

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION
SCHEME) (AMENDMENT No 2) ORDER 2008**

2008 No. 2160

1. This explanatory memorandum has been prepared by the Ministry of Defence (MOD) and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No 2) Order 2008 (“this Instrument”) amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (“the 2005 Order”). It makes amendments to the revised injury Tariff inserted by the Armed Forces and Reserve Forces Compensation Scheme (Amendment) Order 2006 (S.I 2006/1438) by inserting a number of additional descriptors as well as amending existing injury descriptors. It also makes amendment to Article 20 of the Scheme, which provides for temporary awards to be made, to ensure that all relevant temporary awards come within the scope of these changes. The amendments do not fundamentally alter the compensation scheme.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 The 2005 Order (No. 439) was introduced on 6 April 2005 and provides for benefits to be payable to or in respect of a person by reason of his illness, injury or death which is caused (wholly or partly) by his service in the armed forces or reserve forces on or after that date. The benefits which are payable for injury caused by service are a lump sum and, for more severe injury, a guaranteed income payment payable for life. The 2005 Order has been previously amended as follows: a number of minor amendments were made in 2006 by the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2006 (No.1438) which included the insertion of a revised injury Tariff; in 2007 by the Armed Forces (Gurkha Compensation) Order 2007 (No. 2609) in line with the changes to Gurkha pay and pension rights; and in February 2008 by the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2008 (No. 39) to amend the rules on multiple injuries sustained in one incident.

5. **Extent**

5.1 This instrument applies to all of 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 Tariff lists the various forms of injury or disease for which compensation is available under the Scheme; specifies a numerical level referable to each type of injury or disease and specifies for each numerical level the amount of compensation payable.

7.2 The Armed Forces Compensation Scheme contains a provision (Article 20) for a temporary award to be made where the injury is sufficiently serious to warrant an award of injury but there is no existing tariff descriptor to apply. The provisions stipulate that for the temporary award to be made permanent, the Tariff must be amended within one year of the date of the award to include the injury for which the temporary award was made. There are now approximately twenty-five amendments to the Tariff required in order to make the corresponding temporary awards permanent.

7.3 This Instrument also amends Article 20 of the Scheme (temporary awards). At present the Secretary of State can only issue a decision making a temporary award permanent where the tariff has been amended accordingly within a period of one year starting with the date on which the temporary award was made. However in some exceptional cases, the decision to make a temporary award will happen after the Tariff has already been amended by adding an injury of the same descriptor in respect of which the temporary award is to be made - but as the Secretary of State will apply the Tariff in force on the date the claim was made, he cannot take account of the new descriptor. In such a case the current provisions of Article 20 could not apply since the amending Order has been made before, rather than after, the making of the temporary award. Accordingly article 2(b) of this Order inserts new paragraphs (5) and (6) into Article 20 to cater for this scenario.

7.4 While amending the Tariff to include the temporary award injuries the opportunity has been taken to amend other existing tariff entries for the sake of clarity, to reflect experience gained from receipt of live claims and, where appropriate, to take into account the approach taken elsewhere in other Schemes and in the Courts. The new Tariff incorporates some additional table entries as well as amending the content of certain pre-existing table entries (a significant number of entries remain as per the Tariff inserted by the 2006 Order). In some cases the amendment is to the tariff level referable to the particular injury or disorder rather than to the descriptor of that injury or disorder with the effect of increasing the value of the award for that particular injury or disorder.

7.5 The proposed amendments were notified to representatives of ex-service organisations in a four week consultation exercise which began on 4 June 2008 and closed on 1 July 2008. A formal 12 week consultation was not

undertaken as the proposals are mostly process driven, technical changes of a beneficial nature to an isolated area of the Scheme (the Tariff), the changes affect Service personnel only and consultation was with organisations with experience of the Scheme rules. Of the nine organisations consulted, four responses were received, which were supportive of the changes. An issue was raised about the clarity of the proposed new descriptors for loss of use of hands and feet and this has been rectified by amending the wording accordingly. Another issue was raised about the level of award for burns to the face and this was addressed by the insertion of a new descriptor in Table 2 for burns to the face and neck which includes loss of or severe damage to facial features (the latter change was as a result of a temporary award). Two respondents queried whether the amendments would have retrospective effect. In line with general Government policy on retrospection the revised tariff does not affect a claim made before the coming into force of this Order. Such claims will be determined in accordance with the Tariff inserted by the 2006 Order. The exception to this are the amendments for the purpose of giving permanent effect to a temporary award made under Article 20 of the Scheme. Such awards will, by necessity, have been made prior to the legislation coming into force and for these awards the revised tariff will have effect from the date of the original temporary award.

7.6 Information about the new provisions will be made available by means of placing a copy of the revised tariff on the MOD and Service Personnel and Veterans Agency Internet sites as well as the internal Intranet sites. In addition, the ex-service organisations consulted will receive a copy of the amending legislation with an explanatory paper. Service personnel will be informed by means of a Defence Internal Brief.

7.7 As there have been a number of amendments to the 2005 Order it is recognised that consolidation is now appropriate and it is intended to undertake this, resources allowing, after a full review of the Scheme due in 2010.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities or voluntary bodies.

9. Contact

Nick Shaw at the Ministry of Defence Tel: 0207 218 0564 can answer any queries regarding the instrument.