

**2013 No. 436**

**PENSIONS**

**The Armed Forces and Reserve Forces (Compensation Scheme)  
(Amendment) Order 2013**

*Made* - - - - - *27th February 2013*

*Laid before Parliament* *4th March 2013*

*Coming into force* - - - *8th April 2013*

The Secretary of State, in exercise of the powers conferred by section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004(a), makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2013 and comes into force on 8th April 2013.

(2) In this Order “the principal Order” means the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(b) and, except where the context otherwise requires, a reference to a numbered article is a reference to the article in the principal Order which bears that number.

**Amendment of the principal Order**

2.—(1) The principal Order is amended as follows.

(2) In article 2(1) (interpretation), insert at the appropriate place—

““armed forces independence payment” is the benefit referred to in article 24A;”

““extra-costs disability benefit” means personal independence payment under the Welfare Reform Act 2012, disability living allowance or attendance allowance under the Social Security Contributions and Benefits Act 1992, or any equivalent benefit awarded under corresponding Northern Ireland legislation or under the legislation of another country or dependent territory;” and

““Motability” means the company set up under that name as a charity and originally incorporated under the Companies Act 1985 and subsequently incorporated by Royal Charter;”.

(3) In article 15(1) (description of benefits-injury), after paragraph (c) insert—

“(ca) armed forces independence payment;”.

(4) After article 24 (amount of guaranteed income payment), insert—

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(a) 2004 c. 32.

(b) S.I.2011/517 as amended by S.I. 2011/2552 and S.I. 2012/1573.

### **“Award of armed forces independence payment**

**24A.—(1)** This article applies where the following conditions are satisfied—

- (a) the person has made a valid claim for an award under this article in accordance with Part 6;
- (b) the person becomes and remains entitled to an annual amount of guaranteed income payment in respect of which the relevant percentage under article 24(3) or (4) is 50% or greater; and
- (c) at all times on or after the date of an award of guaranteed income payment, the person has no outstanding claim or appeal for, nor is in receipt of, an extra-costs disability benefit.

(2) The Secretary of State is to award an allowance to be known as armed forces independence payment.

(3) The amount of the allowance is to be £134.40 per week.

### **Cessation of entitlement to armed forces independence payment**

**24B.** Entitlement of a person to armed forces independent payment will cease upon either of the conditions in article 24A(1)(b) or (c) failing to remain satisfied, but the person may make another claim.

### **Overlapping benefits**

**24C.** Where there is payable to a person in respect of a period armed forces independence payment and an extra-costs disability benefit, there shall be deducted from the armed forces independence payment the aggregate amount of such benefit and only the balance, if any, is to be paid.

### **Payment of armed forces independence payment in respect of Motability**

**24D.—(1)** This article applies where—

- (a) armed forces independence payment is payable in respect of a claimant, and
- (b) under arrangements made or negotiated by Motability, an agreement has been entered into by, or on behalf of, the claimant for the hire or hire-purchase of a vehicle.

(2) Where this article applies the Secretary of State may arrange that out of any armed forces independence payment an amount of up to £55.25 per week be paid on behalf of the claimant in settlement of liability for payments due under the agreement.

(3) Subject to articles 24E and 24F, an arrangement made by the Secretary of State under paragraph (2) terminates at the end of the relevant period specified in paragraph (4), in the case of hire, or paragraph (5), in the case of a hire-purchase agreement.

(4) In the case of hire, the relevant period is—

- (a) where the vehicle is returned to the owner at or before expiry of the term of hire, the period of the term; or
- (b) where the vehicle is retained by, or on behalf of, the claimant with the owner’s consent after expiry of the term of hire, the period of the term; or
- (c) where the vehicle is retained by, or on behalf of, the claimant otherwise than with the owner’s consent after the expiry of the term of hire or its earlier termination, whichever is the longer of the following periods—

- (i) the period ending with the return of the vehicle to the owner; or
- (ii) the period of the term of hire.

(5) In the case of a hire-purchase agreement, the relevant period is—

- (a) the period ending with the purchase of the vehicle; or
- (b) where the vehicle is returned to, or repossessed by, the owner before the completion of the purchase, the original period of the agreement.

**Power for the Secretary of State to terminate a Motability arrangement**

**24E.** The Secretary of State may terminate an arrangement under article 24D(2) on such date as the Secretary of State decides—

- (a) if requested to do so by the owner of the vehicle, or
- (b) if it appears to the Secretary of State that the arrangement is causing undue hardship to the claimant and that it should be terminated earlier than provided for by article 24D(3).

**Restriction on duration of Motability arrangements by the Secretary of State**

**24F.** The Secretary of State must terminate an arrangement under article 24D(2) where the Secretary of State is satisfied that—

- (a) the vehicle has been returned to the owner, and
- (b) the expenses of the owner arising out of the hire or hire–purchase agreement have been recovered following the return of the vehicle.”.

(5) In article 40(3) (adjustment to take account of awards of damages)—

- (a) at the end of paragraph (b), for the full stop substitute “, or”; and
- (b) after paragraph (b) insert—

“(c) take the damages into account to withhold or reduce armed forces independence payment.”.

(6) In article 41 (negligence or misconduct), after “benefit” insert “(except for armed forces independence payment)”.

(7) In article 42 (cessation of guaranteed income payment and survivor’s guaranteed income payment on admission to the Royal Hospital, Chelsea), after “guaranteed income payment” insert “, armed forces independence payment”.

(8) In article 64 (date on which awards of benefit become payable), after paragraph (2) insert—

“(2A) Subject to paragraph (2B) and notwithstanding paragraph (8), where a person becomes entitled to armed forces independence payment, that allowance becomes payable on—

- (a) subject to paragraph (b), the date of claim; or
- (b) where the date of claim is no later than 3 months after the date an award of guaranteed income payment has been determined or revised—
  - (i) the date of claim for that award; or
  - (ii) where paragraph (5) applies, the date on which the guaranteed income payment is, or, but for article 16(10) would have been, payable.

(2B) No armed forces independence payment is payable for any period before 8th April 2013.”.

(9) After article 65 (time of payment) insert—

**“Time of payment for armed forces independence payment**

**65A.** Armed forces independence payment is paid every 4 weeks in arrears, unless in any particular case the Secretary of State arranges otherwise.”.

27th February 2013

Mark Francois  
Minister of State  
Ministry of Defence

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) (“the principal Order”) to provide for a new benefit known as armed forces independence payment (“AFIP”) in the amount of £134.40 per week.

Article 2(4) inserts new articles 24A to 24F into the principal Order.

New article 24A sets out the conditions for an award of AFIP to be made.

New article 24B provides that entitlement to AFIP will cease upon conditions under article 24A failing to remain satisfied.

New article 24C provides that, where AFIP is payable in respect of the same period as certain social security benefits, a set-off will be made between them and only the balance (if any) of AFIP will be paid.

New article 24D provides for the Secretary of State to make arrangements for an amount of up to £55.25 per week to be paid out of AFIP on behalf of a claimant in settlement of liabilities under Motability arrangements. New articles 24E and 24F provide for the circumstances when the Secretary of State has, respectively, the power and the duty to terminate those arrangements.

Article 2(5) amends article 40(3) of the principal Order, relating to awards of damages, so that AFIP may not be withheld or reduced on account of damages.

Article 2(6) amends article 41 of the principal Order to provide that the Secretary of State may not withhold a proportion of AFIP on account of contributory negligence or misconduct.

Article 2(7) amends article 42 of the principal Order to provide that AFIP will cease to be paid on admission to the Royal Hospital, Chelsea.

Article 2(8) amends article 64 of the principal Order to provide for the date on which AFIP will become payable.

Article 2(9) inserts new article 65A into the principal Order to provide for AFIP to be payable every 4 weeks in arrears.

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