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## STATUTORY INSTRUMENTS

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# 2011 No. 517

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

### PART 12

#### TRANSITIONAL PROVISIONS, REVOCATIONS AND SAVINGS

##### General

**84.**—(1) Anything done or begun under a provision of the AFCS 2005 which has been re-enacted (with or without amendment) under this Order is to be treated as having been done or begun under the corresponding provision of this Order.

(2) No award already made to or in respect of any person under the AFCS 2005 may by virtue only of the coming into force of this Order be re-assessed to that person's disadvantage.

##### Claims and applications for reconsideration or review made before 9th May 2011

**85.**—(1) Where paragraph (2) applies, and subject to article 88, a claim, a reconsideration, or a review is to be determined in accordance with this Order.

(2) This paragraph applies where before 9th May 2011—

- (a) a claim or application, under a provision of the AFCS 2005 specified in paragraph (3) was made, but a decision on that claim or application was not given or sent to the claimant before that date;
- (b) an appeal was made to an appropriate tribunal but the Secretary of State had not reconsidered the decision under appeal under article 45(5) of the AFCS 2005 before that date.

(3) The claims and applications referred to in paragraph (2) are—

- (a) a claim for injury benefit or death benefit under article 35, including a case where a claim is not required under article 37;
- (b) an application for reconsideration under article 45(1);
- (c) an application for review under article 48(1);
- (d) an application for review under article 49(1).

(4) In paragraph (2)(a) “a decision on that claim or application” means a decision under the following provisions of the AFCS 2005—

- (a) article 43(1);
- (b) article 45(2);
- (c) article 48(1); or
- (d) article 49(3).

### **Decisions made before 9th May 2011**

**86.**—(1) Where paragraph (2) applies, and subject to article 88, the Secretary of State is to determine a reconsideration or review in accordance with this Order.

(2) This paragraph applies where on or after 9th May 2011 the Secretary of State reconsiders or reviews a decision made before 9th May 2011 in the circumstances specified in paragraph (3).

(3) The circumstances referred to in paragraph (2) are—

- (a) a person makes an application on or after 9th May 2011 for reconsideration under article 53(1);
- (b) an appeal is made to an appropriate tribunal on or after 9th May 2011 and article 53(5) applies;
- (c) the Secretary of State reviews a decision under article 58 or 59 (including a review under article 59 following an application by the claimant made on or after 9th May 2011);
- (d) the Secretary of State reviews a decision under article 47 of the AFCS 2005 in respect of a member of the forces who was discharged on medical grounds before 9th May 2011 for the same injury for which an award of injury benefit was made before the member was discharged.

(4) Where an application for review under article 55, 56 or 57 is made on or after 9th May 2011 in respect of a decision made before 9th May 2011 the Secretary of State is to review that decision in accordance with this Order.

### **Decisions revised by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court**

**87.**—(1) This paragraph applies where—

- (a) the Secretary of State makes an award of additional benefit; and
- (b) a decision made before 9th May 2011 relating to the amount of benefit awarded is revised (“the revised decision”) by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court after that award has been made.

(2) Where paragraph (1) applies, the Secretary of State is to take account of the award of additional benefit when implementing the revised decision.

(3) This paragraph applies where a decision made before 9th May 2011 that no benefit is payable in respect of an injury or a death is revised (“the revised decision”) by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court.

(4) Where paragraph (3) applies, and subject to article 88, the Secretary of State is to implement the revised decision in accordance with this Order.

### **Power to apply provisions in the AFCS 2005 and disapply provisions in this Order**

**88.**—(1) This article applies to a claim, reconsideration or review where—

- (a) article 85(2) applies; or
- (b) article 86(2) applies.

(2) The Secretary of State must not determine the claim, reconsideration or review to the detriment of the claimant.

(3) Where the Secretary of State considers it just and equitable in all the circumstances of the case the Secretary of State may—

- (a) apply one or more of the following provisions in the AFCS 2005, in whole or in part, which were in force at the date of claim—

- (i) article 10 (injury and death benefits);
  - (ii) Tables 1 to 9 of Schedule 4 (the tariff) .
- (b) disapply one or more of the following provisions in this Order in whole or in part—
  - (i) article 5 (descriptor, further interpretation);
  - (ii) article 11 (injury and death –exclusions);
  - (iii) Part 11 (additional benefit);
  - (iv) Tables 1 to 9 of Part 1 of Schedule 3 (tariff).

### **Time limit for application for reconsideration**

**89.**—(1) Subject to paragraph (2), the period for making an application for a reconsideration under article 53(3) in relation to a decision made before 9th May 2011 is 1 year starting from the date the decision was given or sent to the claimant.

(2) The period of 1 year does not apply to an application for a reconsideration if the period of 3 months for making an application under article 45(1) of the AFCS 2005 expired before 9th May 2011.

### **Fast payment and medical expenses**

**90.**—(1) Article 27 (fast payment) applies only where an injury is sustained on or after 9th May 2011.

(2) Where a former member whose service ended before 9th May 2011 applies for medical expenses under article 28, that article is to be construed in accordance with paragraph (3).

(3) The condition in article 28(2)(b) is satisfied if the person becomes ordinarily resident outside the United Kingdom within 1 year starting with 9th May 2011, and paragraph (5) of that article is to be construed accordingly.

### **Review under article 55 (review – service termination)**

**91.** Article 55 applies only where a person's service in the forces ends on or after 9th May 2011.

### **Payment of guaranteed income payment**

**92.**—(1) Where a person is in receipt of guaranteed income payment immediately before 9th May 2011 the annual amount of that payment—

- (a) is to be re-determined in accordance with article 24;
- (b) adjusted in accordance with article 39(3); and
- (c) is payable from 9th May 2011.

(2) Where the relevant percentage for payment of guaranteed income payment is revised under article 77(6), the re-determination referred to in sub-paragraph (a) is to be at the revised percentage.

(3) Where an additional benefit is payable under article 80 to a former member, guaranteed income payment is—

- (a) to be determined in accordance with article 24;
- (b) to be adjusted in accordance with article 39(3); and
- (c) payable from 9th May 2011.

(4) This paragraph applies where a claim for injury benefit giving rise to an entitlement to guaranteed income payment was determined before 9th May 2011, but guaranteed income payment was not in payment immediately before 9th May 2011.

(5) Where paragraph (4) applies the annual amount of guaranteed income payment is—

- (a) to be determined in accordance with article 24;
- (b) to be adjusted in accordance with article 39(3); and
- (c) to commence on the day after the day on which the service of the member ends.

### **Payment of survivor's guaranteed income payment and child's payment**

**93.**—(1) Where a person is in receipt of survivor's guaranteed income payment or child's payment immediately before 9th May 2011 the annual amount of that payment—

- (a) is to be re-determined in accordance with article 34 or 36, as is applicable to the case;
- (b) adjusted in accordance with article 39(4); and
- (c) is payable from 9th May 2011.

(2) This paragraph applies where—

- (a) a claim for death benefit giving rise to an entitlement to survivor's guaranteed income payment or child's payment to an eligible child was determined before 9th May 2011; and
- (b) that survivor's guaranteed income payment or child's payment was not in payment immediately before 9th May 2011.

(3) Where paragraph (2) applies, the annual amount of survivor's guaranteed income payment or child's payment is—

- (a) to be determined in accordance with articles 34 or 36, whichever is applicable to the case;
- (b) to be adjusted in accordance with article 39(4);
- (c) to commence from the day after the day of the death of the former member.

### **Revocations and savings**

**94.**—(1) Subject to this article, the instruments specified in Schedule 7 are revoked.

(2) The following provisions continue to have effect in relation to claims made before 9th May 2011 for the purpose of article 88(3)—

- (a) article 10 and Tables 1 to 9 of Schedule 4 to the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 <sup>M1</sup> (“the 2005 Order”) relation to claims made before 29th June 2006;
- (b) articles 2 and 4 (amendment of article 10 of the 2005 Order) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2006 <sup>M2</sup> (“the 2006 Order”) in respect of claims made on or after 30th June 2006 and before 9th May 2011;
- (c) article 18 (insertion of Tables 1 to 9 of Schedule 4 of the 2005 Order) of the 2006 Order in respect of claims made on or after 30th June 2006 and before 16th September 2008;
- (d) article 15 (amendments to Table 5 of the 2005 Order and transitional provisions) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 2) Order 2008 <sup>M3</sup> (“the 2008 No. 2 Order”) in relation to claims made on or after 8th February 2008 and before 16th September 2008;
- (e) article 3 (insertion of Tables 1 to 9 of Schedule 4 of the 2005 Order and transitional provisions) of the 2008 No. 2 Order in relation to claims made on or after 16th September 2008;

- (f) article 2 (amendment to Table 6 of Schedule 4 of the 2005 Order and transitional provisions) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2009 <sup>M4</sup> in relation to claims made on or after 11th January 2010;
- (g) article 11 and the Schedule (amendments to Tables 1 to 9 of Schedule 4 of the 2005 Order), and article 12(1) and 12(2)(c) (transitional provisions) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2010 <sup>M5</sup> in relation to claims made on or after 3rd August 2010.
- (3) Article 47 of the 2005 Order (review on discharge on medical grounds) continues to have effect where a member was discharged on medical grounds before 9th May 2011 for the same injury for which an award of injury benefit was made before the member was discharged.

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**Marginal Citations**

- M1** [S.I. 2005/439.](#)
- M2** [S.I. 2006/1438.](#)
- M3** [S.I. 2008/2160.](#)
- M4** [S.I. 2009/3236.](#)
- M5** [S.I. 2010/1723.](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011, PART 12.