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STATUTORY INSTRUMENTS

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**2011 No. 517**

**The Armed Forces and Reserve Forces  
(Compensation Scheme) Order 2011**

**PART 5**

**ADJUSTMENT AND CESSATION OF BENEFIT**

**Adjustment of guaranteed income payment, survivor's guaranteed income payment and child's payment to take account of other amounts**

**39.**—(1) This article applies where a person is entitled to guaranteed income payment, survivor's guaranteed income payment or child's payment for any period during which the person is also entitled to—

- [<sup>F1</sup>(a) a pension under the AFPS 1975, the AFPS 2005, the AFPS 2015 or the Gurkha Pension Scheme (“a pension”); or]
- (b) a payment under the Armed Forces Early Departure Payments Scheme Order 2005 <sup>M1</sup>[<sup>F2</sup>or the Armed Forces Early Departure Payments Scheme Regulations 2014] (“a payment”).

(2) Guaranteed income payment, the survivor's guaranteed income payment or the child's payment, as the case may be, is to be adjusted in accordance with paragraphs (3) or (4).

(3) Where a person is entitled to guaranteed income payment for any period during which the person is also entitled—

- (a) to a payment, or to a pension which is not an ill-health pension paid for the same injury for which the guaranteed income payment is paid, then the amount of the guaranteed income payment is reduced by 75% of the amount of that pension or payment;
- [<sup>F3</sup>(b) to a payment or to an ill-health pension which is paid for the same injury for which the guaranteed income payment is paid, then the amount of the guaranteed income payment is reduced by the full amount of the payment or, as the case may be, the ill-health pension.]

(4) Where a person is entitled to survivor's guaranteed income payment or child's payment for any period during which the person is also entitled to a pension, then the amount of survivor's guaranteed income payment or child's payment is reduced by 75% of the amount of that pension.

(5) Where an amount of a pension or payment increases or decreases (including the commencement or cessation), after an award of benefit is made, the Secretary of State is to make such adjustments to the amount of guaranteed income payment, survivor's guaranteed income payment or child's payment as are required to satisfy the rules for the adjustment of benefit specified in this article.

(6) In this article any reference to a pension, ill-health pension or a payment means the gross amount, irrespective of any commutation.

### Textual Amendments

- F1** Art. 39(1)(a) substituted (6.4.2015) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2015 \(S.I. 2015/413\)](#), arts. 1(1), **7(a)**
- F2** Words in art. 39(1)(b) inserted (6.4.2015) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2015 \(S.I. 2015/413\)](#), arts. 1(1), **7(b)**
- F3** Art. 39(3)(b) substituted (9.4.2018) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2018 \(S.I. 2018/293\)](#), arts. 1, **6**

### Marginal Citations

- M1** [S.I. 2005/437](#), as amended by [S.I. 2006/717](#), [2007/2608](#), [2008/229](#) and [2009/544](#).

## Adjustment in benefit to take account of awards of damages

**40.**—(1) This article applies where the Secretary of State is satisfied that damages have been or will be recovered by any person in respect of—

- (a) an injury or its effects for which benefit is payable; or
- (b) the death of a person for which benefit is payable.

(2) Subject to paragraph (3), those damages are to be taken into account against any benefit which might otherwise be payable under this Order and the Secretary of State is to withhold or reduce any such benefit accordingly.

(3) The Secretary of State may not—

- (a) take the damages into account where the Secretary of State is satisfied that benefit payable under this Order has been taken into account in the assessment of the damages;
- (b) withhold or reduce a bereavement grant payable under article 29(1)(b) [<sup>F4</sup>, or]

[<sup>F5</sup>(c) take the damages into account to withhold or reduce armed forces independence payment.]

(4) In calculating the amount of benefit to withhold or reduce under paragraph (1), the Secretary of State may take account of the full value of any damages which have been or will be recovered.

(5) The Secretary of State may require a claimant to provide—

- (a) details of any steps taken or planned to obtain damages in respect of the same injury or death for which benefit is payable;
- (b) a written undertaking that if damages are recovered the claimant will notify the Secretary of State and repay any benefit paid under this Order.

(6) In this article damages include any payment received as a result of a claim made in respect of—

- (a) an injury or the effects of an injury for which benefit is payable; or
- (b) the death of a person for which benefit is payable.

(7) Paragraph (6) applies whether or not the payment is made—

- (i) in pursuance of a judgment or order of a court of any jurisdiction; or
- (ii) by settlement or compromise of the claim, whether or not proceedings are instituted to enforce the claim.

(8) A person to whom or for whose benefit the compensation is paid is to be treated as recovering damages and the compensation paid is to be treated as the damages recovered where compensation is paid—

- (a) under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995 <sup>M2</sup>;
- (b) under the Criminal Injuries (Compensation) (Northern Ireland) Order 2002 <sup>M3</sup>; or
- (c) under the scheme established by the Ministry of Defence for the purposes of paying compensation to members of the forces who suffer injury as a result of a crime committed outside the United Kingdom.

#### Textual Amendments

- F4** Word and comma in art. 40(3)(b) substituted (8.4.2013) for full stop by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2013 \(S.I. 2013/436\)](#), arts. 1(1), **2(5)(a)**
- F5** Art. 40(3)(c) inserted (8.4.2013) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2013 \(S.I. 2013/436\)](#), arts. 1(1), **2(5)(b)**

#### Marginal Citations

- M2** 1995 c. 53.
- M3** S.I. 2002/796 (N.I. 1).

### Negligence or misconduct

**41.** The Secretary of State may withhold up to 40% of benefit [<sup>F6</sup>(except for armed forces independence payment)] where the negligence or misconduct of a member or former member contributed to that person's injury or death.

#### Textual Amendments

- F6** Words in art. 41 inserted (8.4.2013) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2013 \(S.I. 2013/436\)](#), arts. 1(1), **2(6)**

### Cessation of guaranteed income payment and survivor's guaranteed income payment on admission to the Royal Hospital, Chelsea

**42.** Any guaranteed income payment [<sup>F7</sup>, armed forces independence payment] or survivor's guaranteed income payment payable to a former member will cease to be paid on admission to the Royal Hospital, Chelsea, as an in-pensioner but may be restored, if the former member subsequently leaves the hospital.

#### Textual Amendments

- F7** Words in art. 42 inserted (8.4.2013) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2013 \(S.I. 2013/436\)](#), arts. 1(1), **2(7)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011, PART 5.