

2008 No. 39

PENSIONS

**The Armed Forces and Reserve Forces (Compensation Scheme)
(Amendment) Order 2008**

<i>Made</i> - - - -	<i>11th January 2008</i>
<i>Laid before Parliament</i>	<i>16th January 2008</i>
<i>Coming into force</i> - -	<i>8th February 2008</i>

The Secretary of State, in exercise of the powers conferred by sections 1(2) and 10(2) and (3) of the Armed Forces (Pensions and Compensation) Act 2004(a), makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Armed Forces and Reserve Forces (Compensation Scheme)(Amendment) Order 2008 and shall come into force on 8th February 2008.

(2) In this Order “the principal Order” means the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(b) and a reference to a numbered article or Schedule is a reference to the article or Schedule in the principal Order which bears that number.

Amendments to the principal Order

2. The principal Order is amended as follows.

Amendment of article 2 (interpretation)

3. Article 2(1) is amended as follows —

(a) after the definition of “accredited medical specialist” insert—

““additional multiple injury lump sum” means the sum referred to in article 15B(2);”;

(b) in the definition of “lump sum” after “means” insert “,except in the expression “additional multiple injury lump sum,””.

Amendment of article 7 (injury caused by service)

4. In article 7(1) before “Benefit is payable” insert “Subject to articles 15(1A), 15A(1) and 15B(1)”.

Amendment of article 13 (interpretation of Part III)

5. In article 13(b) before “any reference” insert “subject to article 15B(6)”.

(a) 2004 c.32.

(b) S.I. 2005/439, amended by S.I. 2006/1438 and S.I. 2007/2609.

Amendment of article 14 (description of benefits – injury)

6. In article 14(2) after “lump sum” insert “, additional multiple injury lump sum”.

Amendment of article 15 (amount of lump sum)

- 7.—(1) After article 15(1) insert—

“(1A) Where the conditions in article 15A apply, that article shall apply in place of paragraphs (2) to (7).”.

- (2) In article 15(4)(c) after “shall” insert “except where paragraph (6B) applies”.

- (3) After article 15(6) insert—

“(6A) Paragraph 6B applies where—

- (a) more than one injury is sustained in one incident;
- (b) the cause of the injuries occurred on or after the coming into force of this Order;
- (c) a further claim for injuries is made pursuant to paragraph (4) and the Secretary of State determines that the amount of lump sum awarded in respect of the first claim shall be increased; and
- (d) the relevant percentage for the purpose of calculating the amount of a guaranteed income payment for one or more such injuries is recalculated pursuant to article 16(4) and is determined as 100 per cent.

(6B) The first claim shall be recalculated pursuant to article 15A and the further claim determined pursuant to that article, save that account shall be taken of the amount of benefit paid in respect of the first claim and only the difference between the earlier award and the later award shall be paid.”.

- (4) In article 15(7), after “Paragraphs (4), (5) and (6)” insert “(6A) and (6B)”.

Insertion of articles 15A and 15B

8. After article 15 insert—

“Amount of lump sum where 100 per cent guaranteed income payment determined

15A.—(1) This article applies where—

- (a) more than one injury is sustained in one incident;
- (b) the cause of the injuries occurred on or after the coming into force of this Order; and
- (c) the relevant percentage for the purpose of calculating the amount of a guaranteed income payment in accordance with article 16 for one or more such injuries is 100 per cent.

(2) Subject to paragraph (3) the amount of the lump sum is the total of the relevant amount (described in article 14(2)(b)) applicable to each injury.

(3) The total amount payable under paragraph (2) shall not exceed the amount specified at level 1 in column (a) of table 10.

(4) Subject to paragraph (6) where—

- (a) a claim for injury benefit (“the first claim”) is made for some but not all the injuries sustained in one incident; and
- (b) after notice of the decision on the first claim has been given or sent to the claimant, a further claim for injury benefit is made for other injuries sustained in that incident, the Secretary of State shall determine the further claim by recalculating the amount of the lump sum in accordance with paragraphs (2) and (3) taking into account all the injuries sustained in that incident which have been the subject of a claim.

- (5) In determining the further claim under paragraph (4) the Secretary of State may—
- (a) increase the amount of the lump sum awarded in respect of the first claim; or
 - (b) award no, or no further, amount of benefit.

(6) Where the Secretary of State increases the amount of the lump sum awarded in respect of the first claim, account shall be taken of the amount of benefit paid in respect of the first claim and only the difference between the earlier award and the later award shall be paid.

(7) Paragraphs (4), (5) and (6) shall not apply to a further claim for injury benefit referred to in paragraph (4)(a) unless that claim is made within the time specified in articles 39, 40 and 41 for making a claim.

Additional multiple injury lump sum

15B.—(1) This article applies where—

- (a) more than one injury is sustained in one incident;
- (b) the cause of the injuries occurred on or after 6th April 2005 and before the coming into force of this Order;
- (c) an entitlement to injury benefit has been determined in respect of more than one such injury either before or after the coming into force of this Order; and
- (d) the relevant percentage for the purpose of calculating the amount of a guaranteed income payment in accordance with article 16 for one or more such injuries is 100 per cent.

(2) The Secretary of State shall award an additional benefit (“the additional multiple injury lump sum”) in accordance with this article.

(3) The amount of the additional multiple injury lump sum is, subject to paragraphs (4) and (5), the total of the relevant amount (described in article 14(2)(b)) applicable to each injury in respect of which a lump sum would have been payable but for article 15(2).

(4) Account shall be taken of the lump sum previously awarded and, subject to paragraph (5), the difference between that award and the amount of the additional multiple injury lump sum calculated in accordance with paragraph (3) shall be paid.

(5) The total amount payable in accordance with this article shall not, taking into account the amount of lump sum previously awarded, exceed the amount specified at level 1 in column (a) of Table 10.

(6) The determination of the amount of the additional multiple injury lump sum shall be made according to the tariff in force on the day on which—

- (a) the entitlement to injury benefit is determined under article 43;
- (b) a final award of injury benefit is made under article 44;
- (c) a decision of the Secretary of State in relation to injury benefit is revised under article 45, 47, 48 or 49; or
- (d) a decision relating to injury benefit is revised by a Pension Appeal Tribunal, an appropriate Social Security Commissioner or a court.”.

Amendment of article 20 (temporary awards)

9.—(1) In article 20(1)(b) after “injury benefit” insert “or of an additional multiple injury lump sum”.

(2) In article 20(2) after “lump sum” insert “or of the additional multiple injury lump sum”.

(3) In article 20(4)(a)(ii) after “amount” omit “either lump sum or guaranteed income payment” and replace with “of any lump sum, of any additional multiple injury lump sum or of any guaranteed income payment”.

Amendment of article 37 (cases where claims are not required)

10. After article 37(1) insert—

“(1A) It is not a condition of entitlement to an additional multiple injury lump sum that a claim be made for it and article 38 shall not apply in relation to this benefit.”.

Amendment of article 44 (interim awards)

11. In article 44(1) after “injury benefit” insert “or to an additional multiple injury lump sum”.

Amendment of article 47 (review on discharge on medical grounds)

12. In article 47(1)—

- (a) after “injury benefit” insert “or an additional multiple injury lump sum”;
- (b) omit “that benefit” and replace with “the injury benefit or additional multiple injury lump sum”.

Amendment of article 48 (review – exceptional circumstances)

13.—(1) In article 48(1) after “injury benefit” insert “or of an additional multiple injury lump sum”.

(2) In article 48(2) after the first use of the words “final decision” insert “to award injury benefit”.

Amendment of article 54 (date on which awards of benefit become payable)

14.—(1) In article 54(1) after “lump sum” insert “,an additional multiple injury lump sum”.

(2) In article 54(7) after “article 15(4)” insert “, 15(6B) or 15A(4)”.

Amendment of Table 5 (amputations) of Schedule 4 (the Tariff)

15.—(1) Table 5 of Schedule 4 is amended as follows.

(2) For the entry in column (b) for item 6 substitute—

“Loss of both legs above or below knee (not hip disarticulation or hemipelvectomy) and one arm (above or below elbow).”.

(3) For the entry in column (b) for item 7 substitute—

“Loss of both arms above or below elbow (not shoulder disarticulation or forequarter) and one leg (above or below) knee.”.

(4) For the entry in column (b) for item 26 substitute—

“Loss of one hand (wrist disarticulation) or permanent loss of use of one hand.”.

(5) The following entries are omitted—

- (a) item 12 (loss of one leg at or above knee and one arm at or above elbow);
- (b) item 16 (loss of one leg at or above knee and one leg below knee);
- (c) item 17 (loss of one arm at or above elbow and one arm below elbow);
- (d) item 18 (loss of one leg at or above knee and one arm below elbow);
- (e) item 19 (loss of one arm at or above elbow and one leg below knee);
- (f) item 23 (loss of one leg below knee and one arm below elbow).

(6) The amendments in paragraphs (2), (3) and (5) shall not affect any claim made before the coming into force of this Order.

Signed by authority of the Secretary of State

11th January 2008

Derek Twigg
Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Armed Forces and Reserve Forces Compensation Scheme Order 2005 (“the Scheme”) which provides for benefits to be payable to or in respect of a person by reason of his illness or injury (whether physical or mental), or his death, which is caused (wholly or partly) by his service in the armed forces or the reserve forces.

This Order amends the Scheme in respect of its treatment of claims where more than one injury has been sustained in one incident. It also makes amendments to the Tariff for certain entries relating to amputation cases.

Article 7 amends article 15 of the Scheme (which provides for the calculation of the lump sum) by inserting paragraph (1A). This provides for the new article 15A to apply in place of paragraphs (2) to (7) where—

- more than one injury is sustained in one incident,
- the cause of those injuries occurred on or after the coming into force of this Order, and
- the relevant percentage for the purpose of calculating the amount of any guaranteed income payment in accordance with article 16 for one or more such injuries is calculated as 100 per cent.

The calculation in relation to one injury sustained in one incident is unaltered. The position is also unaltered where more than one injury is sustained in one incident and the cause of those injuries occurred before the coming into force of this Order or where the cause of the injuries occurred after the coming into force of this Order but the relevant percentage for the purpose of calculating the guaranteed income payment is less than 100%.

The existing paragraphs (4) to (6) of article 15 provide for the recalculation of a claim where, after injury benefits have originally been awarded, a further claim in respect of injuries arising out of the same incident is made. Article 7(3) of this Order inserts new paragraphs (6A) and (6B) into article 15 of the Scheme to provide for the recalculation rules where the cause of the injuries occurred on or after the coming into force of this Order and, as a result of an increase in the lump sum award, the relevant percentage for the purpose of calculating the amount of a guaranteed income payment in accordance with article 16 is increased to 100%. Article 15(6B) requires the recalculation of the first claim and the determination of the further claim to be made pursuant to article 15A.

Article 8 inserts a new article 15A into the Scheme to deal with those cases in which more than one injury is sustained in one incident and the relevant percentage for the purpose of calculating the amount of any guaranteed income payment in accordance with article 16 for one or more such injuries is 100 per cent. In such cases, the amount of the lump sum is the total of the relevant amount (described in article 14(2)(b)) applicable to each such injury. The discounting rules contained in article 15(2) will not apply to such claims but an overall cap on the amount payable (of the amount specified at level 1 in column (a) of table 10 – currently £285,000) will apply. This amendment applies where the cause of the injuries occurred on or after the coming into force of this Order.

Article 8 also inserts a new article 15B into the Scheme. Article 15B operates to confer an additional benefit – “the additional multiple injury lump sum” – in cases where

- a person has sustained more than one injury in one incident,
- the cause of the injuries occurred on or after the coming into force of the original Scheme (6th April 2005), and before the coming into force of this Order,
- an entitlement to injury benefit for more than one injury is or has been established, and
- the relevant percentage for the purpose of calculating the amount of any guaranteed income payment in accordance with article 16 for one or more such injuries is 100 per cent.

The additional multiple injury lump sum is the difference between the total of the amount specified in table 10 in respect of each injury sustained and the amount of lump sum previously awarded (after application of the discounting rules in article 15(2)). The amount payable is subject to an overall cap (of the amount specified at level 1 in column (a) of table 10 - currently £285,000). An entitlement to injury benefit must have been established before article 15B has any application – but it does not make any difference to its application whether that entitlement is established before or after the coming into force of this Order. The calculation is performed by using the tariff in force on the day the determination of entitlement to injury benefit was originally made or on the day on which it is revised by the Secretary of State or by a Pension Appeal Tribunal, an appropriate Social Security Commissioner or a court.

Articles 20 (temporary awards), 44 (interim awards), 47 (review on discharge on medical grounds), 48 (review – exceptional circumstances) and 54 (date on which awards of benefit become payable) of the Scheme are amended so that each applies to the additional multiple injury lump sum.

Article 10 amends article 37 of the Scheme with the result that a claim is not required for an additional multiple injury lump sum award to be made: the Secretary of State will automatically consider and notify claimants of any entitlement under the new provision.

Article 15 amends Table 5 of Schedule 4 to the Scheme which sets out the tariff levels for cases of amputation by amending three entries and omitting 6 others. With the exception of the amendment to item 26 of table 5, these amendments do not affect any claim made before the coming into force of this Order.

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

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