

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME)
(AMENDMENT) ORDER 2018

2018 No. 293

1. Introduction

- 1.1 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 The Instrument makes amendments to the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) (“the principal Order”) and comes into force on 9 April 2018. It increases the value of the Armed Forces Independence Payment (AFIP) including the Motability allowance and uprates the tariff amounts. It amends seven descriptors and related footnotes in Schedule 3 of the principal Order on the recommendation of the Independent Medical Expert Group (“IMEG”), and amends another descriptor to make a temporary award permanent. It inserts into the principal Order a new article making assignment of certain benefits invalid, and a new definition of an outbreak of an exogenous infection, and also extends the time limit exception to all applications for review. It clarifies that the guaranteed income payment (“GIP”) is reduced by 100% where an ill health pension or an early departure payment (“EDP”) are also paid for the same injury.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative context

- 4.1 This Instrument, is made under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (c.32), and amends the principal Order. The Armed Forces Compensation Scheme (“AFCS”) is established by the principal Order which revoked and re-enacted, with amendments, the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (S.I. 2005/439) (“the original AFCS”).
- 4.2 The AFCS provides for benefits to be payable to or in respect of a person by reason of his or her illness, injury or death caused (wholly or partly) by service in the regular armed forces or reserve forces on or since 6 April 2005. Benefits for injury under the AFCS are based on a tariff which describes the injuries for which awards are made.
- 4.3 There is provision in the principal Order (article 24A) for the award of AFIP and an amendment is required to increase the value of AFIP from £141.10 to £145.35 per

week. The principal Order provides (article 24D) for a maximum amount to be deducted from the AFIP and paid to Motability and an amendment is required to increase this maximum amount from £58.00 per week to £59.75 per week.

- 4.4 There is provision in the principal Order (article 26) for a temporary award to be made where the injury is sufficiently serious to warrant an award of injury but the injury is not described in the tariff. For a temporary award to be made permanent, the tariff must be amended within one year of the award being made. An amendment to the tariff in Table 8 (Fractures and dislocations) is now required, in order to make one temporary award made under the Scheme in the last twelve months permanent.
- 4.5 Further amendment is required to the tariff in Table 6 (Neurological disorders, including spinal, head or brain injuries) and Table 10 (Tariff amounts) to incorporate the recommendations of IMEG and Quinquennial Review (QQR) recommendations by amending descriptors, footnotes and uprating tariff amounts.
- 4.6 An amendment to article 12 is required to include a provision defining an outbreak of an exogenous infection.
- 4.7 An amendment to article 39 is required to clarify that where a person is entitled to a GIP in respect of an injury for which that person is also entitled to a payment or ill-health pension, the GIP is to be reduced by 100% of that payment or ill-health pension in the terms of the principal Order. An amendment is also required under Schedule 2 (Modifications for Reserve Forces) to mirror the amendment to article 39.
- 4.8 The principal Order is also amended to ensure that a person's lump sum award and GIP are protected in the event of bankruptcy (new article 68A).
- 4.9 There is provision in the principal Order (article 49) for an extension of time to make a claim if a person is physically or mentally incapacitated during the normal time specified for making such a claim. An amendment is required to article 55 to apply the same provisions for extending the time limit to applications for review under articles 56 and 57 of the principle Order.

5. Extent and territorial application

- 5.1 The extent and territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The original AFCS came into force on 6 April 2005 and provided for benefits to be payable to Regular and Reserve Service personnel for injury, illness or death which is caused (wholly or partly) by service on or after that date.
- 7.2 An independently chaired review of the AFCS was presented to Parliament by the Secretary of State for Defence on 10 February 2010, Hansard Column 926 refers. All recommendations from the review were accepted and the original AFCS was revoked and re-enacted with amendments by the principal Order.
- 7.3 The AFCS is a modern, fit-for-purpose scheme that offers value for money for the tax payer, provides awards to injured Service personnel and conforms to medical best practice, with oversight by the IMEG.

Consolidation

- 7.4 The principal Order was the consequence of the review of the original AFCS. Since enactment in 2011, the principal Order has been subject to annual amendment for the purposes of uprating and also to address issues that have been identified by the scheme administrators, the First and Upper Tier Tribunals, and as a consequence of recommendations made by IMEG.
- 7.5 It is intended that the AFCS reflects contemporary medical opinion and it consequently requires amendment from time to time. There are no plans to consolidate the principal Order at present but a consolidated version of the principal Order is available to the public free of charge on <http://www.legislation.gov.uk/uksi/2011/517/contents>.

8. Consultation outcome

- 8.1 No separate external consultation exercise has been conducted because all amendments in this instrument provide either clarification to existing provisions or improvements to the Scheme.

9. Guidance

- 9.1 Information about the new provisions will be made available by means of publication on www.Gov.UK.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is not significant.
- 10.2 The impact on the public sector is not significant, as the changes are not expected to increase the workload of Defence Business Services Veterans UK, which is already established to process claims made under the AFCS.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The MOD will continue to review the AFCS as part of its day-to-day management and in order to monitor the impact of the changes in this instrument.
- 12.2 The Central Advisory Committee on compensation (“CAC”) provides a consultative mechanism for the AFCS. MOD will continue to liaise with the CAC who provide advice on policy issues affecting the AFCS.

13. Contact

- 13.1 Tracy Sexton at the Ministry of Defence, telephone: 0207 218 0564 or email: CLS-Sec1@mod.uk can answer any queries regarding this instrument.