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STATUTORY INSTRUMENTS

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**2011 No. 517**

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

**PART 7**

**ADJUDICATION**

**Decisions**

**51.**—(1) The Secretary of State is to determine any claim for benefit and any question arising out of the claim.

(2) The Secretary of State is to give reasons for the decision.

(3) The decision and the reasons for the decision must—

(a) be in writing;

(b) be given or sent to the claimant; and

(c) inform the claimant of any right that the claimant may have—

(i) to a reconsideration of the decision under article 53; and

(ii) to appeal that decision to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943 <sup>M1</sup>.

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**Marginal Citations**

**M1** 1943 c. 39, **section 5A(1)** was amended by the [Armed Forces \(Pensions and Compensation\) Act 2004](#) (c. 32), **section 5** and Schedule 1, paragraph 2(2).

**Interim awards**

**52.**—(1) An interim award may be made where the Secretary of State is satisfied that a person is entitled to injury benefit but—

(a) the prognosis for the injury in that particular case is uncertain; and

(b) it is not possible to determine which descriptor is applicable to it.

(2) The Secretary of State is to select the descriptor considered to be the most appropriate descriptor at the date of the decision.

(3) The Secretary of State must specify the period which the interim award has effect in accordance with paragraphs (4) and (5).

(4) The period referred to in paragraph (3) is to be a maximum of 2 years starting from the date the award was first made.

- (5) Where the period specified is less than 2 years, the Secretary of State may extend and further extend the award but, subject to paragraph (6), a final award must be made within the period of 2 years starting with the date on which an interim award was first made.
- (6) Where paragraph (7) applies—
  - (a) the interim award may be extended and further extended for a period not exceeding 2 years; and
  - (b) a final award must be made within the period of 4 years starting with the date on which an interim award was first made.
- (7) This paragraph applies where—
  - (a) the prognosis remains uncertain at the end of the initial 2 year period; and
  - (b) the Secretary of State considers the extension just and equitable having regard to all the circumstances of the case.
- (8) Where the final decision is to award a descriptor at a tariff level which is—
  - (a) at the same level or higher than the tariff level awarded in the interim award, account is to be taken of the amount of benefit paid in accordance with the interim award and only the difference between the amount of benefit paid in accordance with the interim award and the amount of the final decision is payable;
  - (b) lower than the tariff level of the tariff awarded in the interim award, no further amount of benefit will be paid in accordance with the final decision, and no amount of benefit paid in accordance with the interim award is recoverable.

**Reconsideration**

**53.**—(1) Subject to paragraphs (2) and (11), a decision (“the original decision”) is to be reconsidered if an application for a reconsideration, made in accordance with paragraph (4), is given or sent to the Service Personnel and Veterans Agency.

- (2) Paragraph (1) does not apply where the decision—
  - (a) is to make a temporary award under article 26(1);
  - (b) is to make a fast payment under article 27(1) [<sup>F1</sup>or];
  - (c) <sup>F2</sup>.....
  - (d) is to make an interim award under article 52(1).
- (3) On a reconsideration of the original decision, the Secretary of State may—
  - (a) make a new decision which maintains the original decision; or
  - (b) revise that decision by—
    - (i) awarding benefit where no award of benefit was made in the original decision;
    - (ii) changing the descriptor applied so as to maintain or increase the amount awarded in the original decision;
    - (iii) increasing the amount awarded in the original decision;
    - (iv) changing the date on which an award of benefit becomes payable.

[<sup>F3</sup>(v) making an interim award under article 52(1).]

- (4) An application for a reconsideration must be made within the period of 1 year starting with the date on which notice of the original decision is given or sent to the claimant and must—
  - (a) be in writing;
  - (b) be signed by or on behalf of the person making the application; and

(c) specify the ground on which the application is made.

(5) Where an appeal has been made to an appropriate tribunal against an original decision and no application for a reconsideration has been made in respect of that decision under paragraph (1), the Secretary of State must reconsider the decision.

(6) The decision of the Secretary of State on an application for a reconsideration under paragraph (1), or a reconsideration under paragraph (5), and the reasons for that decision, must—

- (a) be in writing;
- (b) be given or sent to the claimant; and
- (c) inform the claimant of any right the claimant may have to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

(7) A decision on reconsideration does not give rise to a right for the claimant to make a further application for reconsideration under this article unless that decision is to make —

- (a) a temporary award under article 26; or
- (b) an interim award under article 52.

(8) Where a revised decision makes a temporary award or an interim award the claimant may apply for a reconsideration under this article when that award is made final.

(9) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the original award and the revised award is to be paid.

(10) Article 49 has effect in respect of an application for a reconsideration under this article as though a reference to making a claim was a reference to making an application for a reconsideration and reference to the time for making a claim was a reference to the time for making an application for a reconsideration.

(11) Where a person applies for a review under article 55 or 56 before the Secretary of State has determined a reconsideration under this article, the application for the review supersedes the application for reconsideration.

#### Textual Amendments

- F1** Word in art. 53(2)(b) inserted (21.7.2012) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2012 \(S.I. 2012/1573\)](#), arts. 1(1), **5(a)** (with art. 8)
- F2** Art. 53(2)(c) omitted (21.7.2012) by virtue of [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2012 \(S.I. 2012/1573\)](#), arts. 1(1), **5(b)** (with art. 8)
- F3** Art. 53(3)(b)(v) inserted (10.4.2017) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2017 \(S.I. 2017/247\)](#), arts. 1, **8**

#### Finality of decisions

**54.**—(1) Where the Secretary of State has made a final decision awarding benefit, there is to be no review of that decision except in the circumstances specified in articles 55, 56, 57, 58 and 59.

(2) Where the Secretary of State has made a final decision which makes no award of benefit, there is to be no review of that decision except in the circumstances specified in article 59.

(3) In this article, and subject to paragraph (4), a final decision is—

- (a) a decision under article 51;
- (b) a decision making a final award under article 52;
- (c) a decision revised by the Secretary of State under article 55, 56, 57, 58 or 59;
- (d) a decision made under article 55, 56, 57 or 59 which maintains the decision under review;

- (e) a decision revised by the Secretary of State following a reconsideration under article 53; or
- (f) a new decision which maintains the original decision following a reconsideration under article 53.

(4) The decisions referred to in sub-paragraphs (a) to (d) are final decisions where there has been no application for reconsideration under article 53, or the time for such an application has expired.

### **Review - service termination**

**55.**—(1) This article applies where—

- (a) a person has been awarded injury benefit;
- (b) a decision in relation to injury benefit (“the injury benefit decision”) has been made within 7 years of the day the service of the member ends; and
- (c) the service of the member has ended.

(2) Subject to paragraph (3), the Secretary of State must review an injury benefit decision, where an application for review made in accordance with paragraph (6) is given or sent to the Service Personnel and Veterans Agency.

(3) Where a member has more than one period of service—

- (a) the time limit for an application for a review under this article, and
- (b) the condition specified in paragraph (1)(b),

relate to the period of service during which the injury for which injury benefit has been awarded arose.

(4) On a review under this article the Secretary of State may—

- (a) make a new decision which maintains the final decision; or
- (b) subject to paragraph (5), revise an award of injury benefit.

(5) An award may be revised only where the injury in respect of which it has been awarded has—

- (a) become worse or caused a further injury to develop; and
- (b) the injury, or the injury and the further injury together is described by—
  - (i) a descriptor at a tariff level which is higher than that already awarded for the injury; or
  - (ii) an additional descriptor for the injury or the further injury.

(6) An application for a review under this article must be made within the period of 1 year starting with the day on which service ends and must—

- (a) be in writing;
- (b) be signed by or on behalf of the person making the application; and
- (c) specify the ground on which the application is made.

(7) The decision of the Secretary of State on a review under this article and the reasons for the decision must—

- (a) be in writing;
- (b) be given or sent to the applicant;
- (c) inform the applicant of any right the applicant may have—
  - (i) to a reconsideration of the decision under article 53; and
  - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

(8) Article 49 has effect in respect of an application for a review under this article [F4 and articles 56 and 57] as though a reference to making a claim was a reference to making an application for a review and reference to the time for making a claim was a reference to the time for making an application for a review.

(9) The Secretary of State is to review an injury benefit decision under this article on one occasion only.

(10) In this article and articles 56 and 57 “an injury benefit decision” means—

- (a) a final decision in relation to injury benefit;
- (b) a decision in relation to injury benefit where—
  - (i) an application for a reconsideration has been made under article 53(1), or
  - (ii) article 53(5) applies,

and in either case the reconsideration has not been determined;

- (c) a decision in relation to injury benefit made by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court.

#### Textual Amendments

- F4** Words in [art. 55\(8\)](#) inserted (9.4.2018) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Amendment\) Order 2018 \(S.I. 2018/293\)](#), arts. 1, 7

#### Review - exceptional circumstances within 10 years

**56.**—(1) Subject to paragraph (6), the Secretary of State must review an injury benefit decision if an application for a review made in accordance with paragraph (4) is given or sent to the Service Personnel and Veterans Agency.

(2) On a review under this article the Secretary of State may—

- (a) make a new decision which maintains the injury benefit decision; or
- (b) subject to paragraph (3), revise an award of injury benefit.

(3) An award may be revised only where within the period of 10 years, starting with the date of the injury benefit decision, the injury in respect of which the decision relates has—

- (a) become worse or caused a further injury to develop;
- (b) the worsening or the development is unexpected and exceptional; and
- (c) the injury, or the injury and the further injury together is described by—
  - (i) a descriptor at a tariff level which is higher than that already awarded for the injury; or
  - (ii) an additional descriptor for the injury or the further injury.

(4) An application for review under this article must be made within the period of 1 year starting on the day on which the worsening or the development began and must—

- (a) be in writing;
- (b) be signed by or on behalf of the person making the application; and
- (c) specify the ground on which the application is made.

(5) The decision of the Secretary of State on an application for review under this article and the reasons for the decision must—

- (a) be in writing;

- (b) be given or sent to the applicant; and
- (c) inform the applicant of any right the applicant may have—
  - (i) to a reconsideration of the decision under article 53; and
  - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.
- (6) The Secretary of State is to review an injury benefit decision under this article on one occasion only.

### **Review - final**

**57.**—(1) This article applies where an injury benefit decision was made 10 or more years before an application is made under this article.

(2) Subject to paragraph (7), the Secretary of State must review the decision to which paragraph (1) refers if an application for a review made in accordance with paragraph (5) is given or sent to the Service Personnel and Veterans Agency.

- (3) On a review under this article the Secretary of State may—
  - (a) make a new decision which maintains the injury benefit decision; or
  - (b) subject to paragraph (4), revise an award of injury benefit.

(4) An award may be revised only where the Secretary of State considers that it would be manifestly unjust to maintain the effect of the decision under review, because the injury in respect of which benefit has been awarded has—

- (a) become worse or caused a further injury to develop;
- (b) the worsening or the development is substantial, unexpected and exceptional; and
- (c) the injury, or the injury and the further injury together is described by—
  - (i) a descriptor at a tariff level which is higher than that already awarded for the injury; or
  - (ii) an additional descriptor for the injury or the further injury.

(5) An application for review under this article must be made within the period of 1 year starting with the day on which the worsening or the development began and must—

- (a) be in writing;
- (b) be signed by or on behalf of the person making the application; and
- (c) specify the ground on which the application is made.

(6) The decision of the Secretary of State on an application for review under this article and the reasons for the decision must—

- (a) be in writing;
- (b) be given or sent to the applicant; and
- (c) inform the applicant of any right the applicant may have—
  - (i) to a reconsideration of the decision under article 53; and
  - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

(7) The Secretary of State is to review an injury benefit decision under this article on one occasion only.

### **Review - award of damages**

**58.**—(1) This article applies where—

- (a) the Secretary of State has made an award of benefit to a person;
- (b) the person has recovered damages in respect of the injury or death for which the award of benefit is payable; and
- (c) the Secretary of State is satisfied that benefit paid or payable under this Order has not been taken into account in the assessment of the damages.

(2) On a review under this article the Secretary of State may revise a decision by decreasing the amount of the award, or so as to cancel the award of benefit.

(3) The decision of the Secretary of State on a review under this article and the reasons for the decision must—

- (a) be in writing;
- (b) be given or sent to the claimant; and
- (c) inform the applicant of any right the applicant may have—
  - (i) to a reconsideration of the decision under article 53; and
  - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

(4) In this article “damages” has the meaning given in article 40(6) and (8).

### **Review - ignorance or mistake**

**59.**—(1) Subject to paragraph (2), any decision of the Secretary of State may be reviewed at any time (including on the application of the claimant) if the Secretary of State is satisfied that the decision was given in ignorance of, or was based on, a mistake as to a material fact or of a mistake as to the law.

(2) This article only applies—

- (a) if the material fact was knowable at the time the decision was made and was disclosed to the Secretary of State at that time;
- (b) if the ignorance or mistake was the ignorance or mistake of the Secretary of State;
- (c) where the ignorance or mistake relates to the diagnosis of an injury, where the correct diagnosis was knowable given the state of medical knowledge existing at the time the diagnosis was made.

(3) On a review under this article, the Secretary of State may—

- (a) make a new decision which maintains the decision under review (“the original decision”); or
- (b) revise that decision by—
  - (i) awarding benefit where no award of benefit was made in the original decision;
  - (ii) changing the descriptor awarded so as to maintain, increase or decrease the amount awarded in the original decision;
  - (iii) increasing or decreasing the amount awarded in the original decision or so as to cancel an award of benefit;
  - (iv) changing the date on which an award of benefit becomes payable.

(4) The decision of the Secretary of State on a review under this article and the reasons for the decision must—

- (a) be in writing;
- (b) be given or sent to the claimant; and
- (c) inform the applicant of any right the claimant may have—
  - (i) to a reconsideration of the decision under article 53; and
  - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

### **Burden of proof**

**60.**—(1) Subject to the provisions of this article, the burden of proving any issue is on the claimant.

(2) Where paragraph (3) applies there is a presumption in favour of the claimant unless the Secretary of State proves to the contrary.

(3) This paragraph applies where—

- (a) a contemporary official record relating to a material fact which is relevant to deciding a condition for payment of benefit under Part 2 is missing; and
- (b) there is other reliable evidence to determine the material fact.

(4) For the purpose of paragraph (3)—

- (a) “a contemporary official record” means a record, including an electronic record, held by the Secretary of State for Defence or the Defence Council;
- (b) “a material fact” need not be a decisive fact for the purpose of determining a claim under Part 2;
- (c) a record is missing where it has been—
  - (i) lost and cannot be found after a diligent search; or
  - (ii) destroyed.

### **Standard of proof**

**61.** The standard of proof applicable in any decision which is required to be made under this Order is the balance of probabilities.

### **Evidence**

**62.**—(1) For the purposes of determining any issue under this Order, the Secretary of State is to produce such medical or other records of a member or a former member (whether living or deceased), as are held by the Secretary of State for Defence or the Defence Council and are relevant to the issues to be decided.

(2) The Secretary of State is to consider any evidence which appears to be relevant to the issues which are to be decided and is to determine those issues on that evidence.

(3) Where any decision required to be made under this Order is, or includes, a decision involving a medical issue, that decision is to be made in accordance with generally accepted medical and scientific knowledge prevailing at the time the decision is made.

### **Information and medical examination**

**63.**—(1) Where paragraph (2) applies a claim is to be treated as never having been made.

(2) This paragraph applies where a claim has been made, and the claimant “C” has been requested in writing—



- (a) to provide further information which is reasonably required for the determination of the claim and—
    - (i) that information is not given or sent to the Secretary of State within 3 months of the date on which the request is sent; and
    - (ii) C does not provide a satisfactory explanation for that failure; or
  - (b) to attend a medical examination—
    - (i) at a time and place specified in a notice given or sent to C, not less than 10 days before the date of the examination; and
    - (ii) C fails to attend without providing, within 3 months of the date of the examination to which the request related, a satisfactory explanation for that failure.
- (3) Paragraph (2) has effect where a person makes a claim on C's behalf, and references to C are to be construed accordingly.
- (4) The treating of a claim as never having been made does not prevent the making of a new claim in accordance with this Order.
- (5) In this article a reference to a claim includes a reference to an application for reconsideration under article 53(1) and an application for a review under article 55(6), 56(4), 57(5) or 59(1).

**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011, PART 7.