

2011 No. 2552

PENSIONS

**The Armed Forces and Reserve Forces (Compensation Scheme)
(Amendment) Order 2011**

<i>Made</i>	- - - -	<i>25th October 2011</i>
<i>Laid before Parliament</i>		<i>27th October 2011</i>
<i>Coming into force</i>	- -	<i>17th November 2011</i>

The Secretary of State, in exercise of the powers conferred by section 1(2) 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 2011 and comes into force on 17th November 2011.

(2) In this Order “the principal Order” means the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(b) and 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.

Amendments to the principal Order

2. The principal Order is amended as follows.

Amendment to article 11 (injury and death - exclusions)

3. In article 11(9)(b) after “to” where it appears for the second time insert “or from”.

Amendment to article 29 (description of benefits – death)

4. In article 29—

(a) in paragraph (1)(b)—

(i) after “civil partner” insert “,”;

(ii) omit “or”; and

(iii) after “dependant” insert “, or eligible child”;

(b) after paragraph (5) insert—

“(6) A bereavement grant is payable to an eligible child where the deceased does not leave a surviving spouse, civil partner or surviving adult dependant.”.

Amendment to article 35 (amount of bereavement grant)

5. In article 35—

- (a) in paragraph (4)—
 - (i) after “surviving spouse” on both occasions it appears insert “or eligible child”;
 - (ii) after “spouses” insert “or eligible children”;
- (b) after paragraph (4) insert—

“(5) In the case of a bereavement grant payable to an eligible child paragraph (4) applies only where at the time the grant is paid—

 - (a) a claim for child’s payment has been made by or on behalf of an eligible child; or
 - (b) the Secretary of State is aware that a claim is to be made on behalf of a child born after the death of a member or former member.”.

Amendment to article 46 (date of claim)

6. In article 46—

- (a) in paragraph (1) for “paragraphs (2) and ” substitute “paragraph”;
- (b) omit paragraph (2).

Amendment to article 64 (date on which awards of benefit become payable)

7. In article 64—

- (a) for paragraph (4) substitute—

“(4) Subject to paragraph (6), an award of survivor’s guaranteed income payment and an award of child’s payment become payable—

 - (a) on the day following the date of death where—
 - (i) a member dies in service; or
 - (ii) a former member dies and a claim for benefit is made within 3 months of the date of death; or
 - (b) on the date of claim where sub-paragraph (a) does not apply.”;
- (b) in paragraph (8) before “No benefit” insert “Except where paragraph (4)(a)(ii) applies,”.

Amendment to Schedule 2 (modifications for the reserve forces)

8. In paragraph 4 of Schedule 2 in the modified article 35—

- (a) in paragraph (3) for “(2)” substitute “(1)”;
- (b) in paragraph (5)—
 - (i) after “surviving spouse” on both occasions it appears insert “or eligible child”; and
 - (ii) after “spouses” insert “or eligible children”.
- (c) after paragraph (5) insert—

“(5A) In the case of a bereavement grant payable to an eligible child paragraph (5) applies only where at the time the grant is paid—

 - (a) a claim for child’s payment has been made by or on behalf of an eligible child; or
 - (b) the Secretary of State is aware that a claim is to be made on behalf of a child born after the death of a member or former member.”.

Amendment to Schedule 3 (the tariff and supplementary awards)

9.—(1) In Part 1 of Schedule 3—

- (a) in item 12 of Table 6 (neurological disorders) for “servere” substitute “severe”;
 - (b) in Table 8 (fractures and dislocations)—
 - (i) for item 17 substitute—

“17 11 Shoulder joint(a) instability which has required or is expected to require operative treatment with permanent significant functional limitation or restriction.”;
 - (ii) insert in the appropriate place—

“17A 12 Shoulder joint instability which has required or is expected to require operative treatment with substantial recovery.”;
 - (c) in Table 9 (musculoskeletal disorders)—
 - (i) in item 2 after “arthrodesis” insert “,osteotomy”;
 - (ii) insert in the appropriate place—

“16A 12 Traumatic back injury with one or more intervertebral disc prolapses or vertebral body or facet joint fractures which has required, or is expected to require, operative treatment and which has caused, or is expected to cause, significant functional limitation or restriction beyond 13 weeks.”;
 - (iii) in item 27 after “Hip” insert “pelvis,”;
 - (iv) in item 38 omit “Direct”.
- (2) In Part 2 of Schedule 3 after paragraph 1(1)(a) insert “and”.

Transitional provisions

10.—(1) Subject to paragraph (2), the amendments to the principal Order do not apply to a claim or application for review made before the day this Order comes into force.

(2) The amendments to Tables 8 and 9 in article 9(1)(b) and 9(1)(c) apply to a claim made before the day this Order comes into force where—

- (a) the Secretary of State determines (whether before or after the coming into force of this Order) that, following the determination of a claim or application for review, a temporary award in accordance with article 26 should be made;
- (b) a descriptor of the injury (in respect of which the temporary award is made) is included in the amendments to Tables 8 and 9; and
- (c) the descriptor is at the same level as the temporary award.

(3) Where, pursuant to article 46(2), before the day this Order comes into force—

- (a) a claimant or a person acting on the claimant’s behalf requested the Secretary of State to provide information or a claim form for the purpose of claiming benefit, and
- (b) a claim is made not more than 3 months after the date of the request,

the date of claim is the date of the request.

(4) In this article—

- (a) “claim” means a claim made in accordance with the principal Order;
- (b) “application for review” means an application for review pursuant to article 55, 56, 57 or 59.

(a) In this table, shoulder includes acromio-clavicular and sterno-clavicular joints.

25th October 2011

Andrew Robathan
Parliamentary 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 2011 (“the principal Order”) which provides for benefits to be payable to or in respect of a person by reason of injury or illness (whether physical or mental), or death, which is caused (wholly or partly) by service in the armed forces or reserve forces.

Article 11 is amended to put beyond doubt that the inclusion which provides that benefit is payable for injury or death by reason of a person being called out to an emergency, covers travel both to and from the emergency.

Articles 29, 35 and the modified article 35 in Schedule 2 are amended to provide for a bereavement grant to be paid to an eligible child in circumstances where there is no surviving spouse, civil partner or surviving adult dependant. Where there is more than one eligible child the grant is divided between the eligible children who have made a claim for child’s payment at the time the grant is paid.

The amendment to article 46 revokes the provision that if a potential claimant requests from the Secretary of State information relating to making a claim and then makes a claim within 3 months, the date of the claim is the date of the request. The effect of the revocation of this provision is that the date of claim will be the date it is made.

Article 64 is amended to insert a new provision that where a claim is made in respect of a person who dies after leaving service, an award of survivor’s guaranteed income payment and an award of child payment is backdated to the day following the date of death, providing the claim is made within 3 months of the date of death. The amendment restates the current position that where a person dies in service, the payments start on the day following the date of death.

The amendments to Tables 8 and 9 of Schedule 3 insert new descriptors (description of injury or illness) and amend existing descriptors in the tariff. The tariff lists the various forms of injury or illness for which compensation is payable, specifies a numerical tariff level and specifies for each tariff 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 26 of the principal Order, but must amend the tariff within 1 year of making the award. The new and amended descriptors are as a result of making temporary awards.

The other amendments correct minor drafting errors in the principal Order.

Article 10 of this Order makes transitional provisions. The new and amended descriptors do not apply where a claim or application for review is made before the day this Order comes into force, unless they describe injuries for which a temporary award is made. It also provides that where a person has requested information about making a claim under article 46(2) of the principal Order before this Order comes into force, and then makes a claim within 3 months of the request, the date of claim will be the date of the request.

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STATUTORY INSTRUMENTS

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