

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION
SCHEME) (AMENDMENT) ORDER 2008**

2008 No. 39

1. This explanatory memorandum has been prepared by the Ministry of Defence (MOD) and is laid before Parliament by Command of her Majesty.

2. **Description**

2.1 The Armed Forces and Reserve Forces (Compensation Scheme) Amendment Order 2008 (“this Instrument”) amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (“the 2005 Order”). It amends the provisions of the 2005 Order that apply where more than one injury has been sustained in one incident. It also makes provision for amendments to a number of injury descriptors in Table 5 (Amputations) of the injury tariff.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 The 2005 Order (No. 439) was introduced on 6 April 2005 and provides for benefits to be payable to or in respect of a person by reason of his illness, injury or death which is caused (wholly or partly) by his service in the armed forces or reserve forces on or after that date. The benefits which are payable for injury caused by service are a lump sum and, for more severe injury, a guaranteed income payment payable for life. A number of minor amendments were made to the 2005 Order in 2006 (No.1438) by the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2006 and in 2007 it was amended by the Armed Forces (Gurkha Compensation) Order 2007 (No. 2609) in line with the changes to Gurkha pay and pension rights. Since the introduction of the 2005 Order, the MOD has continued to monitor the Scheme in particular to any issues raised by experience of live claims. One particular case received a lot of media coverage in 2007, prompting the MOD to review the particular rules applied to that case and similar cases in order to assess whether the Scheme was still fulfilling the original intent of focussing resources on the most severely injured. This identified a requirement to amend the effect of one particular rule (contained in article 15) which applies discounting to an award of lump sum benefit where the individual sustains more than one injury in one incident. The opportunity is also taken to amend the injury tariff contained in Schedule 4 to enable final injury benefit to be payable for an injury for which no provision was available previously and to decouple certain categories of combined

amputation items.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 One of the policy objectives of the 2005 Order was to focus resources on the most severely injured. This 2008 Instrument fulfils this by amending the discounting rule contained in article 15 so that it no longer applies to the most severely injured claimants, namely those who receive a full guaranteed income payment for life in accordance with article 16 of the 2005 Order. At present, article 15 provides that where more than one injury is sustained in one incident, 100% of the relevant award for the first injury will be payable, 30% of the award for the second injury and 15% of the award for the third will be payable. No lump sum award will be payable for any other injuries sustained in that incident. This rule will, for the future, continue to be applied only to the less severely injured claimants, namely those who receive less than a full guaranteed income payment.

7.2 A person who suffers more than one injury in one incident, and who is in receipt of a full guaranteed income payment, after commencement of this Instrument will receive the full award for each injury that is payable in accordance with the tariff - but subject to the overall cap specified at level 1 of Table 10 (currently £285,000). A person who sustained more than one injury in an incident which occurred before commencement of this Instrument will continue to be dealt with under the extant article 15, but if certain criteria are met, will become entitled to an additional benefit – the additional multiple injury lump sum. The effect of this will be to bring the overall level of compensation the claimant receives to the same level as a person who sustains his injuries after commencement of this Instrument. This additional multiple injury lump sum will, subject to the same criteria, also be payable in cases in which claims have been determined prior to commencement of this Instrument.

7.3 Item 26 of Table 5 of Schedule 4, The Tariff, is amended to include the injury “permanent loss of use one hand”. This is required to take account of a temporary award made under article 20 of the Scheme rules, which allow for the making of a temporary award where an injury is not on the tariff but where award of injury benefit is deemed appropriate, with the proviso that the tariff is amended to include that injury within the period of one year from the making of the temporary award. In addition there are amendments to Table 5 of the tariff to decouple certain combined amputation items that are treated as separate injuries in other Schemes and by the courts.

7.4 The amendment to the discounting rules has attracted public attention due to individual cases that received media coverage earlier in the year and suggestions that the Scheme payments were not generous enough. The proposals for change were outlined in a Written Ministerial Statement and Press release issued on Thursday 11 October 2007, subject to consultation.

7.5 The proposed amendments to the discounting rules were notified to the HCDC committee and the Opposition Spokesman and Liberal Democrat Spokesman in October 2007 ahead of the four week consultation exercise which began on 11 October 2007 and closed on 7 November 2007. The standard 12 week consultation was not undertaken as the proposal was a small, beneficial change to a specialised rule in the Scheme which would affect Service personnel only and consultation was with an external body that has experience of the Scheme rules. This body is the Central Advisory Committee on War Pensions established in 1921 to advise the Minister on matters of compensation and members consist of representatives of key ex-service organisations, including the Royal British Legion, the War Widows Association, the British Limbless Ex-Service Men's Association (BLESMA) and Combat Stress. In addition internal consultation with all service personnel was conducted by means of a Defence Internal Brief, an electronic document cascaded to all personnel with access to an account and also through the chain of command.

7.6 Overall a total of 15 responses were received, 10 from ex-service organisations and 5 from service personnel. On the whole these were supportive of the proposed change. A request to extend the consultation was received from one ex-service organisation but was not supported by any other stakeholders and the ex-service organisation involved submitted their comments within the deadline. A parliamentary question was also tabled querying the length of the consultation exercise (reference: HL353 11 December 2007). One issue was raised by BLESMA about the unintended effect that the proposed removal of the discounting rules would have on the combined amputee items on the injury tariff. After careful consideration of the issue and further consultation with BLESMA a decision was taken to amend the Scheme to decouple certain of the combined amputee items. The consultation did not include the amendment to give effect to the temporary award since this was not identified as requiring urgent amendment until after the consultation had begun. As the amendment does not alter the rules of the 2005 Order but simply adds a new descriptor to the injury tariff it was not felt appropriate to extend the consultation to include this. Nonetheless the Central advisory Committee has been informed and has had an opportunity to comment prior to the laying of this Order.

7.7 Information about the new provisions will be made available by means of a Written Ministerial Statement to be issued at the time the legislation comes into force. In addition, the ex-service organisations consulted will receive a copy of the amending legislation with an explanatory paper. Service personnel will be informed by means of a Defence Internal Brief. In addition guidance on the issues raised in the consultation exercise

will be published on the MOD website around the time that the regulations come into force.

7.7 As there have been a number of amendments to the 2005 Order it is recognised that consolidation is now appropriate and it is intended to undertake this, resources allowing, at the next review of the Scheme due in 2010.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities or voluntary bodies.

9. Contact

Mrs S J McIntosh at the Ministry of Defence Tel: 0202 7218 0564 can answer any queries regarding the instrument.