

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION
SCHEME) (AMENDMENT) ORDER 2011**

2011 No. 2552

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

2. **Purpose of the Instrument**

The Order amends the Armed Forces Compensation Scheme for the regular and reserve armed forces.

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

None.

4. **Legislative Context**

The Armed Forces Compensation Scheme is established by the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) “the February 2011 Order”), which revoked and re-enacted with amendments the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005. The Scheme provides for benefits to be payable to or in respect of a person by reason of his or her illness, injury or death caused (wholly or partly) by service in the regular armed forces or reserve forces on or since 5 April 2005. The benefits constitute a lump sum and, for more serious injury, a Guaranteed Income Payment payable for life. Awards are based on a Tariff which lists the various forms of injury or illness for which compensation is available under the Scheme, specifies a numerical level referable to each type of injury or illness, and specifies for each numerical level the amount of compensation payable.

5. **Extent**

This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

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

7. **Policy background**

7.1 The February 2011 Order provides for a temporary award to be made where the injury is sufficiently serious to warrant an award of compensation but there is no appropriate tariff descriptor for that injury. The provision stipulates that, for the temporary award to be made permanent, the Tariff must

be amended within one year of the award to include the injury for which the temporary award was made. Amendment to the Tariff is now required in order to make permanent the seven temporary awards that have been made. This will give affected claimants rights to reconsideration and appeal that were not there previously.

7.2 The Order also makes amendments to refine provisions and to correct some minor drafting errors that have come to light since the February 2011 Order was made. The amendments made by the Order are described in the explanatory note to the Order.

7.3 The amendments regarding the bereavement grant payable to eligible children as described in the third paragraph of the explanatory note will, amongst other things, have the effect of making the Armed Forces Compensation Scheme consistent with the Armed Forces Pension Schemes, which include provision to pay lump sum benefits to eligible children where there is no eligible partner.

7.4 The Order revokes article 46(2) of the February 2011 Order, which enabled claimants to register an intent to claim prior to the submission of a claim form. When a person registered their intent to claim and submits a claim form within three months, it was the 'intent' date that was recognised as the date of claim. The date of claim effects the commencement date of Guaranteed Income Payment (GIP), Survivor's Guaranteed Income Payment (SGIP) and Child Payment (CP). The rationale for removing this provision is that as GIP, SGIP and CP is only payable upon discharge it only assists post-service claimants. Since the commencement of the Scheme a large number of 'intents to claim' have been registered and because the claimant – in the vast majority of cases – is still in service, the provision does not provide any benefit.

7.5 The amendment to article 64 provides protection to those affected by the revocation of article 46 (2). The amendment applies where an individual makes a claim for dependants' benefits within 3 months of the date of death of the member or former member of the Armed Forces. If a SGIP or CP is payable, it will be payable from the date after the date of death.

7.6 The proposed amendments and Tariff changes can only be achieved through amendment to the legislation.

8. Consultation Outcome

The proposed amendments were notified to members of the Central Advisory Committee on Pensions and Compensation (CAC) in a consultation exercise which began on 21 July 2011 and closed on 2 September 2011. This external advisory body was established in 1921 to advise the Minister on matters of pensions and compensation relevant to the Armed Forces. Membership consists 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 as well as Service members and MOD officials. CAC members reacted positively to the changes

and five responses were received. One response expressed concern that the amendment to article 46 would delay the start date of the payment of benefit for a certain category of claimants. The MOD responded to the effect that given the protection afforded to bereavement claims in this category, the combined changes is expected to impact no, or at most only a very small number, of claims but undertook to monitor the impact closely in the future with a view to amending legislation at a later date if thought necessary.

9. Guidance

Information about the new provisions, including a copy of the revised Tariff, will be made available on the MOD website: <http://www.mod.uk/AFCS> and the Service Personnel and Veterans Agency website: <http://veterans-uk.info/pensions/afcs> Guidance will also be provided to the Service Personnel Veterans Agency, the Schemes delivery body, about how best to apply the new Scheme rules. In addition, the Central Advisory Committee members will receive a copy of the amended Order.

10. Impact

- 10.1 The impact on business, charities and voluntary bodies is not significant.
- 10.2 The impact on the public sector is not significant.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring and Review

The MOD will continue to review the Armed Forces Compensation Scheme as part of its day-to-day management. In the event that anomalies or inaccuracies are identified every effort will be made to amend existing legislation as soon as it is practically possible. Members of the Central Advisory Committee on Pensions and Compensation will be updated on potential changes to the legislation as and when they are identified. This will include monitoring the impact of the changes made in this amending Order.

13. Contact

James Longworth at the Ministry of Defence Tel: 0207 218 0377 can answer any queries regarding this Instrument.