

EXPLANATORY MEMORANDUM TO

THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME) (AMENDMENTS) ORDER 2019

2019 No. 440

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Defence (“the MOD”) and is laid in Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Armed Forces Compensation Scheme (“the AFCS”) provides benefits 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.
- 2.2 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 8 April 2019. It increases the value of the Armed Forces Independence Payment (AFIP), including the Motability allowance. It introduces a new level 4 descriptor for mental health conditions, amends the tariff level for another descriptor, replaces one descriptor and introduces three new descriptors to make three temporary awards permanent. It amends Article 12 of the principle Order to define the terms “exogenous infection” and “outbreak”. It amends Article 14 to reflect the policy intent that the value of an award should be determined by reference to the value of the tariff in force on date of claim, with exceptions in the case of certain types of revision.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom and it applies to members of the armed forces wherever they are in the world.
- 4.2 The territorial application of this instrument includes Scotland and Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument is made under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (c.32) and amends the AFCS. The AFCS is established by The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) (“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”).
- 6.2 The AFCS provides that benefits are 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, contained in Schedule 3 to the principal Order, which describes the injuries for which awards are made.
- 6.3 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 £145.35 to £148.85 per week. The principal Order provides (Article 24D) for a maximum amount to be deducted from AFIP and paid to Motability. An amendment is required to increase this maximum amount from £59.75 to £61.20 per week.
- 6.4 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, 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 9 (musculoskeletal disorders) is now required, in order to make three temporary awards made under the Scheme in the last twelve months permanent.
- 6.5 The Quinquennial Review (QQR) recommended that a new mental health award be introduced, with a higher tariff level. Following consultation with the Independent Medical Expert Group (IMEG), an amendment to Table 3 is required to introduce a new descriptor, at tariff level 4. The descriptor is detailed and aims to reflect the rarity of circumstances where the highest award is appropriate.
- 6.6 An amendment is required to provide that, with effect from 8 April 2019, the value of an award will be determined by reference to the tariff in force at the date of claim, except in cases where the award is revised due to unexpected worsening, the development of an additional injury or mistake in the original award, and the effect of the revision is to increase the tariff level or award an additional descriptor. This will bring consistency to the scheme, and reinforces the principle that an award is made in full and final settlement of a claim.
- 6.7 An amendment is required to define the terms “exogenous infection” and “outbreak” in Article 12, in order to further clarify the policy intent.
- 6.8 Further amendments are required to the tariff, in order to amend the tariff level for one descriptor in Table 6 (neurological disorders, including spinal, head or brain injuries) and to amend a descriptor for a musculoskeletal disorder in Table 9.

7. Policy background

What is being done and why?

- 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.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 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 Tribunals and as a consequence of recommendations made by IMEG.
- 9.2 It is intended that the AFCS remain flexible to reflect contemporary medical opinion and to adapt to changing circumstances and 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>.

10. Consultation outcome

- 10.1 A public consultation has not been undertaken on this instrument

11. Guidance

- 11.1 Information about the new provisions will be made available by means of a Joint Service Publication on www.gov.uk

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business, charities or voluntary bodies.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The MOD will continue to review the AFCS as part of its day-to-day management and in order to monitor the impact of changes in this instrument.
- 14.2 The 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.

15. Contact

- 15.1 Tareq Sulaiman at the Ministry of Defence Telephone: 0207 218 0529 or email: afcompensation-policy@mod.gov.uk can answer any queries regarding the instrument.
- 15.2 James Greenrod, Head of Service Personnel Support at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard. Email: afcompensation-policy@mod.gov.uk
- 15.3 The Rt Hon Tobias Ellwood MP, Minister of Defence People and Veterans at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.