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STATUTORY INSTRUMENTS

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**2017 No. 247**

**PENSIONS**

**The Armed Forces and Reserve Forces  
(Compensation Scheme) (Amendment) Order 2017**

<i>Made</i>	- - - -	<i>23rd February 2017</i>
<i>Laid before Parliament</i>		<i>6th March 2017</i>
<i>Coming into force</i>	- -	<i>10th April 2017</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004<sup>(1)</sup>.

**Citation and commencement**

1. This Order may be cited as the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2017 and comes into force on 10th April 2017.

**Amendment of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011**

2. The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>(2)</sup> (“the principal Order”) is amended as follows.

**Amendment of article 2 (interpretation)**

3. In paragraph (1) of article 2 (interpretation) of the principal Order—

(a) after the definition of “a Commissioner”, insert—

““constant attendance allowance” means a constant attendance allowance under article 8 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006<sup>(3)</sup>”;

(b) in the definition of “ill-health pension”—

(i) at the end of sub-paragraph (b), omit “or”;

(ii) at the end of sub-paragraph (c) insert “or”; and

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(1) 2004 c. 32.

(2) S.I. 2011/517, amended by S.I. 2011/2552, 2012/1573, 2013/436, 2014/412, 2015/413 and 2016/557.

(3) S.I. 2006/606; relevant amending instruments are S.I. 2006/1455, 2007/909, 2008/679, 2009/706, 2012/359, 2013/241, 2015/208 and 2016/374.

(iii) after sub-paragraph (c) insert—

“(d) Chapter 3 of Part 5 of the AFPS 2015;” and

(c) after the definition of “member”, insert—

““mobility supplement” means a mobility supplement under article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(4);”.

#### **Amendment of article 12 (injury and death – other exclusions)**

4. For paragraph (2) of article 12 (injury and death – other exclusions) of the principal Order, substitute—

“Where a person is in receipt of any retired pay, pension, allowance or other continuing benefit awarded under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(5) in respect of a disablement or death—

- (a) that disablement shall not be accepted as an injury, or worsening of injury, caused wholly or predominantly by service for the purposes of this Order;
- (b) that death shall not be accepted as caused wholly or predominantly by service for the purposes of this Order.”.

#### **Amendment of article 24A (award of armed forces independence payment)**

5. In paragraph (3) of article 24A (award of armed forces independence payment) of the principal Order, for “£139.75 per week” substitute “£141.10 per week”.

#### **Amendment of article 24C (overlapping benefits)**

6. For article 24C (overlapping benefits) of the principal Order, substitute—

“24C. Where there is payable to a person, in respect of a period, armed forces independence payment and—

- (a) extra-costs disability benefit;
- (b) constant attendance allowance; or
- (c) mobility supplement,

there shall be deducted from the armed forces independence payment the aggregate amount of such benefit, allowance or supplement and only the balance, if any, is to be paid.”.

#### **Amendment of article 24D (payment of armed forces independence payment in respect of Motability)**

7. In paragraph (2) of article 24D (payment of armed forces independence payment in respect of Motability) of the principal Order, for “£56.75 per week” substitute “£58.00 per week”.

#### **Amendment of article 53 (reconsideration)**

8. In paragraph (3)(b) of article 53 (reconsideration) of the principal Order, after paragraph (iv) insert—

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(4) S.I. 2006/606; relevant amending instruments are S.I. 2007/909, 2008/679, 2009/706, 2012/359, 2013/241, 2013/388, 2015/208, 2016/228 and 2016/374.

(5) S.I. 2006/606; relevant amending instruments are S.I. 2006/1455, 2007/909, 2008/679, 2008/2683, 2009/706, 2011/1740, 2012/359, 2013/241, 2013/388, 2013/630, 2014/107, 2014/3229, 2015/208, 2016/228, 2016/236 and 2016/374.

“(v) making an interim award under article 52(1).”.

### **Amendment of Schedule 3 (the tariff and supplementary awards)**

9.—(1) Schedule 3 (the tariff and supplementary awards) to the principal Order is amended as follows.

(2) In table 2 (injury, wounds and scarring), after item 68—

(a) omit—

- (i) “(\*) A non-freezing cold injury must be diagnosed by a non-treating consultant neurologist.”;
- (ii) “(\*) A descriptor for a freezing cold injury refers to either unilateral or bilateral damage to the upper or lower extremities.”; and
- (iii) “(a) In items 55A and 65A, a descriptor for a freezing cold injury or non-freezing cold injury refers to either unilateral or bilateral damage to the upper or lower extremities.”; and

(b) insert—

- (i) “(\*) A non-freezing cold injury under item 22A must be diagnosed by a non-treating consultant neurologist.”; and
- (ii) “(\*) A descriptor for a freezing cold injury or a non-freezing cold injury refers to either unilateral or bilateral damage to the upper or lower extremities.”.

(3) In table 6 (neurological disorders, including spinal, head or brain injuries), after item 27 insert—

“27A 11 Intra-cerebral haematoma requiring or expected to require decompressive surgery and interval cranioplasty but with poor cosmetic result.”.

(4) In table 7 (senses), after item 29A insert—

“29B 12 Post head injury hyposmia or anosmia.”.

(5) In table 9 (musculoskeletal disorders)—

- (a) in item 2, after “osteotomy”, insert “or partial”;
- (b) after item 16A, insert—

“16B 12 Radiologically confirmed tarsal or metatarsal avascular necrosis requiring operative intervention.”; and

(c) after item 27, insert—

“27A 13 Ligament injury which has resulted in full thickness rupture affecting one knee, ankle, shoulder, elbow or wrist from which the claimant has made or is expected to make a substantial recovery within 26 weeks.”.

23rd February 2017

*Mark Lancaster*  
Parliamentary Under Secretary of State  
Ministry of Defence

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## 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”), which provides for benefits to be payable to, or in respect of, a person by reason of injury, illness or death caused (wholly or partly) by service in the regular or reserve armed forces.

Article 3 amends the principal Order by amending the definition of “ill-health pension” and inserting definitions for “constant attendance allowance” and “mobility supplement”.

Article 4 amends article 12 of the principal Order to make it clear that a person in receipt of an award under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606) for an injury aggravated by service cannot also receive an award for this under the principal Order.

Articles 5, 6 and 7 make provision with respect to the armed forces independence payment. Article 5 increases the weekly amount of the payment. Article 6 replaces article 24C of the principal Order with a new article which provides that an amount equal to any payment of extra-costs disability benefit, constant attendance allowance or mobility supplement received must be deducted from the armed forces independence payment. Article 7 increases the weekly amount that may be paid to Motability out of the payment.

Article 8 amends article 53 of the principal Order to make it clear that, on a reconsideration of a decision, the Secretary of State may make an interim award.

The amendments made by article 9 to Tables 2, 6, 7 and 9 in Schedule 3 to the principal Order insert new descriptors (description of injury or illness) and amend existing descriptors in the tariff. The tariff lists the various forms of injury or illness for which compensation is payable, specifies a numerical tariff level and specifies for each tariff level the amount of compensation payable. Where a person sustains an injury which the Secretary of State considers is sufficiently serious to warrant an award, the Secretary of State may make a temporary award under article 26 of the principal Order, but must amend the tariff within one year of making the award. The new descriptors are as a result of making temporary awards.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.