sum”, the sum referred to in article 14(1)(a);”.

Amendment of article 7 (injury caused by service)

4. In article 7(1) for the words and numbers “and 15B(1)” substitute “, 15B(1) and 15C(1)”.

(a) 2004 c.32.

(b) S.I. 2005/439, amended by S.I. 2006/1438, S.I. 2007/2609, S.I. 2008/39 and S.I. 2008/2160.

Amendment of article 8 (injury made worse by service)

5. In article 8(1) after “the predominant cause of the worsening of the injury and” insert “, subject to articles 15(1A), 15A(1), 15B(1) and 15C(1),”.

Amendment of article 13 (interpretation of Part III)

6. In article 13(b) delete “subject to article 15B(6)”.

Amendment of article 15 (amount of lump sum)

7. Article 15 is amended as follows—

- (a) in paragraph (6) after “earlier award” insert “(including any award of additional lump sum)”;
- (b) in sub-paragraph (6A)(b) for “the coming into force of this Order” substitute “8th February 2008”;
- (c) in paragraph (6B) after “earlier award” insert “(including any award of additional multiple injury lump sum and any award of additional lump sum)”.

Amendment of article 15A (amount of lump sum where 100 per cent guaranteed income payment determined)

8. Article 15A is amended as follows—

- (a) in sub-paragraph (1)(b) for “the coming into force of this Order” substitute “8th February 2008”;
- (b) in paragraph (6) after “earlier award” insert “(including any award of additional lump sum)”.

Amendment of article 15B (additional multiple injury lump sum)

9. Article 15B is amended as follows—

- (a) in sub-paragraphs (b) and (c) of paragraph (1) for “the coming into force of this Order” substitute “8th February 2008”;
- (b) delete paragraph (6).

Insertion of articles 15C and 15D

10. After article 15B insert—

“Additional lump sum

15C.—(1) Subject to article 15D, the Secretary of State shall award a benefit (“the additional lump sum”) for a qualifying injury in accordance with this article.

(2) Only one award of additional lump sum shall be made for a qualifying injury.

(3) The amount of the additional lump sum is, subject to paragraph (4), $A - B$.

(4) The total amount payable under paragraph (3) shall not, taking into account all previous awards of benefit applicable to the qualifying injury or qualifying injuries sustained in one incident, exceed the amount specified at level 1 in column (a) of the Table in paragraph (6).

(5) In this article—

- (a) “A” means the combined total of the amount of benefit that would be awarded for each qualifying injury sustained in one incident if, in making the determination as to the relevant amount of benefit that was to be awarded —

- (i) the reference in article 14(2)(b) to the amount in column (b) of Table 10 was read as a reference to the amount in column (b) of the Table in paragraph (6); and
 - (ii) the reference in articles 15(3), 15A(3) and 15B(5) to the amount specified at level 1 in column (a) of Table 10 was read as a reference to the amount specified at level 1 in column (a) of the Table in paragraph (6);
 - (b) “B” means the combined total of all previous awards of benefit applicable to the qualifying injury or qualifying injuries sustained in one incident;
 - (c) “benefit” means a lump sum or an additional multiple injury lump sum;
 - (d) “determination” means the determination by the Secretary of State in accordance with this Order as to the total of all awards of benefit applicable to the qualifying injury or qualifying injuries sustained in one incident;
 - (e) “qualifying injury” means an injury in respect of which an entitlement to benefit has been determined before 15th December 2008;
 - (f) “relevant amount” has the meaning described in article 14(2)(b).
- (6) The Table referred to in paragraphs (4) and (5) is—

<i>Column (a)</i> <i>Tariff level</i>	<i>Column (b)</i> <i>Amount</i>
1	£570,000
2	£402,500
3	£230,000
4	£172,500
5	£115,000
6	£92,000
7	£63,825
8	£48,875
9	£34,100
10	£23,100
11	£13,750
12	£9,075
13	£5,775
14	£2,888
15	£1,155.

Exception to entitlement to additional lump sum

15D.—(1) This article applies where—

- (a) a qualifying injury has been sustained; and
- (b) on or after 15th December 2008 the award of benefit applicable to that qualifying injury is —
 - (i) increased under article 15(5) or 15A(5);
 - (ii) revised under article 45, 47, 48 or 49; or
 - (iii) revised by a Pension Appeal Tribunal, an appropriate Social Security Commissioner, the First-tier Tribunal, the Upper Tribunal or a court.

(2) Notwithstanding article 15C, there is no entitlement to an additional lump sum award for a qualifying injury if such an award has not been paid before the day on which the award of benefit applicable to that qualifying injury is increased or revised.

(3) In this article, “benefit” and “qualifying injury” have the same meaning as in article 15C.”.

Amendment of article 19 (more than one injury to the same part of the body)

11. In article 19(7)(b) for “lump sum which has” insert “total of all awards of benefit which have”.

Amendment of article 37 (cases where claims are not required)

12. Paragraph (1A) of article 37 is amended as follows —

- (a) after “additional multiple injury lump sum” add “or an additional lump sum”;
- (b) for “this benefit” substitute “these awards of benefit”.

Amendment of article 44 (interim awards)

13. Article 44 is amended as follows —

- (a) for paragraph (4) substitute—

“(4) Where the final award is at a level of the tariff which is—

- (a) at the same level or is higher than the level of the tariff awarded in 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 benefit paid in accordance with the interim award and the amount of the final award shall be paid;
- (b) lower than the level of the tariff awarded in the interim award, no further amount of benefit will be paid in accordance with the final award and no amount of benefit paid in accordance with the interim award is recoverable.”;

- (b) after paragraph (4) insert—

“(5) For the purposes of paragraph (4), the amount of benefit paid in accordance with the interim award means the amount of the lump sum awarded in the interim award together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that interim award.”.

Amendment of article 45 (reconsideration)

14. In article 45, after paragraph (7) insert—

“(8) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the amount of the original award and the amount of the revised award shall be paid.

(9) For the purposes of paragraph (8), the original award means the amount of the lump sum awarded in the original decision together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that original decision.”.

Amendment of article 47 (review on discharge on medical grounds)

15. In article 47, after paragraph (3) insert —

“(4) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the amount of the original award and the amount of the revised award shall be paid.

(5) For the purposes of paragraph (4), the original award means the amount of the lump sum awarded in the original decision together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that original decision.”.

Amendment of article 48 (review – exceptional circumstances)

16. In article 48, after paragraph (6) insert—

“(7) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the amount of the original award and the amount of the revised award shall be paid.

(8) For the purposes of paragraph (7), the original award means the amount of the lump sum awarded in the original decision together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that original decision.”.

Amendment of article 49 (review – ignorance or mistake)

17. In article 49, after paragraph (4) insert—

“(5) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the amount of the original award and the amount of the revised award shall be paid.

(6) For the purposes of paragraph (5), the original award means the amount of the lump sum awarded in the original decision together with any award of additional multiple injury lump sum or any award of additional lump sum applicable to that original decision.”.

Amendment of article 54 (date on which awards of benefit become payable)

18. In article 54(1) after “additional multiple injury lump sum” add “, an additional lump sum”.

Amendment of Schedule 4 (the Tariff)

19. For Table 10 of Schedule 4 substitute—

“Table 10

<i>Column (a)</i> <i>Level</i>	<i>Column (b)</i> <i>Amount</i>
1	£570,000
2	£402,500
3	£230,000
4	£172,500
5	£115,000
6	£92,000
7	£63,825
8	£48,875
9	£34,100
10	£23,100
11	£13,750
12	£9,075
13	£5,775
14	£2,888
15	£1,155.”.

Signed by authority of the Secretary of State

13th November 2008

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (“the Scheme”) which provides for benefits to be payable to or in respect of a person by reason of that person’s illness, injury (whether physical or mental) or death, which is caused (wholly or partly) by service in the armed forces or the reserve forces.

This Order amends the Scheme by increasing the amount of a lump sum award which is payable for a claim determined or revised on or after 15th December 2008 and also by providing for a new form of benefit to be paid.

Article 10 inserts new articles 15C and 15D into the Scheme. Article 15C provides for the payment of a new form of benefit – the additional lump sum. This new benefit will, in general, be paid to any claimant who has been awarded a lump sum or additional multiple injury lump sum before 15th December 2008. The amount of the additional lump sum is determined by calculating the amount of benefit that would have been awarded had the amounts in the table in article 15C(6) been applied (in place of the actual amounts applied) and then deducting from that sum the amount of benefit previously awarded. There is an overall cap on the total amount that can be awarded under this article in respect of one or more injuries sustained in one incident (taking into account previous awards of benefit applicable to the injury or injuries) of £570,000. A recipient of the additional lump sum will, once all the awards of benefit are added together, receive the same amount as a claimant who has their award assessed according to the new amounts in the version of Table 10 of Schedule 4 to the Scheme as substituted by article 19. Only one award of additional lump sum will be made for a qualifying injury. If the award for the qualifying injury is later revised it will be calculated according to the new higher amounts in the version of table 10 substituted by article 19 of this Order (see article 13(b) of the Scheme).

Article 15D provides for an exception to the general entitlement to an additional lump sum. This is where an award of benefit has been determined before 15th December 2008 but on or after that date and before any additional lump sum award has actually been paid, the award of benefit is then increased or revised. The new Table 10 will be applied to the new calculation and hence the claimant will automatically receive a higher award. In such a case no additional lump sum will then be awarded.

Article 19 inserts a new version of Table 10 of Schedule 4 to the Scheme. This sets the amounts payable as a lump sum by reference to the tariff level applicable to the injury. The new amounts will be applied to all claims determined or revised on or after 15th December 2008 (see article 13(b) of the Scheme).

In some cases an award may be revised after an additional lump sum has been paid. The calculation of a revised award will be by reference to the new higher amounts specified in table 10. In calculating the amount due for the revised award account will be taken of both the earlier awards of benefit and the award of additional lump sum and only the difference between the total of those amounts and of the revised amounts will be paid. This is expressly achieved by amendments to articles 15, 15A, 19, 44, 45, 47, 48 and 49.

Articles 7(b), 8(a) and 9(a) amend articles 15(6A)(b), 15A(1)(b) and 15B(1)(b) and (c) respectively in order to insert the specific date that S.I. 2008/39 came into force.

Article 12 amends article 37 of the Scheme with the result that a claim is not required for an additional lump sum award to be made: the Secretary of State will automatically consider and notify claimants of any entitlement under the new provision.

A full regulatory impact has not been produced for this instrument as it has no significant impact on the costs of business, charities or voluntary bodies.

STATUTORY INSTRUMENTS

2008 No. 2942

PENSIONS

The Armed Forces and Reserve Forces (Compensation Scheme)
(Amendment No. 3) Order 2008

£5.00