

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME)
(AMENDMENT) ORDER 2021

2021 No. 285

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before 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 2005.

2.2 The Instrument makes three amendments to the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) (“the principal Order”) and comes into force on 12 April 2021. It increases the value of the Armed Forces Independence Payment (“AFIP”) including the Motability allowance, and amends a descriptor in the Tariff. It also makes the calculation of the bereavement grant payable to Reserve members of the AFPS 2015 consistent with that paid to Regular members.

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 is the United Kingdom.

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, which is made under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (c.32), amends the principal Order. The principal Order

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 principal Order 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. Benefits for injury under the AFCS are based on a tariff, contained in Schedule 3 to the principal Order, which describes the injuries for which awards are made.
- 6.3 There is provision in the principal Order (Article 24A) for the award of AFIP. This instrument will increase the value of AFIP from £151.40 to £152.15 in line with the Government’s general approach of increasing disability-related benefits in line with inflation (calculated using the Consumer Price Index). The principal Order provides (Article 24D) for a maximum amount to be deducted from AFIP and paid to Motability. This instrument will increase this maximum amount from £62.25 to £62.55 per week.
- 6.4 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, 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. This instrument amends the tariff in Table 8 (fractures and dislocations) in order to make one temporary award made under the Scheme in the last twelve months permanent.
- 6.5 This instrument also makes an amendment to the modified version of Article 35 applicable to the Reserves contained in Schedule 2, following the introduction of the Armed Forces Pension Scheme 2015 (AFPS 15). This amendment will ensure the compensation payable for death caused by service is consistent between Reservist and Regular members of the AFPS 15.

7. Policy background

What is being done and why?

- 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 taxpayer, provides awards to injured Service personnel and conforms to medical best practice, with oversight by the Independent Medical Expert Group (“IMEG”).

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 IMEG.
- 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/uksi/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.

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 approach to monitoring of this legislation is 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 Zena Prescott at the Ministry of Defence Telephone: 0207 218 9571 or email: afcompensation-policy@mod.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Maria Bettles-Hill, Armed Forces People Support – Compensation and Insurance Team Deputy Head, at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard. Email: afcompensation-policy@mod.gov.uk

15.3 Johnny Mercer MP at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.