

EXPLANATORY MEMORANDUM TO

THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME) (AMENDMENTS RELATING TO FLEXIBLE WORKING AND MISCELLANEOUS AMENDMENTS) ORDER 2018

2018 No. 1099

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Armed Forces Compensation Scheme (“the AFCS”) provides benefits 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
- 2.2 This instrument amends the AFCS as a result of the introduction of flexible working in the armed forces, and also inserts a new descriptor into the tariff.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom and it applies to members of the armed forces wherever they are in the world.
- 4.2 The territorial application of this instrument includes Scotland and Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument is made under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (c.32), and amends the AFCS. The AFCS is established by The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) (“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”).

- 6.2 The AFCS provides that benefits are 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. The AFCS provides lump sum payments, based on a tariff which describes the injuries for which awards are made. In addition, where an award at tariff levels 1 to 11 is made, claimants are entitled to a monthly income payment, known as the guaranteed income payment (“GIP”). The scheme also provides for income payments and other benefits to surviving dependants. These are calculated by reference to the individual’s salary when they left the armed forces.
- 6.3 The AFCS provides that where an injury is sufficiently serious to warrant an award, but is not described in the tariff, temporary award may be made (article 26). Where a temporary award is made, the tariff must be updated within a year in order for the award to become permanent. A temporary award was made in March 2018 and the tariff must now be updated.

7. Policy background

What is being done and why?

Flexible Service

- 7.1 At present, service in the regular armed forces involves unlimited commitment for duty at any time, in any location. This means that such service personnel are either on duty or liable to be called up for duty all day, every day. Subject to a few limited exceptions, they may be required to serve anywhere in the world without notice.
- 7.2 The 2015 Strategic Defence and Security Review recognised the need to “make the changes necessary to enable our armed forces to work flexibly, reflecting the realities of modern life”. This acknowledged that members of the armed forces, like their civilian counterparts, want to have more control over how they run their lives by better balancing work and home life. Unlimited control is not possible in a disciplined armed force, but increasing such control where possible is seen as an important way of improving recruitment and retention in the armed forces.
- 7.3 On 1st April 2019, MOD will introduce flexible service for members of the regular forces, who will be able to request to serve part-time or on a restricted separation basis from that date. Flexible service is designed to provide temporary relief from some of the exigencies of service life, without undermining Defence need which generally requires regular service to be full-time unlimited commitment. A flexible service arrangement will only be available for relatively short periods across a service person’s career, limited to a maximum of 1,095 consecutive days (roughly 3 years) or a total of 1,460 days (roughly 4 years) in any 12-year period. Pay for those on a period of flexible service will be reduced proportionately.
- 7.4 Benefits for injury under the AFCS are paid according to a tariff, ranging from 1 to 15, which describes the injuries for which the awards are made and prescribes the lump sum amount payable. The more seriously injured individuals, with awards at tariff levels 1 to 11, are also compensated by a GIP, a regular tax-free and index-linked payment for life once the individual leaves paid service in the armed forces.
- 7.5 In the case of death due to service, an index-linked survivor’s guaranteed income payment (“SGIP”) is payable to widows(ers), civil partners and eligible partners and child payment is paid to eligible dependent children.

- 7.6 The present formula for calculating the GIP, SGIP and child payment includes, amongst other variables, the salary of the individual on leaving the service. A claimant who was on a period of flexible service when he or she left the armed forces would therefore receive a lower GIP. Survivor's benefits and child payments would likewise be paid a lower rate because the individual had been on a lower rate of pay when they left the armed forces, where the injury or illness is due to service and in instances of death, survivors would receive lower SGIP or child payment.
- 7.7 This instrument will ensure that where an individual is serving under a flexible service arrangement on the date they leave service, their benefits, and those of their dependents, will be determined on the basis of their full-time equivalent salary.
- 7.8 The instrument also amends Table 9 (musculoskeletal disorders) of the tariff to include a new descriptor, with effect from 28 February 2019.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 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 Tribunals and as a consequence of recommendations made by the Independent Medical Expert Group.
- 9.2 It is intended that the AFCS remain flexible to reflect contemporary medical opinion and to adapt to changing circumstances and 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/2011/517.contents>.

10. Consultation outcome

- 10.1 A public consultation has not been undertaken on this instrument. The Central Advisory Committee on Compensation ("CAC") provides a consultative mechanism for the AFCS. The CAC membership includes representation from the Veterans' charities, the Independent Medical Expert Group and single services. The single services have been included in the development of policy. A letter to the CAC members explaining the proposed changes has been sent by the Minister for Defence People and Veterans, the Rt Hon Tobias Ellwood MP.

11. Guidance

- 11.1 Information about the new provisions will be made available by means of a Joint Service Publication on www.gov.uk

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business, charities or voluntary bodies.

13. Regulating small business

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

14. Monitoring & review

14.1 The MOD will continue to review the AFCS as part of its day-to day management and in order to monitor the impact of changes in this instrument.

14.2 The 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.

15. Contact

15.1 Melanie Court at the Ministry of Defence Telephone: 0207 218 9832 or email: afcompensation-policy@mod.gov.uk can answer any queries regarding the instrument.

15.2 James Greenrod, Head of Service Personnel Support at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard. Email: afcompensation-policy@mod.gov.uk

15.3 The Rt Hon Tobias Ellwood MP, Minister of Defence People and Veterans at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.