
STATUTORY INSTRUMENTS

2011 No. 517

**The Armed Forces and Reserve Forces
(Compensation Scheme) Order 2011**

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 and comes into force on 9th May 2011.

Interpretation

2. In this Order—

(1) “the AFCS 2005” means the Scheme established by the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(1);

“the AFPS 1975” means the occupational pension scheme arrangements set out in—

- (a) the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 made on 16th December 2010(2);
- (b) the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Warrant 2010 made on 15th December 2010(3);
- (c) the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 made on 15th December 2010(4);

“the AFPS 2005” means the Scheme established in the Armed Forces Pension Scheme Order 2005(5);

“accredited medical specialist” means a medical practitioner whose name is included in the specialist register kept and published by the General Medical Council as required by section 34D of the Medical Act 1983(6);

“acting rank” means a rank where a member of the forces is appointed to a post above the member’s substantive rank, and is paid at the rate appropriate to the higher rank;

“additional benefit” means a benefit specified in article 75(2) and (3);

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- (1) S.I. 2005/439, amended by S.I. 2006/1438, 2007/2609, 2008/39, 2008/2160, 2008/2942, 2008/2683, 2009/3236 and 2010/1723.
 - (2) Order in Council made pursuant to section 3 of the Naval and Marine Pay and Pensions Act 1865 c. 73 (28 and 29 Vict).
 - (3) Royal Warrant made under section 2 of the Pensions and Yeomanry Pay Act 1884 (47 and 48 Vict c. 55) and prerogative powers.
 - (4) Queen’s Order made under section 2(1) of the Air Force (Constitution) Act 1917 c. 51.(7 and 8 Geo 5).
 - (5) S.I. 2005/438, as amended by S.I. 2006/717, 2007/2608, 2008/229 and 2009/544.
 - (6) 1983 c. 54, section 34D was inserted by S.I. 2010/234, article 4 and paragraph 10 of Schedule 1.

“additional lump sum” means a benefit previously awarded under article 15C(7) of the AFCS 2005;

“additional multiple injury lump sum” means a benefit previously awarded under article 15B(8) of the AFCS 2005;

“appropriate tribunal” means the appropriate tribunal as defined in section 12(1) of the Pensions Appeal Tribunals Act 1943(9);

“benefit” means a benefit payable under this Order;

“bereavement grant” means the grant referred to in article 29(1)(b);

“body zone” is to be construed in accordance with article 20;

“child’s payment” means the payment referred to in article 29(1)(c) and determined in accordance with article 36;

“claimant” means a person who has claimed benefit, a person to whom benefit has been paid and a person affected by any decision of the Secretary of State made under this Order;

“claim form” means the form referred to in article 44(b);

“a Commissioner” means a Northern Ireland Social Security Commissioner and includes a tribunal of Commissioners constituted under section 6D(5) of the Pensions Appeal Tribunals Act 1943(10);

“death benefit” means a benefit referred to in article 29;

“descriptor” means a description of an injury in column (b) of Tables 1 to 9 of the tariff, and is to be construed in accordance with article 5;

“downgraded” means downgraded for medical reasons as a result of which the person downgraded undertakes a reduced range of duties but retains rank and pay;

“eligible child” has the meaning given in article 31;

“fast payment” means the benefit referred to in article 27;

“final decision” means a decision referred to in article 54;

“forces” means the armed forces and the reserve forces;

“former member” means a former member of the forces;

“the FTRSPS 2010” means the occupational pension scheme for members of the Full-Time Reserve Service(11) established by regulations made by the Defence Council(12) in exercise of the powers conferred on them by sections 4(2) and (3) and 8(2) and (3) of the Reserve Forces Act 1996(13);

“guaranteed income payment” is the payment referred to in article 15(1)(c) and determined in accordance with article 24;

“Gurkha Pension Scheme” means the Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949)(14);

“ill-health pension” means a pension paid under —

(7) Article 15C was inserted by S.I. 2008/2942, article 10. This S.I. is revoked by article 94 and Schedule 7.

(8) Article 15B was inserted by S.I. 2008/39, article 8. This S.I. is revoked by article 94 and Schedule 7.

(9) 1943 c. 39, section 12(1) was amended by S.I. 2008/2833, article 9(1) and paragraph 4(20)(a) of Schedule 3.

(10) 1943 c. 39, section 6D(5) was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and schedule 1, paragraph 4 and amended by S.I. 2008/2833, article 9(1), Schedule 3, paragraph 4(16)(d).

(11) Full-Time Reserve Service is a commitment to a period of full-time service made under section 24 of the Reserve Forces Act 1996 (c. 14).

(12) This instrument is available from Deputy Chief of Defence Staff (Personnel), (Pensions, Compensation and Veterans), Ministry of Defence, Main Building, Whitehall, London, SW1A 2HB.

(13) 1996 c. 14.

(14) This instrument is available from Land Forces Secretariat (Gurkha Policy). IDL 24, HQ Land Forces, Blenheim Building, Marlborough Lines, Andover, Hampshire, SP11 8HJ.

- (a) rules D1 and D7 (where the ill-health condition is met) of the instruments referred to in the definition of the AFPS 1975;
- (b) rule D5 or D6 of the AFPS 2005; or
- (c) provisions in the FTRSPS 2010, the Gurkha Pension Scheme, the NRPSPS or the RFPS 2005 equivalent to a pension specified in sub-paragraph (a) or (b) above;

“illness” means a physical or mental disorder included either in the International Statistical Classification of Diseases and Related Health Problems(15) or in the Diagnostic and Statistical Manual of Mental Disorders(16);

“injury” includes illness except in relation to determining eligibility for a fast payment in article 27(1)(a);

“injury benefit” means a lump sum, a supplementary award and guaranteed income payment;

“interim award” means an award under article 52(1);

“lump sum”, except in the expressions “additional lump sum” and “additional multiple injuries lump sum”, means the sum referred to in article 15(1)(a) and determined in accordance with article 16(3);

“medical expenses” means the expenses referred to in article 28;

“member” member means a member of the forces;

“the NRPSPS” means the occupational pension scheme for members of the Non-Regular Permanent Staff(17) set out in Chapter 9 of the Territorial Army Regulations 1978(18) made by the Defence Council in exercise of the powers conferred on them by sections 4(2) and (3) and 8(2) and (3) of the Reserve Forces Act 1996;

“predominant” means more than 50%;

“the RFPS 2005” means the occupational pension scheme for members of the reserve forces established by regulations made by the Defence Council in exercise of the powers conferred on them by sections 4(2) and (3) and 8(2) and (3) of the Reserve Forces Act 1996;

“service” means service as a member of the forces;

“Service Personnel and Veterans Agency” means an office designated by the Secretary of State for the purpose of receiving and determining applications for benefit;

“substantial and exclusive relationship” is to be construed in accordance with Schedule 1;

“supplementary award” means an award referred to in article 15(1)(b) and determined in accordance with article 16(5) and Part 2 of Schedule 3;

“surviving adult dependant” has the meaning given in article 30;

“survivor’s guaranteed income payment” is the payment referred to in article 29(1)(a) and determined in accordance with article 34;

“tariff” means the tables of injuries and amounts set out in Part 1 of Schedule 3;

“tariff level” means the level of the tariff specified in column (a) of Tables 1 to 10 of Part 1 of Schedule 3;

“temporary award” means an award referred to in article 26.

- (2) In this Order, any reference to claiming a benefit or to a claim—

(15) World Health Organisation, Geneva, 10th Revision 1992.

(16) American Psychiatric Association, Washington DC. 4th Edition, Text Revision (2000).

(17) Non-Regular Permanent Staff undertake administrative tasks for the Territorial Army. They are subject to call out under section 52 of the Reserve Forces Act 1996 (c. 14).

(18) This instrument is available from Directorate Personnel Services (Army) (Territorial Army), Headquarters Land Forces, Inkerman 67, Wilton, Salisbury, Wiltshire, SP2 0AG.

- (a) is to be treated as including a case where, by virtue of article 45, it is not a condition of entitlement to benefit that a claim be made;
- (b) in the case of a claim for injury benefit, means a claim for one injury even where claims for more than one injury are made on the same claim form.

(3) In this Order, a person is “discharged on medical grounds” if the discharge is on the grounds that the person is medically unfit to continue in service, and as a result is entitled to an ill-health pension.

Definition of “late onset illness”

3. A “late onset illness” is—

- (a) a malignancy, or other physical disorder which is capable of being caused by an occupational exposure occurring 7 or more years before the onset of the illness or the date of death as the case may be;
- (b) a mental disorder which is capable of being caused by an incident occurring 7 or more years before the onset of the illness; or
- (c) a mental disorder capable of being caused by an incident occurring less than 7 years before the date of onset of the illness, which disorder is capable of causing the person suffering from it to be unable to seek medical help for the disorder within 7 years of the date of onset of the illness.

Definition of “salary”

4.—(1) Subject to the following provisions of this article, in this Order “salary”, in relation to a member or former member in respect of whom benefit is payable, means—

- (a) basic pay payable at the rate for a person of the member’s substantive rank, or acting rank as the case may be, and seniority; and
- (b) any other amount if and to the extent that the Defence Council have determined that it is to be treated as salary.

(2) Subject to paragraph (1)(b), “salary” does not include—

- (a) any allowances; or
- (b) any additional amounts payable in respect of particular qualifications or duties (including payable to medical or dental officers), the location of service or the conditions in which service is temporarily performed.

(3) “Salary” does not include any description of payment that the Secretary of State has determined is not to be treated as salary.

Descriptor, further interpretative provisions

5.—(1) Subject to article 25, a descriptor is to be construed as encompassing the expected effects of the primary injury and its appropriate clinical management, short of a discrete diagnosable disorder, including, but not limited to—

- (a) pain and suffering due to the primary injury;
- (b) the effect of operative intervention, including pain, discomfort and scarring;
- (c) the effect of therapeutic drug treatment;
- (d) the use of appropriate aids and appliances;
- (e) associated psychological effects short of a discrete diagnosable disorder.

(2) The effects described in paragraph (1) include the effects both on directly damaged and indirectly affected body structures.

(3) The term “functional limitation or restriction” in relation to a descriptor means that, as a result of an impairment arising from the primary injury or its effects, a person—

- (a) has difficulty in executing a task or action; or
- (b) is required to avoid a task or action because of the risk of recurrence, delayed recovery, or injury to self or others.

(4) Subject to paragraph (5), a reference in a descriptor to duration of effects means from the date of injury.

(5) In Tables 3 and 4 of the tariff a reference in a descriptor to duration of effects means from the date the claimant first sought medical advice in respect of the mental or physical disorder.

(6) Functional limitation or restriction is to be assessed by—

- (a) taking account of the primary injury and its effects; and
- (b) making a comparison between the limitation and restriction of the claimant and the capacity of a healthy person of the same age and sex who is not injured or suffering a health condition.

(7) Functional limitation or restriction is —

- (a) “permanent” where following appropriate clinical management of adequate duration—
 - (i) an injury has reached steady or stable state at maximum medical improvement; and
 - (ii) no further improvement is expected; and
- (b) “significant” where the functional limitation or restriction has an extensive effect.

Service of documents

6. Where under this Order—

- (a) any notice or other document is required to be given or sent to the Service Personnel and Veterans Agency, that notice or document is to be treated as having been given or sent on the day it is received by that Agency; and
- (b) any notice or other document is required to be given or sent to any person, that notice or document, if sent by post to that person’s last known address, is to be treated as having been given or sent on the day that it was posted.

PART 2

THE COMPENSATION SCHEME

The Compensation Scheme

7.—(1) The Compensation Scheme set out in this Order is to be known as the Armed Forces and Reserve Forces Compensation Scheme 2011.

(2) Subject to paragraph (3), the rules of the Scheme are to be construed without reference to any other scheme applicable to the armed forces.

(3) Paragraph (2) does not apply where this Scheme—

- (a) re-enacts the provisions of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005; or
- (b) makes express reference to any other scheme.

Injury caused by service

8.—(1) Subject to articles 11 and 12, benefit is payable to or in respect of a member or former member by reason of an injury which is caused (wholly or partly) by service where the cause of the injury occurred on or after 6th April 2005.

(2) Where injury is partly caused by service, benefit is only payable if service is the predominant cause of the injury.

Injury made worse by service

9.—(1) Subject to articles 11 and 12, benefit is payable to or in respect of a former member of the forces by reason of an injury made worse by service if the injury—

- (a) was sustained before the member entered service and was recorded in the report of the medical examination when the member entered service,
- (b) was sustained before the member entered service but without the member's knowledge and the injury was not found at that examination, or
- (c) arose during service but was not caused by service,

and in each case service on or after 6th April 2005 was the predominant cause of the worsening of the injury.

(2) Benefit is only payable under paragraph (1) if the injury has been worsened by service and remains worsened by service on—

- (i) the day on which the member's service ends; or
- (ii) the date of claim if that date is later.

(3) Subject to paragraph (4), in the case of paragraph (1)(a) and (b), benefit is only payable if—

- (a) the member or former member was downgraded within the period of 5 years starting on the day on which the member entered service;
- (b) the downgrading lasted for a period of at least 6 months (except where the member was discharged on medical grounds within that period);
- (c) the member or former member remains continually downgraded until service ends; and
- (d) the worsening was the predominant cause of the downgrading.

(4) In the case of paragraph (1)(a) or (1)(b), benefit is not payable if the injury is worsened—

- (a) within 6 months of the day service commenced; or
- (b) 5 years or more after that day.

(5) In the case of paragraph (1)(c), benefit is only payable if the member—

- (a) was downgraded within the period of 5 years starting on the day on which the member sustained the injury and remains continually downgraded until service ends; and
- (b) the worsening was the predominant cause of the downgrading.

Death caused by service

10.—(1) Subject to articles 11 and 12, benefit is payable in respect of a member or former member by reason of the death of the member or former member where—

- (a) the death was caused (wholly or partly) by service;
- (b) the cause of the death occurred on or after 6th April 2005; and
- (c) one of the conditions specified in paragraph (3) is satisfied.

(2) Where the death is partly caused by service, benefit is only payable if service is the predominant cause of the death.

(3) The conditions referred to in paragraph (1) are that the death—

- (a) occurred in service;
- (b) occurred within the period of 7 years beginning with the day on which service ends and was caused by—
 - (i) an injury which was caused by service; or
 - (ii) the worsening by service of an injury which existed before or arose during service and which was not caused by service; or
- (c) occurred more than 7 years after the day on which service ends and—
 - (i) the death is caused by a late onset illness which was caused by service; or
 - (ii) the predominant cause of the death is an injury for which an award of injury benefit has been made which gave rise to an entitlement within tariff levels 1 to 9 (inclusive).

Injury and death – exclusions relating to travel, sport and slipping and tripping

11.—(1) Except where paragraph (2) or (9) apply, benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by travel from home to place of work or during travel back again.

(2) This paragraph applies where the travel referred to in paragraph (1) is—

- (a) from the member's home or place of work to the place where an activity referred to in paragraph (6) is happening or during travel back again; or
- (b) from home or place of work where a member is changing a place of work in the United Kingdom to a place of work outside the United Kingdom or during travel back again.

(3) Except where paragraph (4) and (9) apply, benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by that member slipping, tripping or falling.

(4) This paragraph applies where the member was participating in one of the following activities in pursuance of a service obligation—

- (a) activity of a hazardous nature;
- (b) activity in a hazardous environment; or
- (c) training to improve or maintain the effectiveness of the forces.

(5) Except where paragraph (6) or (9) apply, benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by participation in sporting activity as—

- (a) a player;
- (b) a referee;
- (c) an organiser or a representative of a particular sport or sporting organisation.

(6) This paragraph applies where—

- (a) the Defence Council have approved the sport or sporting activity as being a sport which enhances the fitness, initiative and endurance of members of the forces, and prior to the event, the relevant Service has recognised the particular sporting event and the organisation and training for it; or

- (b) the sporting activity is approved by the Defence Council which is undertaken for the purpose of meeting and maintaining the physical standards required of members of the forces.

(7) For the purposes of paragraph (6)(a), the Defence Council may approve a single sport or sporting activity or a class of such activities and may approve such activities unconditionally or subject to any specified condition.

(8) Except where paragraph (9) applies, benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by reason of—

- (a) attendance at a social event unless attendance was required by an order; or
- (b) free time or a social event associated with the activities specified in paragraph (5).

(9) This paragraph applies where the injury, the worsening of the injury or death was caused (wholly or partly) by reason of—

- (a) acts of terrorism or other warlike activities in each case directed towards the person as a member of the forces as such; or
- (b) the member being called out to and travelling to an emergency.

(10) In this article—

- (a) “home” means accommodation, including service accommodation, in which a member has lived or is expected to live for 3 or more months, and a member may have more than one home;
- (b) “place of work” means the place of work to which a member is assigned or temporarily attached;
- (c) “sporting activity” includes an adventurous course or an adventurous expedition approved by the Defence Council.

Injury and death – other exclusions

12. Benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by—

- (a) the use or effect of tobacco;
- (b) the consumption of alcohol;
- (c) the non-therapeutic use of drugs;
- (d) consensual sexual activity;
- (e) except where article 9 applies, events, experiences, exposures and activities occurring before the member or former member entered service;
- (f) an illness which is—
 - (i) caused by a single gene defect or is predominantly hereditary in origin;
 - (ii) a personality disorder;
 - (iii) an endogenous infection; or
 - (iv) an exogenous infection except where the infection is acquired in a non-temperate region and the person infected has been exposed to the infection in the course of service or where, in a temperate region, there has been an outbreak of the infection in service accommodation or a workplace; or
- (g) a self-inflicted injury whether or not causing death except where the self-inflicting of injury is a result of a mental illness caused by service.

Modifications of provisions for members or former members of the reserve forces

13. Schedule 2 has effect for the modification of certain provisions of this Order in relation to the reserve forces.

PART 3

BENEFITS PAYABLE FOR INJURY

Interpretation of Part 3

14. In Part 3—

- (a) any reference to an amount specified in column (b) of Table 10 of the tariff means the amount specified in that column on whichever is the later of the day on which—
 - (i) a claim for benefit is determined under article 51;
 - (ii) a final decision is made under article 54;
 - (iii) a decision of the Secretary of State is reconsidered under article 53 or revised under article 55, 56, 57 or 59; or
 - (iv) a decision relating to benefit is revised by an appropriate tribunal, the Upper Tribunal, a Commissioner, or a court.
- (b) “relevant amount” has the meaning given in article 16(6), and any reference to a relevant amount applicable to a descriptor is to be construed accordingly.
- (c) “relevant percentage” means the percentage of guaranteed income payment payable determined in accordance with article 24(3) and (4).

Description of benefits - injury

15.—(1) Benefits payable for injury are—

- (a) a lump sum;
 - (b) a supplementary award;
 - (c) a guaranteed income payment payable until death;
 - (d) a fast payment; and
 - (e) medical expenses.
- (2) Schedule 3 has effect for the purpose of determining—
- (a) the descriptor;
 - (b) the tariff level;
 - (c) the amount of a lump sum;
 - (d) the conditions relating to payment of a supplementary award; and
 - (e) the amount of a supplementary award.

Injury benefit - general provisions

16.—(1) Subject to articles 25 and 26—

- (a) benefit for injury is payable only in respect of an injury for which there is a descriptor;
- (b) where an injury may be described by more than one descriptor, the descriptor is that which best describes the injury and its effects for which benefit has been claimed; and

- (c) more than one injury may be described by one descriptor.
- (2) In Tables 1 to 9 of the tariff the descriptors give rise to entitlement at the corresponding tariff level.
- (3) Subject to paragraph (4), the amount specified in column (b) of Table 10 of the tariff is the amount of the lump sum in relation to the corresponding tariff level referred to in column (a).
- (4) In the case of an injury to which article 25 (injury to a pair of like body parts) applies, the lump sum is the amount calculated in accordance with article 25(3)(a).
- (5) A supplementary award is payable in addition to a lump sum where an injury or the effect of an injury is—
- (a) specified in Part 2 of Schedule 3; and
 - (b) the conditions specified in that Part are satisfied.
- (6) The relevant amount is the amount of—
- (a) the lump sum determined in accordance with paragraph (3); and
 - (b) a supplementary award, if payable, added to the lump sum for the descriptor which gives rise to that award.
- (7) Guaranteed income payment is payable only in respect of injuries giving rise to an entitlement within tariff levels 1 to 11 and is to be determined in accordance with article 24.
- (8) Subject to article 79(2), a person is only entitled to one guaranteed income payment regardless of the number of injuries which are sustained.
- (9) If a person has sustained more than one injury in separate incidents the guaranteed income payment which is payable is the highest such payment which has been awarded.
- (10) Guaranteed income payment is not payable until the day after the day on which the service of the member to whom it was awarded ends, and no such payment is payable in respect of any period before that day.

Amount of lump sum and supplementary award - general

- 17.—(1) The amount payable for an injury is—
- (a) the relevant amount, or
 - (b) a percentage of the relevant amount,
- determined in accordance with articles 18 to 23, whichever is applicable to the case.
- (2) The total amount of lump sum and supplementary award payable for all injuries sustained in, or arising from, one incident is not to exceed the amount specified in column (b) of Table 10 of the tariff for an injury at tariff level 1.
- (3) Subject to article 25, where paragraph (4) applies no account is to be taken of a lump sum or supplementary award paid for an injury or injuries sustained in any other incident.
- (4) This paragraph applies where—
- (a) a member sustains an injury in more than one incident; and
 - (b) in each case the injury is caused by service.
- (5) Where paragraph (4) applies, guaranteed income payment is payable with reference to the tariff level determined on each occasion, but subject to article 16(8) and (9).

Amount where injury or injuries are described by one descriptor

18. Subject to article 17(2), where one injury or more which is described by one descriptor is sustained in or arises from one incident, the amount payable is the relevant amount applicable to that descriptor.

Amount where 100% guaranteed income payment determined

19.—(1) This article applies where—

- (a) one injury or more which is described by more than one descriptor is sustained in or arises from one incident;
- (b) the relevant percentage for the purpose of calculating the amount of a guaranteed income payment is 100%.

(2) Subject to article 17(2), the amount payable is the total of the relevant amount applicable to each descriptor.

Allocation of descriptors to body zones

20.—(1) This article applies where—

- (a) one injury or more which is described by more than one descriptor is sustained in or arises from one incident;
- (b) the relevant percentage for the purpose of calculating the amount of guaranteed income payment is less than 100%; and
- (c) one injury or more is described by two or more descriptors tariff levels 1 to 11.

(2) Each injury or injuries which is described by a separate descriptor is to be allocated to one of the body zones specified in paragraph (6).

(3) The amount payable is to be calculated in accordance with article 21 or 22, whichever is applicable to the case.

(4) Subject to paragraph (5), where one or more injuries described by one descriptor extend to more than one body zone the descriptor is to be allocated to the body zone predominantly affected by the injury.

(5) Where benefit is payable for burns and is described by a descriptor in Table 1 of the tariff, the descriptor is to be allocated to the body zone which has the highest percentage of affected body surface area.

(6) The body zones are as follows —

- (a) “head and neck” which includes injury to the brain, skull, face, jaw, organs of the mouth and nose, cervical bony and spinal structures and thyroid;
- (b) “torso” which includes injury to the abdomen, including wall, peritoneum and structural contents, bony pelvis, pelvic floor and structural contents, perineum and external male and female genitalia, bony thorax, chest wall, pleura and structural contents, thoracic, lumbar, sacral and coccygeal bony and spinal structures;
- (c) “upper and lower limbs” which includes—
 - (i) injury to all structures from the shoulder, including scapula and clavicle, to the tips of hand digits (upper limbs);
 - (ii) injury to the buttocks and groin, and from the head of the femur to the tips of toes (lower limbs);
- (d) “senses” which means an injury which is described by a descriptor in Table 7 of the tariff;

(e) “mental health” which means an injury which is described by a descriptor in Table 3 of the tariff.

(7) References to all the parts of the body in paragraph (6) include associated nerves, arteries, veins and lymphatic structures.

Amount where injury or injuries are described by two or more descriptors at tariff level 11 or above in more than one body zone

21.—(1) This article applies where—

- (a) one or more injury which is described by more than one descriptor is sustained in or arises from one incident;
- (b) the descriptors of the injury or injuries relate to two or more body zones;
- (c) there is at least one descriptor which gives rise to an entitlement within tariff levels 1 to 11 in each of two or more body zones; and
- (d) the relevant percentage for the purpose of calculating the amount of a guaranteed income payment is less than 100%.

(2) Subject to article 17(2) the amount payable is to be calculated as follows—

- (a) for the first body zone, 100% of the relevant amount applicable to each descriptor in that body zone;
- (b) for the second body zone, 80% of the relevant amount applicable to each descriptor in that body zone;
- (c) for the third body zone, 60% of the relevant amount applicable to each descriptor in that body zone;
- (d) for the fourth body zone, 40% of the relevant amount applicable to each descriptor in that body zone;
- (e) for the fifth body zone, 20% of the relevant amount applicable to each descriptor in that body zone.

(3) In this article—

- (a) “first body zone” means the body zone in relation to which the highest relevant amount would, but for this article, be payable,
- (b) where the same amount is payable for each of two body zones one is the “first body zone” and the other is to be the “second body zone”,

and references to the second, third, fourth and fifth body zone are to be construed accordingly.

Amount where injury or injuries are described by more than one descriptor - other cases

22.—(1) This article applies where either paragraph (2) or (3) is satisfied.

(2) This paragraph applies where—

- (a) one injury or more which is described by more than one descriptor is sustained in or arises from one incident;
- (b) the descriptors of the injury or injuries relate to one or more body zones;
- (c) the relevant percentage for the purpose of calculating the amount of a guaranteed income payment is less than 100%; and
- (d) the descriptor or descriptors which give rise to an entitlement within tariff levels 1 to 11 are in a single body zone.

(3) This paragraph applies where there are no injuries described by a descriptor which give rise to an entitlement within tariff levels 1 to 11.

(4) Subject to article 17(2) the amount payable is to be calculated as follows—

- (a) for the first descriptor, 100% of the relevant amount applicable to that descriptor;
- (b) for the second descriptor, 80% of the relevant amount applicable to that descriptor;
- (c) for the third descriptor, 60% of the relevant amount applicable to that descriptor;
- (d) for the fourth descriptor, 40% of the relevant amount applicable to that descriptor;
- (e) for the fifth and subsequent descriptors, 20% of the relevant amount applicable to each descriptor.

(5) In this article—

- (a) “first descriptor” means the descriptor in relation to which the highest relevant amount would, but for this article, be payable,
- (b) where the same amount is payable for each of two descriptors one is the “first descriptor” and the other is to be the “second descriptor”,

and references to the second, third, fourth, fifth descriptor and subsequent descriptors are to be construed accordingly.

Recalculation of amount payable following award for additional injury

23.—(1) This article applies where—

- (a) a claim for injury benefit (“the first claim”) has been determined and injury benefit awarded;
- (b) in the circumstances specified in paragraph (2) a further determination is made in relation to an injury sustained in the same incident, or an injury consequential to an injury sustained in that incident; and
- (c) the decision following the further determination—
 - (i) changes a descriptor for an injury;
 - (ii) awards an additional descriptor; or
 - (iii) awards a supplementary award.

(2) The circumstances referred to in paragraph (1)(b) are—

- (a) a further claim is made for injury benefit for another injury, or an injury consequential to an injury sustained in the same incident as the first claim; or
- (b) the decision on the first claim or the further claim is revised following a reconsideration under article 53, or a review under article 55, 56, 57 or 59.

(3) Subject to paragraph (4), the amount of lump sum and any supplementary award payable following the further claim, reconsideration or review is to be re-determined in accordance with article 19, 21 or 22, whichever is applicable to the case.

(4) Where the amount awarded following a re-determination of benefit payable for all injuries sustained in one incident, or consequential to an injury sustained in that incident is increased, account is to be taken of the amount of benefit already paid, and, subject to article 17(2), only the difference between an earlier award and a later award is payable.

Amount of guaranteed income payment

24.—(1) The annual amount of guaranteed income payment is the relevant percentage of the base figure.

- (2) The base figure is calculated by multiplying the relevant salary by the relevant factor.
- (3) Subject to paragraph (4), the relevant percentage is—
- (a) 100% where a descriptor gives rise to entitlement at tariff level 1, 2, 3 or 4 (band A);
 - (b) 75% where a descriptor gives rise to entitlement at tariff level 5 or 6 (band B);
 - (c) 50% where a descriptor gives rise to entitlement at tariff level 7 or 8 (band C); and
 - (d) 30% where a descriptor gives rise to entitlement at tariff level 9, 10 or 11 (band D).
- (4) Where an award for an injury sustained in or arising from one incident is described by—
- (a) one descriptor, “the relevant percentage” is determined in accordance with paragraph (3);
 - (b) more than one descriptor and the first and second descriptors are specified—
 - (i) in the same band, “the relevant percentage” is the percentage specified in the band immediately above the band in which the descriptors are specified (except where the descriptors are specified in band A in which case “the relevant percentage” is 100%);
 - (ii) in different bands, “the relevant percentage” is the percentage specified in the band in which the descriptor which gives rise to an entitlement to the highest tariff level is specified.
- (5) Where the Secretary of State makes a re-determination under article 23(3) and as a result, the first descriptor is at a higher tariff level than it was before the re-determination, the Secretary of State is to re-determine the relevant percentage in accordance with paragraphs (3) and (4).
- (6) In this article—
- (a) “the first and second descriptors” mean the descriptors which give rise to an entitlement to the highest tariff levels;
 - (b) “the relevant salary” is, subject to paragraph (7), the salary of a member on the day on which the member’s service ends or in the case of a former member, the salary on that day up-rated for inflation to the date of claim;
 - (c) “the relevant factor” is the figure specified in column (b) of the Table in Schedule 4 in relation to the relevant age specified in column (a); and
 - (d) “the relevant age” is the age of the member on the day on which service ends or, in the case of a former member, the date of claim.
- (7) Where one or more of the injuries which gives rise to an entitlement to guaranteed income payment was sustained in an incident which occurred on a day when the member or former member, as the case may be, held acting rank, the relevant salary is whichever is the higher of—
- (a) the salary specified in paragraph (6)(b); or
 - (b) the actual salary of the member on the day of the incident.
- (8) Up-rating a former member’s salary for inflation for the purposes of determining “the relevant salary” under this article is to be carried out in accordance with article 73.

Injury to a pair of like parts of the body

25.—(1) This article applies where a member loses, or wholly loses the function of, first one (“the first injury”) and later, in another incident, the other (“the second injury”) of a pair of like parts of the body specified in paragraph (5) and—

- (a) both the injuries are caused by service; and
- (b) an award of injury benefit has been made for the first injury.

(2) The descriptor for the second injury is to be the descriptor for the loss of both of the pair of like parts of the body.

- (3) Where paragraph (1) applies—
 - (a) the lump sum for the second injury is Y–X;
 - (b) any award of guaranteed income payment made for the first injury ceases to have effect; and
 - (c) subject to article 16(8) and (9), guaranteed income payment is payable for the second injury as if the tariff level for that descriptor is determined in accordance with paragraph (2).
- (4) In this article—
 - (a) Y is the amount specified in column (b) of Table 10 of the tariff corresponding with the tariff level specified in column (a) of the relevant Table for the descriptor for loss of both of the pair of like parts of the body; and
 - (b) X is the combined total of all previous awards of lump sum, supplementary award, additional multiple injury lump sum and additional lump sum paid for the loss of one of the pair of like parts of the body.
- (5) The pairs of like parts of the body to which this article applies are—
 - (a) arms or part of an arm;
 - (b) feet (but not toes);
 - (c) hands (but not fingers);
 - (d) kidneys;
 - (e) legs or part of a leg;
 - (f) total loss of sight in both eyes; and
 - (g) total loss of hearing in both ears.

Temporary Awards

- 26.**—(1) This article applies where the Secretary of State considers that—
- (a) a person has sustained an injury of a description for which no provision is made in the tariff in force on the date—
 - (i) on which the claim for benefit was made; or
 - (ii) of an application for a review under articles 55, 56, 57 or 59;
 - (b) that the injury is sufficiently serious to warrant an award of injury benefit; and
 - (c) that injury is listed in the International Statistical Classification of Diseases and Related Health Problems⁽¹⁹⁾ or in the Diagnostic and Statistical Manual of Mental Disorders⁽²⁰⁾.
- (2) The Secretary of State is to make a temporary award in respect of that person relating to the level of the tariff which the Secretary of State considers appropriate for that injury.
- (3) The amount of the lump sum payable under a temporary award is the amount which would have been payable had a descriptor been included in the tariff at the tariff level which the Secretary of State considers appropriate for the injury.
- (4) Where guaranteed income payment is payable under a temporary award, the amount payable is that which would have been payable had the descriptor been included in the tariff at the tariff level which the Secretary of State considers appropriate for the injury.
- (5) The making of a temporary award does not give rise to a right to—
- (a) a reconsideration of the decision under article 53; or

⁽¹⁹⁾ World Health Organisation, Geneva. 10th revision (1992).

⁽²⁰⁾ American Psychiatric Association, Washington DC 20005 USA. 4th Edition, Text Revision (2000).

- (b) a review of the decision under article 55, 56 or 57.
- (6) Except where paragraph (7) applies, if the Secretary of State—
- (a) does, within the period of 1 year starting with the date on which the temporary award is given or sent to the claimant, amend this Order by including a descriptor which describes the injury and is at the same tariff level for which the temporary award is made—
- (i) a decision is to be issued making a permanent award in favour of the claimant, which takes effect on the day on which the amending Order comes into force; and
- (ii) guaranteed income payment is to continue to be paid in accordance with this Order;
- or
- (b) does not within the period of 1 year so amend this Order—
- (i) a decision is to be issued refusing to make a permanent award in favour of the claimant; and
- (ii) guaranteed income payment ceases to be payable under the temporary award at the end of the period but no amount of benefit paid in accordance with that award is recoverable.
- (7) This paragraph applies where, after the date of a claim or application for review (referred to in paragraph (1)(a)(ii)) but before the determination of that claim or application, the Secretary of State has amended this Order, by including a descriptor in the tariff which describes the injury at the tariff level which the Secretary of State considers appropriate for that injury.
- (8) Where paragraph (7) applies the Secretary of State is to make a temporary award and immediately issue a decision making the temporary award permanent.

Fast payment

- 27.—(1) A fast payment is to be made where the Secretary of State is satisfied that—
- (a) an injury has occurred during service and is caused by service; and
- (b) if a claim for injury benefit is made one or more of the injuries sustained will be described by a descriptor which gives rise to an entitlement within tariff levels 1 to 8.
- (2) The amount of the fast payment is to be the amount specified in column (b) of Table 10 of the tariff for an injury at tariff level 8.
- (3) Following a determination of a claim for injury benefit, account is to be taken of the fast payment and only the difference between the amount of the fast payment and the amount of injury benefit payable on determination of that claim is to be paid.
- (4) A decision under this article does not give rise to a right to a reconsideration under article 53.
- (5) In this article “determination of a claim for injury benefit” means the amount of injury benefit payable for all the injuries arising from the same incident in relation to which the claim for a fast payment has been made.

Medical expenses

- 28.—(1) Any necessary expenses of a former member may be paid for wholly or in part by the Secretary of State if the conditions specified in paragraph (2) are satisfied.
- (2) Subject to paragraph (5) the conditions referred to in paragraph (1) are that the former member—
- (a) has been awarded injury benefit where one or more of the injuries sustained gave rise to an entitlement to a descriptor within tariff levels 1 to 8;

- (b) became ordinarily resident outside the United Kingdom within the period of 1 year starting with the day service ends; and
- (c) is ordinarily resident outside the United Kingdom when the expenses are incurred.
- (3) The necessary expenses referred to paragraph (1) include, but are not limited to—
 - (a) medical, surgical or rehabilitative treatment;
 - (b) professional nursing care;
 - (c) appropriate medical aids and appliances; and
 - (d) any expenses which the Secretary of State considers are incidental to the expenses specified in subparagraphs (a) to (c).
- (4) A decision under this article does not give rise to a right to a reconsideration under article 53.
- (5) Where a former member is physically or mentally incapable of making arrangements to move outside the United Kingdom for some or all of the period specified in paragraph (2)(b), that period is to be extended for such further period, as in all the circumstances of the case, the Secretary of State considers reasonable.

PART 4

BENEFITS PAYABLE FOR DEATH

Description of benefits - death

- 29.**—(1) Benefits payable for the death of a member or a former member (“the deceased”) are—
- (a) a survivor’s guaranteed income payment payable until death to a surviving spouse, civil partner or surviving adult dependant;
 - (b) a bereavement grant payable to a surviving spouse, civil partner or surviving adult dependant;
 - (c) a child’s payment payable to or in respect of an eligible child.
- (2) If the deceased and the surviving spouse married less than 6 months before the death of the deceased, the Secretary of State may withhold benefit under this article.
- (3) If the deceased and the surviving civil partner formed their partnership less than 6 months before the death of the deceased, the Secretary of State may withhold benefit under this article.
- (4) Where a member was a member of the AFPS 2005 and dies in service, a bereavement grant is not payable except in the circumstances specified in paragraph (5).
- (5) The circumstances referred to in paragraph (4) are that the salary of the deceased on the date of death is less than the amount of the bereavement grant.

Meaning of “surviving adult dependant”

- 30.** A person is a surviving adult dependant in relation to a deceased member or former member if, at the time of the deceased’s death—
- (a) the person and the deceased were cohabiting as partners in a substantial and exclusive relationship;
 - (b) the deceased leaves no surviving spouse or civil partner;
 - (c) the person and the deceased were not prevented from marrying or forming a civil partnership; and

- (d) either the person was financially dependent on the deceased or they were financially interdependent.

Meaning of “eligible child”

31.—(1) In this Order, “eligible child” in relation to a deceased member or former member, means—

- (a) a child or an adopted child of the deceased who meets any of the conditions specified in paragraph (2); and
 - (b) any other child or young person who—
 - (i) meets any of those conditions; and
 - (ii) was financially dependent on the deceased on the day of death.
- (2) The conditions referred to in paragraph (1) are that the person—
- (a) is aged under 18;
 - (b) is in full-time education or vocational training and is aged under 23; or
 - (c) because of physical or mental impairment—
 - (i) is, in the opinion of the Secretary of State, unable to engage in gainful employment; and
 - (ii) was dependent on the deceased on day of the deceased’s death.

Eligible child - further provisions

32.—(1) Where a person ceases to be in full-time education and is aged under 19 on that day (“the relevant day”), the person is treated as being in such education until the first of the following days after the relevant day—

- (a) the second Monday in January;
- (b) the second Monday after Easter Monday;
- (c) the second Monday in September;
- (d) the day of the person’s 19th birthday;
- (e) the day on which the person becomes engaged full-time in gainful employment.

(2) A person who, on the day of the death of a member or former member, is aged under 23 and taking a break from full-time education or vocational training not exceeding one academic year, is treated as continuing such education or training during the break for the purpose of determining whether the person is an eligible child on that day.

- (3) A person who on the day of the death of a member or former member—
- (a) has finished full-time education at school,
 - (b) has not started further full-time education or vocational training, and
 - (c) is taking a break not exceeding 15 months,

is treated as continuing such education or training during the break for the purposes of determining whether the person is an eligible child on that day.

- (4) A person who is an eligible child—
- (a) who takes a break from full-time education or vocational training not exceeding one academic year; or
 - (b) who—
 - (i) finishes full-time education at school, and

- (ii) takes a break not exceeding 15 months before starting further full-time education or vocational training,

is to be treated as continuing such education or training during one academic year in the case of paragraph (a) and during 15 months in the case of paragraph (b) for the purpose of determining whether the person is an eligible child during the break.

(5) A person who is aged over 17 and under 23 who has ceased full-time education or vocational training because of ill-health is to be treated, for the purpose of determining whether the person is an eligible child for the purpose of satisfying the condition specified in article 31(2)(b) as continuing such education or training until either—

- (a) the person resumes such education or training;
- (b) the person is no longer ill and does not resume such education or training; or
- (c) the person's ill-health is such that the person is unable to resume such education or training.

(6) Nothing in paragraphs (2), (3) or (4) requires child's payment to be paid in respect of such a child during the break.

(7) A person is no longer treated as an eligible child if a break referred to in paragraph (2), (3), (4) or (5) lasts for longer than the periods mentioned in those paragraphs.

Children born after the death of a member or former member

33.—(1) A child who is born after the death of a member or a former member is only treated as an eligible child of that member if the child is born before the first anniversary of the death of the member or former member.

- (2) No child's payment is payable in respect of any period before the birth of such a child.

Amount of survivor's guaranteed income payment

34.—(1) Subject to paragraph (6) the annual amount of survivor's guaranteed income payment is 60% of the base figure.

- (2) The base figure is calculated by multiplying the relevant salary by the relevant factor.

(3) In this article—

- (a) "the relevant salary" is, subject to paragraph (4), the salary of the member on the date of death, or in the case of a former member, the salary on the day on which the member's service ends up-rated for inflation to the date of claim;
- (b) "the relevant factor" is the figure specified in column (b) of the Table set out in Schedule 4 in relation to the relevant age specified in column (a);
- (c) "the relevant age" is the age of the member or former member as the case may be on the date of death.

(4) Where death is due to an injury sustained in an incident which occurred on a day while the member or former member held acting rank, the relevant salary is whichever is the higher of—

- (a) the salary specified in paragraph (3); or
- (b) the actual salary of the member or former member on the day of the incident.

(5) Up-rating a former member's salary for inflation for the purposes of determining "relevant salary" under this article is to be carried out in accordance with article 73.

(6) In the event that there is more than one surviving spouse entitled to the survivor's guaranteed income payment, the annual amount to which each such surviving spouse is entitled is 60% of the base figure, divided by the number of surviving spouses so entitled at the date of the death of the member or former member.

Amount of bereavement grant

35.—(1) Subject to paragraph (2), the amount of the bereavement grant payable in respect of the death of a person who was a member on the date of death is £25,000.

(2) Where the person was a member of the AFPS 2005, the amount of the bereavement grant is the difference between the salary of the member on the date of death and the amount specified in paragraph (1).

(3) Where a former member dies the bereavement grant is £37,500.

(4) In the event that there is more than one surviving spouse entitled to the bereavement grant, the amount to which each such surviving spouse is entitled is the amount payable at paragraphs (1), (2) or (3), divided by the number of surviving spouses so entitled at the date of the death of the member or former member.

Amount of child's payment

36.—(1) The annual amount of child's payment is the relevant percentage of the base figure or, in the circumstances specified in paragraphs (3)(b) and (4)(b), the amount referred to in those subparagraphs.

(2) The base figure is calculated by multiplying the relevant salary by the relevant factor.

(3) Where a member or former member dies leaving a surviving spouse, civil partner or a surviving adult dependant—

(a) the relevant percentage is—

- (i) 15% for each of the first 2 eligible children;
- (ii) 10% for the third eligible child; and

(b) where there are more than 3 eligible children, the amount referred to in paragraph (1) is an amount obtained by dividing 40% of the base figure by the number of eligible children left by the member or former member.

(4) Where a member or a former member dies without leaving a surviving spouse, a civil partner or a surviving adult dependant but leaves—

- (a) no more than 4 eligible children, the relevant percentage is 25%;
- (b) more than 4 eligible children, the amount referred to in paragraph (1) is an amount obtained by dividing the base figure by the number of eligible children.

(5) A child's payment is to be recalculated, in accordance with paragraph (6), and commence in accordance with paragraph (7), on the death of a person—

- (a) who was a surviving spouse, civil partner or surviving adult dependant of a member or a former member; and
- (b) who has been in receipt of a survivor's guaranteed income payment; and
- (c) where there is no other surviving spouse entitled to a survivor's guaranteed income payment.

(6) The child's payment is to be recalculated—

- (a) in accordance with paragraph (4); and
- (b) as if the member or former member had died without leaving a surviving spouse, civil partner or surviving adult dependant.

(7) The recalculated child's payment becomes payable on the day after the date on which the death of the surviving spouse, civil partner or surviving adult dependant occurred.

(8) Where a child ceases to be an eligible child, there is to be no adjustment in the amount of child's payment payable to the other children who receive child's payment as a result of the same calculation.

(9) In this article—

- (a) “the relevant salary” is, subject to paragraph (10), the salary of the member on the date of death or, in the case of a former member, the salary on the day on which the member's service ends up-rated for inflation to the date of claim;
- (b) “the relevant factor” is the figure specified in column (b) of the Table set out in Schedule 4 in relation to the relevant age specified in column (a);
- (c) “the relevant age” is the age of the member or the former member on the date of death.

(10) Where death is due to an injury sustained in an incident which occurred on a day while the member, or former member, held acting rank, the relevant salary is whichever is the higher of—

- (a) the salary specified in paragraph (9); or
- (b) the actual salary of the member or former member on the day of the incident.

(11) Up-rating a former member's salary for the purposes of determining “the relevant salary” under this article is to be carried out in accordance with article 73.

Awards of child's payment - later adjustment

37.—(1) This article applies where, after the death of a member or former member—

- (a) a child's payment is paid in respect of one or more persons under this Part on the basis that they were eligible children at the date of the member's death and that there were then no other eligible children; and
- (b) subsequently it appears—
 - (i) that a person in respect of whom such a payment has been paid was not then an eligible child;
 - (ii) that a further person was then an eligible child; or
 - (iii) that a child who was born after the member's death is an eligible child.

(2) The Secretary of State may make such adjustments in the amount of the child's payment payable in respect of the eligible children as are required in view of the facts as they subsequently appear.

(3) Paragraph (2) does not affect the Secretary of State's right to recover a payment or overpayment in any case where the Secretary of State considers it appropriate to do so.

Children entitled to three or more awards of child's payment

38.—(1) This paragraph applies if, apart from this paragraph, child's payment would be payable in respect of the same child under article 29(1)(c) as a result of the death of more than two members or former members.

(2) Child's payment is payable only in respect of the death of two members or former members.

(3) The amount of child's payment is the total of the two payments which together result in the payment of the highest annual amount.

PART 5

ADJUSTMENT AND CESSATION OF BENEFIT

Adjustment of guaranteed income payment, survivor's guaranteed income payment and child's payment to take account of other amounts

39.—(1) This article applies where a person is entitled to guaranteed income payment, survivor's guaranteed income payment or child's payment for any period during which the person is also entitled to—

- (a) a pension under the AFPS 1975, the AFPS 2005 or the Gurkha Pension Scheme (“a pension”); or
- (b) a payment under the Armed Forces Early Departure Payments Scheme Order 2005(21) (“a payment”).

(2) Guaranteed income payment, the survivor's guaranteed income payment or the child's payment, as the case may be, is to be adjusted in accordance with paragraphs (3) or (4).

(3) Where a person is entitled to guaranteed income payment for any period during which the person is also entitled—

- (a) to a payment, or to a pension which is not an ill-health pension paid for the same injury for which the guaranteed income payment is paid, then the amount of the guaranteed income payment is reduced by 75% of the amount of that pension or payment;
- (b) to an ill-health pension which is paid for the same injury for which the guaranteed income payment is paid, then the amount of guaranteed income payment is reduced by the full amount of the ill-health pension.

(4) Where a person is entitled to survivor's guaranteed income payment or child's payment for any period during which the person is also entitled to a pension, then the amount of survivor's guaranteed income payment or child's payment is reduced by 75% of the amount of that pension.

(5) Where an amount of a pension or payment increases or decreases (including the commencement or cessation), after an award of benefit is made, the Secretary of State is to make such adjustments to the amount of guaranteed income payment, survivor's guaranteed income payment or child's payment as are required to satisfy the rules for the adjustment of benefit specified in this article.

(6) In this article any reference to a pension, ill-health pension or a payment means the gross amount, irrespective of any commutation.

Adjustment in benefit to take account of awards of damages

40.—(1) This article applies where the Secretary of State is satisfied that damages have been or will be recovered by any person in respect of—

- (a) an injury or its effects for which benefit is payable; or
- (b) the death of a person for which benefit is payable.

(2) Subject to paragraph (3), those damages are to be taken into account against any benefit which might otherwise be payable under this Order and the Secretary of State is to withhold or reduce any such benefit accordingly.

(3) The Secretary of State may not—

- (a) take the damages into account where the Secretary of State is satisfied that benefit payable under this Order has been taken into account in the assessment of the damages;
 - (b) withhold or reduce a bereavement grant payable under article 29(1)(b).
- (4) In calculating the amount of benefit to withhold or reduce under paragraph (1), the Secretary of State may take account of the full value of any damages which have been or will be recovered.
- (5) The Secretary of State may require a claimant to provide—
- (a) details of any steps taken or planned to obtain damages in respect of the same injury or death for which benefit is payable;
 - (b) a written undertaking that if damages are recovered the claimant will notify the Secretary of State and repay any benefit paid under this Order.
- (6) In this article damages include any payment received as a result of a claim made in respect of—
- (a) an injury or the effects of an injury for which benefit is payable; or
 - (b) the death of a person for which benefit is payable.
- (7) Paragraph (6) applies whether or not the payment is made—
- (i) in pursuance of a judgment or order of a court of any jurisdiction; or
 - (ii) by settlement or compromise of the claim, whether or not proceedings are instituted to enforce the claim.
- (8) A person to whom or for whose benefit the compensation is paid is to be treated as recovering damages and the compensation paid is to be treated as the damages recovered where compensation is paid—
- (a) under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995(22);
 - (b) under the Criminal Injuries (Compensation) (Northern Ireland) Order 2002(23); or
 - (c) under the scheme established by the Ministry of Defence for the purposes of paying compensation to members of the forces who suffer injury as a result of a crime committed outside the United Kingdom.

Negligence or misconduct

41. The Secretary of State may withhold up to 40% of benefit where the negligence or misconduct of a member or former member contributed to that person's injury or death.

Cessation of guaranteed income payment and survivor's guaranteed income payment on admission to the Royal Hospital, Chelsea

42. Any guaranteed income payment or survivor's guaranteed income payment payable to a former member will cease to be paid on admission to the Royal Hospital, Chelsea, as an in-pensioner but may be restored, if the former member subsequently leaves the hospital.

(22) 1995 c. 53.

(23) S.I. 2002/796 (N.I. 1).

PART 6

CLAIMS

Entitlement to benefit dependant on claim

43.—(1) Except where article 45 applies, a person is not entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied, a claim is made for it in the manner, and within the time, specified in the following provisions of this Part.

(2) Where a member who is in service on or after 6th April 2005 or a surviving spouse, surviving civil partner or surviving adult dependant of such a member makes a claim for a pension for disablement or death under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(**24**), the Secretary of State may treat that claim as also being a claim for benefit under this Order.

Manner of making a claim

44. A claim for benefit must 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 claimant; and
- (d) given or sent to the Service Personnel and Veterans Agency within the time specified in article 47, 48 or 49 whichever is applicable.

Cases where claims are not required

45.—(1) Subject to paragraph (3), it is not a condition of entitlement to benefit that a claim be made for it where a member—

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

(2) It is not a condition of entitlement to additional benefit that a claim be made, and article 46 does not apply in relation to these awards of benefit.

(3) This paragraph applies where a member dies in the circumstances specified in paragraph (1) 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 died.

(4) Where paragraph (3) applies, it is a condition of entitlement to child's payment that a claim is made by or on behalf of the child.

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

(6) Paragraph (1)(b) applies only to death benefit.

(24) [S.I. 2006/606](#) to which there are amendments but none relevant to this Order.

Date of claim

46.—(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 Service Personnel and Veterans Agency.

(2) Where, not more than 3 months before the date on which a claim for injury benefit or death benefit is made, the claimant, or a person acting on the claimant's behalf requests the Secretary of State, orally or in writing, to provide information relating to benefit or a form for the purpose of claiming benefit, the date of claim is to be the date of that request.

(3) Where article 45(1) applies, the date of claim is to be treated as—

- (a) the day after the day on which the member is discharged on medical grounds; or
- (b) the day after the date of death of the member.

Time for making a claim - general

47.—(1) Subject to articles 48 and 49, the time specified for making a claim for injury benefit is 7 years beginning with whichever is the earlier of the following days—

- (a) the day on which the injury occurs;
- (b) the day an injury which is not caused by service is made worse by service;
- (c) the day on which the member's service ends;
- (d) the day a member first seeks medical advice in relation to an illness.

(2) Paragraph (1)(d) applies only if the claim is in respect of an illness.

(3) The time for making a claim for injury benefit is extended by 3 years from the date of diagnosis where—

- (a) an illness first presents within the period specified in paragraph (1); but
- (b) the diagnosis of the illness is not made until less than 1 year before the end of that period.

(4) The time specified for making a claim for a fast payment is 6 months beginning with the day on which the injury occurs.

(5) A claim for medical expenses must be made prior to the expenses being incurred except in circumstances where the Secretary of State is satisfied that prior approval was not reasonably practicable due to a medical emergency.

(6) The time specified for making a claim for death benefit is 3 years beginning with the date of death where the death occurs—

- (a) after the day on which the service of the former member ends; and
- (b) within 7 years starting with that day.

Time for making a claim - exceptional circumstances

48.—(1) Article 47 does not apply where—

- (a) a claim for injury benefit is made by a former member for a late onset illness and the illness has been diagnosed by an accredited medical specialist;
- (b) the death of a former member—
 - (i) is caused by a late onset illness; or
 - (ii) occurs in circumstances specified in article 10(3)(c)(ii).

(2) Where paragraph (1) applies, the time specified for making a claim is 3 years beginning with the day the late onset illness was first diagnosed, or the date of death, as the case may be.

Time for making a claim - physical or mental incapacity

49.—(1) This paragraph applies if throughout the time specified for making a claim in article 47 or 48 a person is physically or mentally incapable of making a claim for injury benefit or death benefit or instructing another person to make a claim on their behalf.

(2) Where paragraph (1) applies, that time is to be extended for such further period as in all circumstances of the case the Secretary of State considers reasonable.

(3) This paragraph applies if a person—

(a) has been physically or mentally incapable of making a claim for injury benefit or death benefit or instructing another to make it on their behalf;

(b) becomes so capable within the period referred to in article 47 or 48.

(4) Where paragraph (3) applies, the time for making a claim may be extended for a period of up to 3 years, if the Secretary of State considers there is insufficient time for the person to make a claim, or instruct a person to make it on their behalf, within the period referred to in article 47 or 48.

Withdrawal or amendment of claim

50.—(1) A claimant may amend a claim by notice in writing given or sent to the Service Personnel and 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 is to be treated by the Secretary of State as if it had been so amended in the first instance.

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

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

PART 7**ADJUDICATION****Decisions**

51.—(1) The Secretary of State is to determine any claim for benefit and any question arising out of the claim.

(2) The Secretary of State is to give reasons for the decision.

(3) The decision and the reasons for the decision must—

(a) be in writing;

(b) be given or sent to the claimant; and

(c) inform the claimant of any right that the claimant may have—

(i) to a reconsideration of the decision under article 53; and

(ii) to appeal that decision to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943(25).

(25) 1943 c. 39, section 5A(1) was amended by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 2(2).

Interim awards

52.—(1) An interim award may be made where the Secretary of State is satisfied that a person is entitled to injury benefit but—

- (a) the prognosis for the injury in that particular case is uncertain; and
- (b) it is not possible to determine which descriptor is applicable to it.

(2) The Secretary of State is to select the descriptor considered to be the most appropriate descriptor at the date of the decision.

(3) The Secretary of State must specify the period which the interim award has effect in accordance with paragraphs (4) and (5).

(4) The period referred to in paragraph (3) is to be a maximum of 2 years starting from the date the award was first made.

(5) Where the period specified is less than 2 years, the Secretary of State may extend and further extend the award but, subject to paragraph (6), a final award must be made within the period of 2 years starting with the date on which an interim award was first made.

(6) Where paragraph (7) applies—

- (a) the interim award may be extended and further extended for a period not exceeding 2 years; and
- (b) a final award must be made within the period of 4 years starting with the date on which an interim award was first made.

(7) This paragraph applies where—

- (a) the prognosis remains uncertain at the end of the initial 2 year period; and
- (b) the Secretary of State considers the extension just and equitable having regard to all the circumstances of the case.

(8) Where the final decision is to award a descriptor at a tariff level which is—

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

Reconsideration

53.—(1) Subject to paragraphs (2) and (11), a decision (“the original decision”) is to be reconsidered if an application for a reconsideration, made in accordance with paragraph (4), is given or sent to the Service Personnel and Veterans Agency.

(2) Paragraph (1) does not apply where the decision—

- (a) is to make a temporary award under article 26(1);
- (b) is to make a fast payment under article 27(1);
- (c) relates to the payment of medical expenses under article 28; or
- (d) is to make an interim award under article 52(1).

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

- (a) make a new decision which maintains the original decision; or
- (b) revise that decision by—

- (i) awarding benefit where no award of benefit was made in the original decision;
 - (ii) changing the descriptor applied so as to maintain or increase the amount awarded in the original decision;
 - (iii) increasing the amount awarded in the original decision;
 - (iv) changing the date on which an award of benefit becomes payable.
- (4) An application for a reconsideration must be made within the period of 1 year starting with the date on which notice of the original decision is given or sent to the claimant and must—
- (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.
- (5) Where an appeal has been made to an appropriate 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 must reconsider the decision.
- (6) The decision of the Secretary of State on an application for a reconsideration under paragraph (1), or a reconsideration under paragraph (5), and the reasons for that decision, must—
- (a) be in writing;
 - (b) be given or sent to the claimant; and
 - (c) inform the claimant of any right the claimant may have to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.
- (7) A decision on reconsideration does not give rise to a right for the claimant to make a further application for reconsideration under this article unless that decision is to make —
- (a) a temporary award under article 26; or
 - (b) an interim award under article 52.
- (8) Where a revised decision makes a temporary award or an interim award the claimant may apply for a reconsideration under this article when that award is made final.
- (9) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the original award and the revised award is to be paid.
- (10) Article 49 has 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.
- (11) Where a person applies for a review under article 55 or 56 before the Secretary of State has determined a reconsideration under this article, the application for the review supersedes the application for reconsideration.

Finality of decisions

- 54.**—(1) Where the Secretary of State has made a final decision awarding benefit, there is to be no review of that decision except in the circumstances specified in articles 55, 56, 57, 58 and 59.
- (2) Where the Secretary of State has made a final decision which makes no award of benefit, there is to be no review of that decision except in the circumstances specified in article 59.
- (3) In this article, and subject to paragraph (4), a final decision is—
- (a) a decision under article 51;
 - (b) a decision making a final award under article 52;
 - (c) a decision revised by the Secretary of State under article 55, 56, 57, 58 or 59;

- (d) a decision made under article 55, 56, 57 or 59 which maintains the decision under review;
- (e) a decision revised by the Secretary of State following a reconsideration under article 53; or
- (f) a new decision which maintains the original decision following a reconsideration under article 53.

(4) The decisions referred to in sub-paragraphs (a) to (d) are final decisions where there has been no application for reconsideration under article 53, or the time for such an application has expired.

Review - service termination

55.—(1) This article applies where—

- (a) a person has been awarded injury benefit;
- (b) a decision in relation to injury benefit (“the injury benefit decision”) has been made within 7 years of the day the service of the member ends; and
- (c) the service of the member has ended.

(2) Subject to paragraph (3), the Secretary of State must review an injury benefit decision, where an application for review made in accordance with paragraph (6) is given or sent to the Service Personnel and Veterans Agency.

(3) Where a member has more than one period of service—

- (a) the time limit for an application for a review under this article, and
- (b) the condition specified in paragraph (1)(b),

relate to the period of service during which the injury for which injury benefit has been awarded arose.

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

- (a) make a new decision which maintains the final decision; or
- (b) subject to paragraph (5), revise an award of injury benefit.

(5) An award may be revised only where the injury in respect of which it has been awarded has—

- (a) become worse or caused a further injury to develop; and
- (b) the injury, or the injury and the further injury together is described by—
 - (i) a descriptor at a tariff level which is higher than that already awarded for the injury; or
 - (ii) an additional descriptor for the injury or the further injury.

(6) An application for a review under this article must be made within the period of 1 year starting with the day on which service ends and must—

- (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.

(7) The decision of the Secretary of State on a review under this article and the reasons for the decision must—

- (a) be in writing;
- (b) be given or sent to the applicant;
- (c) inform the applicant of any right the applicant may have—
 - (i) to a reconsideration of the decision under article 53; and

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

(8) Article 49 has effect in respect of an application for a review under this article as though a reference to making a claim was a reference to making an application for a review and reference to the time for making a claim was a reference to the time for making an application for a review.

(9) The Secretary of State is to review an injury benefit decision under this article on one occasion only.

(10) In this article and articles 56 and 57 “an injury benefit decision” means—

- (a) a final decision in relation to injury benefit;
- (b) a decision in relation to injury benefit where—
 - (i) an application for a reconsideration has been made under article 53(1), or
 - (ii) article 53(5) applies,

and in either case the reconsideration has not been determined;

- (c) a decision in relation to injury benefit made by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court.

Review - exceptional circumstances within 10 years

56.—(1) Subject to paragraph (6), the Secretary of State must review an injury benefit decision if an application for a review made in accordance with paragraph (4) is given or sent to the Service Personnel and Veterans Agency.

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

- (a) make a new decision which maintains the injury benefit decision; or
- (b) subject to paragraph (3), revise an award of injury benefit.

(3) An award may be revised only where within the period of 10 years, starting with the date of the injury benefit decision, the injury in respect of which the decision relates has—

- (a) become worse or caused a further injury to develop;
- (b) the worsening or the development is unexpected and exceptional; and
- (c) the injury, or the injury and the further injury together is described by—
 - (i) a descriptor at a tariff level which is higher than that already awarded for the injury; or
 - (ii) an additional descriptor for the injury or the further injury.

(4) An application for review under this article must be made within the period of 1 year starting on the day on which the worsening or the development began and must—

- (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.

(5) The decision of the Secretary of State on an application for review under this article and the reasons for the decision must—

- (a) be in writing;
- (b) be given or sent to the applicant; and
- (c) inform the applicant of any right the applicant may have—
 - (i) to a reconsideration of the decision under article 53; and

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

(6) The Secretary of State is to review an injury benefit decision under this article on one occasion only.

Review - final

57.—(1) This article applies where an injury benefit decision was made 10 or more years before an application is made under this article.

(2) Subject to paragraph (7), the Secretary of State must review the decision to which paragraph (1) refers if an application for a review made in accordance with paragraph (5) is given or sent to the Service Personnel and Veterans Agency.

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

- (a) make a new decision which maintains the injury benefit decision; or
- (b) subject to paragraph (4), revise an award of injury benefit.

(4) An award may be revised only where the Secretary of State considers that it would be manifestly unjust to maintain the effect of the decision under review, because the injury in respect of which benefit has been awarded has—

- (a) become worse or caused a further injury to develop;
- (b) the worsening or the development is substantial, unexpected and exceptional; and
- (c) the injury, or the injury and the further injury together is described by—
 - (i) a descriptor at a tariff level which is higher than that already awarded for the injury; or
 - (ii) an additional descriptor for the injury or the further injury.

(5) An application for review under this article must be made within the period of 1 year starting with the day on which the worsening or the development began and must—

- (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.

(6) The decision of the Secretary of State on an application for review under this article and the reasons for the decision must—

- (a) be in writing;
- (b) be given or sent to the applicant; and
- (c) inform the applicant of any right the applicant may have—
 - (i) to a reconsideration of the decision under article 53; and
 - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

(7) The Secretary of State is to review an injury benefit decision under this article on one occasion only.

Review - award of damages

58.—(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 paid or payable under this 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 revise a decision by decreasing the amount of the award, or 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 must—
- (a) be in writing;
 - (b) be given or sent to the claimant; and
 - (c) inform the applicant of any right the applicant may have—
 - (i) to a reconsideration of the decision under article 53; and
 - (ii) 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 40(6) and (8).

Review - ignorance or mistake

59.—(1) Subject to paragraph (2), any decision of the Secretary of State may be reviewed at any time (including on the application of the claimant) if the Secretary of State 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 was 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) make a new decision which maintains the decision under review (“the original decision”); or
 - (b) revise that decision by—
 - (i) awarding benefit where no award of benefit was made in the original decision;
 - (ii) changing the descriptor awarded so as to maintain, increase or decrease the amount awarded in the original decision;
 - (iii) increasing or decreasing the amount awarded in the original decision or so as to cancel an award of benefit;
 - (iv) changing the date on which an award of benefit becomes payable.
- (4) The decision of the Secretary of State on a review under this article and the reasons for the decision must—
- (a) be in writing;
 - (b) be given or sent to the claimant; and
 - (c) inform the applicant of any right the claimant may have—
 - (i) to a reconsideration of the decision under article 53; and

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

Burden of proof

60.—(1) Subject to the provisions of this article, the burden of proving any issue is on the claimant.

(2) Where paragraph (3) applies there is a presumption in favour of the claimant unless the Secretary of State proves to the contrary.

(3) This paragraph applies where—

- (a) a contemporary official record relating to a material fact which is relevant to deciding a condition for payment of benefit under Part 2 is missing; and
- (b) there is other reliable evidence to determine the material fact.

(4) For the purpose of paragraph (3)—

- (a) “a contemporary official record” means a record, including an electronic record, held by the Secretary of State for Defence or the Defence Council;
- (b) “a material fact” need not be a decisive fact for the purpose of determining a claim under Part 2;
- (c) a record is missing where it has been—
 - (i) lost and cannot be found after a diligent search; or
 - (ii) destroyed.

Standard of proof

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

Evidence

62.—(1) For the purposes of determining any issue under this Order, the Secretary of State is to produce such medical or other records of a member or a former member (whether living or deceased), as are held by the Secretary of State for Defence or the Defence Council and are relevant to the issues to be decided.

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

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

Information and medical examination

63.—(1) Where paragraph (2) applies a claim is to be treated as never having been made.

(2) This paragraph applies where a claim has been made, and the claimant “C” has been requested in writing—

- (a) to provide further information which is reasonably required for the determination of the claim and—
 - (i) that information is not given or sent to the Secretary of State within 3 months of the date on which the request is sent; and

- (ii) C does not provide a satisfactory explanation for that failure; or
- (b) to attend a medical examination—
 - (i) at a time and place specified in a notice given or sent to C, not less than 10 days before the date of the examination; and
 - (ii) C fails to attend without providing, within 3 months of the date of the examination to which the request related, a satisfactory explanation for that failure.
- (3) Paragraph (2) has effect where a person makes a claim on C's behalf, and references to C are to be construed accordingly.
- (4) The treating of a claim as never having been made does not prevent the making of a new claim in accordance with this Order.
- (5) In this article a reference to a claim includes a reference to an application for reconsideration under article 53(1) and an application for a review under article 55(6), 56(4), 57(5) or 59(1).

PART 8

PAYMENT

Date on which awards of benefit become payable

- 64.**—(1) A lump sum, a fast payment, medical expenses and a bereavement grant are to be paid as soon as is reasonably practicable after the award has been made.
- (2) Subject to paragraphs (5) and (6) an award of guaranteed income payment becomes payable—
 - (a) where a member is discharged from the forces on medical grounds and the award is for the injury which caused the member to be discharged on medical grounds, on the day after the discharge;
 - (b) where a member is awarded injury benefit which includes an award of guaranteed income payment, on the day after the day on which the member's service ends;
 - (c) in any case where sub-paragraph (a) or (b) does not apply, on the date of claim.
 - (3) Where a person who is entitled to a pension for disablement or death under the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 ("the 2006 Order") subsequently becomes entitled to benefit under this Order for the same injury or death for which there was entitlement under the 2006 Order, the date on which benefit under this Order becomes payable is the date on which—
 - (a) a claim for benefit is determined under article 51;
 - (b) a final award is made under article 54;
 - (c) a decision of the Secretary of State is reconsidered under article 53 or revised under article 55, 56, 57 or 59;
 - (d) a decision relating to benefit is revised by an appropriate tribunal, the Upper Tribunal, an appropriate Social Security Commissioner or a court, as the case may be.
 - (4) Subject to paragraph (6), where a member dies in service, an award of survivor's guaranteed income payment and an award of child's payment become payable on the day after the member's death.
 - (5) Subject to article 16(10), an award—
 - (a) revised under article 53 becomes payable on the date of claim;
 - (b) revised under article 55 becomes payable on the day after the member's service ends;

- (c) revised under article 56 or 57 becomes payable on the date the application for review is sent to the Secretary of State;
- (d) subject to paragraph (6), revised under 59 becomes payable—
 - (i) on the date the application for review is sent to the Secretary of State; or
 - (ii) where no application for a review has been made, the date on which the decision in relation to the revised award is sent to the claimant.
- (6) Subject to paragraph (8), where a decision of the Secretary of State is revised under article 59 so as to award benefit or increase the amount of benefit awarded, guaranteed income payment, survivor's guaranteed income payment or child's payment becomes payable from the beginning of the period starting 6 years—
 - (a) before the date on which the application for review is sent to the Secretary of State; or
 - (b) where no application for a review has been made, before the date on which the decision in relation to the revised award is sent to the claimant.
- (7) Where the amount of an award is reduced following a review under article 58 or 59, the reduced amount becomes payable on the date on which notification of the revised award is given or sent to the claimant.
- (8) No benefit is payable for any period before the date of claim.

Time of payment

65. Guaranteed income payment, survivor's guaranteed income payment and child's payment are paid monthly in arrears unless, in any particular case, the Secretary of State arranges otherwise.

Suspension – appeal from a decision of an appropriate tribunal

- 66.—(1) Where paragraph (2) applies, and subject to paragraph (3), the Secretary of State may suspend payment of benefit in whole or in part.
- (2) This paragraph applies where the Secretary of State is considering making an application for leave to appeal against the decision of an appropriate tribunal.
 - (3) A direction that payment of benefit is to be suspended must be—
 - (a) in writing; and
 - (b) given or sent to the claimant within the relevant period.
 - (4) If the Secretary of State does not make an application for leave to appeal within the relevant period the suspension is to cease.
 - (5) Where a direction has been given under paragraph (3) and an application for leave to appeal made the suspension may continue where—
 - (a) leave to appeal is granted, until any subsequent appeal is determined;
 - (b) an appropriate tribunal reviews its decision until that review has been determined; or
 - (c) an application for leave to appeal is refused, if the Secretary of State makes a further application for leave to appeal in accordance with paragraph (6).
 - (6) The application referred to in paragraph (5)(c) must be made to the Upper Tribunal or a Commissioner within a period of 1 month beginning with the date on which notice in writing of the decision of the appropriate tribunal refusing leave to appeal is received.
 - (7) Where an application is made in accordance with paragraph (6) the suspension may continue until that application and any subsequent appeal is determined.

(8) Where the appeal is determined and the case remitted for rehearing and determination by an appropriate tribunal, the appeal is not determined for the purposes of this article until the matter remitted for rehearing has been determined by the appropriate tribunal.

(9) In this article “relevant period” means the period of 6 weeks beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

Suspension – appeal from a decision of the Upper Tribunal, a Commissioner or a court

67.—(1) Where paragraph (2) applies, and subject to paragraph (3), the Secretary of State may suspend payment of benefit in whole or in part.

(2) This paragraph applies where the Secretary of State is considering making an application for leave to appeal against the decision of the Upper Tribunal or a Commissioner.

(3) A direction that payment of benefit is to be suspended must be—

- (a) in writing; and
- (b) given or sent to the claimant within the relevant period.

(4) If the Secretary of State does not make an application for leave to appeal within the relevant period the suspension is to cease.

(5) Where direction has been given under paragraph (3) and an application for leave to appeal made, the suspension may continue where—

- (a) leave to appeal is granted, until any subsequent appeal is determined;
- (b) the Upper Tribunal reviews its decision until that review has been determined; or
- (c) leave to appeal is refused, if the Secretary of State makes a further application for leave to appeal in accordance with to paragraph (6).

(6) The application referred to in paragraph (5)(c) must be made to the relevant appellate court within a period of 1 month beginning with the date on which notice in writing of the decision of the Upper Tribunal or a Commissioner refusing leave to appeal is received.

(7) Where an application is made in accordance with paragraph (6) the suspension may continue until that application and any subsequent appeal is determined.

(8) Where the appeal is determined and the case remitted by the relevant appellate court for rehearing and determination by an appropriate tribunal, the appeal is not determined for the purposes of this article until the matter remitted for rehearing has been determined by the appropriate tribunal.

(9) This article applies to an application for leave to appeal and an appeal from a decision of the relevant appellate court to the Supreme Court, and references to “the Upper Tribunal or Commissioner” and “the relevant appellate court” is to be construed accordingly.

(10) In this article “relevant period” means the period of 3 months beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

Suspension in other cases

68.—(1) This article applies where—

- (a) an appeal has been brought against a decision of an appropriate tribunal, the Upper Tribunal, a Commissioner or a court in relation to a case (“the primary case”); and
- (b) if such an appeal were to be allowed a question would arise in relation to another case (“the secondary case”) whether the award of benefit in that case ought to be reviewed.

(2) Where paragraph (1) applies the Secretary of State may direct that payment of the benefit under the award in the secondary case be suspended, in whole or in part until such an appeal has been determined.

Payments on death

69.—(1) On the death of a person who has made a claim for benefit, the Secretary of State may appoint such person as the Secretary of State thinks fit to proceed with the claim.

(2) Any sum which is payable under an award on a claim proceeded with under paragraph (1) is to be paid to the personal representatives of the deceased, or to such other persons as the Secretary of State considers fit.

(3) An award on a claim proceeded with under paragraph (1) is not to provide for payment of benefit for any period after the date of death.

PART 9

THIRD PARTIES

Persons under 18

70.—(1) Where a child is less than the age of 18, a claim for child's payment must be made by the child's parent or by a person having legal responsibility for the child and such a person may exercise on behalf of the child the powers specified in articles 50, 53, and 59, and has the duty imposed by article 63(2)(a) (provision of further information).

(2) Where the Secretary of State is satisfied that a claim for child's payment made by a person referred to in paragraph (1) cannot be determined because the person making the claim has not provided information requested under article 63(2)(a), the Secretary of State must appoint a person to pursue the claim on the child's behalf.

(3) Where the Secretary of State has made an appointment under paragraph (2)—

- (a) the Secretary of State may at any time revoke it and make another appointment under paragraph (2); and
- (b) the person appointed may resign after having given one month's notice in writing to the Secretary of State of the intention to do so.

(4) Subject to paragraph (5), child's payment awarded in respect of an eligible child aged less than 18 is to be paid to the child's parent or the person having legal responsibility for the child.

(5) Where paragraph (6) applies the Secretary of State may, in writing, appoint a person to—

- (a) receive child's payment on behalf of the child; and
- (b) apply child's payment for the benefit of the child.

(6) This paragraph applies if the Secretary of State considers that it is in the interests of the child that a person other than the parent or person having legal responsibility for the child should be paid the child's payment.

(7) Where a person appointed under paragraph (2) or (5) is a natural person, the person must be over the age of 18.

(8) The Secretary of State may, before appointing a person under paragraph (5), require that person to give such undertaking as the Secretary of State considers necessary as to the use of the child's payment.

(9) Where the Secretary of State has made an appointment under paragraph (5)—

- (a) the Secretary of State may at any time revoke it and either—
 - (i) make another appointment under paragraph (5); or
 - (ii) pay the child's payment to the parent or the person having legal responsibility for the child; and
- (b) the person appointed may resign after having given one month's notice in writing to the Secretary of State of the intention to do so.

Persons who are mentally infirm

71.—(1) Where—

- (a) a person ("M") is, or is alleged to be, entitled to benefit, whether or not a claim for benefit has been made by M or on M's behalf,
- (b) M is, in the opinion of the Secretary of State incapable of managing their own affairs by reason of mental infirmity, and
- (c) no person has legal authority to act on M's behalf,

the Secretary of State may in writing appoint a person (who, if a natural person, is over the age of 18) to act for M in respect of this Order.

(2) A person appointed under paragraph (1) must—

- (a) exercise, on behalf of M, any right to which M may be entitled under this Order and fulfil on M's behalf any duty imposed on M by this Order;
- (b) receive and deal with any sums payable to M under this Order; and
- (c) apply those sums for the benefit of M.

(3) Where the Secretary of State has made an appointment under paragraph (1)—

- (a) the Secretary of State may at any time revoke it and make another appointment under paragraph (1); and
- (b) the person appointed may resign after having given one month's notice in writing to the Secretary of State of the intention to do so.

(4) The Secretary of State may, before appointing a person under paragraph (1), require that person to give such undertaking as the Secretary of State considers necessary as to the use of the sums paid in respect of M.

PART 10

UP-RATING

Annual up-rating of guaranteed income payment, survivor's guaranteed income payment and child's payment

72. The annual amount of guaranteed income payment, survivor's guaranteed income payment or child's payment is to increase as if these payments were pensions eligible to be increased under the Pensions (Increase) Act 1971(26).

Up-rating of relevant salary for the purposes of articles 24, 34 and 36

73.—(1) This article applies where in the definition of “relevant salary” in articles 24(6)(b), 34(3)(a) and 36(9)(a), the salary of a former member is required to be up-rated for inflation.

(2) The Secretary of State is to review the salary on the departure day, estimated in such manner as the Secretary of State thinks fit, to determine whether it would have retained its value in relation to the general level of prices obtaining in the United Kingdom on the payment date.

(3) Where it appears to the Secretary of State that the general level of prices is greater on the payment date than it was on the departure day, the relevant salary is to be determined in accordance with paragraph (4).

(4) The relevant salary is to be the amount of the former member’s salary on the departure day increased by the percentage by which the general level of prices is greater on the payment date than it was on the departure day.

(5) In this article—

- (a) “the departure day” means the day service ended or the date of death, whichever is applicable to the case;
- (b) “the payment date” means the date on which guaranteed income payment, survivor’s guaranteed income payment or child’s payment is paid for the first time.

(6) This article does not apply to determining the actual salary of a former member for the purpose of article 24(7)(b), 34(4)(b) or 36(10)(b), whichever is applicable to the case.

PART 11

ADDITIONAL BENEFIT

Interpretation of Part 11

74. In this Part—

- (a) “original decision” means—
 - (i) a decision by the Secretary of State in relation to the descriptor and tariff level for the qualifying injury made in accordance with the provisions of the AFCS 2005; or
 - (ii) a decision of an appropriate tribunal, the Upper Tribunal, a Social Security Commissioner or a court revising a decision referred to in paragraph (i).
- (b) “qualifying injury” means an injury or injuries which is described by one descriptor to which an entitlement to injury benefit was determined before 9th May 2011 and—
 - (i) injury benefit was paid or payable before that date; or
 - (ii) no injury benefit was payable under article 15(2) of the AFCS 2005 because the injury was the fourth or subsequent injury sustained in the same incident.
- (c) “relevant percentage” means the percentage of guaranteed income payment payable;
- (d) “specified injury” means an injury or injuries or the effect of an injury or injuries which is—
 - (i) a qualifying injury; and
 - (ii) an injury from a category specified in column (a) of the Table in Schedule 5; and
 - (iii) the original decision determined that the injury was described by a descriptor in the AFCS 2005 in the table specified in column (b).

Additional benefit

75.—(1) The Secretary of State is to award additional benefit for a qualifying injury and in respect of a death (where a claim for death benefit was determined and paid before 9th May 2011) in accordance with the provisions of this Part.

- (2) Additional benefits payable for a qualifying injury are—
- (a) a further lump sum benefit determined in accordance with article 78;
 - (b) an additional guaranteed income payment determined in accordance with article 79; and
 - (c) a guaranteed income payment for a specified injury determined in accordance with article 80.
- (3) Additional benefits payable in respect of death are—
- (a) an additional survivor's guaranteed income payment determined in accordance with article 81;
 - (b) an additional child's payment determined in accordance with article 82; and
 - (c) an additional bereavement grant determined in accordance with article 83.

Tariff level for a qualifying injury

76.—(1) The tariff level for a qualifying injury which is not a specified injury is the tariff level determined in the original decision.

(2) Where a qualifying injury is a specified injury the tariff level is to be determined in accordance with paragraph (3).

(3) Where a specified injury is described by a descriptor which gives rise to an entitlement to a tariff level—

- (a) at a higher level than awarded in the original decision, the tariff level is to be the higher level;
- (b) at the same or a lower level as the original decision, the tariff level is to be the same as awarded in the original decision.

Supplementary award, relevant amount and relevant percentage for a qualifying injury

77.—(1) The lump sum for a qualifying injury is the amount specified in column (b) of Table 10 of the tariff in relation to the tariff level determined in accordance with article 76.

- (2) A supplementary award of £60,000 is payable where a qualifying injury—
- (a) is a traumatic physical injury;
 - (b) is described by a descriptor from Table 2 of the tariff; and
 - (c) the injury or the effect of the injury is specified in paragraph 1(2) of Part 2 of Schedule 3.
- (3) The relevant amount for a qualifying injury is the total amount of—
- (a) a lump sum determined in accordance with paragraph (1);
 - (b) any supplementary award determined in accordance with paragraph (2); and
 - (c) where paragraph (4) applies, an increase to the lump sum for a qualifying injury of—
 - (i) £3,000 for a limb injury or fracture of a limb accompanied by acute compartment syndrome requiring operative treatment; or
 - (ii) £1,000 for a perforated tympanic membrane or an open fracture.

(4) This paragraph applies where the increase to the lump sum was awarded in the original decision and—

- (a) was paid; or
 - (b) was not paid because the qualifying injury in respect of which it was awarded for the fourth or subsequent injury sustained in the same incident.
- (5) Except where paragraph (6) applies, the relevant percentage for a qualifying injury is to be the same as awarded in the original decision.
- (6) This paragraph applies where a qualifying injury is a specified injury and the tariff level for the injury—
- (a) is revised under article 76(3)(a); and
 - (b) is within tariff levels 1 to 11.
- (7) Where paragraph (6) applies, the relevant percentage is to be determined in accordance with article 24(3) and (4).

Award of further lump sum benefit

78.—(1) The Secretary of State is to award a further lump sum benefit in accordance with this article.

- (2) The amount of the further lump sum benefit is $A - B$ where—
- (a) “A” is the amount of benefit that would have been awarded for a qualifying injury if that amount has been determined in accordance with paragraph (3):
 - (b) “B” is the combined total of all previous awards of lump sum, additional multiple injury lump sum and additional lump sum applicable to the qualifying injury.
- (3) The amount of benefit is—
- (a) the relevant amount for a qualifying injury (determined in accordance with article 77(3)), or a percentage of that relevant amount; and
 - (b) determined in accordance with articles 18 to 22 with the modifications specified in Schedule 6.
- (4) Only one award of further lump sum benefit is to be made for a qualifying injury.
- (5) The total amount payable under paragraph (2) is not, taking into account all previous awards of lump sum, additional lump sum and additional multiple injury lump sum applicable to the qualifying injury or injuries sustained in or arising from one incident, to exceed the amount specified in column (b) of Table 10 of the tariff for an injury at tariff level 1.

Award of additional guaranteed income payment

- 79.**—(1) This article applies where for any period before 9th May 2011 a former member was—
- (a) in receipt of guaranteed income payment; or
 - (b) entitled to guaranteed income payment for a qualifying injury, but guaranteed income payment was not payable due to the reduction of that payment under article 31(2) of the AFCS 2005.
- (2) The Secretary of State is to award an additional guaranteed income payment in accordance with this article.
- (3) The additional guaranteed income payment is—
- (a) where paragraph (1)(a) applies, $(A-B)-C$;
 - (b) where paragraph (1)(b) applies, $A-B$.
- (4) In this article —

- (a) “A” is the total amount of guaranteed income payment which would have been payable if the annual amount had been calculated in accordance with article 24; and—
 - (i) where paragraph (1)(a) applies, if that amount had been paid from the date payment commenced until the date specified in paragraph (5); and
 - (ii) where paragraph (1)(b) applies, if that amount had been paid for the period specified in paragraph (6).
 - (b) “B” is the adjustment of the total amount determined in accordance with article 39(3);
 - (c) “C” is the amount of guaranteed income payment paid from the date payment commenced until the date specified in paragraph (5).
- (5) The date referred to in paragraph (4)(a)(i) and (4)(c) is whichever is the earlier of—
- (a) the date of the former member’s death; or
 - (b) 8th May 2011.
- (6) The period referred to in paragraph (4)(a)(ii) is the period—
- (a) commencing with whichever is the later of—
 - (i) the day after the former member’s service ends; or
 - (ii) the date of the claim for injury benefit for the qualifying injury; and
 - (b) ending with whichever is the later of the dates specified in paragraph (5).

Award of guaranteed income payment for a specified injury

- 80.**—(1) This article applies where—
- (a) the tariff level for a specified injury is revised under article 76 to within tariff levels 1 to 11; and
 - (b) guaranteed income payment was not payable to a former member because no qualifying injury gave rise to an entitlement within tariff levels 1 to 11.
- (2) The Secretary of State is to award a guaranteed income payment in accordance with this article.
- (3) The income benefit is A–B where —
- (a) “A” is the total amount of guaranteed income payment which would have been payable if the annual amount—
 - (i) had been determined in accordance with article 24; and
 - (ii) had been paid for the period specified in paragraph (4).
 - (b) “B” is the adjustment of the annual amount of guaranteed income payment determined in accordance with article 39(3).
- (4) The period referred to in paragraph (3)(a)(ii) is the period—
- (a) commencing with whichever is the later of—
 - (i) the day after the former member’s service ends; or
 - (ii) the date of the claim for injury benefit for the specified injury; and
 - (b) ending with whichever is the later of —
 - (i) the date of the former member’s death; or
 - (ii) 8th May 2011.

Additional survivor's guaranteed income payment

81.—(1) This article applies where for any period before 9th May 2011 a surviving spouse, civil partner or surviving adult dependant was —

- (a) in receipt of survivor's guaranteed income payment; or
- (b) entitled to survivor's guaranteed income payment, but survivor's guaranteed income payment was not payable due to the reduction of that payment under article 31(3) of the AFCS 2005.

(2) The Secretary of State is to award an additional survivor's guaranteed income payment in accordance with this article.

(3) The additional survivor's guaranteed income payment is—

- (a) where paragraph (1)(a) applies, (A–B)–C;
- (b) where paragraph (1)(b) applies, A–B.

(4) In this article —

(a) "A" is the total amount of survivor's guaranteed income payment which would have been payable (irrespective of any deduction for income tax) if the annual amount had been calculated in accordance with article 34, and—

- (i) where paragraph (1)(a) applies, if that amount had been paid from the date payment commenced until the date specified in paragraph (5); and
- (ii) where paragraph (1)(b) applies, if that amount had been paid for the period specified in paragraph (6).

(b) "B" is the adjustment of the total amount determined in accordance with article 39(4).

(c) "C" is the amount of survivor's guaranteed income payment paid from the date payment commenced until the date specified in paragraph (5).

(5) The date referred to in paragraphs (4)(a)(i) and (4)(c) is whichever is the earlier of —

- (a) the date of death of the surviving spouse, civil partner or surviving adult dependant; or
- (b) 8th May 2011.

(6) The period referred to in paragraph (4)(a)(ii) is the period—

- (a) commencing with whichever is the later of—
 - (i) the day after the date of death of the former member; or
 - (ii) the date of claim; and
- (b) ending with whichever is the earlier of the dates in paragraph (5).

Additional child's payment

82.—(1) This article applies where for any period before 9th May 2011 an eligible child was—

- (a) in receipt of child's payment; or
- (b) entitled to child's payment but child's payment was not payable due to the reduction of that payment under article 31(3) of the AFCS 2005.

(2) The Secretary of State is to award additional child's payment in accordance with this article.

(3) The additional child's payment is—

- (a) where paragraph (1)(a) applies (A–B)–C;
- (b) where paragraph (1)(b) applies A–B.

(4) In this article —

- (a) “A” is the total amount of child’s payment which would have been payable (irrespective of any deduction for income tax) if the annual amount had been calculated in accordance with article 36, and—
 - (i) where paragraph (1)(a) applies, if that amount had been paid from the date payment commenced until the date specified in paragraph (5); and
 - (ii) where paragraph (1)(b) applies, if that amount had been paid for the period specified in paragraph (6);
 - (b) “B” is the adjustment of the total amount determined in accordance with article 39(4).
 - (c) “C” is the amount of child’s payment paid from the date payment commenced until the date specified in paragraph (5).
- (5) The date referred to in paragraphs (4)(a)(i) and (4)(c) is whichever is the earlier of —
- (a) the date of death of the child; or
 - (b) 8th May 2011.
- (6) The period referred to in paragraph (4)(a)(ii) is the period—
- (a) commencing with whichever is the later of—
 - (i) the day after the date of death of the former member; or
 - (ii) the date of claim; and
 - (b) ending with whichever is the earlier of the dates in paragraph (5).
- (7) Where an eligible child has been paid, or, in the case of paragraph (1)(b) was entitled to, child’s payment for more than one period, an additional child’s payment determined in accordance with this article is payable for each period.

Additional bereavement grant

83.—(1) The Secretary of State is to award an additional bereavement grant (“an additional grant”) to a surviving spouse, civil partner or surviving adult dependant determined in accordance with this article.

- (2) An additional grant of £10,000 is payable where—
 - (a) a member of the reserve forces who was not a member of a reserve forces pension scheme died in service on or after 6th April 2005 and before 3rd August 2010; or
 - (b) a former member died on or after 6th April 2005 and a claim for benefit in respect of the death of the member was made before 3rd August 2010.
- (3) An additional grant of £20,000 is payable where a member—
 - (a) died in service on or after 6th April 2005 and before 3rd January 2011;
 - (b) was a member of the AFPS 1975; and
 - (c) had held acting rank for less than 1 year on the date of death.
- (4) In the event that there is more than one surviving spouse entitled to the additional grant the amount payable to each surviving spouse is the amount specified in paragraph (2) or (3) divided by the number of surviving spouses so entitled at the death of the member or former member.
- (5) In this article a “reserve forces pension scheme” means the FTRSPS 2010, the NRRSPS or the RFPS 2005.

PART 12

TRANSITIONAL PROVISIONS, REVOCATIONS AND SAVINGS

General

84.—(1) Anything done or begun under a provision of the AFCS 2005 which has been re-enacted (with or without amendment) under this Order is to be treated as having been done or begun under the corresponding provision of this Order.

(2) No award already made to or in respect of any person under the AFCS 2005 may by virtue only of the coming into force of this Order be re-assessed to that person's disadvantage.

Claims and applications for reconsideration or review made before 9th May 2011

85.—(1) Where paragraph (2) applies, and subject to article 88, a claim, a reconsideration, or a review is to be determined in accordance with this Order.

(2) This paragraph applies where before 9th May 2011—

- (a) a claim or application, under a provision of the AFCS 2005 specified in paragraph (3) was made, but a decision on that claim or application was not given or sent to the claimant before that date;
- (b) an appeal was made to an appropriate tribunal but the Secretary of State had not reconsidered the decision under appeal under article 45(5) of the AFCS 2005 before that date.

(3) The claims and applications referred to in paragraph (2) are—

- (a) a claim for injury benefit or death benefit under article 35, including a case where a claim is not required under article 37;
- (b) an application for reconsideration under article 45(1);
- (c) an application for review under article 48(1);
- (d) an application for review under article 49(1).

(4) In paragraph (2)(a) “a decision on that claim or application” means a decision under the following provisions of the AFCS 2005—

- (a) article 43(1);
- (b) article 45(2);
- (c) article 48(1); or
- (d) article 49(3).

Decisions made before 9th May 2011

86.—(1) Where paragraph (2) applies, and subject to article 88, the Secretary of State is to determine a reconsideration or review in accordance with this Order.

(2) This paragraph applies where on or after 9th May 2011 the Secretary of State reconsiders or reviews a decision made before 9th May 2011 in the circumstances specified in paragraph (3).

(3) The circumstances referred to in paragraph (2) are—

- (a) a person makes an application on or after 9th May 2011 for reconsideration under article 53(1);
- (b) an appeal is made to an appropriate tribunal on or after 9th May 2011 and article 53(5) applies;

- (c) the Secretary of State reviews a decision under article 58 or 59 (including a review under article 59 following an application by the claimant made on or after 9th May 2011);
- (d) the Secretary of State reviews a decision under article 47 of the AFCS 2005 in respect of a member of the forces who was discharged on medical grounds before 9th May 2011 for the same injury for which an award of injury benefit was made before the member was discharged.

(4) Where an application for review under article 55, 56 or 57 is made on or after 9th May 2011 in respect of a decision made before 9th May 2011 the Secretary of State is to review that decision in accordance with this Order.

Decisions revised by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court

87.—(1) This paragraph applies where—

- (a) the Secretary of State makes an award of additional benefit; and
- (b) a decision made before 9th May 2011 relating to the amount of benefit awarded is revised (“the revised decision”) by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court after that award has been made.

(2) Where paragraph (1) applies, the Secretary of State is to take account of the award of additional benefit when implementing the revised decision.

(3) This paragraph applies where a decision made before 9th May 2011 that no benefit is payable in respect of an injury or a death is revised (“the revised decision”) by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court.

(4) Where paragraph (3) applies, and subject to article 88, the Secretary of State is to implement the revised decision in accordance with this Order.

Power to apply provisions in the AFCS 2005 and disapply provisions in this Order

88.—(1) This article applies to a claim, reconsideration or review where—

- (a) article 85(2) applies; or
- (b) article 86(2) applies.

(2) The Secretary of State must not determine the claim, reconsideration or review to the detriment of the claimant.

(3) Where the Secretary of State considers it just and equitable in all the circumstances of the case the Secretary of State may—

- (a) apply one or more of the following provisions in the AFCS 2005, in whole or in part, which were in force at the date of claim—
 - (i) article 10 (injury and death benefits);
 - (ii) Tables 1 to 9 of Schedule 4 (the tariff) .
- (b) disapply one or more of the following provisions in this Order in whole or in part—
 - (i) article 5 (descriptor, further interpretation);
 - (ii) article 11 (injury and death –exclusions);
 - (iii) Part 11 (additional benefit);
 - (iv) Tables 1 to 9 of Part 1 of Schedule 3 (tariff).

Time limit for application for reconsideration

89.—(1) Subject to paragraph (2), the period for making an application for a reconsideration under article 53(3) in relation to a decision made before 9th May 2011 is 1 year starting from the date the decision was given or sent to the claimant.

(2) The period of 1 year does not apply to an application for a reconsideration if the period of 3 months for making an application under article 45(1) of the AFCS 2005 expired before 9th May 2011.

Fast payment and medical expenses

90.—(1) Article 27 (fast payment) applies only where an injury is sustained on or after 9th May 2011.

(2) Where a former member whose service ended before 9th May 2011 applies for medical expenses under article 28, that article is to be construed in accordance with paragraph (3).

(3) The condition in article 28(2)(b) is satisfied if the person becomes ordinarily resident outside the United Kingdom within 1 year starting with 9th May 2011, and paragraph (5) of that article is to be construed accordingly.

Review under article 55 (review – service termination)

91. Article 55 applies only where a person's service in the forces ends on or after 9th May 2011.

Payment of guaranteed income payment

92.—(1) Where a person is in receipt of guaranteed income payment immediately before 9th May 2011 the annual amount of that payment—

- (a) is to be re-determined in accordance with article 24;
- (b) adjusted in accordance with article 39(3); and
- (c) is payable from 9th May 2011.

(2) Where the relevant percentage for payment of guaranteed income payment is revised under article 77(6), the re-determination referred to in sub-paragraph (a) is to be at the revised percentage.

(3) Where an additional benefit is payable under article 80 to a former member, guaranteed income payment is—

- (a) to be determined in accordance with article 24;
- (b) to be adjusted in accordance with article 39(3); and
- (c) payable from 9th May 2011.

(4) This paragraph applies where a claim for injury benefit giving rise to an entitlement to guaranteed income payment was determined before 9th May 2011, but guaranteed income payment was not in payment immediately before 9th May 2011.

(5) Where paragraph (4) applies the annual amount of guaranteed income payment is—

- (a) to be determined in accordance with article 24;
- (b) to be adjusted in accordance with article 39(3); and
- (c) to commence on the day after the day on which the service of the member ends.

Payment of survivor's guaranteed income payment and child's payment

93.—(1) Where a person is in receipt of survivor's guaranteed income payment or child's payment immediately before 9th May 2011 the annual amount of that payment—

- (a) is to be re-determined in accordance with article 34 or 36, as is applicable to the case;
 - (b) adjusted in accordance with article 39(4); and
 - (c) is payable from 9th May 2011.
- (2) This paragraph applies where—
- (a) a claim for death benefit giving rise to an entitlement to survivor’s guaranteed income payment or child’s payment to an eligible child was determined before 9th May 2011; and
 - (b) that survivor’s guaranteed income payment or child’s payment was not in payment immediately before 9th May 2011.
- (3) Where paragraph (2) applies, the annual amount of survivor’s guaranteed income payment or child’s payment is—
- (a) to be determined in accordance with articles 34 or 36, whichever is applicable to the case;
 - (b) to be adjusted in accordance with article 39(4);
 - (c) to commence from the day after the day of the death of the former member.

Revocations and savings

- 94.**—(1) Subject to this article, the instruments specified in Schedule 7 are revoked.
- (2) The following provisions continue to have effect in relation to claims made before 9th May 2011 for the purpose of article 88(3)—
- (a) article 10 and Tables 1 to 9 of Schedule 4 to the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(27) (“the 2005 Order”) relation to claims made before 29th June 2006;
 - (b) articles 2 and 4 (amendment of article 10 of the 2005 Order) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2006(28) (“the 2006 Order”) in respect of claims made on or after 30th June 2006 and before 9th May 2011;
 - (c) article 18 (insertion of Tables 1 to 9 of Schedule 4 of the 2005 Order) of the 2006 Order in respect of claims made on or after 30th June 2006 and before 16th September 2008;
 - (d) article 15 (amendments to Table 5 of the 2005 Order and transitional provisions) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 2) Order 2008(29) (“the 2008 No. 2 Order”) in relation to claims made on or after 8th February 2008 and before 16th September 2008;
 - (e) article 3 (insertion of Tables 1 to 9 of Schedule 4 of the 2005 Order and transitional provisions) of the 2008 No. 2 Order in relation to claims made on or after 16th September 2008;
 - (f) article 2 (amendment to Table 6 of Schedule 4 of the 2005 Order and transitional provisions) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2009(30) in relation to claims made on or after 11th January 2010;
 - (g) article 11 and the Schedule (amendments to Tables 1 to 9 of Schedule 4 of the 2005 Order), and article 12(1) and 12(2)(c) (transitional provisions) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2010(31) in relation to claims made on or after 3rd August 2010.

(27) [S.I. 2005/439](#).

(28) [S.I. 2006/1438](#).

(29) [S.I. 2008/2160](#).

(30) [S.I. 2009/3236](#).

(31) [S.I. 2010/1723](#).

(3) Article 47 of the 2005 Order (review on discharge on medical grounds) continues to have effect where a member was discharged on medical grounds before 9th May 2011 for the same injury for which an award of injury benefit was made before the member was discharged.

23rd February 2011

Andrew Robathan
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Ministry of Defence