

2010 No. 1723

PENSIONS

**The Armed Forces and Reserve Forces (Compensation Scheme)
(Amendment) Order 2010**

<i>Made</i> - - - -	<i>1st July 2010</i>
<i>Laid before Parliament</i>	<i>5th July 2010</i>
<i>Coming into force</i> - -	<i>3rd August 2010</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 2010 and shall come into force on 3rd August 2010.

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

Amendment of article 2 (interpretation)

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

(a) insert in the appropriate places—

““the FTRSPS 2010” means the occupational pension scheme for members of the Full-Time Reserve Service(c) established by regulations made by the Defence Council(d) in exercise of the powers conferred on them by sections 4(2) and (3) and 8(2) and (3) of the Reserve Forces Act 1996(e);”;

““the NRPSPS” means the occupational pension scheme for members of the Non-Regular Permanent Staff(f) set out in Chapter 9 of the Territorial Army Regulations 1978(g) made by the Defence Council in exercise of the powers conferred on them by sections 4(2) and (3) and 8(2) and (3) of the Reserve Forces Act 1996;”;

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- (a) 2004 c. 32.
(b) S.I. 2005/439, amended by S.I. 2006/1438, 2007/2609, 2008/39, 2008/2160, 2008/2683, 2008/2942 and 2009/3236.
(c) Full-Time Reserve Service is a commitment to a period of full-time service made under section 24 of the Reserve Forces Act 1996 (c. 14).
(d) Which are available from Deputy Chief of Defence Staff (Personnel), (Pensions, Compensation and Veterans), Ministry of Defence, Main Building, Whitehall, London, SW1A 2HB.
(e) 1996 c. 14.
(f) Non-Regular Permanent Staff undertake administrative tasks for the Territorial Army. They are subject to call out under section 52 of the Reserve Forces Act 1996 (c. 14).
(g) Which are available from Directorate Personnel Services (Army) (Territorial Army), Headquarters Land Forces, Inkerman 67, Wilton, Salisbury, Wiltshire, SP2 0AG.

““the RFPS 2005” means the occupational pension scheme for members of the reserve forces established by regulations made by the Defence Council in exercise of the powers conferred on them by sections 4(2) and (3) and 8(2) and (3) of the Reserve Forces Act 1996;”;

- (b) in the definition of “ill-health pension” after “AFPS 2005” insert “or the equivalent provisions of the NRPSPS or the RFPS 2005;”;
- (c) in the definition of “invaliding pension” for “ (a), (b) or (c);” substitute “(d), (e) or (f), or the equivalent provisions of the FTRSPS 2010;”.

Amendment of articles 3, 9, 39, 40 and 41 of the principal Order

- 3.—(1) In articles 3, 9 and 39 for “5 years” wherever it appears substitute “7 years”.
- (2) In article 3(c) for “five” substitute “7”.
- (3) In article 39(2) for the words “one year”, where they last appear, substitute “3 years”.
- (4) In article 39(3) for “one year from the date of death.” substitute “3 years beginning with the day on which death occurred.”.
- (5) In articles 40 and 41 for the words “one year” on both occasions they appear substitute “3 years”.

Amendment of article 27 (amount of bereavement grant)

- 4. Article 27 is amended as follows—
 - (a) in paragraph (1) for “member or former member of the forces is £20,000.” substitute “person who was a member of the armed forces on the date of death is £25,000.”;
 - (b) for paragraph (2) substitute—
 - “(2) Where the person was a member of the AFPS 2005, the amount of the bereavement grant is the difference between the salary of the member of the armed forces on the date of death and the amount specified in paragraph (1).”;
 - (c) in paragraph (3) for “payable in full.” substitute “£37,500.”.

Amendment of article 31 (reduction of guaranteed income payment, survivor’s guaranteed income payment and child’s payment to take account of other amounts)

- 5. Article 31 is amended as follows—
 - (a) after paragraph (3) insert—
 - “(3A) Where the amount of a pension or a payment increases or decreases, including coming into payment or ceasing, after an award of benefit is made, the Secretary of State shall make such adjustments to the amount of guaranteed income payment, survivor’s guaranteed income payment or child’s payment as are required to satisfy the rules for reduction of benefit specified in this article.”;
 - (b) in paragraph (4) after “gross amount” insert “, irrespective of any commutation,”.

Amendment of article 32 (reduction in benefit to take account of awards of damages)

- 6. Article 32 is amended as follows—
 - (a) in paragraph (1)—
 - (i) before “Where the Secretary of State” insert “Subject to paragraph (1A),”;
 - (ii) for “may”, on both occasions it appears, substitute “shall”;
 - (b) after paragraph (1) insert—
 - “(1A) The Secretary of State shall not—

- (a) take the damages into account where he is satisfied that benefit payable under this Order has been taken into account in the assessment of the damages;
- (b) withhold or reduce a bereavement grant payable under article 21(1)(b).

(1B) In calculating the amount of benefit to withhold or reduce under paragraph (1), the Secretary of State may take account of the full value of any damages which have been or will be recovered.

(1C) The Secretary of State may require a person who has made a claim to provide—

- (a) details of any steps taken or planned to obtain damages in respect of the same injury, condition or death for which benefit is payable;
- (b) a written undertaking that if the person recovers damages the person shall notify the Secretary of State and repay any benefit paid under this Order.”.

Amendment of article 35 (entitlement to benefit dependent on claim)

7. In article 35(2) for “shall” substitute “may”.

Amendment of article 46 (finality of decisions)

8. Article 46 is amended as follows—

- (a) in paragraph (1) after “48” insert “, 48A”;
- (b) in paragraph (3)(c) after “48” insert “, 48A”.

Insertion of article 48A

9. After article 48 insert—

“Review - award of damages

48A.—(1) This article applies where—

- (a) the Secretary of State has made an award of benefit to a person;
- (b) the person has recovered damages in respect of the injury or death for which the award of benefit is payable; and
- (c) the Secretary of State is satisfied that benefit payable under the Order has not been taken into account in the assessment of the damages.

(2) On a review under this article the Secretary of State may—

- (a) revise a decision—
 - (i) given under article 43,
 - (ii) revised under article 45, 47, 48 or 49, or
 - (iii) relating to benefit made by the First-tier Tribunal, a Pension Appeal Tribunal, the Upper Tribunal, an appropriate Social Security Commissioner or a court, in each case by withholding or reducing the amount of the award so as to cancel the award of benefit.

(3) The decision of the Secretary of State on a review under this article and the reasons for the decision shall be in writing and shall be given or sent to the claimant who shall, at the same time, be informed of the right—

- (a) to a reconsideration of the decision under article 45; and

(b) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943^(a).

(4) In this article “damages” has the meaning given in article 32(2).”.

Amendment of Schedule 2 (modifications for reserve forces)

10. Schedule 2 is amended as follows—

(a) in paragraph 1 omit the definition of the “Reserve Forces Pension Scheme”;

(b) for paragraph 2A substitute—

“For article 27 there is substituted the following—

“27.—(1) This article applies where death is caused (wholly or partly) by service in the reserve forces.

(2) Subject to the following provisions of this article the bereavement grant payable in respect of the death of a person who was a member of the reserve forces on the day of death is £25,000.

(3) Subject to paragraph (4), where the person was not a member of a reserve forces pension scheme the amount of the bereavement grant is £37,500.

(4) Where the person was an active member of the RFPS 2005 the amount of the bereavement grant is the difference between the salary of the member of the reserve forces on the day of death and the amount specified in paragraph (2).

(5) Where a former member of the reserve forces dies, the bereavement grant is £37,500.

(6) In the event that there is more than one surviving spouse entitled to the bereavement grant, the amount to which each such surviving spouse is entitled shall be the amount payable, in accordance with the provisions of this article, divided by the number of spouses so entitled at the date of death of the member or former member of the reserve forces.

(7) In this article—

(a) “active member” in relation to a reserve forces pension scheme has the meaning given in section 124(1) of the Pensions Act 1995^(b);

(b) “reserve forces pension scheme” means the FTRSPS 2010, the NPRSPS or the RFPS 2005.”.”;

(c) in paragraph 3—

(i) for the words “Reserve Forces Pension Scheme”, where they appear in paragraph (1)(c) of the substituted article 31, substitute “the FTRSPS 2010, the NPRSPS or the RFPS 2005”;

(ii) after the words “gross amount”, where they appear in paragraph (4)(a) of the substituted article 31, insert “, irrespective of any commutation.”;

(iii) omit paragraphs (4)(b) and (c) of the substituted article 31.

Amendment of Schedule 4 (the Tariff)

11.—(1) Schedule 4 is amended as follows.

(2) Table 2 (Injury, wounds and scarring) is amended as follows—

(a) insert at the appropriate places—

(a) 1943 c. 39, section 5A(1A) was inserted by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 5 and Schedule 1, paragraph 2.

(b) 1995 c. 26.

- “11A. 7 High velocity gun shot wound, deep shrapnel fragmentation or other penetrating injury (or all or any combination of these) with clinically significant damage to bone, soft tissue structures and vascular or neurological structures of the head and neck, chest, back, abdomen or limb, with complications, which have required, or are expected to require, operative treatment with residual permanent significant functional limitation and restriction.
- 20A. 9 High velocity gun shot wound, deep shrapnel fragmentation or other penetrating injury (or all or any combination of these) with clinically significant damage to soft tissue structures and vascular or neurological structures of the head and neck, chest, back, abdomen or limb, which have required, or are expected to require, operative treatment with residual permanent significant functional limitation and restriction.”

(b) at item 29 for the entry in column (b) substitute—

“High velocity gun shot wound, deep shrapnel fragmentation or other penetrating injury (or all or any combination of these) with clinically significant damage to soft tissue structures of the head and neck, chest, back, abdomen or limb, which have required, or are expected to require, operative treatment with residual permanent significant functional limitation and restriction.”;

(c) at item 39, in column (b), for the words “with substantial recovery.” substitute “which have required, or are expected to require, operative treatment with substantial functional recovery.”;

(d) insert after the last footnote to Table 2—

“(*) Where a limb injury is accompanied by acute compartment syndrome requiring operative treatment the award shall be increased by £3,000.”.

(3) In Table 4 (Physical disorders including infectious diseases) insert at the appropriate place—

“6A. 12 Persisting physical disorder where symptoms and functional effects are well controlled by regular medication.”

(4) In Table 5 (Amputations) insert at the appropriate places—

“7A. 2 Loss of one arm, above or below elbow, and one leg, above or below knee, with total loss of use of another limb due to traumatic injury involving vital structures.*

45A. 14 Partial loss of two or more toes, other than great toe, from one foot.”

(5) Between the second and third footnotes to Table 5 insert the following—

“(*) “Total loss of use of another limb” means the total loss of the physical capacity or power to carry out its expected functions as compared with a normal healthy person of the same age and sex.”.

(6) For Table 7 (Senses) substitute the Table set out in Schedule 1 to this Order.

(7) In Table 8 (Fractures and dislocations)—

(a) insert at the appropriate places—

“AA1. 9 Fracture of femur, tibia, humerus, radius or ulna, with complications, causing permanent significant functional limitation and restriction.

A1. 9 Fracture or dislocation of hip, elbow, wrist, ankle, knee or shoulder, which has required, or is expected to require, arthrodesis, osteotomy or total joint replacement.

10A. 11 Fracture of femur, tibia, humerus, radius or ulna causing permanent significant functional limitation and restriction.

10AA. 11 Fracture of femur, tibia, humerus, radius or ulna, with complications, which has caused, or is expected to cause, significant functional limitation and restriction at 52 weeks with substantial recovery beyond that date.

44A. 13 Subluxed dislocated acromio or sterno-clavicular joint, which has caused, or is expected to cause, significant functional limitation and restriction beyond 26 weeks.”

(b) at item 72 in column (b) for “Subluxed acromio-clavicular” substitute “Subluxed dislocated acromio or sterno-clavicular”.

(8) After the first footnote to Table 8 insert—

“(*) Where a fracture is accompanied by acute compartment syndrome requiring operative treatment the award shall be increased by £3,000.”.

(9) In Table 9 (Musculoskeletal disorders)—

(a) insert at the appropriate places—

“26A. 13 Ankle, hip, knee, wrist, elbow or shoulder strain, sprain or overuse injury, which has required, or is expected to require, operative treatment.

34A. 14 Overuse injury of foot or heel, which has required or is expected to require operative treatment.”

(b) at item 30 in the entry in column (b) omit “or other knee pathology,”.

Transitory provisions

12.—(1) Subject to the provisions of this article the amendments to the principal Order contained in this Order shall not apply to a claim made before the day this Order comes into force.

(2) Where a claim is made before the day this Order comes into force—

(a) the time specified for making a claim for injury benefit is 7 years beginning with the day on whichever of the days specified in article 39(1) is applicable to the claim;

(b) death benefit is payable if death occurs within the period of 7 years beginning with the day on which service ends, and the conditions specified in sub-paragraphs (i) or (ii) of article 9(3)(b) are satisfied; and

(c) the amendments to Schedule 4 shall apply where—

(i) the Secretary of State determines (whether before or after the coming into force of this Order) that a temporary award in accordance with article 20 of the principal Order should be made in respect of an injury—

(aa) for which benefit is claimed; or

(bb) which is of the same description as an injury for which benefit is claimed;

(ii) a descriptor for the injury (in respect of which the temporary award is made) is included in the amendments to Schedule 4; and

(iii) the descriptor is at the same level of the tariff as the temporary award.

(3) The time specified for making a claim for death benefit is 1 year beginning with day this Order comes into force or 3 years beginning with the day on which death occurred, whichever is the later.

(4) In this article—

(a) “claim” means a claim made in accordance with the principal Order and “claimed” shall be construed accordingly;

(b) “descriptor” means an entry in column (b) of, including the footnotes to, Tables 1 to 9 of Schedule 4 to the principal Order.

1st July 2010

Andrew Robathan
Parliamentary Under Secretary of State
Ministry of Defence

SCHEDULE 1

Article 11(6)

TABLE TO BE SUBSTITUTED FOR TABLE 7 OF SCHEDULE 4 TO THE PRINCIPAL ORDER

“Table 7 —Senses (*)

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Injury</i>
1.	1	Total deafness and loss of both eyes, or total deafness and total blindness in both eyes, or total deafness and loss of one eye and total blindness in the other eye.
2.	2	Loss of eyes.
3.	2	Total blindness in both eyes.
4.	2	Loss of one eye and total blindness in the other eye.
5.	5	Loss of one eye and permanent damage to the other eye, where visual acuity is correctable to 6/36.
6.	6	Total deafness in both ears.
7.	6	Severe binocular visual field loss.
8.	8	Loss of one eye or total blindness in one eye.
9.	8	Bilateral permanent hearing loss of more than 75dB averaged over 1, 2 and 3kHz, with severe persistent tinnitus.
10.	9	Partial loss of vision where visual acuity is correctable to 6/60.
11.	9	Permanent and inoperable cataracts in both eyes.
12.	9	Total deafness in one ear.
13.	9	Bilateral permanent hearing loss of more than 75dB averaged over 1, 2 and 3kHz, with mild or no tinnitus.
14.	10	Partial loss of vision where visual acuity is correctable to better than 6/60 and at least 6/36.
15.	10	Detached retina in both eyes.
16.	10	Bilateral permanent hearing loss of 50–75dB averaged over 1, 2 and 3kHz, with severe tinnitus.
17.	10	Blast injury to ears with permanent sensorineural hearing loss in one ear of over 75dB averaged over 1, 2 and 3 kHz with severe persistent tinnitus.
18.	11	Partial loss of vision where visual acuity is correctable to better than 6/36 and at least 6/18.
19.	11	Blast injury to ears with permanent sensorineural hearing loss in one ear of 50-75dB averaged over 1, 2 and 3 kHz with severe persistent tinnitus.
20.	11	Blast injury to ears with permanent sensorineural hearing loss in one ear of over 75dB averaged over 1, 2 and 3 kHz with mild or no tinnitus.
21.	12	Partial loss of vision where visual acuity is correctable to better than 6/18 and at least 6/12.
22.	12	Permanent and inoperable cataract in one eye.
23.	12	Operable cataracts in both eyes.
24.	12	Moderate binocular visual field loss.
25.	12	Detached retina in one eye.
26.	12	Secondary glaucoma.
27.	12	Bilateral permanent hearing loss of 50–75dB averaged over

		1, 2 and 3kHz, with mild or no tinnitus.
28.	12	Blast injury to ears with permanent sensorineural hearing loss in one ear of 50-75dB averaged over 1, 2 and 3 kHz with mild or no tinnitus.
29.	13	Significant penetrating, or blunt, injury to both eyes.
30.	13	Retinal damage (not detached) to both eyes.
31.	13	Partial loss of vision where visual acuity is correctable to better than 6/12.
32.	13	Dislocation of lens in one eye.
33.	13	Degeneration of optic nerve in both eyes.
34.	13	Permanent diplopia.
35.	13	Blast injury to ears.
36.	14	Diplopia which is present, or is expected to be present, at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery beyond that date.
37.	14	Operable cataract in one eye.
38.	14	Corneal abrasions in both eyes.
39.	14	Hyphaema in both eyes which has required, or is expected to require, operative treatment.
40.	14	Retinal damage (not detached) in one eye.
41.	14	Significant penetrating, or blunt, injury in one eye.
42.	14	Degeneration of optic nerve in one eye.
43.	14	Slight binocular visual field loss.
44.	14	Traumatic mydriasis.
45.	15	Diplopia which is present, or is expected to be present, at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery beyond that date.
46.	15	Corneal abrasions in one eye.
47.	15	Hyphaema in one eye which has required, or is expected to require, operative treatment.”

“(*) For the purposes of the Scheme the following definitions apply

Total blindness in both eyes” means that the claimant must have been diagnosed as being blind by an accredited medical specialist;

Total blindness in one eye” means that the claimant must have been diagnosed by an accredited medical specialist and have a visual acuity of 3/60 or worse in the affected eye;

Total deafness” means that the claimant’s bilateral average hearing threshold level is 90dB or more averaged over 1, 2 and 3 kHz as measured by appropriately calibrated equipment meeting British Standards, and using quality assured pure tone audiometry;

Total deafness in one ear” means that the average hearing threshold is 90dB or more averaged over 1, 2 and 3 kHz as measured by appropriately calibrated equipment meeting British Standards and using quality assured pure tone audiometry.

(*) Degree of visual field loss should be assessed by reference to an accredited specialist physician report which includes reasons.

(*) The tariff values for blast injury to ears apply where the tympanic membrane is intact. Where the tympanic membrane is perforated the award shall be increased by £1,000.

(*) Any references to duration of effects in column (b) are from date of injury or onset of illness.

(*) Awards for injuries in this table include compensation for any associated psychological effects short of a distinct diagnosable disorder.”

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 illness or injury (whether physical or mental), or death, which is caused (wholly or partly) by service in the armed forces or the reserve forces.

Article 2 inserts new definitions relating to occupational pension schemes for the reserve forces, relevant to the modifications to the provisions for the reserve forces in the amendments made by article 10.

The amendments in article 3 extend the time limit for making a claim for injury benefit from 5 to 7 years and for death benefit from 1 to 3 years. There are consequential amendments to time limits relating to the definition of “late onset illness”, the provisions relating to an injury made worse by service and a condition relating to a claim for death benefit.

Article 4 increases the bereavement grant to £25,000 where death is in service. It is increased to £37,500, one and half times the standard grant, for post service death; thereby compensating for a smaller lump sum payable under the relevant pension scheme.

The amendments in articles 5, 6 and 9 clarify the powers to review and abate awards where a pension is in payment and damages are received for the same injury or death for which benefit is payable under the Scheme.

The amendment in article 7 revokes the requirement that where a claim is made under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606), and the person has service in the armed forces on or after 6th April 2005, the Secretary of State must consider that claim as also being a claim made under this Scheme. It is replaced with a discretionary power to consider under this Scheme.

Article 10 amends the modifications of the Scheme for the reserve forces and provides for an enhanced bereavement grant of £37,500 (one and a half times the standard grant) where the reservist was not a member of an occupational pension scheme for the armed or reserve forces.

Article 11 makes amendments to the Tariff. This 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. Where a person sustains an injury, which the Secretary of State considers is sufficiently serious to warrant an award, he may make a temporary award under article 20 of the Scheme, but must amend the Tariff within one year of making the award. The majority of amendments in this article are as a consequence of the making of temporary awards. In addition the awards for hearing loss below total deafness are increased by one numerical level. The new Table 7 (Senses) is set out in Schedule 1 to this Order.

Article 12 makes transitory provisions. It provides that where a claim is made before this Order comes into force, the time limit for making a claim is 7 years for injury benefit and extends the time limit for making a claim for death benefit to whichever is the later of 3 years from the date of death or one year from the day this Order comes into force. It also provides that amendments to the Tariff in article 11 shall not apply to claims made before the coming into force of this Order. The exception to this is where the effect of the amendment is to include a description of the injury in respect of which the temporary award is made.

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STATUTORY INSTRUMENTS

2010 No. 1723

PENSIONS

The Armed Forces and Reserve Forces (Compensation Scheme)
(Amendment) Order 2010

£5.75