

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME)
(AMENDMENT) ORDER 2010**

2010 No. 1723

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 amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 S.I. 2005/439 (“the 2005 Scheme”). It makes changes to the provisions of the 2005 Scheme that apply when making a claim for benefit in certain circumstances, including increases to the amount of bereavement grant payable, and increased time limits to make a claim. It also makes amendments to the revised injury Tariff which was inserted by the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 2) Order 2008 (S.I 2008/2160) by inserting a number of additional descriptors as well as amending existing injury descriptors.

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

3.1 None.

4. **Legislative background**

4.1 The 2005 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 his illness, injury or death which is caused (wholly or partly) by service in the armed forces or reserve forces on or after that date. The benefits which are payable for injury caused by service are a lump sum and, for more severe injury, a guaranteed income payment payable for life. Awards are based on an Injury Tariff which lists the various forms of injury or disease for which compensation is available under the Scheme; specifies a numerical level referable to each type of injury or disease and specifies for each numerical level the amount of compensation payable.

4.2 The Review of the Armed Forces Compensation Scheme (Cm 7798) by Admiral the Lord Boyce, was presented to Parliament by the Secretary of State for Defence on 10 February 2010, and the recommendations accepted. Implementation of many of the recommendations requires legislative changes to the 2005 Scheme. This Instrument implements some of the recommendations by way of amendments to the current legislation.

4.3 Article 3 extends the time limit for making a claim under the 2005 Scheme from 5 to 7 years in the case of injury and from 1 to 3 years in the case of death. Article 4 increases the maximum standard bereavement grant to £25,000, and for an enhanced bereavement grant of one and a half times the standard grant (i.e. £37,500) payable where death is post-service. The amendments in Articles 5, 6 and 9 provide further clarity about the adjustment of awards. Article 10 changes the modifications where death or injury is caused due to service in the reserve forces and provides for an increase in the maximum bereavement grant to £37,500, one and a half times the standard grant. This is payable where the former member of the forces was not a member of a reserve forces pension scheme and for all post-service deaths.

4.4 The Review also recommended increasing all the tariffs for hearing loss, below total deafness by one level. These amendments are made in the new table 7 (senses) set out in Schedule 1 of this Instrument.

4.5 The 2005 Scheme contains a provision (article 20) for a temporary award to be made where the injury is sufficiently serious to warrant an award of injury but there is no existing tariff descriptor to apply. The provisions stipulate that for the temporary award to be made permanent, the Tariff must be amended within one year of the date of the award to include the injury for which the temporary award was made. Amendment to the Tariff is now required in order to make the corresponding temporary awards made in the preceding twelve months permanent. These amendments to the Tariff are made in article 11.

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 One of the policy objectives from the beginning of the introduction of the Armed Forces and Reserve Forces (Compensation Scheme) was to conduct a Review of the Scheme at the five year point to ensure that it continues to fulfil the original objectives of fairness and equity and focussing resources on the most severely injured. In July 2009, a review of the AFCS was announced. The Review was chaired by former Chief of Defence Staff Admiral the Lord Boyce who was supported by an independent scrutiny group consisting of medical, academic and legal experts as well as representatives of Service and Ex-service organisations.

7.2 A public engagement was conducted to inform the Review, receiving over 200 responses. The Review made several recommendations for change, some of which require amendment to the Scheme rules through secondary legislation. Although the Review recognised that implementing all the changes would take time an undertaking was given to action the more straightforward ones as quickly as possible.

7.3 This Instrument implements some of the more straightforward changes as set out in the legislative background above.

7.4 The original time limit for making a claim for an injury was 5 years and for a post service death 1 year. In recognition of the low level of awareness of the 2005 Scheme among some parts of the service community the review recommended increasing the time limits to 7 years for injury benefit claims and 3 years for death benefit claims. Transitory provisions ensure that all potential claimants will benefit from these increased time limits.

7.5 The Review recommended removing the requirement that where a person claiming under the War Pensions Scheme (which applies where injury was due to service before 6 April 2005) had post 6 April 2005 service, the War Pensions Claim

had also to be considered under the 2005 Scheme. Only a very small percentage of these claims were accepted, causing nugatory work and confusion for the majority of claimants, who were not aware that they had made a claim under 2005 Scheme. This change is effected by the amendment made in article 7. The Secretary of State has a discretion to consider a claim made under the War Pensions Scheme under the AFCS 2005, which will be exercised in situations where there is clear evidence of a post 2005 injury or the claimant has completed the wrong claim form in error.

7.6 The bereavement grant (paid to surviving adult dependents where death is due to service) is increased from £20,000 to £25,000. This is to take account of salary increases for the armed forces which have occurred since the level was set in 2005. A higher bereavement grant of one and a half times the standard grant will be paid in respect of reservists who were not a members of a a reserve forces pension scheme. The enhanced bereavement grant is also payable for all post-service deaths. This is in recognition of the fact that death in service lump sums under the armed and reserve forces pension schemes are more generous than most other pension schemes, and lump sums for post service deaths under the under the armed and reserve forces pensions schemes are lower than where death is in service.

7.7 The other main Review recommendation implemented by the this Instrument is providing further clarity on where an award under the AFCS will be adjusted where a claimant has received damages in a civil court or tribunal for the same injury or death for which benefit has been paid. This is in line with the long standing legal principle and public policy that no person is compensated twice for the same index incident.

7.8 Article 11 amends the tariff to implement the temporary awards made under article 20 of the 2005 Scheme rules and the Review recommendation that all hearing loss descriptors below total deafness should be increased by one level. As set out above the revised table 7 (senses) in Schedule 1 includes the uplifted hearing loss descriptors. The new descriptors relate to more than eighty temporary awards made in the last twelve months. The claimants have already received awards under the 2005 Scheme and the amendments will make the awards final. Once the award is final there is a right to apply for reconsideration (a review of the award) and a statutory right of appeal to the First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber).

7.9 Both the Review recommendations outlined above and tariff changes can only be achieved through amendment to the legislation.

Consolidation

7.10 The Department intends to implement all the remaining recommendations of the Review which require legislative changes in February 2011. This will be done by way of making a new consolidated Scheme.

8. Consultation outcome

8.1 The proposed amendments were notified to members of the Central Advisory Committee on Pensions and Compensation in a four week consultation exercise which began on 24 May 2010 and closed on 21 June 2010. 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 to the Tariff are required by the legislation and are also entirely beneficial. No substantive comments were received during the consultation.

9. Guidance

9.1 Information about the new provisions will be made available by means of placing information about the changes including a copy of the revised tariff 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 that administers the Scheme about application of the new Scheme rules. In addition, the Central Advisory Committee members consulted will receive a copy of the amending 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 and Review

12.1 A report on implementation of the recommendations in the Armed Forces and Reserve Forces (Compensation Scheme) Review report will be provided by February 2011 to members of the Central Advisory Committee on Pensions and Compensation. This will include monitoring the impact of the changes made in this amending Order.

13. Contact

James Longworth at the Ministry of Defence Tel: 0207 218 0377 can answer any queries regarding this Instrument or email CLS-LegC@mod.uk