

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME)
(AMENDMENT) ORDER 2017

2017 No. 247

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Instrument makes amendments to the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) (“the principal Order”) and comes into force on 10 April 2017. It increases the value of the Armed Forces Independence Payment (AFIP) and Motability allowance; clarifies that no award can be made under the principal Order where a war pension is already in payment for the same cause, that a revised decision on reconsideration may also be an interim decision, and amends terms used in the principal Order. It amends Schedule 3 of the principal Order by introducing four new descriptors and amending another descriptor as well as footnotes in accordance with specific case facts and for non freezing cold injury, on the recommendation of the Independent Medical Expert Group (“IMEG”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instrument

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This Instrument, is made under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (c.32), and amends the principal Order. The Armed Forces Compensation Scheme (“AFCS”) is established by the principal Order which revoked and re-enacted, with amendments, the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (S.I. 2005/439) (“the original AFCS”).
- 4.2 The AFCS provides for benefits to be payable to or in respect of a person by reason of his or her illness, injury or death caused (wholly or partly) by service in the regular armed forces or reserve forces on or since 6 April 2005. Benefits for injury under the AFCS are based on a tariff which describes the injuries for which awards are made.
- 4.3 There is provision in the principal Order (article 24A) for the award of AFIP and an amendment is required to increase the value of AFIP from £139.75 to £141.10 per week. The principal Order provides (article 24D) for a maximum amount to be

deducted from the AFIP and paid to Motability and an amendment is required to increase this maximum amount from £56.75 per week to £58.00 per week.

- 4.4 There is provision in the principal Order (article 26) for a temporary award to be made where the injury is sufficiently serious to warrant an award of injury but the injury is not described in the tariff. For a temporary award to be made permanent, the tariff must be amended within one year of the award being made. Amendments to the tariff in Table 6 (Neurological disorders, including spinal, head or brain injuries), Table 7 (Senses) and Table 9 (Musculoskeletal disorders) are now required, in order to make four temporary awards made under the Scheme in the last twelve months permanent.
- 4.5 Further amendment is required to the tariff in Table 2 (Injury, Wounds and Scarring) and Table 9 (Musculoskeletal disorders) to incorporate the recommendations of IMEG by amending footnotes and a descriptor.
- 4.6 The interpretation provision in the principal Order is updated by including ill-health pensions under the Armed Forces Pensions Scheme 2015 in the definition of ill-health pension, and inserting definitions for constant attendance allowance and mobility supplement under the Service Pension Order 2006.
- 4.7 An amendment to article 12 is required to clarify that a person in receipt of war pension under the Service Pensions Order 2006 cannot receive an award in respect of the worsening of the same injury under the terms of the principal Order.
- 4.8 The principal Order is also amended to ensure that where a person is in receipt of AFIP and certain other overlapping benefits under other schemes, these will be deducted from the AFIP and only the balance paid (article 24C).
- 4.9 There is provision in the principal Order (article 53) for a decision to be reconsidered and an amendment is required to clarify that the Secretary of State may make an interim award on reconsideration.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 The original AFCS came into force on 6 April 2005 and provided for benefits to be payable to Regular and Reserve Service personnel for injury, illness or death which is caused (wholly or partly) by service on or after that date.
- 7.2 An independently chaired review of the AFCS was presented to Parliament by the Secretary of State for Defence on 10 February 2010, Hansard Column 926 refers. All recommendations from the review were accepted and the original AFCS was revoked and re-enacted with amendments by the principal Order.
- 7.3 The AFCS is a modern, fit-for-purpose scheme that offers value for money for the tax payer, provides awards to injured Service personnel and conforms to medical best practice, with oversight by the IMEG.

Consolidation

- 7.4 The principal Order was the consequence of the review of the original AFCS. Since enactment in 2011, the principal Order has been subject to annual amendment for the purposes of uprating and also to address issues that have been identified by the scheme administrators, the First and Upper Tier Tribunals and as a consequence of recommendations made by IMEG.
- 7.5 It is intended that the AFCS reflects contemporary medical opinion and it consequently requires amendment from time to time. There are no plans to consolidate the principal Order at present but a consolidated version of the principal Order is available to the public free of charge on <http://www.legislation.gov.uk/ukxi/2011/517/contents>.

8. Consultation outcome

- 8.1 No separate external consultation exercise has been conducted because all amendments in this instrument provide either clarification to existing provisions or improvements to the Scheme.

9. Guidance

- 9.1 Information about the new provisions will be made available by means of publication on www.Gov.UK.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is not significant.
- 10.2 The impact on the public sector is not significant, as the changes are not expected to increase the workload of Defence Business Services Veterans UK, which is already established to process claims made under the AFCS.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The MOD will continue to review the AFCS as part of its day-to-day management and in order to monitor the impact of the changes in this instrument.
- 12.2 The Central Advisory Committee on compensation (“CAC”) provides a consultative mechanism for the AFCS. MOD will continue to liaise with the CAC who provide advice on policy issues affecting the AFCS.

13. Contact

- 13.1 Tracy Sexton at the Ministry of Defence, telephone: 0207 218 0564 or email: CLS-Sec1@mod.uk can answer any queries regarding this instrument.