

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME) ORDER 2011**

2011 No. 517

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. This Instrument implements the recommendations made in the Review of the Armed Forces Compensation Scheme in Cm 7798 (“the Review”) published on 10 February 2010. It also amends the descriptions of injuries (“the tariff”) for which benefit is payable. The changes to the tariff result from recommendations made by the independent medical expert group set up after the Review, and are also required following awards made in the past 12 months for injuries which are not described in the tariff.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There is a power in articles 55, 56 and 57 to review a decision made by a judicial body where an injury has got worse or a further injury has developed. This is required to effect the policy intent that awards should be increased where there has been a deterioration. Without this power claimants who have exercised their statutory appeal rights would be at a disadvantage. A review under these articles can only maintain or increase an award, and carries a fresh right of appeal.

4. Legislative Context

- 4.1 This Instrument revokes and re-enacts, with modifications reflecting the recommendations of the Review, the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 S.I. 2005/439 (“the Scheme”).
- 4.2 The Scheme came into force on 6 April 2005 and provides for benefits to be payable to or in respect of a person by reason of illness, injury or death which is caused (wholly or partly) by service in the armed forces or reserve forces on or after that date. In July 2009, the Secretary of State for Defence announced that he was commissioning an independent review of the Scheme.
- 4.3 The Review, independently chaired by Admiral the Lord Boyce, a former Chief of the Defence Staff, was presented to Parliament by the Secretary of State for Defence on 10 February 2010, Hansard Column 926 refers. All recommendations were accepted. Implementation of many of the recommendations requires legislative changes. Implementation of some of the recommendations was made in the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2010 S.I. 2010/1723 which came into force on 3 August 2010. This Instrument incorporates the remaining Review’ recommendations that require a change to legislation, including the recommendations of the independent medical expert group.
- 4.4 Benefits for injury under the Scheme are based on a tariff which describes the injuries for which awards are made. There is provision (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. Amendment to the tariff is now required in order to make temporary awards made under the Scheme in the last twelve months permanent. These amendments to the tariff are made in Table 7 (senses,) Table 8 (fractures and dislocations) and Table 9 (musculoskeletal disorders).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As this Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 Admiral, the Lord Boyce, who led the Review of the Scheme, was supported by an independent scrutiny group consisting of medical, academic and legal experts as well as representatives from service and ex-service organisations. During the Review a public engagement was conducted with over 200 responses.

7.2 The Review endorsed the principle of a tariff based Scheme, but made a number of recommendations for change, many of which require amendments to the Scheme.

7.3 The Review recommended all lump sum awards be increased with the exception of the top level (which was doubled in 2008). Table 10 in Part 1 of Schedule 3 sets out the lump sums which range from £570,000 to £1,200. In addition to a lump sum, those more seriously injured, receive a tax free guaranteed income payment. A recommendation of the Review was that the actuarial assumptions on which this payment is based should be changed to reflect the impact on likely promotions, and on the ability to work up to age 65. This change increases guaranteed income payments and will also result in higher awards for surviving adult dependants and children. Guaranteed income payment for members of the Gurkha Pension Scheme and awards to their dependants will be calculated on the same basis as for all other members of the armed and reserve forces, which will result in an increase in the amount payable to them.

7.4 The Review recognised that it is an important principle that those most seriously injured should receive the highest awards, but recommended that it is also important that each injury is recognised in the compensation awarded. Therefore a new system was recommended when calculating compensation awards for multiple injuries arising from a single incident. These new rules are set out in articles 20 to 22. This revised approach involves allocating injuries to one of five body zones: the head and neck; the torso; upper and lower limbs; senses and mental health. A percentage is then applied -100%, 80%, 60%, 40%, 20% - to each zone by order of severity to form the total award. Those with less serious multiple injuries, or where all the more serious injuries are in a single body zone, will receive a percentage of the award for each injury - 100%,80%,60%, 40% of the tariff lump sum for the four injuries attracting the highest award, and 20% for the fifth and subsequent injuries.

- 7.5 A further recommendation was to introduce a modest payment for those most seriously injured who are likely to require active medical intervention over a period of time where prognosis may be difficult to judge. The provision in article 27 gives seriously injured individuals the option to claim a fast payment of £60,000 without the need to submit a full claim. This payment will be taken into account when a full claim is made.
- 7.6 The Review recommended another new provision be introduced to enable payment for medical treatment for those who reside outside the UK. Article 28 introduces this and provides a discretionary provision to meet certain costs of ongoing medical treatment required by seriously injured personnel who decide to live permanently outside the UK within a year of leaving service.
- 7.7 Articles 55 to 59 make provision for the introduction of new and amended review gateways during the life of a claim. These will give sufficient powers to change awards where new and pertinent evidence is available, prognosis changes or an injury gets worse. Article 57 is a new power which allows a claimant to apply for a review more than 10 years after an award has been made where there has been substantial and unexpected deterioration.
- 7.8 The independent medical expert group set up after the publication of the Review has advised on compensation for particular injuries. The revised descriptors in the tariff (Tables 1 to 9 of Part 1 of Schedule 3) incorporate the recommendations of this group. The main changes relate to compensation for amputations; brain and spinal cord injuries, hearing loss and an increase to the highest award for a permanent mental disorder.
- 7.9 The burden of proof is on the balance of probabilities, but as recommended where records have been lost or destroyed there is a presumption in favour of the claimant. This is reflected in article 60.
- 7.10 In line with the recommendations of the Review all those who have claimed under the Scheme will receive an uplift to their awards. The provisions for additional benefits are in Part 11.
- 7.11 All the Review recommendations outlined above can be achieved only through amendment to the legislation.

8. Consultation outcome

- 8.1 The proposed amendments were notified to members of the Central Advisory Committee (“CAC”) on Pensions and Compensation in a six week consultation exercise which began on 17th November 2010 and closed on 4th January 2011. This external advisory body was established in 1921 to advise the Minister on matters of compensation and members consist of representatives of key ex-service organisations, including the Royal British Legion, the War Widows Association, the British Limbless Ex-Service Men’s Association (BLESMA) and Combat Stress. A wider and longer consultation was not undertaken as the majority of changes are implementation of the Review’ recommendations, and have already been subject to public engagement and independent scrutiny. The changes are all beneficial.

8.2 Six responses were received during consultation which were all largely supportive. Feedback included comments on slips, trips and hazardous environment, the burden of proof in respect of lost/missing evidence, multiple injury rule for injuries in one body zone, the approach adopted when calculating how the ongoing awards are up-rated each year and suggestion that a sample of claim forms are independently reviewed before consideration. This Instrument takes account of the responses and some changes made as a result. Some of the other issues raised will be covered in guidance.

9. Guidance

9.1 Information about the new provisions will be made available by means of placing a copy of the Instrument on the MOD website: www.mod.uk/aboutdefence/whatwedo/personnel/pensions/armedforcespensions/afcs and the Service Personnel and Veterans Agency website: <http://veterans-uk.info/pensions/afcs> as well as the internal intranet sites. Guidance will also be provided to the Service Personnel Veterans Agency (which administers the Scheme) about application of the new Scheme rules. In addition, the CAC members consulted will receive a copy of the Order with an explanatory paper.

10. Impact

- 10.1 The impact on business, charities and voluntary bodies is not significant.
- 10.2 The impact on the public sector, aside from the armed forces, is not significant.
- 10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The Legislation does not apply to small business.

12. Monitoring & Review

- 12.1A report on implementation of the recommendations in the Armed Forces Compensation Scheme Review is being produced for circulation to members of the CAC. This report will provide a detailed update on each of the Review recommendations.
- 12.2The CAC provides a consultative mechanism for the service compensation schemes. There are two CAC meetings a year chaired by the Minister in addition there are two other planned engagements during the year, chaired at official level. The CAC will provide advice, support and monitor the Department's implementation of the Review of the Scheme.
- 12.3One of the Review recommendations was the creation of a new independent medical expert group to advise on compensation for specific, relevant illnesses and injuries. The group which comprises senior consultants drawn from relevant specialties, representatives of ex-service organisations and serving members of the armed forces has been established. The group will continue until March 2012 during which time it will conduct more detailed analysis on several important topics including hearing loss and mental health.

12.4The Scheme will remain under internal review on an ongoing basis to ensure that it effectively meets the objectives following the Review in addition to monitoring the impact of the changes made in this Order.

13. Contact

James Longworth at the Ministry of Defence Tel: 020 7218 0377 or email CLS-LegC@mod.uk can answer any queries regarding this Instrument.