
EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes and re-enacts the Armed Forces and Reserve Forces (Compensation Scheme) 2005 S.I. 2005/439 (“the Scheme”), with modifications incorporating the recommendations of the Review of the Armed Forces Compensation Scheme by Admiral the Lord Boyce (Cm 7798). The Scheme provides for benefits to be payable to or in respect of a person by reason of illness or injury (whether physical or mental), or death, which is caused (wholly or partly) by service in the armed forces or the reserve forces.

Part 1 provides for citation, commencement and, together with Schedule 1, interpretation of the Order.

Part 2 establishes the Scheme by providing for compensation to be payable in respect of injuries caused by service, the worsening of non-service injuries and for death caused by service. It excludes injuries caused by, or occurring during, social events, slipping and tripping, home to duty travel and sport, unless the injuries occur in specified circumstances. In the case of sport and adventurous training the activity must be approved by the services. Provision is made for the modification of the Scheme for the reserve forces, the modifications being set out in Schedule 2.

Part 3 sets out the benefits which are payable for injury caused by service and the conditions attaching to the payment. The benefits are a lump sum, a supplementary award, a guaranteed income payment payable for life, a fast payment and, in limited circumstances, the reimbursement of medical expenses. The lump sum is calculated with reference to the severity of the injury sustained. A tariff, set out in Part 1 of Schedule 3, contains tables which list descriptors of injuries and tariff levels, and a table which gives amounts corresponding to those levels. There are 15 tariff levels. The maximum lump sum payable for a tariff level 1 injury is £570,000.

Supplementary awards are payable where the injury is accompanied by one of the conditions specified in Part 2 of Schedule 3, but subject to the cap of £570,000.

Guaranteed income payment is payable for more serious injuries. There are four bands - 100%, 75%, 50% and 30%. The payment commences when service ends, or from the date of claim, if later, and is payable for life. The amount of guaranteed income payment is calculated by means of a formula based on the age of the member of the forces when service ends or at the date of claim, if later.

A fast payment in the sum of £60,000 is payable only for more serious injuries. It is off-set against the lump sum payable. Medical expenses are a discretionary provision. Seriously injured personnel who move to live permanently overseas within a year of leaving service may claim reimbursement of certain expenses.

This Part also contains provision for the calculation of awards in cases where more than one injury is sustained in one incident. In all cases benefit is paid for each injury caused by service. For the most seriously injured (where the amount of guaranteed income payment is 100%) the tariff amount is paid in full up to the cap of £570,000. In other cases a percentage of the tariff amount is paid for some of the injuries sustained. There is also provision for injury to a pair of like parts of the body in sequential incidents, for example, to one leg and then the other leg.

Where a person has sustained an injury of a description for which no provision is made in the tariff a temporary award is payable, if that injury is sufficiently serious to warrant an award. The injury must be listed in the International Statistical Classification of Diseases and Related Health Problems or in the Diagnostic and Statistical Manual of Mental Disorder.

Part 4 sets out the benefits which are payable in respect of a member of the forces whose death is caused by service. Survivor's guaranteed income payment and a bereavement grant are payable to a surviving spouse, surviving adult dependent or surviving civil partner. Child's payment is payable to “eligible” children. An eligible child is a child or adopted child of the deceased or

a child dependent on the deceased who is under 18 or under 23 and in full-time education or vocational training. Provision is also made for children over 18 who are unable, due to physical or mental disability, to support themselves. A bereavement grant for a person who dies in service is £25,000 but may be reduced depending on which armed forces pension scheme the member of the forces belonged to. The grant in respect of a member who dies after leaving service is £37,500. Survivor's guaranteed income payment and child's payment are calculated in a similar way to guaranteed income payment. The amount of survivor's guaranteed income payment is 60% of the full amount of guaranteed income payment. The first two eligible children each receive child's payment of 15% of guaranteed income payment and a third child 10%. Where there are four or more eligible children the percentages are reduced.

Part 5 makes provision for adjusting the amount of benefit payable in specified circumstances. Guaranteed income payment, survivor's guaranteed income payment and child's payment is adjusted to take account of pensions paid under an armed forces' pension scheme, and, in the case of the reserve forces, another occupational pension scheme. Benefit will also be reduced if a person receives damages or compensation from another scheme in respect of the same injury or death. In addition, benefit may be reduced by up to 40% where the negligence or misconduct of a member of the forces has contributed to the injury or death. This Part also provides that benefit will cease if a former member of the armed forces is admitted as an in-pensioner to the Royal Hospital, Chelsea.

Part 6 deals with the manner of making a claim, specifies circumstances where a claim is not required and provides for the date of a claim and time limits for making claims. For injury, the time limit is 7 years from the date of the injury, or the worsening of a non-service injury, and in the case of an illness, the date on which medical advice is first sought or the date on which service ends whichever is the earlier. For death, the time limit is 3 years from the date of death. A claim for a fast payment must be made within 6 months of the injury. Medical expenses must be approved before they are paid, except in cases of a medical emergency. There are some exceptions to the time limits where a person is unable to make a claim, or instruct another person to make it, due to physical or mental illness. There are also exceptions in specified exceptional circumstances.

Part 7 makes provision for the adjudication of claims. Provision is made for the manner of making decisions and the information to be provided with a decision, for interim awards and for reconsideration and review of decisions in specified circumstances. A person who has received an award in-service can apply for a review of that award within a year of leaving service, providing the final decision in relation to that award was made not more than 7 years earlier. There is also provision to apply for a review in exceptional circumstances where an injury has unexpectedly got worse.

The burden of proving any issue under the Scheme lies on the claimant, but where records have been lost there is a presumption in favour of the claimant. The standard of proof is on a balance of probabilities. Provision is also made for the production of evidence, with the Secretary of State being required to produce relevant medical or other records which are in the Department's possession.

Parts 8 and 9 make provision for the payment of benefit. These provisions include the date on which benefit becomes payable, suspension of benefit in certain circumstances, and a power to appoint persons to act on behalf of persons under 18 and persons unable to act for themselves.

Part 10 provides a power to up-rate guaranteed income payment, survivor's guaranteed income payment and child's payment. It also provides a mechanism for a notional up-rating of a person's salary to take account of inflation. This is used for the purpose of calculating guaranteed income payment, survivor's guaranteed income payment and child's payment where a member of the forces makes a claim or dies after service ends.

Part 11 makes provision for payment of additional benefits for those who claimed under the Scheme before this Order comes into force. All those who have been awarded injury benefit under the AFCS 2005 of less than £570,000 will receive a further lump sum payment, subject to the cap of that amount. Guaranteed income payment, survivor's guaranteed income payment

Changes to legislation: *There are currently no known outstanding effects for the The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011. (See end of Document for details)*

and child's payment is to increase, as it is to be calculated on revised factors. In certain specified circumstances an additional bereavement grant will be paid.

Part 12 includes various general transitional provisions, revocations and savings.

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