

**The Armed Forces and Reserve Forces  
Compensation Scheme Order (AFCS) 2011  
in force from 9 May 2011 to 16 November 2011**

SI 2011/517

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STATUTORY INSTRUMENTS

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**2011 No. 517**

**PENSIONS**

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

*Made* - - - - 23rd February 2011  
*Laid before Parliament* 28th February 2011  
*Coming into force* - - 9th May 2011

The Secretary of State, in exercise of the powers conferred by section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 <sup>F1</sup>, makes the following Order:

**Annotations:**

**Amendments (Textual)**

**F1** 2004 c. 32.

**PART 1**

PRELIMINARY

**Citation and commencement**

**1.** This Order may be cited as the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 and comes into force on 9th May 2011.

**Interpretation**

**2.** In this Order—

(1) “the AFCS 2005” means the Scheme established by the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 <sup>F2</sup>;

“the AFPS 1975” means the occupational pension scheme arrangements set out in—

(a) the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 made on 16th December 2010 <sup>F3</sup>;

- (b) the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Warrant 2010 made on 15th December 2010 <sup>F4</sup>;
  - (c) the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 made on 15th December 2010 <sup>F5</sup>;
- “the AFPS 2005” means the Scheme established in the Armed Forces Pension Scheme Order 2005 <sup>F6</sup>;
- “accredited medical specialist” means a medical practitioner whose name is included in the specialist register kept and published by the General Medical Council as required by section 34D of the Medical Act 1983 <sup>F7</sup>;
- “acting rank” means a rank where a member of the forces is appointed to a post above the member's substantive rank, and is paid at the rate appropriate to the higher rank;
- “additional benefit” means a benefit specified in article 75(2) and (3);
- “additional lump sum” means a benefit previously awarded under article 15C <sup>F8</sup> of the AFCS 2005;
- “additional multiple injury lump sum” means a benefit previously awarded under article 15B <sup>F9</sup> of the AFCS 2005;
- “appropriate tribunal” means the appropriate tribunal as defined in section 12(1) of the Pensions Appeal Tribunals Act 1943 <sup>F10</sup>;
- “benefit” means a benefit payable under this Order;
- “bereavement grant” means the grant referred to in article 29(1)(b);
- “body zone” is to be construed in accordance with article 20;
- “child's payment” means the payment referred to in article 29(1)(c) and determined in accordance with article 36;
- “claimant” means a person who has claimed benefit, a person to whom benefit has been paid and a person affected by any decision of the Secretary of State made under this Order;
- “claim form” means the form referred to in article 44(b);
- “a Commissioner” means a Northern Ireland Social Security Commissioner and includes a tribunal of Commissioners constituted under section 6D(5) of the Pensions Appeal Tribunals Act 1943 <sup>F11</sup>;
- “death benefit” means a benefit referred to in article 29;
- “descriptor” means a description of an injury in column (b) of Tables 1 to 9 of the tariff, and is to be construed in accordance with article 5;
- “downgraded” means downgraded for medical reasons as a result of which the person downgraded undertakes a reduced range of duties but retains rank and pay;
- “eligible child” has the meaning given in article 31;
- “fast payment” means the benefit referred to in article 27;
- “final decision” means a decision referred to in article 54;
- “forces” means the armed forces and the reserve forces;
- “former member” means a former member of the forces;
- “the FTRSPS 2010” means the occupational pension scheme for members of the Full-Time Reserve Service <sup>F12</sup> established by regulations made by the Defence Council <sup>F13</sup> 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 <sup>F14</sup>;
- “guaranteed income payment” is the payment referred to in article 15(1)(c) and determined in accordance with article 24;
- “Gurkha Pension Scheme” means the Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949) <sup>F15</sup>;
- “ill-health pension” means a pension paid under —

- (a) rules D1 and D7 (where the ill-health condition is met) of the instruments referred to in the definition of the AFPS 1975;
- (b) rule D5 or D6 of the AFPS 2005; or
- (c) provisions in the FTRSPS 2010, the Gurkha Pension Scheme, the NRPSPS or the RFPS 2005 equivalent to a pension specified in sub-paragraph (a) or (b) above;

“illness” means a physical or mental disorder included either in the International Statistical Classification of Diseases and Related Health Problems <sup>F16</sup> or in the Diagnostic and Statistical Manual of Mental Disorders <sup>F17</sup>;

“injury” includes illness except in relation to determining eligibility for a fast payment in article 27(1)(a);

“injury benefit” means a lump sum, a supplementary award and guaranteed income payment;

“interim award” means an award under article 52(1);

“lump sum”, except in the expressions “additional lump sum” and “additional multiple injuries lump sum”, means the sum referred to in article 15(1)(a) and determined in accordance with article 16(3);

“medical expenses” means the expenses referred to in article 28;

“member” member means a member of the forces;

“the NRPSPS” means the occupational pension scheme for members of the Non-Regular Permanent Staff <sup>F18</sup> set out in Chapter 9 of the Territorial Army Regulations 1978 <sup>F19</sup> 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;

“predominant” means more than 50%;

“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;

“service” means service as a member of the forces;

“Service Personnel and Veterans Agency” means an office designated by the Secretary of State for the purpose of receiving and determining applications for benefit;

“substantial and exclusive relationship” is to be construed in accordance with Schedule 1;

“supplementary award” means an award referred to in article 15(1)(b) and determined in accordance with article 16(5) and Part 2 of Schedule 3;

“surviving adult dependant” has the meaning given in article 30;

“survivor's guaranteed income payment” is the payment referred to in article 29(1)(a) and determined in accordance with article 34;

“tariff” means the tables of injuries and amounts set out in Part 1 of Schedule 3;

“tariff level” means the level of the tariff specified in column (a) of Tables 1 to 10 of Part 1 of Schedule 3;

“temporary award” means an award referred to in article 26.

(2) In this Order, any reference to claiming a benefit or to a claim—

- (a) is to be treated as including a case where, by virtue of article 45, it is not a condition of entitlement to benefit that a claim be made;
- (b) in the case of a claim for injury benefit, means a claim for one injury even where claims for more than one injury are made on the same claim form.

(3) In this Order, a person is “discharged on medical grounds” if the discharge is on the grounds that the person is medically unfit to continue in service, and as a result is entitled to an ill-health pension.

**Annotations:****Amendments (Textual)**

- F2** S.I. 2005/439, amended by S.I. 2006/1438, 2007/2609, 2008/39, 2008/2160, 2008/2942, 2008/2683, 2009/3236 and 2010/1723.
- F3** Order in Council made pursuant to section 3 of the Naval and Marine Pay and Pensions Act 1865 c. 73 (28 and 29 Vict).
- F4** Royal Warrant made under section 2 of the Pensions and Yeomanry Pay Act 1884 (47 and 48 Vict c. 55) and prerogative powers.
- F5** Queen's Order made under section 2(1) of the Air Force (Constitution) Act 1917 c. 51.(7 and 8 Geo 5).
- F6** S.I. 2005/438. as amended by S.I. 2006/717, 2007/2608, 2008/229 and 2009/544.
- F7** 1983 c. 54, **section 34D** was inserted by S.I. 2010/234, **article 4** and paragraph 10 of Schedule 1.
- F8** **Article 15C** was inserted by S.I. 2008/2942, article 10. This S.I. is revoked by article 94 and Schedule 7.
- F9** **Article 15B** was inserted by S.I. 2008/39, **article 8**. This S.I. is revoked by article 94 and Schedule 7.
- F10** 1943 c. 39, **section 12(1)** was amended by S.I. 2008/2833, **article 9(1)** and paragraph 4(20)(a) of Schedule 3.
- F11** 1943 c. 39, **section 6D(5)** was inserted by the **Armed Forces (Pensions and Compensation) Act 2004 (c. 32)**, **section 5** and schedule 1, paragraph 4 and amended by S.I. 2008/2833, **article 9(1)**, **Schedule 3**, paragraph 4(16)(d).
- F12** 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)**.
- F13** This instrument is available from Deputy Chief of Defence Staff (Personnel), (Pensions, Compensation and Veterans), Ministry of Defence, Main Building, Whitehall, London, SW1A 2HB.
- F14** 1996 c. 14.
- F15** This instrument is available from Land Forces Secretariat (Gurkha Policy). IDL 24, HQ Land Forces, Blenheim Building, Marlborough Lines, Andover, Hampshire, SP11 8HJ.
- F16** World Health Organisation, Geneva, 10th Revision 1992.
- F17** American Psychiatric Association, Washington DC. 4th Edition, Text Revision (2000).
- F18** 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)**.
- F19** This instrument is available from Directorate Personnel Services (Army) (Territorial Army), Headquarters Land Forces, Inkerman 67, Wilton, Salisbury, Wiltshire, SP2 0AG.

**Definition of “late onset illness”**

3. A “late onset illness” is—
- a malignancy, or other physical disorder which is capable of being caused by an occupational exposure occurring 7 or more years before the onset of the illness or the date of death as the case may be;
  - a mental disorder which is capable of being caused by an incident occurring 7 or more years before the onset of the illness; or
  - a mental disorder capable of being caused by an incident occurring less than 7 years before the date of onset of the illness, which disorder is capable of causing the person suffering from it to be unable to seek medical help for the disorder within 7 years of the date of onset of the illness.

**Definition of “salary”**

- 4.—(1) Subject to the following provisions of this article, in this Order “salary”, in relation to a member or former member in respect of whom benefit is payable, means—
- basic pay payable at the rate for a person of the member's substantive rank, or acting rank as the case may be, and seniority; and
  - any other amount if and to the extent that the Defence Council have determined that it is to be treated as salary.
- (2) Subject to paragraph (1)(b), “salary” does not include—

- (a) any allowances; or
  - (b) any additional amounts payable in respect of particular qualifications or duties (including payable to medical or dental officers), the location of service or the conditions in which service is temporarily performed.
- (3) “Salary” does not include any description of payment that the Secretary of State has determined is not to be treated as salary.

**Descriptor, further interpretative provisions**

5.—(1) Subject to article 25, a descriptor is to be construed as encompassing the expected effects of the primary injury and its appropriate clinical management, short of a discrete diagnosable disorder, including, but not limited to—

- (a) pain and suffering due to the primary injury;
- (b) the effect of operative intervention, including pain, discomfort and scarring;
- (c) the effect of therapeutic drug treatment;
- (d) the use of appropriate aids and appliances;
- (e) associated psychological effects short of a discrete diagnosable disorder.

(2) The effects described in paragraph (1) include the effects both on directly damaged and indirectly affected body structures.

(3) The term “functional limitation or restriction” in relation to a descriptor means that, as a result of an impairment arising from the primary injury or its effects, a person—

- (a) has difficulty in executing a task or action; or
- (b) is required to avoid a task or action because of the risk of recurrence, delayed recovery, or injury to self or others.

(4) Subject to paragraph (5), a reference in a descriptor to duration of effects means from the date of injury.

(5) In Tables 3 and 4 of the tariff a reference in a descriptor to duration of effects means from the date the claimant first sought medical advice in respect of the mental or physical disorder.

(6) Functional limitation or restriction is to be assessed by—

- (a) taking account of the primary injury and its effects; and
- (b) making a comparison between the limitation and restriction of the claimant and the capacity of a healthy person of the same age and sex who is not injured or suffering a health condition.

(7) Functional limitation or restriction is —

- (a) “permanent” where following appropriate clinical management of adequate duration—
  - (i) an injury has reached steady or stable state at maximum medical improvement; and
  - (ii) no further improvement is expected; and
- (b) “significant” where the functional limitation or restriction has an extensive effect.

**Service of documents**

6. Where under this Order—

- (a) any notice or other document is required to be given or sent to the Service Personnel and Veterans Agency, that notice or document is to be treated as having been given or sent on the day it is received by that Agency; and
- (b) any notice or other document is required to be given or sent to any person, that notice or document, if sent by post to that person's last known address, is to be treated as having been given or sent on the day that it was posted.

## PART 2

### THE COMPENSATION SCHEME

#### The Compensation Scheme

7.—(1) The Compensation Scheme set out in this Order is to be known as the Armed Forces and Reserve Forces Compensation Scheme 2011.

(2) Subject to paragraph (3), the rules of the Scheme are to be construed without reference to any other scheme applicable to the armed forces.

(3) Paragraph (2) does not apply where this Scheme—

- (a) re-enacts the provisions of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005; or
- (b) makes express reference to any other scheme.

#### Injury caused by service

8.—(1) Subject to articles 11 and 12, benefit is payable to or in respect of a member or former member by reason of an injury which is caused (wholly or partly) by service where the cause of the injury occurred on or after 6th April 2005.

(2) Where injury is partly caused by service, benefit is only payable if service is the predominant cause of the injury.

#### Injury made worse by service

9.—(1) Subject to articles 11 and 12, benefit is payable to or in respect of a former member of the forces by reason of an injury made worse by service if the injury—

- (a) was sustained before the member entered service and was recorded in the report of the medical examination when the member entered service,
- (b) was sustained before the member entered service but without the member's knowledge and the injury was not found at that examination, or
- (c) arose during service but was not caused by service,

and in each case service on or after 6th April 2005 was the predominant cause of the worsening of the injury.

(2) Benefit is only payable under paragraph (1) if the injury has been worsened by service and remains worsened by service on—

- (i) the day on which the member's service ends; or
- (ii) the date of claim if that date is later.

(3) Subject to paragraph (4), in the case of paragraph (1)(a) and (b), benefit is only payable if—

- (a) the member or former member was downgraded within the period of 5 years starting on the day on which the member entered service;
- (b) the downgrading lasted for a period of at least 6 months (except where the member was discharged on medical grounds within that period);
- (c) the member or former member remains continually downgraded until service ends; and
- (d) the worsening was the predominant cause of the downgrading.

(4) In the case of paragraph (1)(a) or (1)(b), benefit is not payable if the injury is worsened—

- (a) within 6 months of the day service commenced; or
- (b) 5 years or more after that day.

(5) In the case of paragraph (1)(c), benefit is only payable if the member—

- (a) was downgraded within the period of 5 years starting on the day on which the member sustained the injury and remains continually downgraded until service ends; and

- (b) the worsening was the predominant cause of the downgrading.

### **Death caused by service**

**10.**—(1) Subject to articles 11 and 12, benefit is payable in respect of a member or former member by reason of the death of the member or former member where—

- (a) the death was caused (wholly or partly) by service;
- (b) the cause of the death occurred on or after 6th April 2005; and
- (c) one of the conditions specified in paragraph (3) is satisfied.

(2) Where the death is partly caused by service, benefit is only payable if service is the predominant cause of the death.

(3) The conditions referred to in paragraph (1) are that the death—

- (a) occurred in service;
- (b) occurred within the period of 7 years beginning with the day on which service ends and was caused by—
  - (i) an injury which was caused by service; or
  - (ii) the worsening by service of an injury which existed before or arose during service and which was not caused by service; or
- (c) occurred more than 7 years after the day on which service ends and—
  - (i) the death is caused by a late onset illness which was caused by service; or
  - (ii) the predominant cause of the death is an injury for which an award of injury benefit has been made which gave rise to an entitlement within tariff levels 1 to 9 (inclusive).

### **Injury and death – exclusions relating to travel, sport and slipping and tripping**

**11.**—(1) Except where paragraph (2) or (9) apply, benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by travel from home to place of work or during travel back again.

(2) This paragraph applies where the travel referred to in paragraph (1) is—

- (a) from the member's home or place of work to the place where an activity referred to in paragraph (6) is happening or during travel back again; or
- (b) from home or place of work where a member is changing a place of work in the United Kingdom to a place of work outside the United Kingdom or during travel back again.

(3) Except where paragraph (4) and (9) apply, benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by that member slipping, tripping or falling.

(4) This paragraph applies where the member was participating in one of the following activities in pursuance of a service obligation—

- (a) activity of a hazardous nature;
- (b) activity in a hazardous environment; or
- (c) training to improve or maintain the effectiveness of the forces.

(5) Except where paragraph (6) or (9) apply, benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by participation in sporting activity as—

- (a) a player;
- (b) a referee;
- (c) an organiser or a representative of a particular sport or sporting organisation.

(6) This paragraph applies where—

- (a) the Defence Council have approved the sport or sporting activity as being a sport which enhances the fitness, initiative and endurance of members of the forces, and prior to



the event, the relevant Service has recognised the particular sporting event and the organisation and training for it; or

- (b) the sporting activity is approved by the Defence Council which is undertaken for the purpose of meeting and maintaining the physical standards required of members of the forces.

(7) For the purposes of paragraph (6)(a), the Defence Council may approve a single sport or sporting activity or a class of such activities and may approve such activities unconditionally or subject to any specified condition.

(8) Except where paragraph (9) applies, benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by reason of—

- (a) attendance at a social event unless attendance was required by an order; or
- (b) free time or a social event associated with the activities specified in paragraph (5).

(9) This paragraph applies where the injury, the worsening of the injury or death was caused (wholly or partly) by reason of—

- (a) acts of terrorism or other warlike activities in each case directed towards the person as a member of the forces as such; or
- (b) the member being called out to and travelling to an emergency.

(10) In this article—

- (a) “home” means accommodation, including service accommodation, in which a member has lived or is expected to live for 3 or more months, and a member may have more than one home;
- (b) “place of work” means the place of work to which a member is assigned or temporarily attached;
- (c) “sporting activity” includes an adventurous course or an adventurous expedition approved by the Defence Council.

### **Injury and death – other exclusions**

**12.** Benefit is not payable to or in respect of a person by reason of an injury sustained by a member, the worsening of an injury, or death which is caused (wholly or partly) by—

- (a) the use or effect of tobacco;
- (b) the consumption of alcohol;
- (c) the non-therapeutic use of drugs;
- (d) consensual sexual activity;
- (e) except where article 9 applies, events, experiences, exposures and activities occurring before the member or former member entered service;
- (f) an illness which is—
  - (i) caused by a single gene defect or is predominantly hereditary in origin;
  - (ii) a personality disorder;
  - (iii) an endogenous infection; or
  - (iv) an exogenous infection except where the infection is acquired in a non-temperate region and the person infected has been exposed to the infection in the course of service or where, in a temperate region, there has been an outbreak of the infection in service accommodation or a workplace; or
- (g) a self-inflicted injury whether or not causing death except where the self-inflicting of injury is a result of a mental illness caused by service.

### **Modifications of provisions for members or former members of the reserve forces**

13. Schedule 2 has effect for the modification of certain provisions of this Order in relation to the reserve forces.

## **PART 3**

### **BENEFITS PAYABLE FOR INJURY**

#### **Interpretation of Part 3**

14. In Part 3—

- (a) any reference to an amount specified in column (b) of Table 10 of the tariff means the amount specified in that column on whichever is the later of the day on which—
  - (i) a claim for benefit is determined under article 51;
  - (ii) a final decision is made under article 54;
  - (iii) a decision of the Secretary of State is reconsidered under article 53 or revised under article 55, 56, 57 or 59; or
  - (iv) a decision relating to benefit is revised by an appropriate tribunal, the Upper Tribunal, a Commissioner, or a court.
- (b) “relevant amount” has the meaning given in article 16(6), and any reference to a relevant amount applicable to a descriptor is to be construed accordingly.
- (c) “relevant percentage” means the percentage of guaranteed income payment payable determined in accordance with article 24(3) and (4).

#### **Description of benefits - injury**

15.—(1) Benefits payable for injury are—

- (a) a lump sum;
  - (b) a supplementary award;
  - (c) a guaranteed income payment payable until death;
  - (d) a fast payment; and
  - (e) medical expenses.
- (2) Schedule 3 has effect for the purpose of determining—
- (a) the descriptor;
  - (b) the tariff level;
  - (c) the amount of a lump sum;
  - (d) the conditions relating to payment of a supplementary award; and
  - (e) the amount of a supplementary award.

#### **Injury benefit - general provisions**

16.—(1) Subject to articles 25 and 26—

- (a) benefit for injury is payable only in respect of an injury for which there is a descriptor;
- (b) where an injury may be described by more than one descriptor, the descriptor is that which best describes the injury and its effects for which benefit has been claimed; and
- (c) more than one injury may be described by one descriptor.

(2) In Tables 1 to 9 of the tariff the descriptors give rise to entitlement at the corresponding tariff level.

(3) Subject to paragraph (4), the amount specified in column (b) of Table 10 of the tariff is the amount of the lump sum in relation to the corresponding tariff level referred to in column (a).

(4) In the case of an injury to which article 25 (injury to a pair of like body parts) applies, the lump sum is the amount calculated in accordance with article 25(3)(a).

(5) A supplementary award is payable in addition to a lump sum where an injury or the effect of an injury is—

- (a) specified in Part 2 of Schedule 3; and
- (b) the conditions specified in that Part are satisfied.

(6) The relevant amount is the amount of—

- (a) the lump sum determined in accordance with paragraph (3); and
- (b) a supplementary award, if payable, added to the lump sum for the descriptor which gives rise to that award.

(7) Guaranteed income payment is payable only in respect of injuries giving rise to an entitlement within tariff levels 1 to 11 and is to be determined in accordance with article 24.

(8) Subject to article 79(2), a person is only entitled to one guaranteed income payment regardless of the number of injuries which are sustained.

(9) If a person has sustained more than one injury in separate incidents the guaranteed income payment which is payable is the highest such payment which has been awarded.

(10) Guaranteed income payment is not payable until the day after the day on which the service of the member to whom it was awarded ends, and no such payment is payable in respect of any period before that day.

#### **Amount of lump sum and supplementary award - general**

**17.**—(1) The amount payable for an injury is—

- (a) the relevant amount, or
- (b) a percentage of the relevant amount,

determined in accordance with articles 18 to 23, whichever is applicable to the case.

(2) The total amount of lump sum and supplementary award payable for all injuries sustained in, or arising from, one incident is not to exceed the amount specified in column (b) of Table 10 of the tariff for an injury at tariff level 1.

(3) Subject to article 25, where paragraph (4) applies no account is to be taken of a lump sum or supplementary award paid for an injury or injuries sustained in any other incident.

(4) This paragraph applies where—

- (a) a member sustains an injury in more than one incident; and
- (b) in each case the injury is caused by service.

(5) Where paragraph (4) applies, guaranteed income payment is payable with reference to the tariff level determined on each occasion, but subject to article 16(8) and (9).

#### **Amount where injury or injuries are described by one descriptor**

**18.** Subject to article 17(2), where one injury or more which is described by one descriptor is sustained in or arises from one incident, the amount payable is the relevant amount applicable to that descriptor.

#### **Amount where 100% guaranteed income payment determined**

**19.**—(1) This article applies where—

- (a) one injury or more which is described by more than one descriptor is sustained in or arises from one incident;
- (b) the relevant percentage for the purpose of calculating the amount of a guaranteed income payment is 100%.

(2) Subject to article 17(2), the amount payable is the total of the relevant amount applicable to each descriptor.

### **Allocation of descriptors to body zones**

**20.**—(1) This article applies where—

- (a) one injury or more which is described by more than one descriptor is sustained in or arises from one incident;
- (b) the relevant percentage for the purpose of calculating the amount of guaranteed income payment is less than 100%; and
- (c) one injury or more is described by two or more descriptors tariff levels 1 to 11.

(2) Each injury or injuries which is described by a separate descriptor is to be allocated to one of the body zones specified in paragraph (6).

(3) The amount payable is to be calculated in accordance with article 21 or 22, whichever is applicable to the case.

(4) Subject to paragraph (5), where one or more injuries described by one descriptor extend to more than one body zone the descriptor is to be allocated to the body zone predominantly affected by the injury.

(5) Where benefit is payable for burns and is described by a descriptor in Table 1 of the tariff, the descriptor is to be allocated to the body zone which has the highest percentage of affected body surface area.

(6) The body zones are as follows —

- (a) “head and neck” which includes injury to the brain, skull, face, jaw, organs of the mouth and nose, cervical bony and spinal structures and thyroid;
- (b) “torso” which includes injury to the abdomen, including wall, peritoneum and structural contents, bony pelvis, pelvic floor and structural contents, perineum and external male and female genitalia, bony thorax, chest wall, pleura and structural contents, thoracic, lumbar, sacral and coccygeal bony and spinal structures;
- (c) “upper and lower limbs” which includes—
  - (i) injury to all structures from the shoulder, including scapula and clavicle, to the tips of hand digits (upper limbs);
  - (ii) injury to the buttocks and groin, and from the head of the femur to the tips of toes (lower limbs);
- (d) “senses” which means an injury which is described by a descriptor in Table 7 of the tariff;
- (e) “mental health” which means an injury which is described by a descriptor in Table 3 of the tariff.

(7) References to all the parts of the body in paragraph (6) include associated nerves, arteries, veins and lymphatic structures.

### **Amount where injury or injuries are described by two or more descriptors at tariff level 11 or above in more than one body zone**

**21.**—(1) This article applies where—

- (a) one or more injury which is described by more than one descriptor is sustained in or arises from one incident;
- (b) the descriptors of the injury or injuries relate to two or more body zones;
- (c) there is at least one descriptor which gives rise to an entitlement within tariff levels 1 to 11 in each of two or more body zones; and
- (d) the relevant percentage for the purpose of calculating the amount of a guaranteed income payment is less than 100%.

(2) Subject to article 17(2) the amount payable is to be calculated as follows—

- (a) for the first body zone, 100% of the relevant amount applicable to each descriptor in that body zone;
- (b) for the second body zone, 80% of the relevant amount applicable to each descriptor in that body zone;

- (c) for the third body zone, 60% of the relevant amount applicable to each descriptor in that body zone;
  - (d) for the fourth body zone, 40% of the relevant amount applicable to each descriptor in that body zone;
  - (e) for the fifth body zone, 20% of the relevant amount applicable to each descriptor in that body zone.
- (3) In this article—
- (a) “first body zone” means the body zone in relation to which the highest relevant amount would, but for this article, be payable,
  - (b) where the same amount is payable for each of two body zones one is the “first body zone” and the other is to be the “second body zone”,
- and references to the second, third, fourth and fifth body zone are to be construed accordingly.

**Amount where injury or injuries are described by more than one descriptor - other cases**

- 22.**—(1) This article applies where either paragraph (2) or (3) is satisfied.
- (2) This paragraph applies where—
- (a) one injury or more which is described by more than one descriptor is sustained in or arises from one incident;
  - (b) the descriptors of the injury or injuries relate to one or more body zones;
  - (c) the relevant percentage for the purpose of calculating the amount of a guaranteed income payment is less than 100%; and
  - (d) the descriptor or descriptors which give rise to an entitlement within tariff levels 1 to 11 are in a single body zone.
- (3) This paragraph applies where there are no injuries described by a descriptor which give rise to an entitlement within tariff levels 1 to 11.
- (4) Subject to article 17(2) the amount payable is to be calculated as follows—
- (a) for the first descriptor, 100% of the relevant amount applicable to that descriptor;
  - (b) for the second descriptor, 80% of the relevant amount applicable to that descriptor;
  - (c) for the third descriptor, 60% of the relevant amount applicable to that descriptor;
  - (d) for the fourth descriptor, 40% of the relevant amount applicable to that descriptor;
  - (e) for the fifth and subsequent descriptors, 20% of the relevant amount applicable to each descriptor.
- (5) In this article—
- (a) “first descriptor” means the descriptor in relation to which the highest relevant amount would, but for this article, be payable,
  - (b) where the same amount is payable for each of two descriptors one is the “first descriptor” and the other is to be the “second descriptor”,
- and references to the second, third, fourth, fifth descriptor and subsequent descriptors are to be construed accordingly.

**Recalculation of amount payable following award for additional injury**

- 23.**—(1) This article applies where—
- (a) a claim for injury benefit (“the first claim”) has been determined and injury benefit awarded;
  - (b) in the circumstances specified in paragraph (2) a further determination is made in relation to an injury sustained in the same incident, or an injury consequential to an injury sustained in that incident; and
  - (c) the decision following the further determination—

- (i) changes a descriptor for an injury;
  - (ii) awards an additional descriptor; or
  - (iii) awards a supplementary award.
- (2) The circumstances referred to in paragraph (1)(b) are—
- (a) a further claim is made for injury benefit for another injury, or an injury consequential to an injury sustained in the same incident as the first claim; or
  - (b) the decision on the first claim or the further claim is revised following a reconsideration under article 53, or a review under article 55, 56, 57 or 59.
- (3) Subject to paragraph (4), the amount of lump sum and any supplementary award payable following the further claim, reconsideration or review is to be re-determined in accordance with article 19, 21 or 22, whichever is applicable to the case.
- (4) Where the amount awarded following a re-determination of benefit payable for all injuries sustained in one incident, or consequential to an injury sustained in that incident is increased, account is to be taken of the amount of benefit already paid, and, subject to article 17(2), only the difference between an earlier award and a later award is payable.

### **Amount of guaranteed income payment**

- 24.**—(1) The annual amount of guaranteed income payment is the relevant percentage of the base figure.
- (2) The base figure is calculated by multiplying the relevant salary by the relevant factor.
- (3) Subject to paragraph (4), the relevant percentage is—
- (a) 100% where a descriptor gives rise to entitlement at tariff level 1, 2, 3 or 4 (band A);
  - (b) 75% where a descriptor gives rise to entitlement at tariff level 5 or 6 (band B);
  - (c) 50% where a descriptor gives rise to entitlement at tariff level 7 or 8 (band C); and
  - (d) 30% where a descriptor gives rise to entitlement at tariff level 9, 10 or 11 (band D).
- (4) Where an award for an injury sustained in or arising from one incident is described by—
- (a) one descriptor, “the relevant percentage” is determined in accordance with paragraph (3);
  - (b) more than one descriptor and the first and second descriptors are specified—
    - (i) in the same band, “the relevant percentage” is the percentage specified in the band immediately above the band in which the descriptors are specified (except where the descriptors are specified in band A in which case “the relevant percentage” is 100%);
    - (ii) in different bands, “the relevant percentage” is the percentage specified in the band in which the descriptor which gives rise to an entitlement to the highest tariff level is specified.
- (5) Where the Secretary of State makes a re-determination under article 23(3) and as a result, the first descriptor is at a higher tariff level than it was before the re-determination, the Secretary of State is to re-determine the relevant percentage in accordance with paragraphs (3) and (4).
- (6) In this article—
- (a) “the first and second descriptors” mean the descriptors which give rise to an entitlement to the highest tariff levels;
  - (b) “the relevant salary” is, subject to paragraph (7), the salary of a member on the day on which the member's service ends or in the case of a former member, the salary on that day up-rated for inflation to the date of claim;
  - (c) “the relevant factor” is the figure specified in column (b) of the Table in Schedule 4 in relation to the relevant age specified in column (a); and
  - (d) “the relevant age” is the age of the member on the day on which service ends or, in the case of a former member, the date of claim.

(7) Where one or more of the injuries which gives rise to an entitlement to guaranteed income payment was sustained in an incident which occurred on a day when the member or former member, as the case may be, held acting rank, the relevant salary is whichever is the higher of—

- (a) the salary specified in paragraph (6)(b); or
- (b) the actual salary of the member on the day of the incident.

(8) Up-rating a former member's salary for inflation for the purposes of determining “the relevant salary” under this article is to be carried out in accordance with article 73.

### **Injury to a pair of like parts of the body**

**25.**—(1) This article applies where a member loses, or wholly loses the function of, first one (“the first injury”) and later, in another incident, the other (“the second injury”) of a pair of like parts of the body specified in paragraph (5) and—

- (a) both the injuries are caused by service; and
- (b) an award of injury benefit has been made for the first injury.

(2) The descriptor for the second injury is to be the descriptor for the loss of both of the pair of like parts of the body.

(3) Where paragraph (1) applies—

- (a) the lump sum for the second injury is  $Y-X$ ;
- (b) any award of guaranteed income payment made for the first injury ceases to have effect; and
- (c) subject to article 16(8) and (9), guaranteed income payment is payable for the second injury as if the tariff level for that descriptor is determined in accordance with paragraph (2).

(4) In this article—

- (a)  $Y$  is the amount specified in column (b) of Table 10 of the tariff corresponding with the tariff level specified in column (a) of the relevant Table for the descriptor for loss of both of the pair of like parts of the body; and
- (b)  $X$  is the combined total of all previous awards of lump sum, supplementary award, additional multiple injury lump sum and additional lump sum paid for the loss of one of the pair of like parts of the body.

(5) The pairs of like parts of the body to which this article applies are—

- (a) arms or part of an arm;
- (b) feet (but not toes);
- (c) hands (but not fingers);
- (d) kidneys;
- (e) legs or part of a leg;
- (f) total loss of sight in both eyes; and
- (g) total loss of hearing in both ears.

### **Temporary Awards**

**26.**—(1) This article applies where the Secretary of State considers that—

- (a) a person has sustained an injury of a description for which no provision is made in the tariff in force on the date—
  - (i) on which the claim for benefit was made; or
  - (ii) of an application for a review under articles 55, 56, 57 or 59;
- (b) that the injury is sufficiently serious to warrant an award of injury benefit; and
- (c) that injury is listed in the International Statistical Classification of Diseases and Related Health Problems <sup>F20</sup> or in the Diagnostic and Statistical Manual of Mental Disorders <sup>F21</sup>.

(2) The Secretary of State is to make a temporary award in respect of that person relating to the level of the tariff which the Secretary of State considers appropriate for that injury.

(3) The amount of the lump sum payable under a temporary award is the amount which would have been payable had a descriptor been included in the tariff at the tariff level which the Secretary of State considers appropriate for the injury.

(4) Where guaranteed income payment is payable under a temporary award, the amount payable is that which would have been payable had the descriptor been included in the tariff at the tariff level which the Secretary of State considers appropriate for the injury.

(5) The making of a temporary award does not give rise to a right to—

- (a) a reconsideration of the decision under article 53; or
- (b) a review of the decision under article 55, 56 or 57.

(6) Except where paragraph (7) applies, if the Secretary of State—

- (a) does, within the period of 1 year starting with the date on which the temporary award is given or sent to the claimant, amend this Order by including a descriptor which describes the injury and is at the same tariff level for which the temporary award is made—
  - (i) a decision is to be issued making a permanent award in favour of the claimant, which takes effect on the day on which the amending Order comes into force; and
  - (ii) guaranteed income payment is to continue to be paid in accordance with this Order; or
- (b) does not within the period of 1 year so amend this Order—
  - (i) a decision is to be issued refusing to make a permanent award in favour of the claimant; and
  - (ii) guaranteed income payment ceases to be payable under the temporary award at the end of the period but no amount of benefit paid in accordance with that award is recoverable.

(7) This paragraph applies where, after the date of a claim or application for review (referred to in paragraph (1)(a)(ii)) but before the determination of that claim or application, the Secretary of State has amended this Order, by including a descriptor in the tariff which describes the injury at the tariff level which the Secretary of State considers appropriate for that injury.

(8) Where paragraph (7) applies the Secretary of State is to make a temporary award and immediately issue a decision making the temporary award permanent.

**Annotations:**

**Amendments (Textual)**

**F20** World Health Organisation, Geneva. 10th revision (1992).

**F21** American Psychiatric Association, Washington DC 20005 USA. 4th Edition, Text Revision (2000).

**Fast payment**

**27.—(1)** A fast payment is to be made where the Secretary of State is satisfied that—

- (a) an injury has occurred during service and is caused by service; and
- (b) if a claim for injury benefit is made one or more of the injuries sustained will be described by a descriptor which gives rise to an entitlement within tariff levels 1 to 8.

(2) The amount of the fast payment is to be the amount specified in column (b) of Table 10 of the tariff for an injury at tariff level 8.

(3) Following a determination of a claim for injury benefit, account is to be taken of the fast payment and only the difference between the amount of the fast payment and the amount of injury benefit payable on determination of that claim is to be paid.

(4) A decision under this article does not give rise to a right to a reconsideration under article 53.



(5) In this article “determination of a claim for injury benefit” means the amount of injury benefit payable for all the injuries arising from the same incident in relation to which the claim for a fast payment has been made.

### **Medical expenses**

**28.**—(1) Any necessary expenses of a former member may be paid for wholly or in part by the Secretary of State if the conditions specified in paragraph (2) are satisfied.

(2) Subject to paragraph (5) the conditions referred to in paragraph (1) are that the former member

- (a) has been awarded injury benefit where one or more of the injuries sustained gave rise to an entitlement to a descriptor within tariff levels 1 to 8;
  - (b) became ordinarily resident outside the United Kingdom within the period of 1 year starting with the day service ends; and
  - (c) is ordinarily resident outside the United Kingdom when the expenses are incurred.
- (3) The necessary expenses referred to paragraph (1) include, but are not limited to—
- (a) medical, surgical or rehabilitative treatment;
  - (b) professional nursing care;
  - (c) appropriate medical aids and appliances; and
  - (d) any expenses which the Secretary of State considers are incidental to the expenses specified in subparagraphs (a) to (c).
- (4) A decision under this article does not give rise to a right to a reconsideration under article 53.

(5) Where a former member is physically or mentally incapable of making arrangements to move outside the United Kingdom for some or all of the period specified in paragraph (2)(b), that period is to be extended for such further period, as in all the circumstances of the case, the Secretary of State considers reasonable.

## **PART 4**

### **BENEFITS PAYABLE FOR DEATH**

#### **Description of benefits - death**

**29.**—(1) Benefits payable for the death of a member or a former member (“the deceased”) are—

- (a) a survivor's guaranteed income payment payable until death to a surviving spouse, civil partner or surviving adult dependant;
- (b) a bereavement grant payable to a surviving spouse, civil partner or surviving adult dependant;
- (c) a child's payment payable to or in respect of an eligible child.

(2) If the deceased and the surviving spouse married less than 6 months before the death of the deceased, the Secretary of State may withhold benefit under this article.

(3) If the deceased and the surviving civil partner formed their partnership less than 6 months before the death of the deceased, the Secretary of State may withhold benefit under this article.

(4) Where a member was a member of the AFPS 2005 and dies in service, a bereavement grant is not payable except in the circumstances specified in paragraph (5).

(5) The circumstances referred to in paragraph (4) are that the salary of the deceased on the date of death is less than the amount of the bereavement grant.

#### **Meaning of “surviving adult dependant”**

**30.** A person is a surviving adult dependant in relation to a deceased member or former member if, at the time of the deceased's death—

- (a) the person and the deceased were cohabiting as partners in a substantial and exclusive relationship;
- (b) the deceased leaves no surviving spouse or civil partner;
- (c) the person and the deceased were not prevented from marrying or forming a civil partnership; and
- (d) either the person was financially dependent on the deceased or they were financially interdependent.

**Meaning of “eligible child”**

**31.**—(1) In this Order, “eligible child” in relation to a deceased member or former member, means—

- (a) a child or an adopted child of the deceased who meets any of the conditions specified in paragraph (2); and
  - (b) any other child or young person who—
    - (i) meets any of those conditions; and
    - (ii) was financially dependent on the deceased on the day of death.
- (2) The conditions referred to in paragraph (1) are that the person—
- (a) is aged under 18;
  - (b) is in full-time education or vocational training and is aged under 23; or
  - (c) because of physical or mental impairment—
    - (i) is, in the opinion of the Secretary of State, unable to engage in gainful employment; and
    - (ii) was dependent on the deceased on day of the deceased's death.

**Eligible child - further provisions**

**32.**—(1) Where a person ceases to be in full-time education and is aged under 19 on that day (“the relevant day”), the person is treated as being in such education until the first of the following days after the relevant day—

- (a) the second Monday in January;
- (b) the second Monday after Easter Monday;
- (c) the second Monday in September;
- (d) the day of the person's 19th birthday;
- (e) the day on which the person becomes engaged full-time in gainful employment.

(2) A person who, on the day of the death of a member or former member, is aged under 23 and taking a break from full-time education or vocational training not exceeding one academic year, is treated as continuing such education or training during the break for the purpose of determining whether the person is an eligible child on that day.

- (3) A person who on the day of the death of a member or former member—
- (a) has finished full-time education at school,
  - (b) has not started further full-time education or vocational training, and
  - (c) is taking a break not exceeding 15 months,

is treated as continuing such education or training during the break for the purposes of determining whether the person is an eligible child on that day.

- (4) A person who is an eligible child—
- (a) who takes a break from full-time education or vocational training not exceeding one academic year; or
  - (b) who—
    - (i) finishes full-time education at school, and

- (ii) takes a break not exceeding 15 months before starting further full-time education or vocational training,

is to be treated as continuing such education or training during one academic year in the case of paragraph (a) and during 15 months in the case of paragraph (b) for the purpose of determining whether the person is an eligible child during the break.

(5) A person who is aged over 17 and under 23 who has ceased full-time education or vocational training because of ill-health is to be treated, for the purpose of determining whether the person is an eligible child for the purpose of satisfying the condition specified in article 31(2)(b) as continuing such education or training until either—

- (a) the person resumes such education or training;
- (b) the person is no longer ill and does not resume such education or training; or
- (c) the person's ill-health is such that the person is unable to resume such education or training.

(6) Nothing in paragraphs (2), (3) or (4) requires child's payment to be paid in respect of such a child during the break.

(7) A person is no longer treated as an eligible child if a break referred to in paragraph (2), (3), (4) or (5) lasts for longer than the periods mentioned in those paragraphs.

### **Children born after the death of a member or former member**

**33.**—(1) A child who is born after the death of a member or a former member is only treated as an eligible child of that member if the child is born before the first anniversary of the death of the member or former member.

- (2) No child's payment is payable in respect of any period before the birth of such a child.

### **Amount of survivor's guaranteed income payment**

**34.**—(1) Subject to paragraph (6) the annual amount of survivor's guaranteed income payment is 60% of the base figure.

- (2) The base figure is calculated by multiplying the relevant salary by the relevant factor.

(3) In this article—

- (a) “the relevant salary” is, subject to paragraph (4), the salary of the member on the date of death, or in the case of a former member, the salary on the day on which the member's service ends up-rated for inflation to the date of claim;
- (b) “the relevant factor” is the figure specified in column (b) of the Table set out in Schedule 4 in relation to the relevant age specified in column (a);
- (c) “the relevant age” is the age of the member or former member as the case may be on the date of death.

(4) Where death is due to an injury sustained in an incident which occurred on a day while the member or former member held acting rank, the relevant salary is whichever is the higher of—

- (a) the salary specified in paragraph (3); or
- (b) the actual salary of the member or former member on the day of the incident.

(5) Up-rating a former member's salary for inflation for the purposes of determining “relevant salary” under this article is to be carried out in accordance with article 73.

(6) In the event that there is more than one surviving spouse entitled to the survivor's guaranteed income payment, the annual amount to which each such surviving spouse is entitled is 60% of the base figure, divided by the number of surviving spouses so entitled at the date of the death of the member or former member.

### **Amount of bereavement grant**

**35.**—(1) Subject to paragraph (2), the amount of the bereavement grant payable in respect of the death of a person who was a member on the date of death is £25,000.

(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 on the date of death and the amount specified in paragraph (1).

(3) Where a former member dies the bereavement grant is £37,500.

(4) 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 is the amount payable at paragraphs (1), (2) or (3), divided by the number of surviving spouses so entitled at the date of the death of the member or former member.

### **Amount of child's payment**

**36.**—(1) The annual amount of child's payment is the relevant percentage of the base figure or, in the circumstances specified in paragraphs (3)(b) and (4)(b), the amount referred to in those subparagraphs.

(2) The base figure is calculated by multiplying the relevant salary by the relevant factor.

(3) Where a member or former member dies leaving a surviving spouse, civil partner or a surviving adult dependant—

(a) the relevant percentage is—

(i) 15% for each of the first 2 eligible children;

(ii) 10% for the third eligible child; and

(b) where there are more than 3 eligible children, the amount referred to in paragraph (1) is an amount obtained by dividing 40% of the base figure by the number of eligible children left by the member or former member.

(4) Where a member or a former member dies without leaving a surviving spouse, a civil partner or a surviving adult dependant but leaves—

(a) no more than 4 eligible children, the relevant percentage is 25%;

(b) more than 4 eligible children, the amount referred to in paragraph (1) is an amount obtained by dividing the base figure by the number of eligible children.

(5) A child's payment is to be recalculated, in accordance with paragraph (6), and commence in accordance with paragraph (7), on the death of a person—

(a) who was a surviving spouse, civil partner or surviving adult dependant of a member or a former member; and

(b) who has been in receipt of a survivor's guaranteed income payment; and

(c) where there is no other surviving spouse entitled to a survivor's guaranteed income payment.

(6) The child's payment is to be recalculated—

(a) in accordance with paragraph (4); and

(b) as if the member or former member had died without leaving a surviving spouse, civil partner or surviving adult dependant.

(7) The recalculated child's payment becomes payable on the day after the date on which the death of the surviving spouse, civil partner or surviving adult dependant occurred.

(8) Where a child ceases to be an eligible child, there is to be no adjustment in the amount of child's payment payable to the other children who receive child's payment as a result of the same calculation.

(9) In this article—

(a) “the relevant salary” is, subject to paragraph (10), the salary of the member on the date of death or, in the case of a former member, the salary on the day on which the member's service ends up-rated for inflation to the date of claim;

(b) “the relevant factor” is the figure specified in column (b) of the Table set out in Schedule 4 in relation to the relevant age specified in column (a);

(c) “the relevant age” is the age of the member or the former member on the date of death.

(10) Where death is due to an injury sustained in an incident which occurred on a day while the member, or former member, held acting rank, the relevant salary is whichever is the higher of—

- (a) the salary specified in paragraph (9); or
- (b) the actual salary of the member or former member on the day of the incident.

(11) Up-rating a former member's salary for the purposes of determining “the relevant salary” under this article is to be carried out in accordance with article 73.

#### **Awards of child's payment - later adjustment**

**37.**—(1) This article applies where, after the death of a member or former member—

- (a) a child's payment is paid in respect of one or more persons under this Part on the basis that they were eligible children at the date of the member's death and that there were then no other eligible children; and
- (b) subsequently it appears—
  - (i) that a person in respect of whom such a payment has been paid was not then an eligible child;
  - (ii) that a further person was then an eligible child; or
  - (iii) that a child who was born after the member's death is an eligible child.

(2) The Secretary of State may make such adjustments in the amount of the child's payment payable in respect of the eligible children as are required in view of the facts as they subsequently appear.

(3) Paragraph (2) does not affect the Secretary of State's right to recover a payment or overpayment in any case where the Secretary of State considers it appropriate to do so.

#### **Children entitled to three or more awards of child's payment**

**38.**—(1) This paragraph applies if, apart from this paragraph, child's payment would be payable in respect of the same child under article 29(1)(c) as a result of the death of more than two members or former members.

(2) Child's payment is payable only in respect of the death of two members or former members.

(3) The amount of child's payment is the total of the two payments which together result in the payment of the highest annual amount.

## **PART 5**

### **ADJUSTMENT AND CESSATION OF BENEFIT**

#### **Adjustment of guaranteed income payment, survivor's guaranteed income payment and child's payment to take account of other amounts**

**39.**—(1) This article applies where a person is entitled to guaranteed income payment, survivor's guaranteed income payment or child's payment for any period during which the person is also entitled to—

- (a) a pension under the AFPS 1975, the AFPS 2005 or the Gurkha Pension Scheme (“a pension”); or
- (b) a payment under the Armed Forces Early Departure Payments Scheme Order 2005<sup>F22</sup> (“a payment”).

(2) Guaranteed income payment, the survivor's guaranteed income payment or the child's payment, as the case may be, is to be adjusted in accordance with paragraphs (3) or (4).

(3) Where a person is entitled to guaranteed income payment for any period during which the person is also entitled—

- (a) to a payment, or to a pension which is not an ill-health pension paid for the same injury for which the guaranteed income payment is paid, then the amount of the guaranteed income payment is reduced by 75% of the amount of that pension or payment;
- (b) to an ill-health pension which is paid for the same injury for which the guaranteed income payment is paid, then the amount of guaranteed income payment is reduced by the full amount of the ill-health pension.

(4) Where a person is entitled to survivor's guaranteed income payment or child's payment for any period during which the person is also entitled to a pension, then the amount of survivor's guaranteed income payment or child's payment is reduced by 75% of the amount of that pension.

(5) Where an amount of a pension or payment increases or decreases (including the commencement or cessation), after an award of benefit is made, the Secretary of State is to 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 the adjustment of benefit specified in this article.

(6) In this article any reference to a pension, ill-health pension or a payment means the gross amount, irrespective of any commutation.

**Annotations:**

**Amendments (Textual)**

**F22** [S.I. 2005/437](#), as amended by [S.I. 2006/717](#), 2007/2608, 2008/229 and 2009/544.

**Adjustment in benefit to take account of awards of damages**

**40.**—(1) This article applies where the Secretary of State is satisfied that damages have been or will be recovered by any person in respect of—

- (a) an injury or its effects for which benefit is payable; or
- (b) the death of a person for which benefit is payable.

(2) Subject to paragraph (3), those damages are to be taken into account against any benefit which might otherwise be payable under this Order and the Secretary of State is to withhold or reduce any such benefit accordingly.

(3) The Secretary of State may not—

- (a) take the damages into account where the Secretary of State 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 29(1)(b).

(4) 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.

(5) The Secretary of State may require a claimant to provide—

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

(6) In this article damages include any payment received as a result of a claim made in respect of —

- (a) an injury or the effects of an injury for which benefit is payable; or
- (b) the death of a person for which benefit is payable.

(7) Paragraph (6) applies whether or not the payment is made—

- (i) in pursuance of a judgment or order of a court of any jurisdiction; or
- (ii) by settlement or compromise of the claim, whether or not proceedings are instituted to enforce the claim.

(8) A person to whom or for whose benefit the compensation is paid is to be treated as recovering damages and the compensation paid is to be treated as the damages recovered where compensation is paid—

- (a) under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995 <sup>F23</sup>;
- (b) under the Criminal Injuries (Compensation) (Northern Ireland) Order 2002 <sup>F24</sup>; or
- (c) under the scheme established by the Ministry of Defence for the purposes of paying compensation to members of the forces who suffer injury as a result of a crime committed outside the United Kingdom.

**Annotations:**

**Amendments (Textual)**

**F23** 1995 c. 53.

**F24** S.I. 2002/796 (N.I. 1).

**Negligence or misconduct**

**41.** The Secretary of State may withhold up to 40% of benefit where the negligence or misconduct of a member or former member contributed to that person's injury or death.

**Cessation of guaranteed income payment and survivor's guaranteed income payment on admission to the Royal Hospital, Chelsea**

**42.** Any guaranteed income payment or survivor's guaranteed income payment payable to a former member will cease to be paid on admission to the Royal Hospital, Chelsea, as an in-pensioner but may be restored, if the former member subsequently leaves the hospital.

## PART 6

### CLAIMS

**Entitlement to benefit dependant on claim**

**43.—(1)** Except where article 45 applies, a person is not entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied, a claim is made for it in the manner, and within the time, specified in the following provisions of this Part.

(2) Where a member who is in service on or after 6th April 2005 or a surviving spouse, surviving civil partner or surviving adult dependant of such a member makes a claim for a pension for disablement or death under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 <sup>F25</sup>, the Secretary of State may treat that claim as also being a claim for benefit under this Order.

**Annotations:**

**Amendments (Textual)**

**F25** S.I. 2006/606 to which there are amendments but none relevant to this Order.

**Manner of making a claim**

**44.** A claim for benefit must be—

- (a) in writing;
- (b) on a form approved for that purpose by the Secretary of State;
- (c) signed by or on behalf of the claimant; and

- (d) given or sent to the Service Personnel and Veterans Agency within the time specified in article 47, 48 or 49 whichever is applicable.

### **Cases where claims are not required**

**45.**—(1) Subject to paragraph (3), it is not a condition of entitlement to benefit that a claim be made for it where a member—

- (a) is discharged on medical grounds; or
- (b) dies whilst serving in the forces.

(2) It is not a condition of entitlement to additional benefit that a claim be made, and article 46 does not apply in relation to these awards of benefit.

(3) This paragraph applies where a member dies in the circumstances specified in paragraph (1) leaving an eligible child and either—

- (a) leaves no surviving spouse, civil partner or surviving adult dependant; or
- (b) the child is not living with the surviving spouse, civil partner or surviving adult dependant, as the case may be, on the date on which the member died.

(4) Where paragraph (3) applies, it is a condition of entitlement to child's payment that a claim is made by or on behalf of the child.

(5) Paragraph (1)(a) applies only to injury benefit for the injury which caused the member to be discharged on medical grounds and any injuries arising from that injury or from the same incident that caused that injury.

(6) Paragraph (1)(b) applies only to death benefit.

### **Date of claim**

**46.**—(1) Subject to paragraphs (2) and (3), the date on which a claim is made is the date on which it is received by the Service Personnel and Veterans Agency.

(2) Where, not more than 3 months before the date on which a claim for injury benefit or death benefit is made, the claimant, or a person acting on the claimant's behalf requests the Secretary of State, orally or in writing, to provide information relating to benefit or a form for the purpose of claiming benefit, the date of claim is to be the date of that request.

(3) Where article 45(1) applies, the date of claim is to be treated as—

- (a) the day after the day on which the member is discharged on medical grounds; or
- (b) the day after the date of death of the member.

### **Time for making a claim - general**

**47.**—(1) Subject to articles 48 and 49, the time specified for making a claim for injury benefit is 7 years beginning with whichever is the earlier of the following days—

- (a) the day on which the injury occurs;
- (b) the day an injury which is not caused by service is made worse by service;
- (c) the day on which the member's service ends;
- (d) the day a member first seeks medical advice in relation to an illness.

(2) Paragraph (1)(d) applies only if the claim is in respect of an illness.

(3) The time for making a claim for injury benefit is extended by 3 years from the date of diagnosis where—

- (a) an illness first presents within the period specified in paragraph (1); but
- (b) the diagnosis of the illness is not made until less than 1 year before the end of that period.

(4) The time specified for making a claim for a fast payment is 6 months beginning with the day on which the injury occurs.



(5) A claim for medical expenses must be made prior to the expenses being incurred except in circumstances where the Secretary of State is satisfied that prior approval was not reasonably practicable due to a medical emergency.

(6) The time specified for making a claim for death benefit is 3 years beginning with the date of death where the death occurs—

- (a) after the day on which the service of the former member ends; and
- (b) within 7 years starting with that day.

**Time for making a claim - exceptional circumstances**

**48.**—(1) Article 47 does not apply where—

- (a) a claim for injury benefit is made by a former member for a late onset illness and the illness has been diagnosed by an accredited medical specialist;
- (b) the death of a former member—
  - (i) is caused by a late onset illness; or
  - (ii) occurs in circumstances specified in article 10(3)(c)(ii).

(2) Where paragraph (1) applies, the time specified for making a claim is 3 years beginning with the day the late onset illness was first diagnosed, or the date of death, as the case may be.

**Time for making a claim - physical or mental incapacity**

**49.**—(1) This paragraph applies if throughout the time specified for making a claim in article 47 or 48 a person is physically or mentally incapable of making a claim for injury benefit or death benefit or instructing another person to make a claim on their behalf.

(2) Where paragraph (1) applies, that time is to be extended for such further period as in all circumstances of the case the Secretary of State considers reasonable.

(3) This paragraph applies if a person—

- (a) has been physically or mentally incapable of making a claim for injury benefit or death benefit or instructing another to make it on their behalf;
- (b) becomes so capable within the period referred to in article 47 or 48.

(4) Where paragraph (3) applies, the time for making a claim may be extended for a period of up to 3 years, if the Secretary of State considers there is insufficient time for the person to make a claim, or instruct a person to make it on their behalf, within the period referred to in article 47 or 48.

**Withdrawal or amendment of claim**

**50.**—(1) A claimant may amend a claim by notice in writing given or sent to the Service Personnel and Veterans Agency at any time before notice of the decision on the claim has been given or sent to the claimant, and any claim so amended is to be treated by the Secretary of State as if it had been so amended in the first instance.

(2) A claimant may withdraw a claim at any time before notice of the decision on the claim has been given or sent, by notice in writing given or sent to the Service Personnel and Veterans Agency, and any such notice of withdrawal has effect when it is received.

(3) Where a claimant has withdrawn a claim under paragraph (2), that claim may not be reinstated, but the person may make a further claim in accordance with the provisions of this Order.

## PART 7

### ADJUDICATION

#### Decisions

**51.**—(1) The Secretary of State is to determine any claim for benefit and any question arising out of the claim.

- (2) The Secretary of State is to give reasons for the decision.
- (3) The decision and the reasons for the decision must—
  - (a) be in writing;
  - (b) be given or sent to the claimant; and
  - (c) inform the claimant of any right that the claimant may have—
    - (i) to a reconsideration of the decision under article 53; and
    - (ii) to appeal that decision to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943 <sup>F26</sup>.

#### Annotations:

#### Amendments (Textual)

**F26** 1943 c. 39, [section 5A\(1\)](#) was amended by the [Armed Forces \(Pensions and Compensation\) Act 2004](#) (c. 32), [section 5](#) and Schedule 1, paragraph 2(2).

#### Interim awards

**52.**—(1) An interim award may be made where the Secretary of State is satisfied that a person is entitled to injury benefit but—

- (a) the prognosis for the injury in that particular case is uncertain; and
  - (b) it is not possible to determine which descriptor is applicable to it.
- (2) The Secretary of State is to select the descriptor considered to be the most appropriate descriptor at the date of the decision.
- (3) The Secretary of State must specify the period which the interim award has effect in accordance with paragraphs (4) and (5).
- (4) The period referred to in paragraph (3) is to be a maximum of 2 years starting from the date the award was first made.
- (5) Where the period specified is less than 2 years, the Secretary of State may extend and further extend the award but, subject to paragraph (6), a final award must be made within the period of 2 years starting with the date on which an interim award was first made.
- (6) Where paragraph (7) applies—
- (a) the interim award may be extended and further extended for a period not exceeding 2 years; and
  - (b) a final award must be made within the period of 4 years starting with the date on which an interim award was first made.
- (7) This paragraph applies where—
- (a) the prognosis remains uncertain at the end of the initial 2 year period; and
  - (b) the Secretary of State considers the extension just and equitable having regard to all the circumstances of the case.
- (8) Where the final decision is to award a descriptor at a tariff level which is—
- (a) at the same level or higher than the tariff level awarded in the interim award, account is to be taken of the amount of benefit paid in accordance with the interim award and only

the difference between the amount of benefit paid in accordance with the interim award and the amount of the final decision is payable;

- (b) lower than the tariff level of the tariff awarded in the interim award, no further amount of benefit will be paid in accordance with the final decision, and no amount of benefit paid in accordance with the interim award is recoverable.

### Reconsideration

53.—(1) Subject to paragraphs (2) and (11), a decision (“the original decision”) is to be reconsidered if an application for a reconsideration, made in accordance with paragraph (4), is given or sent to the Service Personnel and Veterans Agency.

(2) Paragraph (1) does not apply where the decision—

- (a) is to make a temporary award under article 26(1);
- (b) is to make a fast payment under article 27(1);
- (c) relates to the payment of medical expenses under article 28; or
- (d) is to make an interim award under article 52(1).

(3) On a reconsideration of the original decision, the Secretary of State may—

- (a) make a new decision which maintains the original decision; or
- (b) revise that decision by—
  - (i) awarding benefit where no award of benefit was made in the original decision;
  - (ii) changing the descriptor applied so as to maintain or increase the amount awarded in the original decision;
  - (iii) increasing the amount awarded in the original decision;
  - (iv) changing the date on which an award of benefit becomes payable.

(4) An application for a reconsideration must be made within the period of 1 year starting with the date on which notice of the original decision is given or sent to the claimant and must—

- (a) be in writing;
- (b) be signed by or on behalf of the person making the application; and
- (c) specify the ground on which the application is made.

(5) Where an appeal has been made to an appropriate tribunal against an original decision and no application for a reconsideration has been made in respect of that decision under paragraph (1), the Secretary of State must reconsider the decision.

(6) The decision of the Secretary of State on an application for a reconsideration under paragraph (1), or a reconsideration under paragraph (5), and the reasons for that decision, must—

- (a) be in writing;
- (b) be given or sent to the claimant; and
- (c) inform the claimant of any right the claimant may have to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

(7) A decision on reconsideration does not give rise to a right for the claimant to make a further application for reconsideration under this article unless that decision is to make —

- (a) a temporary award under article 26; or
- (b) an interim award under article 52.

(8) Where a revised decision makes a temporary award or an interim award the claimant may apply for a reconsideration under this article when that award is made final.

(9) Where the Secretary of State increases the amount of benefit awarded in the original decision only the difference between the original award and the revised award is to be paid.

(10) Article 49 has effect in respect of an application for a reconsideration under this article as though a reference to making a claim was a reference to making an application for a reconsideration

and reference to the time for making a claim was a reference to the time for making an application for a reconsideration.

(11) Where a person applies for a review under article 55 or 56 before the Secretary of State has determined a reconsideration under this article, the application for the review supersedes the application for reconsideration.

### **Finality of decisions**

**54.**—(1) Where the Secretary of State has made a final decision awarding benefit, there is to be no review of that decision except in the circumstances specified in articles 55, 56, 57, 58 and 59.

(2) Where the Secretary of State has made a final decision which makes no award of benefit, there is to be no review of that decision except in the circumstances specified in article 59.

(3) In this article, and subject to paragraph (4), a final decision is—

- (a) a decision under article 51;
- (b) a decision making a final award under article 52;
- (c) a decision revised by the Secretary of State under article 55, 56, 57, 58 or 59;
- (d) a decision made under article 55, 56, 57 or 59 which maintains the decision under review;
- (e) a decision revised by the Secretary of State following a reconsideration under article 53; or
- (f) a new decision which maintains the original decision following a reconsideration under article 53.

(4) The decisions referred to in sub-paragraphs (a) to (d) are final decisions where there has been no application for reconsideration under article 53, or the time for such an application has expired.

### **Review - service termination**

**55.**—(1) This article applies where—

- (a) a person has been awarded injury benefit;
- (b) a decision in relation to injury benefit (“the injury benefit decision”) has been made within 7 years of the day the service of the member ends; and
- (c) the service of the member has ended.

(2) Subject to paragraph (3), the Secretary of State must review an injury benefit decision, where an application for review made in accordance with paragraph (6) is given or sent to the Service Personnel and Veterans Agency.

(3) Where a member has more than one period of service—

- (a) the time limit for an application for a review under this article, and
- (b) the condition specified in paragraph (1)(b),

relate to the period of service during which the injury for which injury benefit has been awarded arose.

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

- (a) make a new decision which maintains the final decision; or
- (b) subject to paragraph (5), revise an award of injury benefit.

(5) An award may be revised only where the injury in respect of which it has been awarded has—

- (a) become worse or caused a further injury to develop; and
- (b) the injury, or the injury and the further injury together is described by—
  - (i) a descriptor at a tariff level which is higher than that already awarded for the injury; or
  - (ii) an additional descriptor for the injury or the further injury.

(6) An application for a review under this article must be made within the period of 1 year starting with the day on which service ends and must—

- (a) be in writing;

- (b) be signed by or on behalf of the person making the application; and
  - (c) specify the ground on which the application is made.
- (7) The decision of the Secretary of State on a review under this article and the reasons for the decision must—
- (a) be in writing;
  - (b) be given or sent to the applicant;
  - (c) inform the applicant of any right the applicant may have—
    - (i) to a reconsideration of the decision under article 53; and
    - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.
- (8) Article 49 has effect in respect of an application for a review under this article as though a reference to making a claim was a reference to making an application for a review and reference to the time for making a claim was a reference to the time for making an application for a review.
- (9) The Secretary of State is to review an injury benefit decision under this article on one occasion only.
- (10) In this article and articles 56 and 57 “an injury benefit decision” means—
- (a) a final decision in relation to injury benefit;
  - (b) a decision in relation to injury benefit where—
    - (i) an application for a reconsideration has been made under article 53(1), or
    - (ii) article 53(5) applies,
- and in either case the reconsideration has not been determined;
- (c) a decision in relation to injury benefit made by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court.

### **Review - exceptional circumstances within 10 years**

**56.**—(1) Subject to paragraph (6), the Secretary of State must review an injury benefit decision if an application for a review made in accordance with paragraph (4) is given or sent to the Service Personnel and Veterans Agency.

- (2) On a review under this article the Secretary of State may—
- (a) make a new decision which maintains the injury benefit decision; or
  - (b) subject to paragraph (3), revise an award of injury benefit.
- (3) An award may be revised only where within the period of 10 years, starting with the date of the injury benefit decision, the injury in respect of which the decision relates has—
- (a) become worse or caused a further injury to develop;
  - (b) the worsening or the development is unexpected and exceptional; and
  - (c) the injury, or the injury and the further injury together is described by—
    - (i) a descriptor at a tariff level which is higher than that already awarded for the injury;  
or
    - (ii) an additional descriptor for the injury or the further injury.
- (4) An application for review under this article must be made within the period of 1 year starting on the day on which the worsening or the development began and must—
- (a) be in writing;
  - (b) be signed by or on behalf of the person making the application; and
  - (c) specify the ground on which the application is made.
- (5) The decision of the Secretary of State on an application for review under this article and the reasons for the decision must—
- (a) be in writing;

- (b) be given or sent to the applicant; and
  - (c) inform the applicant of any right the applicant may have—
    - (i) to a reconsideration of the decision under article 53; and
    - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.
- (6) The Secretary of State is to review an injury benefit decision under this article on one occasion only.

### **Review - final**

**57.**—(1) This article applies where an injury benefit decision was made 10 or more years before an application is made under this article.

(2) Subject to paragraph (7), the Secretary of State must review the decision to which paragraph (1) refers if an application for a review made in accordance with paragraph (5) is given or sent to the Service Personnel and Veterans Agency.

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

- (a) make a new decision which maintains the injury benefit decision; or
- (b) subject to paragraph (4), revise an award of injury benefit.

(4) An award may be revised only where the Secretary of State considers that it would be manifestly unjust to maintain the effect of the decision under review, because the injury in respect of which benefit has been awarded has—

- (a) become worse or caused a further injury to develop;
- (b) the worsening or the development is substantial, unexpected and exceptional; and
- (c) the injury, or the injury and the further injury together is described by—
  - (i) a descriptor at a tariff level which is higher than that already awarded for the injury; or
  - (ii) an additional descriptor for the injury or the further injury.

(5) An application for review under this article must be made within the period of 1 year starting with the day on which the worsening or the development began and must—

- (a) be in writing;
- (b) be signed by or on behalf of the person making the application; and
- (c) specify the ground on which the application is made.

(6) The decision of the Secretary of State on an application for review under this article and the reasons for the decision must—

- (a) be in writing;
- (b) be given or sent to the applicant; and
- (c) inform the applicant of any right the applicant may have—
  - (i) to a reconsideration of the decision under article 53; and
  - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

(7) The Secretary of State is to review an injury benefit decision under this article on one occasion only.

### **Review - award of damages**

**58.**—(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 paid or payable under this 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 revise a decision by decreasing the amount of the award, or 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 must—
  - (a) be in writing;
  - (b) be given or sent to the claimant; and
  - (c) inform the applicant of any right the applicant may have—
    - (i) to a reconsideration of the decision under article 53; and
    - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.
- (4) In this article “damages” has the meaning given in article 40(6) and (8).

### **Review - ignorance or mistake**

- 59.**—(1) Subject to paragraph (2), any decision of the Secretary of State may be reviewed at any time (including on the application of the claimant) if the Secretary of State is satisfied that the decision was given in ignorance of, or was based on, a mistake as to a material fact or of a mistake as to the law.
- (2) This article only applies—
    - (a) if the material fact was knowable at the time the decision was made and was disclosed to the Secretary of State at that time;
    - (b) if the ignorance or mistake was the ignorance or mistake of the Secretary of State;
    - (c) where the ignorance or mistake relates to the diagnosis of an injury, where the correct diagnosis was knowable given the state of medical knowledge existing at the time the diagnosis was made.
  - (3) On a review under this article, the Secretary of State may—
    - (a) make a new decision which maintains the decision under review (“the original decision”); or
    - (b) revise that decision by—
      - (i) awarding benefit where no award of benefit was made in the original decision;
      - (ii) changing the descriptor awarded so as to maintain, increase or decrease the amount awarded in the original decision;
      - (iii) increasing or decreasing the amount awarded in the original decision or so as to cancel an award of benefit;
      - (iv) changing the date on which an award of benefit becomes payable.
  - (4) The decision of the Secretary of State on a review under this article and the reasons for the decision must—
    - (a) be in writing;
    - (b) be given or sent to the claimant; and
    - (c) inform the applicant of any right the claimant may have—
      - (i) to a reconsideration of the decision under article 53; and
      - (ii) to appeal to the appropriate tribunal under section 5A(1) of the Pensions Appeal Tribunals Act 1943.

### **Burden of proof**

- 60.**—(1) Subject to the provisions of this article, the burden of proving any issue is on the claimant.

(2) Where paragraph (3) applies there is a presumption in favour of the claimant unless the Secretary of State proves to the contrary.

(3) This paragraph applies where—

- (a) a contemporary official record relating to a material fact which is relevant to deciding a condition for payment of benefit under Part 2 is missing; and
- (b) there is other reliable evidence to determine the material fact.

(4) For the purpose of paragraph (3)—

- (a) “a contemporary official record” means a record, including an electronic record, held by the Secretary of State for Defence or the Defence Council;
- (b) “a material fact” need not be a decisive fact for the purpose of determining a claim under Part 2;
- (c) a record is missing where it has been—
  - (i) lost and cannot be found after a diligent search; or
  - (ii) destroyed.

### **Standard of proof**

**61.** The standard of proof applicable in any decision which is required to be made under this Order is the balance of probabilities.

### **Evidence**

**62.**—(1) For the purposes of determining any issue under this Order, the Secretary of State is to produce such medical or other records of a member or a former member (whether living or deceased), as are held by the Secretary of State for Defence or the Defence Council and are relevant to the issues to be decided.

(2) The Secretary of State is to consider any evidence which appears to be relevant to the issues which are to be decided and is to determine those issues on that evidence.

(3) Where any decision required to be made under this Order is, or includes, a decision involving a medical issue, that decision is to be made in accordance with generally accepted medical and scientific knowledge prevailing at the time the decision is made.

### **Information and medical examination**

**63.**—(1) Where paragraph (2) applies a claim is to be treated as never having been made.

(2) This paragraph applies where a claim has been made, and the claimant “C” has been requested in writing—

- (a) to provide further information which is reasonably required for the determination of the claim and—
  - (i) that information is not given or sent to the Secretary of State within 3 months of the date on which the request is sent; and
  - (ii) C does not provide a satisfactory explanation for that failure; or
- (b) to attend a medical examination—
  - (i) at a time and place specified in a notice given or sent to C, not less than 10 days before the date of the examination; and
  - (ii) C fails to attend without providing, within 3 months of the date of the examination to which the request related, a satisfactory explanation for that failure.

(3) Paragraph (2) has effect where a person makes a claim on C's behalf, and references to C are to be construed accordingly.

(4) The treating of a claim as never having been made does not prevent the making of a new claim in accordance with this Order.



(5) In this article a reference to a claim includes a reference to an application for reconsideration under article 53(1) and an application for a review under article 55(6), 56(4), 57(5) or 59(1).

## PART 8

### PAYMENT

#### Date on which awards of benefit become payable

**64.**—(1) A lump sum, a fast payment, medical expenses and a bereavement grant are to be paid as soon as is reasonably practicable after the award has been made.

(2) Subject to paragraphs (5) and (6) an award of guaranteed income payment becomes payable—

- (a) where a member is discharged from the forces on medical grounds and the award is for the injury which caused the member to be discharged on medical grounds, on the day after the discharge;
- (b) where a member is awarded injury benefit which includes an award of guaranteed income payment, on the day after the day on which the member's service ends;
- (c) in any case where sub-paragraph (a) or (b) does not apply, on the date of claim.

(3) Where a person who is entitled to a pension for disablement or death under the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (“the 2006 Order”) subsequently becomes entitled to benefit under this Order for the same injury or death for which there was entitlement under the 2006 Order, the date on which benefit under this Order becomes payable is the date on which—

- (a) a claim for benefit is determined under article 51;
- (b) a final award is made under article 54;
- (c) a decision of the Secretary of State is reconsidered under article 53 or revised under article 55, 56, 57 or 59;
- (d) a decision relating to benefit is revised by an appropriate tribunal, the Upper Tribunal, an appropriate Social Security Commissioner or a court, as the case may be.

(4) Subject to paragraph (6), where a member dies in service, an award of survivor's guaranteed income payment and an award of child's payment become payable on the day after the member's death.

(5) Subject to article 16(10), an award—

- (a) revised under article 53 becomes payable on the date of claim;
- (b) revised under article 55 becomes payable on the day after the member's service ends;
- (c) revised under article 56 or 57 becomes payable on the date the application for review is sent to the Secretary of State;
- (d) subject to paragraph (6), revised under 59 becomes payable—
  - (i) on the date the application for review is sent to the Secretary of State; or
  - (ii) where no application for a review has been made, the date on which the decision in relation to the revised award is sent to the claimant.

(6) Subject to paragraph (8), where a decision of the Secretary of State is revised under article 59 so as to award benefit or increase the amount of benefit awarded, guaranteed income payment, survivor's guaranteed income payment or child's payment becomes payable from the beginning of the period starting 6 years—

- (a) before the date on which the application for review is sent to the Secretary of State; or
- (b) where no application for a review has been made, before the date on which the decision in relation to the revised award is sent to the claimant.

(7) Where the amount of an award is reduced following a review under article 58 or 59, the reduced amount becomes payable on the date on which notification of the revised award is given or sent to the claimant.

(8) No benefit is payable for any period before the date of claim.

**Time of payment**

**65.** Guaranteed income payment, survivor's guaranteed income payment and child's payment are paid monthly in arrears unless, in any particular case, the Secretary of State arranges otherwise.

**Suspension – appeal from a decision of an appropriate tribunal**

**66.**—(1) Where paragraph (2) applies, and subject to paragraph (3), the Secretary of State may suspend payment of benefit in whole or in part.

(2) This paragraph applies where the Secretary of State is considering making an application for leave to appeal against the decision of an appropriate tribunal.

(3) A direction that payment of benefit is to be suspended must be—

- (a) in writing; and
- (b) given or sent to the claimant within the relevant period.

(4) If the Secretary of State does not make an application for leave to appeal within the relevant period the suspension is to cease.

(5) Where a direction has been given under paragraph (3) and an application for leave to appeal made the suspension may continue where—

- (a) leave to appeal is granted, until any subsequent appeal is determined;
- (b) an appropriate tribunal reviews its decision until that review has been determined; or
- (c) an application for leave to appeal is refused, if the Secretary of State makes a further application for leave to appeal in accordance with paragraph (6).

(6) The application referred to in paragraph (5)(c) must be made to the Upper Tribunal or a Commissioner within a period of 1 month beginning with the date on which notice in writing of the decision of the appropriate tribunal refusing leave to appeal is received.

(7) Where an application is made in accordance with paragraph (6) the suspension may continue until that application and any subsequent appeal is determined.

(8) Where the appeal is determined and the case remitted for rehearing and determination by an appropriate tribunal, the appeal is not determined for the purposes of this article until the matter remitted for rehearing has been determined by the appropriate tribunal.

(9) In this article “relevant period” means the period of 6 weeks beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

**Suspension – appeal from a decision of the Upper Tribunal, a Commissioner or a court**

**67.**—(1) Where paragraph (2) applies, and subject to paragraph (3), the Secretary of State may suspend payment of benefit in whole or in part.

(2) This paragraph applies where the Secretary of State is considering making an application for leave to appeal against the decision of the Upper Tribunal or a Commissioner.

(3) A direction that payment of benefit is to be suspended must be—

- (a) in writing; and
- (b) given or sent to the claimant within the relevant period.

(4) If the Secretary of State does not make an application for leave to appeal within the relevant period the suspension is to cease.

(5) Where direction has been given under paragraph (3) and an application for leave to appeal made, the suspension may continue where—

- (a) leave to appeal is granted, until any subsequent appeal is determined;
- (b) the Upper Tribunal reviews its decision until that review has been determined; or

(c) leave to appeal is refused, if the Secretary of State makes a further application for leave to appeal in accordance with to paragraph (6).

(6) The application referred to in paragraph (5)(c) must be made to the relevant appellate court within a period of 1 month beginning with the date on which notice in writing of the decision of the Upper Tribunal or a Commissioner refusing leave to appeal is received.

(7) Where an application is made in accordance with paragraph (6) the suspension may continue until that application and any subsequent appeal is determined.

(8) Where the appeal is determined and the case remitted by the relevant appellate court for rehearing and determination by an appropriate tribunal, the appeal is not determined for the purposes of this article until the matter remitted for rehearing has been determined by the appropriate tribunal.

(9) This article applies to an application for leave to appeal and an appeal from a decision of the relevant appellate court to the Supreme Court, and references to “the Upper Tribunal or Commissioner” and “the relevant appellate court” is to be construed accordingly.

(10) In this article “relevant period” means the period of 3 months beginning with the date on which notice in writing of the decision in question and of the reasons for it is received by the Secretary of State.

### **Suspension in other cases**

**68.**—(1) This article applies where—

- (a) an appeal has been brought against a decision of an appropriate tribunal, the Upper Tribunal, a Commissioner or a court in relation to a case (“the primary case”); and
- (b) if such an appeal were to be allowed a question would arise in relation to another case (“the secondary case”) whether the award of benefit in that case ought to be reviewed.

(2) Where paragraph (1) applies the Secretary of State may direct that payment of the benefit under the award in the secondary case be suspended, in whole or in part until such an appeal has been determined.

### **Payments on death**

**69.**—(1) On the death of a person who has made a claim for benefit, the Secretary of State may appoint such person as the Secretary of State thinks fit to proceed with the claim.

(2) Any sum which is payable under an award on a claim proceeded with under paragraph (1) is to be paid to the personal representatives of the deceased, or to such other persons as the Secretary of State considers fit.

(3) An award on a claim proceeded with under paragraph (1) is not to provide for payment of benefit for any period after the date of death.

## **PART 9**

### **THIRD PARTIES**

#### **Persons under 18**

**70.**—(1) Where a child is less than the age of 18, a claim for child's payment must be made by the child's parent or by a person having legal responsibility for the child and such a person may exercise on behalf of the child the powers specified in articles 50, 53, and 59, and has the duty imposed by article 63(2)(a) (provision of further information).

(2) Where the Secretary of State is satisfied that a claim for child's payment made by a person referred to in paragraph (1) cannot be determined because the person making the claim has not provided information requested under article 63(2)(a), the Secretary of State must appoint a person to pursue the claim on the child's behalf.

(3) Where the Secretary of State has made an appointment under paragraph (2)—

- (a) the Secretary of State may at any time revoke it and make another appointment under paragraph (2); and
  - (b) the person appointed may resign after having given one month's notice in writing to the Secretary of State of the intention to do so.
- (4) Subject to paragraph (5), child's payment awarded in respect of an eligible child aged less than 18 is to be paid to the child's parent or the person having legal responsibility for the child.
- (5) Where paragraph (6) applies the Secretary of State may, in writing, appoint a person to—
- (a) receive child's payment on behalf of the child; and
  - (b) apply child's payment for the benefit of the child.
- (6) This paragraph applies if the Secretary of State considers that it is in the interests of the child that a person other than the parent or person having legal responsibility for the child should be paid the child's payment.
- (7) Where a person appointed under paragraph (2) or (5) is a natural person, the person must be over the age of 18.
- (8) The Secretary of State may, before appointing a person under paragraph (5), require that person to give such undertaking as the Secretary of State considers necessary as to the use of the child's payment.
- (9) Where the Secretary of State has made an appointment under paragraph (5)—
- (a) the Secretary of State may at any time revoke it and either—
    - (i) make another appointment under paragraph (5); or
    - (ii) pay the child's payment to the parent or the person having legal responsibility for the child; and
  - (b) the person appointed may resign after having given one month's notice in writing to the Secretary of State of the intention to do so.

### **Persons who are mentally infirm**

- 71.**—(1) Where—
- (a) a person (“M”) is, or is alleged to be, entitled to benefit, whether or not a claim for benefit has been made by M or on M's behalf,
  - (b) M is, in the opinion of the Secretary of State incapable of managing their own affairs by reason of mental infirmity, and
  - (c) no person has legal authority to act on M's behalf,
- the Secretary of State may in writing appoint a person (who, if a natural person, is over the age of 18) to act for M in respect of this Order.
- (2) A person appointed under paragraph (1) must—
- (a) exercise, on behalf of M, any right to which M may be entitled under this Order and fulfil on M's behalf any duty imposed on M by this Order;
  - (b) receive and deal with any sums payable to M under this Order; and
  - (c) apply those sums for the benefit of M.
- (3) Where the Secretary of State has made an appointment under paragraph (1)—
- (a) the Secretary of State may at any time revoke it and make another appointment under paragraph (1); and
  - (b) the person appointed may resign after having given one month's notice in writing to the Secretary of State of the intention to do so.
- (4) The Secretary of State may, before appointing a person under paragraph (1), require that person to give such undertaking as the Secretary of State considers necessary as to the use of the sums paid in respect of M.

## PART 10

### UP-RATING

#### Annual up-rating of guaranteed income payment, survivor's guaranteed income payment and child's payment

**72.** The annual amount of guaranteed income payment, survivor's guaranteed income payment or child's payment is to increase as if these payments were pensions eligible to be increased under the Pensions (Increase) Act 1971 <sup>F27</sup>.

#### Annotations:

#### Amendments (Textual)

**F27** 1971 c. 56.

#### Up-rating of relevant salary for the purposes of articles 24, 34 and 36

**73.**—(1) This article applies where in the definition of “relevant salary” in articles 24(6)(b), 34(3)(a) and 36(9)(a), the salary of a former member is required to be up-rated for inflation.

(2) The Secretary of State is to review the salary on the departure day, estimated in such manner as the Secretary of State thinks fit, to determine whether it would have retained its value in relation to the general level of prices obtaining in the United Kingdom on the payment date.

(3) Where it appears to the Secretary of State that the general level of prices is greater on the payment date than it was on the departure day, the relevant salary is to be determined in accordance with paragraph (4).

(4) The relevant salary is to be the amount of the former member's salary on the departure day increased by the percentage by which the general level of prices is greater on the payment date than it was on the departure day.

(5) In this article—

- (a) “the departure day” means the day service ended or the date of death, whichever is applicable to the case;
- (b) “the payment date” means the date on which guaranteed income payment, survivor's guaranteed income payment or child's payment is paid for the first time.

(6) This article does not apply to determining the actual salary of a former member for the purpose of article 24(7)(b), 34(4)(b) or 36(10)(b), whichever is applicable to the case.

## PART 11

### ADDITIONAL BENEFIT

#### Interpretation of Part 11

**74.** In this Part—

- (a) “original decision” means—
  - (i) a decision by the Secretary of State in relation to the descriptor and tariff level for the qualifying injury made in accordance with the provisions of the AFCS 2005; or
  - (ii) a decision of an appropriate tribunal, the Upper Tribunal, a Social Security Commissioner or a court revising a decision referred to in paragraph (i).
- (b) “qualifying injury” means an injury or injuries which is described by one descriptor to which an entitlement to injury benefit was determined before 9th May 2011 and—
  - (i) injury benefit was paid or payable before that date; or

- (ii) no injury benefit was payable under article 15(2) of the AFCS 2005 because the injury was the fourth or subsequent injury sustained in the same incident.
- (c) “relevant percentage” means the percentage of guaranteed income payment payable;
- (d) “specified injury” means an injury or injuries or the effect of an injury or injuries which is—
  - (i) a qualifying injury; and
  - (ii) an injury from a category specified in column (a) of the Table in Schedule 5; and
  - (iii) the original decision determined that the injury was described by a descriptor in the AFCS 2005 in the table specified in column (b).

### **Additional benefit**

**75.**—(1) The Secretary of State is to award additional benefit for a qualifying injury and in respect of a death (where a claim for death benefit was determined and paid before 9th May 2011) in accordance with the provisions of this Part.

- (2) Additional benefits payable for a qualifying injury are—
  - (a) a further lump sum benefit determined in accordance with article 78;
  - (b) an additional guaranteed income payment determined in accordance with article 79; and
  - (c) a guaranteed income payment for a specified injury determined in accordance with article 80.
- (3) Additional benefits payable in respect of death are—
  - (a) an additional survivor's guaranteed income payment determined in accordance with article 81;
  - (b) an additional child's payment determined in accordance with article 82; and
  - (c) an additional bereavement grant determined in accordance with article 83.

### **Tariff level for a qualifying injury**

**76.**—(1) The tariff level for a qualifying injury which is not a specified injury is the tariff level determined in the original decision.

(2) Where a qualifying injury is a specified injury the tariff level is to be determined in accordance with paragraph (3).

(3) Where a specified injury is described by a descriptor which gives rise to an entitlement to a tariff level—

- (a) at a higher level than awarded in the original decision, the tariff level is to be the higher level;
- (b) at the same or a lower level as the original decision, the tariff level is to be the same as awarded in the original decision.

### **Supplementary award, relevant amount and relevant percentage for a qualifying injury**

**77.**—(1) The lump sum for a qualifying injury is the amount specified in column (b) of Table 10 of the tariff in relation to the tariff level determined in accordance with article 76.

- (2) A supplementary award of £60,000 is payable where a qualifying injury—
  - (a) is a traumatic physical injury;
  - (b) is described by a descriptor from Table 2 of the tariff; and
  - (c) the injury or the effect of the injury is specified in paragraph 1(2) of Part 2 of Schedule 3.
- (3) The relevant amount for a qualifying injury is the total amount of—
  - (a) a lump sum determined in accordance with paragraph (1);
  - (b) any supplementary award determined in accordance with paragraph (2); and

- (c) where paragraph (4) applies, an increase to the lump sum for a qualifying injury of—
- (i) £3,000 for a limb injury or fracture of a limb accompanied by acute compartment syndrome requiring operative treatment; or
  - (ii) £1,000 for a perforated tympanic membrane or an open fracture.
- (4) This paragraph applies where the increase to the lump sum was awarded in the original decision and—
- (a) was paid; or
  - (b) was not paid because the qualifying injury in respect of which it was awarded for the fourth or subsequent injury sustained in the same incident.
- (5) Except where paragraph (6) applies, the relevant percentage for a qualifying injury is to be the same as awarded in the original decision.
- (6) This paragraph applies where a qualifying injury is a specified injury and the tariff level for the injury—
- (a) is revised under article 76(3)(a); and
  - (b) is within tariff levels 1 to 11.
- (7) Where paragraph (6) applies, the relevant percentage is to be determined in accordance with article 24(3) and (4).

#### **Award of further lump sum benefit**

- 78.**—(1) The Secretary of State is to award a further lump sum benefit in accordance with this article.
- (2) The amount of the further lump sum benefit is  $A - B$  where—
- (a) “A” is the amount of benefit that would have been awarded for a qualifying injury if that amount has been determined in accordance with paragraph (3):
  - (b) “B” is the combined total of all previous awards of lump sum, additional multiple injury lump sum and additional lump sum applicable to the qualifying injury.
- (3) The amount of benefit is—
- (a) the relevant amount for a qualifying injury (determined in accordance with article 77(3)), or a percentage of that relevant amount; and
  - (b) determined in accordance with articles 18 to 22 with the modifications specified in Schedule 6.
- (4) Only one award of further lump sum benefit is to be made for a qualifying injury.
- (5) The total amount payable under paragraph (2) is not, taking into account all previous awards of lump sum, additional lump sum and additional multiple injury lump sum applicable to the qualifying injury or injuries sustained in or arising from one incident, to exceed the amount specified in column (b) of Table 10 of the tariff for an injury at tariff level 1.

#### **Award of additional guaranteed income payment**

- 79.**—(1) This article applies where for any period before 9th May 2011 a former member was—
- (a) in receipt of guaranteed income payment; or
  - (b) entitled to guaranteed income payment for a qualifying injury, but guaranteed income payment was not payable due to the reduction of that payment under article 31(2) of the AFCS 2005.
- (2) The Secretary of State is to award an additional guaranteed income payment in accordance with this article.
- (3) The additional guaranteed income payment is—
- (a) where paragraph (1)(a) applies,  $(A-B)-C$ ;
  - (b) where paragraph (1)(b) applies,  $A-B$ .
- (4) In this article —

- (a) “A” is the total amount of guaranteed income payment which would have been payable if the annual amount had been calculated in accordance with article 24; and—
    - (i) where paragraph (1)(a) applies, if that amount had been paid from the date payment commenced until the date specified in paragraph (5); and
    - (ii) where paragraph (1)(b) applies, if that amount had been paid for the period specified in paragraph (6).
  - (b) “B” is the adjustment of the total amount determined in accordance with article 39(3);
  - (c) “C” is the amount of guaranteed income payment paid from the date payment commenced until the date specified in paragraph (5).
- (5) The date referred to in paragraph (4)(a)(i) and (4)(c) is whichever is the earlier of—
- (a) the date of the former member's death; or
  - (b) 8th May 2011.
- (6) The period referred to in paragraph (4)(a)(ii) is the period—
- (a) commencing with whichever is the later of—
    - (i) the day after the former member's service ends; or
    - (ii) the date of the claim for injury benefit for the qualifying injury; and
  - (b) ending with whichever is the later of the dates specified in paragraph (5).

#### **Award of guaranteed income payment for a specified injury**

- 80.**—(1) This article applies where—
- (a) the tariff level for a specified injury is revised under article 76 to within tariff levels 1 to 11; and
  - (b) guaranteed income payment was not payable to a former member because no qualifying injury gave rise to an entitlement within tariff levels 1 to 11.
- (2) The Secretary of State is to award a guaranteed income payment in accordance with this article.
- (3) The income benefit is A–B where —
- (a) “A” is the total amount of guaranteed income payment which would have been payable if the annual amount—
    - (i) had been determined in accordance with article 24; and
    - (ii) had been paid for the period specified in paragraph (4).
  - (b) “B” is the adjustment of the annual amount of guaranteed income payment determined in accordance with article 39(3).
- (4) The period referred to in paragraph (3)(a)(ii) is the period—
- (a) commencing with whichever is the later of—
    - (i) the day after the former member's service ends; or
    - (ii) the date of the claim for injury benefit for the specified injury; and
  - (b) ending with whichever is the later of —
    - (i) the date of the former member's death; or
    - (ii) 8th May 2011.

#### **Additional survivor's guaranteed income payment**

- 81.**—(1) This article applies where for any period before 9th May 2011 a surviving spouse, civil partner or surviving adult dependant was —
- (a) in receipt of survivor's guaranteed income payment; or



- (b) entitled to survivor's guaranteed income payment, but survivor's guaranteed income payment was not payable due to the reduction of that payment under article 31(3) of the AFCS 2005.
- (2) The Secretary of State is to award an additional survivor's guaranteed income payment in accordance with this article.
- (3) The additional survivor's guaranteed income payment is—
  - (a) where paragraph (1)(a) applies, (A–B)–C;
  - (b) where paragraph (1)(b) applies, A–B.
- (4) In this article —
  - (a) “A” is the total amount of survivor's guaranteed income payment which would have been payable (irrespective of any deduction for income tax) if the annual amount had been calculated in accordance with article 34, and—
    - (i) where paragraph (1)(a) applies, if that amount had been paid from the date payment commenced until the date specified in paragraph (5); and
    - (ii) where paragraph (1)(b) applies, if that amount had been paid for the period specified in paragraph (6).
  - (b) “B” is the adjustment of the total amount determined in accordance with article 39(4).
  - (c) “C” is the amount of survivor's guaranteed income payment paid from the date payment commenced until the date specified in paragraph (5).
- (5) The date referred to in paragraphs (4)(a)(i) and (4)(c) is whichever is the earlier of —
  - (a) the date of death of the surviving spouse, civil partner or surviving adult dependant; or
  - (b) 8th May 2011.
- (6) The period referred to in paragraph (4)(a)(ii) is the period—
  - (a) commencing with whichever is the later of—
    - (i) the day after the date of death of the former member; or
    - (ii) the date of claim; and
  - (b) ending with whichever is the earlier of the dates in paragraph (5).

#### **Additional child's payment**

- 82.**—(1) This article applies where for any period before 9th May 2011 an eligible child was—
- (a) in receipt of child's payment; or
  - (b) entitled to child's payment but child's payment was not payable due to the reduction of that payment under article 31(3) of the AFCS 2005.
- (2) The Secretary of State is to award additional child's payment in accordance with this article.
- (3) The additional child's payment is—
- (a) where paragraph (1)(a) applies (A–B)–C;
  - (b) where paragraph (1)(b) applies A–B.
- (4) In this article —
- (a) “A” is the total amount of child's payment which would have been payable (irrespective of any deduction for income tax) if the annual amount had been calculated in accordance with article 36, and—
    - (i) where paragraph (1)(a) applies, if that amount had been paid from the date payment commenced until the date specified in paragraph (5); and
    - (ii) where paragraph (1)(b) applies, if that amount had been paid for the period specified in paragraph (6);
  - (b) “B” is the adjustment of the total amount determined in accordance with article 39(4).
  - (c) “C” is the amount of child's payment paid from the date payment commenced until the date specified in paragraph (5).

- (5) The date referred to in paragraphs (4)(a)(i) and (4)(c) is whichever is the earlier of —
- (a) the date of death of the child; or
  - (b) 8th May 2011.
- (6) The period referred to in paragraph (4)(a)(ii) is the period—
- (a) commencing with whichever is the later of—
    - (i) the day after the date of death of the former member; or
    - (ii) the date of claim; and
  - (b) ending with whichever is the earlier of the dates in paragraph (5).

(7) Where an eligible child has been paid, or, in the case of paragraph (1)(b) was entitled to, child's payment for more than one period, an additional child's payment determined in accordance with this article is payable for each period.

### **Additional bereavement grant**

**83.**—(1) The Secretary of State is to award an additional bereavement grant (“an additional grant”) to a surviving spouse, civil partner or surviving adult dependant determined in accordance with this article.

- (2) An additional grant of £10,000 is payable where—
- (a) a member of the reserve forces who was not a member of a reserve forces pension scheme died in service on or after 6th April 2005 and before 3rd August 2010; or
  - (b) a former member died on or after 6th April 2005 and a claim for benefit in respect of the death of the member was made before 3rd August 2010.
- (3) An additional grant of £20,000 is payable where a member—
- (a) died in service on or after 6th April 2005 and before 3rd January 2011;
  - (b) was a member of the AFPS 1975; and
  - (c) had held acting rank for less than 1 year on the date of death.

(4) In the event that there is more than one surviving spouse entitled to the additional grant the amount payable to each surviving spouse is the amount specified in paragraph (2) or (3) divided by the number of surviving spouses so entitled at the death of the member or former member.

(5) In this article a “reserve forces pension scheme” means the FTRSPS 2010, the NRRSPS or the RFPS 2005.

## **PART 12**

### **TRANSITIONAL PROVISIONS, REVOCATIONS AND SAVINGS**

#### **General**

**84.**—(1) Anything done or begun under a provision of the AFCS 2005 which has been re-enacted (with or without amendment) under this Order is to be treated as having been done or begun under the corresponding provision of this Order.

(2) No award already made to or in respect of any person under the AFCS 2005 may by virtue only of the coming into force of this Order be re-assessed to that person's disadvantage.

#### **Claims and applications for reconsideration or review made before 9th May 2011**

**85.**—(1) Where paragraph (2) applies, and subject to article 88, a claim, a reconsideration, or a review is to be determined in accordance with this Order.

- (2) This paragraph applies where before 9th May 2011—

- (a) a claim or application, under a provision of the AFCS 2005 specified in paragraph (3) was made, but a decision on that claim or application was not given or sent to the claimant before that date;
  - (b) an appeal was made to an appropriate tribunal but the Secretary of State had not reconsidered the decision under appeal under article 45(5) of the AFCS 2005 before that date.
- (3) The claims and applications referred to in paragraph (2) are—
- (a) a claim for injury benefit or death benefit under article 35, including a case where a claim is not required under article 37;
  - (b) an application for reconsideration under article 45(1);
  - (c) an application for review under article 48(1);
  - (d) an application for review under article 49(1).
- (4) In paragraph (2)(a) “a decision on that claim or application” means a decision under the following provisions of the AFCS 2005—
- (a) article 43(1);
  - (b) article 45(2);
  - (c) article 48(1); or
  - (d) article 49(3).

#### **Decisions made before 9th May 2011**

**86.**—(1) Where paragraph (2) applies, and subject to article 88, the Secretary of State is to determine a reconsideration or review in accordance with this Order.

(2) This paragraph applies where on or after 9th May 2011 the Secretary of State reconsiders or reviews a decision made before 9th May 2011 in the circumstances specified in paragraph (3).

(3) The circumstances referred to in paragraph (2) are—

- (a) a person makes an application on or after 9th May 2011 for reconsideration under article 53(1);
- (b) an appeal is made to an appropriate tribunal on or after 9th May 2011 and article 53(5) applies;
- (c) the Secretary of State reviews a decision under article 58 or 59 (including a review under article 59 following an application by the claimant made on or after 9th May 2011);
- (d) the Secretary of State reviews a decision under article 47 of the AFCS 2005 in respect of a member of the forces who was discharged on medical grounds before 9th May 2011 for the same injury for which an award of injury benefit was made before the member was discharged.

(4) Where an application for review under article 55, 56 or 57 is made on or after 9th May 2011 in respect of a decision made before 9th May 2011 the Secretary of State is to review that decision in accordance with this Order.

#### **Decisions revised by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court**

**87.**—(1) This paragraph applies where—

- (a) the Secretary of State makes an award of additional benefit; and
- (b) a decision made before 9th May 2011 relating to the amount of benefit awarded is revised (“the revised decision”) by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court after that award has been made.

(2) Where paragraph (1) applies, the Secretary of State is to take account of the award of additional benefit when implementing the revised decision.

(3) This paragraph applies where a decision made before 9th May 2011 that no benefit is payable in respect of an injury or a death is revised (“the revised decision”) by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court.

(4) Where paragraph (3) applies, and subject to article 88, the Secretary of State is to implement the revised decision in accordance with this Order.

### **Power to apply provisions in the AFCS 2005 and disapply provisions in this Order**

**88.**—(1) This article applies to a claim, reconsideration or review where—

- (a) article 85(2) applies; or
- (b) article 86(2) applies.

(2) The Secretary of State must not determine the claim, reconsideration or review to the detriment of the claimant.

(3) Where the Secretary of State considers it just and equitable in all the circumstances of the case the Secretary of State may—

- (a) apply one or more of the following provisions in the AFCS 2005, in whole or in part, which were in force at the date of claim—
  - (i) article 10 (injury and death benefits);
  - (ii) Tables 1 to 9 of Schedule 4 (the tariff) .
- (b) disapply one or more of the following provisions in this Order in whole or in part—
  - (i) article 5 (descriptor, further interpretation);
  - (ii) article 11 (injury and death –exclusions);
  - (iii) Part 11 (additional benefit);
  - (iv) Tables 1 to 9 of Part 1 of Schedule 3 (tariff).

### **Time limit for application for reconsideration**

**89.**—(1) Subject to paragraph (2), the period for making an application for a reconsideration under article 53(3) in relation to a decision made before 9th May 2011 is 1 year starting from the date the decision was given or sent to the claimant.

(2) The period of 1 year does not apply to an application for a reconsideration if the period of 3 months for making an application under article 45(1) of the AFCS 2005 expired before 9th May 2011.

### **Fast payment and medical expenses**

**90.**—(1) Article 27 (fast payment) applies only where an injury is sustained on or after 9th May 2011.

(2) Where a former member whose service ended before 9th May 2011 applies for medical expenses under article 28, that article is to be construed in accordance with paragraph (3).

(3) The condition in article 28(2)(b) is satisfied if the person becomes ordinarily resident outside the United Kingdom within 1 year starting with 9th May 2011, and paragraph (5) of that article is to be construed accordingly.

### **Review under article 55 (review – service termination)**

**91.** Article 55 applies only where a person's service in the forces ends on or after 9th May 2011.

### **Payment of guaranteed income payment**

**92.**—(1) Where a person is in receipt of guaranteed income payment immediately before 9th May 2011 the annual amount of that payment—

- (a) is to be re-determined in accordance with article 24;

- (b) adjusted in accordance with article 39(3); and
- (c) is payable from 9th May 2011.

(2) Where the relevant percentage for payment of guaranteed income payment is revised under article 77(6), the re-determination referred to in sub-paragraph (a) is to be at the revised percentage.

(3) Where an additional benefit is payable under article 80 to a former member, guaranteed income payment is—

- (a) to be determined in accordance with article 24;
- (b) to be adjusted in accordance with article 39(3); and
- (c) payable from 9th May 2011.

(4) This paragraph applies where a claim for injury benefit giving rise to an entitlement to guaranteed income payment was determined before 9th May 2011, but guaranteed income payment was not in payment immediately before 9th May 2011.

(5) Where paragraph (4) applies the annual amount of guaranteed income payment is—

- (a) to be determined in accordance with article 24;
- (b) to be adjusted in accordance with article 39(3); and
- (c) to commence on the day after the day on which the service of the member ends.

### **Payment of survivor's guaranteed income payment and child's payment**

**93.**—(1) Where a person is in receipt of survivor's guaranteed income payment or child's payment immediately before 9th May 2011 the annual amount of that payment—

- (a) is to be re-determined in accordance with article 34 or 36, as is applicable to the case;
- (b) adjusted in accordance with article 39(4); and
- (c) is payable from 9th May 2011.

(2) This paragraph applies where—

- (a) a claim for death benefit giving rise to an entitlement to survivor's guaranteed income payment or child's payment to an eligible child was determined before 9th May 2011; and
- (b) that survivor's guaranteed income payment or child's payment was not in payment immediately before 9th May 2011.

(3) Where paragraph (2) applies, the annual amount of survivor's guaranteed income payment or child's payment is—

- (a) to be determined in accordance with articles 34 or 36, whichever is applicable to the case;
- (b) to be adjusted in accordance with article 39(4);
- (c) to commence from the day after the day of the death of the former member.

### **Revocations and savings**

**94.**—(1) Subject to this article, the instruments specified in Schedule 7 are revoked.

(2) The following provisions continue to have effect in relation to claims made before 9th May 2011 for the purpose of article 88(3)—

- (a) article 10 and Tables 1 to 9 of Schedule 4 to the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 <sup>F28</sup> (“the 2005 Order”) relation to claims made before 29th June 2006;
- (b) articles 2 and 4 (amendment of article 10 of the 2005 Order) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2006 <sup>F29</sup> (“the 2006 Order”) in respect of claims made on or after 30th June 2006 and before 9th May 2011;
- (c) article 18 (insertion of Tables 1 to 9 of Schedule 4 of the 2005 Order) of the 2006 Order in respect of claims made on or after 30th June 2006 and before 16th September 2008;
- (d) article 15 (amendments to Table 5 of the 2005 Order and transitional provisions) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 2) Order

2008<sup>F30</sup> (“the 2008 No. 2 Order”) in relation to claims made on or after 8th February 2008 and before 16th September 2008;

- (e) article 3 (insertion of Tables 1 to 9 of Schedule 4 of the 2005 Order and transitional provisions) of the 2008 No. 2 Order in relation to claims made on or after 16th September 2008;
- (f) article 2 (amendment to Table 6 of Schedule 4 of the 2005 Order and transitional provisions) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2009<sup>F31</sup> in relation to claims made on or after 11th January 2010;
- (g) article 11 and the Schedule (amendments to Tables 1 to 9 of Schedule 4 of the 2005 Order), and article 12(1) and 12(2)(c) (transitional provisions) of the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2010<sup>F32</sup> in relation to claims made on or after 3rd August 2010.

(3) Article 47 of the 2005 Order (review on discharge on medical grounds) continues to have effect where a member was discharged on medical grounds before 9th May 2011 for the same injury for which an award of injury benefit was made before the member was discharged.

**Annotations:**

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**Amendments (Textual)**

- F28** [S.I. 2005/439](#).
- F29** [S.I. 2006/1438](#).
- F30** [S.I. 2008/2160](#).
- F31** [S.I. 2009/3236](#).
- F32** [S.I. 2010/1723](#).

Ministry of Defence  
23rd February 2011

*Andrew Robathan*  
Parliamentary Under Secretary of State

SCHEDULE 1

Article 2(1)

MEANING OF “SUBSTANTIAL AND EXCLUSIVE RELATIONSHIP”

**PART 1**

**SUBSTANTIAL RELATIONSHIP**

1. In deciding whether a relationship of a deceased member (“the deceased”) and the claimant is a substantial relationship, the Secretary of State is to have regard to—
  - (a) any evidence which the claimant considers demonstrates that the relationship is substantial; and
  - (b) must in particular have regard to the examples of the evidence specified in paragraph 2 which could, either alone or together, indicate that the relationship is substantial.
2. The evidence referred to in paragraph 1(b) is—
  - (a) evidence of regular financial support of the claimant by the deceased;
  - (b) evidence of a valid will or life insurance policy, valid at the time of the deceased's death, in which—
    - (i) the deceased nominates the claimant as principal beneficiary or co-beneficiary with children; or
    - (ii) the claimant nominates the deceased as the principal beneficiary;
  - (c) evidence indicating that the deceased and the claimant were purchasing accommodation as joint owners or evidence of joint ownership of other valuable property, such as a car or land;
  - (d) evidence of a joint savings plan or joint investments of a substantial nature;
  - (e) evidence that the deceased and the claimant operated a joint account for which they were co-signatories;
  - (f) evidence of joint financial arrangements such as joint repayment of a loan or payment of each other's debts;
  - (g) evidence that the deceased or the claimant had given the other a power of attorney;
  - (h) evidence that the names of both the deceased and the claimant appeared on a lease or rental agreement, if they lived in rented accommodation;
  - (i) evidence that the deceased and the claimant shared responsibility for children;
  - (j) evidence of the length of the relationship.

**PART 2**

**EXCLUSIVE RELATIONSHIP**

3. A relationship is not an exclusive relationship if—
  - (a) one or both of the parties to the relationship is married to, or is the civil partner of, someone other than the other party to the relationship; or
  - (b) one or both of the parties is a party to another relationship which is, or could be considered to be, a substantial and exclusive relationship having regard to the provisions of this Schedule.

## MODIFICATIONS FOR RESERVE FORCES

**Modification of article 2 (interpretation)**

1. The following definitions are inserted in article 2(1) in the appropriate alphabetical order—
- “relevant service” has the same meaning as in regulations made under sections 83 and 84 of the Reserve Forces Act 1996<sup>F33</sup>;
- “reservists' award” means an award payable to a member of a reserve force by virtue of regulations made under sections 83 and 84 or the Reserve Forces Act 1996 in respect of financial loss suffered by the member during relevant service, but does not include—
- (a) any award payable to a self-employed member of a reserve force in respect of the member's status as an employer;
  - (b) any amount payable to a reservist as a result of expenses incurred by the member during a period of relevant service; or
  - (c) any payments made into the member's civilian occupational pension scheme.

**Annotations:****Amendments (Textual)**

F33 1996 c. 14. S.I. 2005/859; 2010/2643.

**Modification of article 4 (definition of “salary”)**

- 2.—(1) For paragraph (1) of article 4 substitute the following paragraph—
- “(1) Subject to paragraph (3), in this Order “salary”, in relation to a member of the reserve forces in respect of whom benefit is payable, means—
- (a) the basic pay payable at the rate of a regular member of the forces who is of equivalent substantive rank, or acting rank, as the case may be, and seniority;
  - (b) an amount which represents any reservist's award to which the member is entitled on the day the member leaves the service by virtue of being in relevant service on that day;
  - (c) where the member is not in relevant service on the day the member leaves service, an amount which represents any reservist's award to which there would have been an entitlement had the member been in relevant service on that day; and
  - (d) any other amount if and to the extent that the Defence Council have determined that it is to be treated as salary.”.
- (2) In article 4(2) for “(1)(b)” substitute “ (1)(d) ”.

**Modification of article 11 (injury and death – exclusions relating to travel, sport and slipping or tripping)**

3. In article 11(10)(b) after “temporarily attached” insert “ for the purpose of service in the reserve forces. ”.

**Modification of article 35 (amount of bereavement grant)**

4. Where death is caused wholly or partly by service in the reserve forces, for article 35 substitute the following article—

**35.**—(1) 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.



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

(3) 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 date of death and the amount specified in paragraph (2).

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

(5) 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 is to 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.

(6) 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<sup>F34</sup>;
- (b) “reserve forces pension scheme” means the FTRSPS 2010, the NRPSPS or the RFPS 2005.”.

**Annotations:**

**Amendments (Textual)**

F34 1995 c. 26.

**Modification of article 39 (adjustment of guaranteed income payment, survivor's guaranteed income payment and child's payment to take account of other amounts)**

5. For article 39 substitute the following article—

“39.—(1) This article applies where a person is entitled to guaranteed income payment, survivor's guaranteed income payment or child's payment for any period during which the person is also entitled to—

- (a) a pension under the AFPS 1975, the AFPS 2005 or the Gurkha Pension Scheme (“a pension”);
- (b) a payment under the Armed Forces Early Departure Payments Scheme Order 2005 (“a payment”)<sup>F35</sup>;
- (c) a pension under the FTRSPS 2010, the NRPSPS or the RFPS 2005 (“a reserve forces pension”); or
- (d) benefit under an occupational pension scheme or a personal pension scheme in respect of the same injury or death for which guaranteed income payment, survivor's guaranteed income payment or child's payment is paid (“a civilian pension”).

(2) Guaranteed income payment, survivor's guaranteed income payment or child's payment, as the case may be, is adjusted in accordance with paragraphs (3) or (5).

(3) Where a person is entitled to a guaranteed income payment for any period during which the person is also entitled to a pension or payment—

- (a) specified in paragraph (4)(a), the amount of guaranteed income payment is reduced by 75% of that pension or payment;
- (b) specified in paragraph (4)(b), the amount of guaranteed income payment is reduced by the full amount of that pension.

(4) The pensions or payment referred to—

- (a) in paragraph (3)(a) are—
  - (i) a pension or a reserve forces pension which is not an ill-health pension paid for the same injury for which guaranteed income payment is paid;
  - (ii) a payment; or

(iii) a civilian pension;

(b) in paragraph (3)(b), are a pension or a reserve forces pension which is an ill-health pension paid for the same injury for which the guaranteed income payment is paid.

(5) Where a person is entitled to a survivor's guaranteed income payment or a child's payment for any period during which the person is also entitled to a pension, specified in paragraph (1)(a), (c) or (d), then the amount of the survivor's guaranteed income payment or child's payment is reduced by 75 % of the amount of that pension.

(6) Where an amount of a pension or payment specified in paragraph (1) increases or decreases (including commencement or cessation), after an award of benefit is made, the Secretary of State is to 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 the adjustment of benefit specified in this article.

(7) In this article—

(a) any reference to a pension, payment, reserve forces pension, civilian pension or ill-health pension means the gross amount, irrespective of any commutation;

(b) “occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993<sup>F36</sup>;

(c) “personal pension scheme” means a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 established within section 154(1) of the Finance Act 2004<sup>F37</sup>.”.

#### Annotations:

#### Amendments (Textual)

**F35** S.I. 2005/437, as amended by S.I. 2006/717, 2007/2608, 2008/229 and 2009/544.

**F36** 1993 c. 48 as amended by the Pensions Act 2004 (c. 35), **section 239(1)** and (3).

**F37** 2004 c. 12, **section 154(1)** as amended by the Finance Act 2007 (c. 11), **section 70** and Schedule 20, paragraph 1, 2(1) and (2).

## SCHEDULE 3

Article 15(2)

### THE TARIFF AND SUPPLEMENTARY AWARDS

## PART 1

### DESCRIPTORS, TARIFF LEVELS AND AMOUNTS - “THE TARIFF”

**Table 1 – Burns(\*)**

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Description of injury and its effects (“descriptor”)</i>
1	4	Burns, with deep second degree, third degree, or full thickness burns affecting 70% or more of whole body surface area.
2	5	Burns, with deep second degree, third degree, or full thickness burns affecting 50 to 69.9% of whole body surface area.
3	6	Burns, with deep second degree, third degree, or full thickness burns affecting 15 to 49.9% of whole body surface area.
4	6	Burns, with deep second degree, third degree, or full thickness burns to the face or face and neck including one or more of the following: loss of or very

		severe damage to chin, ear, lip or nose, resulting in or expected to result in residual scarring and poor cosmetic result despite treatment and camouflage.
5	7	Burns, with deep second degree, third degree, or full thickness burns to the face or face and neck resulting in, or expected to result in, residual scarring and poor cosmetic result despite treatment and camouflage.
6	8	Burns, with deep second degree, third degree, or full thickness burns affecting 9 to 14.9% of whole body surface area.
7	9	Burns, with deep second degree, third degree, or full thickness burns to the face or face and neck resulting in, or expected to result in, residual scarring and satisfactory cosmetic result with camouflage.
8	11	Burns, with deep second degree, third degree, or full thickness burns affecting 4.5 to 8.9% of whole body surface area.
9	12	Burns, with deep second degree, third degree, or full thickness burns affecting less than 4.5% of whole body surface area.
10	12	Burns, with first degree or superficial second degree burns affecting more than 15% of whole body surface area.
11	13	Burns, with first degree or superficial second degree burns to the face or face and neck.
12	14	Burns, with first degree or superficial second degree burns affecting 4.5 to 15% of whole body surface area.
13	15	Burns, with first degree or superficial second degree burns affecting 1 to 4.4% of whole body surface area.

(\*) Awards for all burns include compensation for any residual scarring or pigmentation and take into account any skin grafting.

(\*) Awards for deep second degree, third degree or full thickness burns include compensation for actual or expected metabolic or cardiovascular consequences.

**Table 2 - Injury, Wounds and Scarring(\*)**

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Description of injury and its effects (“descriptor”)</i>
1	5	Complex injury covering all or most of the area from thigh to ankle or shoulder to wrist, with complications, causing permanent significant functional limitation or restriction.
2	5	Loss of both kidneys or chronic renal failure.
3	6	Complex injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, with complications, causing permanent significant functional limitation or restriction.
4	6	Injury covering all or most of the area from thigh to ankle or shoulder to wrist, with complications, causing permanent significant functional limitation or restriction.
5	6	Complex injury to chest, with complications, causing permanent significant functional limitation or restriction.
6	7	Complex injury covering all or most of the area from thigh to ankle or shoulder to wrist, causing permanent significant functional limitation or restriction.

<sup>1</sup> A descriptor for a non-freezing cold injury refers to either unilateral or bilateral damage to the upper or lower extremities.

7	7	Injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, with complications, causing permanent significant functional limitation or restriction.
8	7	Injury to chest, with complications, causing permanent significant functional limitation or restriction.
9	7	Complex injury to chest causing permanent significant functional limitation or restriction.
10	7	Complex injury to abdomen, including pelvis or perineum, or both, with complications, causing permanent significant functional limitation or restriction.
11	7	Severe facial lacerations including one or more of the following: loss of or very severe damage to chin, ear, lip or nose, which have required, or are expected to require, operative treatment, but with poor cosmetic result despite camouflage.
12	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, torso or limb, with complications, which have required, or are expected to require, operative treatment with residual permanent significant functional limitation or restriction.
13	8	Injury covering all or most of the area from thigh to ankle or shoulder to wrist, causing permanent significant functional limitation or restriction.
14	8	Complex injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, causing permanent significant functional limitation or restriction.
15	8	Severe facial lacerations which have required, or are expected to require, operative treatment, but with poor cosmetic result despite camouflage.
16	8	Injury to abdomen, including pelvis or perineum, or both, with complications, causing permanent significant functional limitation or restriction.
17	8	Complex injury to abdomen, including pelvis or perineum, or both, causing permanent significant functional limitation or restriction.
18	8	Injury to chest, causing permanent significant functional limitation or restriction.
19	9	Injury to abdomen, including pelvis or perineum, or both, causing permanent significant functional limitation or restriction.
20	9	Injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, causing permanent significant functional limitation or restriction.
21	9	Complex injury covering all or most of the hand, with complications, causing permanent significant functional limitation or restriction.
22	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, torso or limb, which have required, or are expected to require, operative treatment with residual permanent significant functional limitation or restriction.
23	10	Severe facial lacerations which have required, or are expected to require, operative treatment with a good cosmetic result with camouflage.

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<sup>1</sup> A descriptor for a non-freezing cold injury refers to either unilateral or bilateral damage to the upper or lower extremities.

24	10	Complex injury covering all or most of the area from thigh to ankle or shoulder to wrist, with complications, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
25	10	Complex injury to chest, with complications, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
26	10	Complex injury covering all or most of the foot, with complications, causing permanent significant functional limitation or restriction.
27	10	Non-freezing cold injury with persistent local neuropathic pain and severe compromise of mobility or dexterity, and evidence of permanent damage to small nerves on thermal threshold testing. <sup>1</sup>
28	11	Complex injury covering all or most of the area from thigh to ankle or shoulder to wrist, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
29	11	Traumatic damage to spleen which has required splenectomy and where there is, or where there is a high risk of, overwhelming post-splenectomy infection.
30	11	Severe facial scarring which produces a poor cosmetic result despite camouflage.
31	11	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, torso or limb, which have required, or are expected to require, operative treatment with residual permanent significant functional limitation or restriction.
32	11	Complex injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, with complications, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
33	11	Injury covering all or most of the area from thigh to ankle or shoulder to wrist, with complications, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
34	11	Complex injury to chest, which has caused or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
35	11	Complex injury to abdomen, including pelvis or perineum, or both, with complications, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
36	11	Complex injury covering all or most of the hand, with complications, which has caused or is expected to cause significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
37	12	Complex injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
38	12	Severe scarring of face, or face and neck, or neck, scalp, torso or limb, where camouflage produces a good cosmetic result.

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<sup>1</sup> A descriptor for a non-freezing cold injury refers to either unilateral or bilateral damage to the upper or lower extremities.

39	12	Injury to chest, with complications, which has caused or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
40	12	Injury covering all or most of the area from thigh to ankle or shoulder to wrist, which has caused or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
41	12	High velocity gun shot wound, deep shrapnel fragmentation or one or more puncture wounds (or all or any combination of these injuries) to the head and neck, torso or limb which have required, or are expected to require, operative treatment with substantial functional recovery.
42	12	Traumatic injury to external genitalia requiring treatment resulting in severe permanent damage or loss.
43	12	Injury covering all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, with complications, which has caused, or is expected to cause significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
44	12	Complex injury to abdomen, including pelvis or perineum, or both, which has caused or is expected to cause significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
45	12	Complex injury covering all or most of the foot, with complications, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
46	13	Injury to abdomen, including pelvis or perineum, or both, with complications, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
47	13	Injury to all or most of the area from thigh to knee, knee to ankle, shoulder to elbow or elbow to wrist, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
48	13	Injury to chest, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with a substantial recovery beyond that date.
49	13	Moderate facial scarring where camouflage produces a good cosmetic result.
50	13	Lung damage due to toxic fumes, smoke inhalation or blast, where symptoms have continued, or are expected to continue beyond 6 weeks and where the claimant has made or is expected to make a substantial recovery within 26 weeks.
51	13	Traumatic tension or open pneumothorax.
52	13	Superficial shrapnel fragmentation or one or more puncture wounds (or both such injuries) to head and neck, torso or limb which have required, or are expected to require, operative treatment.
53	13	Fractured tooth which has required, or is expected to require, root resection.
54	13	Loss of two or more front teeth.
55	13	Non-freezing cold injury which has caused or is expected to cause neuropathic pain and significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date. <sup>1</sup>

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<sup>1</sup> A descriptor for a non-freezing cold injury refers to either unilateral or bilateral damage to the upper or lower extremities.

56	14	Injury to abdomen including pelvis or perineum, or both, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, with substantial recovery beyond that date.
57	14	Moderate scarring of scalp, neck, torso or limbs where camouflage produces a good cosmetic result.
58	14	Minor facial scarring.
59	14	Flesh wound which has required, or is expected to require, operative treatment.
60	14	Traumatic injury to external genitalia requiring treatment resulting in moderate permanent damage.
61	14	Damage to one front tooth which has required, or is expected to require, a crown or root canal surgery.
62	14	Damage to two or more teeth other than front which have required, or are expected to require, crowns or root canal surgery.
63	14	Loss of one front tooth.
64	14	Loss of two or more teeth other than front.
65	14	Non-freezing cold injury which has caused, or is expected to cause, neuropathic pain and significant functional limitation or restriction at 6 weeks with substantial recovery beyond that date. <sup>1</sup>
66	15	Minor scarring of scalp, neck, torso or limbs.
67	15	Injury to abdomen, including pelvis, or both, which has caused, or is expected to cause significant functional limitation or restriction at 13 weeks, with substantial recovery within 26 weeks.
68	15	Shrapnel fragmentation or one or more puncture wounds (or both such injuries) to head and neck, torso or limb not requiring operative treatment.

(\*) When applied to a limb injury the expression “complex injury” means that the injury affects all or most of the following structures: skin, subcutaneous tissues, muscle, bone, blood vessels and nerves.

(\*) When applied to a limb injury the expression “with complications” means that the injury is complicated by at least one of septicaemia, osteomyelitis, clinically significant vascular or neurological injury, avascular necrosis, gross shortening of the limb, mal-united or non-united fracture, or the fact that the claimant has required, or is expected to require, a bone graft.

(\*) When applied to a limb injury, the expression “injury covering all or most of the area” means external injury causing direct damage to contiguous areas of the limb circumference. In the case of a lower limb this may include direct damage to the buttocks.

(\*) When applied to an injury to the torso the expression “complex injury” means that there is clinically significant damage to vital structures and organs including two or more of the following: trachea, lungs, heart, gastrointestinal tract, great vessels, major nerves, diaphragm, chest or abdominal wall, pelvic floor, liver, pancreas, kidneys, bladder, spleen or ovaries.

(\*) When applied to an injury to the torso the expression “with complications” means that management of the injury has required two or more of the following: resuscitation, ventilation, thoracic or abdominal drainage, a laparotomy with repair and/or removal of organs and structures.

(\*) When applied to an injury in this Table, the term “torso” means any part of the chest, back or abdomen including pelvis and perineum.

(\*) When applied to any injury, the expression “vital structures” includes major nerve or blood vessels.

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<sup>1</sup> A descriptor for a non-freezing cold injury refers to either unilateral or bilateral damage to the upper or lower extremities.

(\*) An award for injury to a limb or the torso includes compensation for related scarring and damage to, or removal of structures (including skin, subcutaneous tissue, muscle, bone, tendons, ligaments, blood vessels, lymphatics and nerves).

<sup>1</sup> A descriptor for a non-freezing cold injury refers to either unilateral or bilateral damage to the upper or lower extremities.

**Table 3 - Mental disorders(\*)**

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Description of injury and its effects (“descriptor”)</i>
1	6	Permanent mental disorder, causing severe functional limitation or restriction. <sup>1</sup>
2	8	Permanent mental disorder, causing moderate functional limitation or restriction. <sup>2</sup>
3	10	Mental disorder, causing functional limitation or restriction, which has continued, or is expected to continue for 5 years.
4	12	Mental disorder, which has caused, or is expected to cause functional limitation or restriction at 2 years, from which the claimant has made, or is expected to make, a substantial recovery within 5 years.
5	13	Mental disorder, which has caused, or is expected to cause, functional limitation or restriction at 26 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 2 years.
6	14	Mental disorder, which has caused or is expected to cause, functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.

(\*) In assessing functional limitation or restriction in accordance with article 5(6) account is to be taken of the claimant's psychological, social and occupational function.

(\*) Mental disorders must be diagnosed by a relevant accredited medical specialist.

<sup>1</sup> Functional limitation or restriction is severe where the claimant is unable to undertake work appropriate to experience, qualifications and skills at the time of onset of the illness and over time able to work only in less demanding jobs.

<sup>2</sup> Functional limitation or restriction is moderate where the claimant is unable to undertake work appropriate to experience, qualifications and skills at the time of onset of the illness but able to work regularly in a less demanding job.

**Table 4 - Physical disorders – illnesses and infectious diseases(\*)**

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Description of physical disorder and its effects (“descriptor”)</i>
1	6	Physical disorder causing severe functional limitation or restriction where life expectancy is less than 5 years.
2	7	Physical disorder causing severe functional limitation or restriction where life expectancy is reduced, but is more than 5 years.
3	9	Physical disorder causing permanent severe functional limitation or restriction.
4	11	Physical disorder which has caused, or is expected to cause, severe functional limitation or restriction at 26 weeks from which the claimant has made, or is expected to make, a substantial recovery beyond that date.
5	11	Physical disorder causing permanent moderate functional limitation or restriction.
6	12	Permanent physical disorder where symptoms and functional effects are well controlled by regular medication.



7	13	Physical disorder which has caused, or is expected to cause, severe functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
8	13	Physical disorder which has caused, or is expected to cause, moderate functional limitation or restriction at 26 weeks, from which the claimant has made, or is expected to make, a substantial recovery beyond that date.
9	14	Physical disorder which has caused, or is expected to cause, severe functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
10	14	Physical disorder which has caused, or is expected to cause, moderate functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
11	15	Physical disorder which has caused, or is expected to cause, moderate functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.

(\*) This Table relates to diseases and related physical health problems included in the World Health Organisation International Classification of Diseases and Related Health Problems F38

. Mental and behavioural disorders and traumatic and accidental physical injuries are excluded.

#### Annotations:

#### Amendments (Textual)

F38 World Health Organisation, Geneva, 10<sup>th</sup> Revision 1992.

**Table 5 - Amputations(\*)**

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Description of injury and its effects (“descriptor”)</i>
1	1	Loss of both legs (above or below knee) and both arms (above or below elbow).
2	1	Loss of both eyes or sight in both eyes and loss of either both legs (above or below knee), or both arms (above or below elbow).
3	1	Total deafness and loss of either both legs (above or below knee) or both arms (above or below elbow).
4	1	Loss of both arms where one loss is a shoulder disarticulation or forequarter loss, and the loss of the other arm is at any level. <sup>1</sup>
5	1	Loss of both arms above or below elbow (not shoulder disarticulation or forequarter) and one leg (above or below knee).
6	1	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. <sup>2</sup>
7	2	Loss of both arms where one loss is at or above elbow (trans-humeral or elbow disarticulation) and the loss of the other arm is at, above or below elbow.
8	2	Loss of one arm above elbow (shoulder disarticulation or forequarter). <sup>1</sup>

<sup>1</sup> These descriptors also apply to circumstances where stump length or condition precludes satisfactory fitting of prosthesis.

<sup>2</sup> “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.

9	2	Loss of both legs where one loss is at hip disarticulation or hindquarter loss, and the loss of the other leg is at any level. <sup>1</sup>
10	2	Loss of both legs above or below knee (not hip disarticulation or hemipelvectomy) and one arm (above or below elbow).
11	3	Loss of both arms below elbow (trans-radial).
12	3	Loss of both legs where one loss is at or above knee (trans-femoral or knee disarticulation) and the loss of the other is at any level.
13	3	Loss of one leg above knee (hip disarticulation or hemipelvectomy). <sup>1</sup>
14	4	Loss of one arm at or above elbow (trans-humeral or elbow disarticulation).
15	4	Loss of both legs below knee (trans-tibial).
16	4	Loss of both hands (wrist disarticulation) or where amputation distal to that site has led to permanent total loss of use of both hands.
17	5	Loss of one arm below elbow (trans-radial).
18	5	Loss of one leg at or above knee (trans-femoral or knee disarticulation).
19	5	Loss of both feet at ankle distal to the calcaneum.
20	6	Loss of one leg below knee (trans-tibial).
21	6	Loss of one hand (wrist disarticulation) or where amputation distal to that site has led to permanent total loss of use of one hand.
22	7	Loss of both thumbs.
23	8	Loss of one foot at ankle distal to the calcaneum.
24	10	Loss of both great toes.
25	10	Loss of thumb.
26	10	Loss of both index fingers.
27	10	Loss of two or more fingers, other than thumb or index finger, from each hand.
28	10	Partial loss of thumb and index finger from each hand.
29	11	Loss of two or more fingers, other than thumb or index finger, from one hand.
30	12	Loss of great toe.
31	12	Loss of two or more toes, other than great toe, from each foot.
32	12	Loss of index finger from one hand.
33	12	Partial loss of thumb and index finger from one hand.
34	12	Partial loss of two or more fingers, other than thumb or index finger, from each hand.
35	12	Loss of one finger, other than thumb or index finger, from each hand.
36	12	Partial loss of thumb or index finger from each hand.
37	12	Persistent phantom limb pain.
38	12	Stump neuroma with trigger point stump pain.
39	13	Loss of two or more toes, other than great toe, from one foot.
40	13	Partial loss of each great toe.

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<sup>1</sup> These descriptors also apply to circumstances where stump length or condition precludes satisfactory fitting of prosthesis.

<sup>2</sup> "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.

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41	13	Partial loss of one finger, other than thumb or index finger, from each hand.
42	13	Loss of one finger, other than thumb or index finger, from one hand.
43	13	Partial loss of two or more fingers, other than thumb or index finger, from one hand.
44	13	Partial loss of thumb or index finger from one hand.
45	14	Partial loss of great toe from one foot.
46	14	Loss of one toe, other than great toe, from each foot.
47	14	Partial loss of one finger, other than thumb or index finger, from one hand.
48	14	Partial loss of two or more toes, other than great toe, from one foot.
49	15	Loss of one toe, other than great toe, from one foot.

(\*) Loss of one or both legs below knee includes loss of foot with loss of all or part of calcaneum (heel).

(\*) Loss of a finger or thumb means that amputation has taken place at the metacarpophalangeal joint.

(\*) Loss of a toe means that amputation has taken place at the metatarsophalangeal joint.

<sup>1</sup> These descriptors also apply to circumstances where stump length or condition precludes satisfactory fitting of prosthesis.

<sup>2</sup> “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.

**Table 6-Neurological disorders, including spinal, head or brain injuries(\*)**

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Description of injury and its effects (“descriptor”)</i>
1	1	Cervical spinal cord injury where the claimant requires ventilatory support and there is complete tetraparesis.
2	1	Cervical spinal cord injury with minimal upper limb function and complete or near complete paraparesis.
3	1	Complete brachial plexus injury with avulsion of the roots from the spinal cord, resulting in complete flaccid paralysis and sensory loss, with persistent severe central pain.
4	1	Brain injury with persistent vegetative state.
5	1	Brain injury resulting in major loss or limitation of responsiveness to the environment, including absence or severe impairment of language function, and a requirement for regular professional nursing care.
6	2	Cervical spinal cord injury with some useful upper limb function and complete or near complete paraparesis.
7	2	Thoracic spinal cord injury with complete paraparesis.
8	2	Injury to conus medullaris or cauda equina giving rise to complete paraparesis.
9	2	Complete brachial plexus injury with avulsion of the roots from the spinal cord, resulting in complete flaccid paralysis and sensory loss, without persistent severe central pain.

<sup>1</sup> The claimant is unable to undertake work appropriate to experience, qualifications and skills at the time of onset of the illness, but able to work regularly in a less demanding job.

<sup>2</sup> The diagnosis and prognosis of post traumatic syndrome must be determined by a consultant neurologist.

10	2	Partial brachial plexus injury in which spontaneous recovery or operative treatment has led to some restoration of useful function in the arm at the shoulder and elbow, but with no restoration of useful function in the hand.
11	2	Brain injury where the claimant has some limitation of response to the environment; substantial physical and sensory problems; and one or more of cognitive, personality or behavioural problems, requiring some professional nursing care and likely to require considerable regular support from other health professionals.
12	3	Injury to conus medullaris or cauda equina giving rise to partial paraparesis or severe monoparesis.
13	3	Thoracic spinal cord injury with partial paraparesis.
14	4	Injury to conus medullaris or cauda equina giving rise to partial asymmetric paraparesis.
15	4	Uncontrolled post head injury epilepsy.
16	4	Traumatic spinal injury with partial spinal cord, conus or cauda equina damage causing paraparesis of upper or lower limbs, or both, with some recovery and restoration of upper limb motor and sensory function, but no useful manual dexterity or ability to walk.
17	4	Brain injury where the claimant has moderate physical or sensory problems; one or more of cognitive, personality or behavioural problems and requires regular help from others with activities of everyday living, but not professional nursing care or regular help from other health professionals.
18	5	Partial brachial plexus injury in which spontaneous improvement or operative treatment has led to restoration of some useful function in the arm and hand.
19	5	Hemiplegia.
20	6	Injury to conus medullaris or cauda equina giving rise to partial monoparesis.
21	7	Traumatic spinal injury resulting in partial paresis of lower or upper limbs, or both, with substantial recovery, restoration of lower and upper limb motor and sensory function, including a useful ability to walk.
22	8	Brain injury from which the claimant has made a substantial recovery and is able to undertake some form of employment and social life, has no major physical or sensory deficits, but one or more of residual cognitive deficit, behavioural change or change in personality. <sup>1</sup>
23	8	Mild brachial plexus injury with substantial recovery of arm and hand function resulting in good restoration of manual dexterity.
24	9	Permanent isolated damage to one cranial nerve.
25	10	Permanent foot or wrist drop.
26	11	Minor traumatic head injury which has caused, or is expected to cause, functionally limiting or restricting post traumatic syndrome for more than 52 weeks. <sup>2</sup>
27	11	Brain or traumatic head injury with persistent balance symptoms and other functionally limiting neurological damage including permanent sensorineural hearing loss of less than 50dB averaged over 1, 2 and 3kHz.

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<sup>1</sup> The claimant is unable to undertake work appropriate to experience, qualifications and skills at the time of onset of the illness, but able to work regularly in a less demanding job.

<sup>2</sup> The diagnosis and prognosis of post traumatic syndrome must be determined by a consultant neurologist.

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28	12	Cerebral infarction due to vascular injury in the neck, resulting in persisting impairment of function and restriction of activities.
29	12	Controlled post head injury epilepsy.
30	12	Permanent substantial peripheral motor sensory or autonomic nerve damage.
31	12	Entrapment neuropathy which has not responded to treatment.
32	13	Permanent facial numbness including lip.
33	13	Entrapment neuropathy which has responded, or is expected to respond, to treatment.
34	13	Minor traumatic head injury which has caused, or is expected to cause, functionally limiting or restricting impaired balance or post-traumatic syndrome for more than 6 weeks, with substantial recovery beyond that date.
35	14	Permanent facial numbness which does not include the lip.
36	15	Permanent minor peripheral sensory nerve damage.

(\* ) An award for brain injury in levels 1, 2 or 4 includes compensation for associated sexual dysfunction, incontinence of the bowel and bladder, and epilepsy.

(\* ) An award for a spinal injury including a spinal cord, conus medullaris or cauda equina injury, complete or partial, at any tariff level, includes compensation for associated sexual dysfunction and incontinence of the bowel and bladder.

(\* ) The descriptors for a brachial plexus injury are for a unilateral injury.

<sup>1</sup> The claimant is unable to undertake work appropriate to experience, qualifications and skills at the time of onset of the illness, but able to work regularly in a less demanding job.

<sup>2</sup> The diagnosis and prognosis of post traumatic syndrome must be determined by a consultant neurologist.

**Table 7-senses(\*)**

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Description of injury and its effects (“descriptor”)</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	2	Total deafness in both ears.
6	5	Loss of one eye and permanent damage to the other eye, where visual acuity is correctable to 6/36.
7	5	Blast injury to ears or acute acoustic trauma due to impulse noise with permanent bilateral sensorineural hearing loss of more than 75dB averaged over 1, 2 and 3kHz.
8	6	Severe binocular visual field loss.
9	6	Blast injury to ears or acute acoustic trauma due to impulse noise with permanent sensorineural hearing loss of 50-75dB averaged over 1, 2 and 3kHz in one ear and more than 75dB loss averaged over 1, 2 and 3kHz in the other.

<sup>1</sup> These descriptors apply to bilateral hearing loss caused otherwise than by blast injury or acute acoustic trauma due to impulse noise.

10	6	Bilateral permanent hearing loss of more than 75dB averaged over 1, 2 and 3kHz. <sup>1</sup>
11	7	Blast injury to ears or acute acoustic trauma due to impulse noise with permanent bilateral sensorineural hearing loss of 50-75dB averaged over 1, 2 and 3kHz.
12	8	Total deafness in one ear.
13	8	Bilateral permanent hearing loss of 50-75dB averaged over 1, 2 and 3kHz. <sup>1</sup>
14	8	Loss of one eye or total blindness in one eye.
15	9	Partial loss of vision where visual acuity is correctable to 6/60.
16	9	Permanent and inoperable cataracts in both eyes.
17	10	Partial loss of vision where visual acuity is correctable to better than 6/60 and at least 6/36.
18	10	Detached retina in both eyes.
19	10	Blast injury to ears or acute acoustic trauma due to impulse noise with permanent sensorineural hearing loss in one ear of more than 75dB averaged over 1, 2 and 3kHz.
20	10	Acute physical trauma to ear causing conductive or permanent sensorineural hearing loss in one ear of more than 75dB averaged over 1, 2 and 3kHz.
21	11	Partial loss of vision where visual acuity is correctable to better than 6/36 and at least 6/18.
22	11	Blast injury to ears or acute acoustic trauma due to impulse noise with permanent sensorineural hearing loss in one ear of 50-75dB averaged over 1, 2 and 3kHz.
23	11	Acute physical trauma to ear causing conductive or permanent sensorineural hearing loss in one ear of 50-75dB averaged over 1, 2 and 3kHz.
24	12	Partial loss of vision where visual acuity is correctable to better than 6/18 and at least 6/12.
25	12	Permanent and inoperable cataract in one eye.
26	12	Operable cataracts in both eyes.
27	12	Moderate binocular visual field loss.
28	12	Detached retina in one eye.
29	12	Secondary glaucoma.
30	13	Significant penetrating, or blunt injury, to both eyes.
31	13	Retinal damage (not detached) to both eyes.
32	13	Partial loss of vision where visual acuity is correctable to better than 6/12.
33	13	Dislocation of lens in one eye.
34	13	Degeneration of optic nerve in both eyes.
35	13	Permanent diplopia.
36	13	Blast injury to ears or acute acoustic trauma due to impulse noise.
37	13	Acute physical trauma to ear causing conductive or permanent sensorineural hearing loss in one ear.

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<sup>1</sup> These descriptors apply to bilateral hearing loss caused otherwise than by blast injury or acute acoustic trauma due to impulse noise.

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38	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.
39	14	Operable cataract in one eye.
40	14	Corneal abrasions in both eyes.
41	14	Hyphaema in both eyes which has required, or is expected to require, operative treatment.
42	14	Retinal damage (not detached) in one eye.
43	14	Significant penetrating, or blunt, injury in one eye.
44	14	Degeneration of optic nerve in one eye.
45	14	Slight binocular visual field loss.
46	14	Traumatic mydriasis.
47	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.
48	15	Corneal abrasions in one eye.
49	15	Hyphaema in one eye which has required, or is expected to require, operative treatment.

(\*) For the purposes of this table 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 as having 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 3kHz, as measured by appropriately calibrated equipment meeting British Standards, operated by trained staff, 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 3kHz as measured by appropriately calibrated equipment meeting British Standards, operated by trained staff, and using quality assured pure tone audiometry.

(\*) All awards for hearing loss, including blast injury to ears and acute acoustic trauma, include compensation for associated tinnitus, and no separate award is payable for tinnitus alone.

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

<sup>1</sup> These descriptors apply to bilateral hearing loss caused otherwise than by blast injury or acute acoustic trauma due to impulse noise.

**Table 8-Fractures and dislocations(\*)**

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Description of injury and its effects (“descriptor”)</i>
1	9	Fracture of one femur, tibia, humerus, radius or ulna, with complications, causing permanent significant functional limitation or restriction.
2	9	Fracture or dislocation of one hip, knee, ankle, shoulder, elbow, or wrist, which has required, or is expected to require, arthrodesis, osteotomy or total joint replacement.
3	10	Fractured heels of both feet causing permanent significant functional limitation or restriction.

4	10	Fractures or dislocations of both hips, both knees, both ankles, both shoulders, both elbows or both wrists causing permanent significant functional limitation or restriction.
5	10	Multiple face fractures causing permanent significant cosmetic effect and functional limitation or restriction despite treatment.
6	11	Fractures or dislocations of both hips, both knees, both ankles, both shoulders, both elbows or both wrists which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
7	11	Fractured heel of one foot causing permanent significant functional limitation or restriction.
8	11	Fractured heel of both feet which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
9	11	Fracture of pelvis which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
10	11	Fracture or dislocation of great toe of both feet, which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
11	11	Fractured tarsal bones of both feet which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
12	11	Fractures of both femurs, both tibiae, both humeri, both radii or both ulnae which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
13	11	Fracture of one femur, tibia, humerus, radius or ulna causing permanent significant functional limitation or restriction.
14	11	Fracture of one femur, tibia, humerus, radius or ulna, with complications, which has caused, or is expected to cause, significant functional limitation or restriction beyond 52 weeks.
15	11	Multiple fractures to face, or face and neck where treatment has led, or is expected to lead, to a good cosmetic and functional outcome.
16	11	Fracture or dislocation of one hip, knee, ankle, shoulder, elbow or wrist causing permanent significant functional limitation or restriction.
17	11	Shoulder joint instability which has required or is expected to require operative treatment.
18	12	Fracture of one femur, tibia, humerus, radius or ulna, which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
19	12	Fracture of mandible or maxilla, 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 26 weeks.
20	12	Fracture of both hands which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
21	12	Fractures of both clavicles, or both scapulae, which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
22	12	Fracture of the skull with sub-dural or extra-dural haematoma which has required evacuation, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.



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23	12	Fracture or dislocation of thumb of both hands which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
24	12	Fracture or dislocation of one hip, knee, ankle, shoulder, elbow or wrist, which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
25	12	Fracture or dislocation of index finger on both hands which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
26	12	Fracture or dislocation of great toe on one foot which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
27	12	Fractured tarsal bones on one foot which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
28	12	Fractured heel of one foot which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
29	12	Fractured heel of both feet from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
30	12	Fractured or dislocated patella on both knees which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
31	12	Fractured metatarsal bones on both feet which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
32	12	Fractures of both femurs, both tibiae, both humeri, both radii or both ulnae, from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
33	12	Depressed skull fracture requiring operative treatment.
34	13	Fractured tarsal or metatarsal bones on both feet from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
35	13	Fractured metatarsal bones on one foot which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
36	13	Fracture or dislocation of great toe of both feet from which the claimant has made or is expected to make a substantial recovery within 26 weeks.
37	13	Fracture of one femur, tibia, humerus, radius or ulna from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
38	13	Fracture of skull with intracranial, extracerebral haematoma that has not required evacuation.
39	13	Fracture of ethmoid which has required or is expected to require operative treatment.
40	13	Fracture of zygoma which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
41	13	Fracture or dislocation of one hip, knee, ankle, shoulder, elbow or wrist from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
42	13	Fracture of one hand which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
43	13	Fractured heel of one foot, from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.

- 44 13 Fracture of both hands from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 45 13 Blow-out fracture of orbit which has required, or is expected to require, operative treatment.
- 46 13 Dislocated jaw which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 47 13 Fracture of one scapula or one clavicle which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 48 13 Fracture of both clavicles or both scapulae from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 49 13 Fracture of pelvis from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 50 13 Fracture of sternum which has, or is expected to have, symptoms continuing beyond 26 weeks.
- 51 13 Subluxed dislocated acromio or sterno-clavicular joint, which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 52 13 Fractures or dislocations of two or more toes, other than great, of both feet which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 53 13 Fracture or dislocation of thumb on one hand which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 54 13 Fracture or dislocation of thumb of both hands which has caused, or is expected to cause, significant functional limitation or restriction at 13 weeks from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
- 55 13 Fractures or dislocations of index finger on both hands, which have caused, or are expected to cause, significant functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 56 13 Fractures or dislocations of two or more fingers, other than index, on both hands, which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 57 13 Fracture or dislocation of index finger on one hand which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 58 13 Fractured or dislocated patella of one knee which has caused, or is expected to cause significant functional limitation beyond 26 weeks.
- 59 13 Shoulder joint instability not requiring operative treatment.
- 60 14 Dislocated jaw from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 61 14 Fractured zygoma from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
- 62 14 Fractured ethmoid which has not, or is not expected to require, operative treatment.
- 63 14 Fracture of mandible or maxilla from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.

64	14	Fracture of one hand from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
65	14	Deviated nasal septum requiring corrective surgery.
66	14	Displaced fracture of nasal bones.
67	14	Simple skull fracture.
68	14	Fractured fibula which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
69	14	Fracture or dislocation of thumb on one hand which has caused, or is expected to cause, significant functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
70	14	Fracture or dislocation of index finger, on one hand, which has caused, or is expected to cause, significant functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
71	14	Fracture or dislocation of one finger, other than index, on both hands, which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
72	14	Fractures or dislocations of two or more fingers, other than index, on one hand, which have caused, or are expected to cause significant functional limitation or restriction beyond 26 weeks.
73	14	Fractures or dislocations of two or more fingers, other than index, on both hands which have caused, or are expected to cause, significant functional limitation or restriction beyond 13 weeks from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
74	14	Fractures or dislocations of two or more toes, other than great toe, on one foot, which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
75	14	Fractures or dislocations of one toe other than great toe, on both feet, which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
76	14	Fractures or dislocations of two or more toes, other than great toe, on both feet, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
77	14	Fracture or dislocation of great toe on one foot from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
78	14	Fracture or dislocation of index finger on both hands, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
79	14	Fracture or dislocation of thumb on both hands, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
80	14	Subluxed dislocated acromio or sterno-clavicular joint from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
81	14	Fracture of coccyx from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
82	14	Fracture of clavicle or scapula from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.

- 83 14 Fracture of sternum from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 84 14 Fractured tarsal or metatarsal bones on one foot which have caused, or are expected to cause, significant functional limitation or restriction at 13 weeks from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 85 14 Fractured or dislocated patella of both knees which has caused, or is expected to cause, significant functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 86 14 Stress fracture where symptoms have lasted, or are expected to last, for more than 6 weeks.
- 87 15 Fracture of mastoid.
- 88 15 Undisplaced fracture of nasal bones.
- 89 15 Deviated nasal septum which has not required, or is not expected to require, operative treatment.
- 90 15 Fractured or dislocated patella of one knee which has caused, or is expected to cause, significant functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 91 15 Fracture of three or more ribs.
- 92 15 Fractures or dislocations of two or more toes, on one foot, which have caused, or are expected to cause significant functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 93 15 Fractures or dislocations of one toe, other than great toe, on both feet, which have caused, or are expected to cause significant functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 94 15 Fracture or dislocation of thumb on one hand from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
- 95 15 Fractured tarsal or metatarsal bone on one foot, which has caused, or is expected to cause, significant functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
- 96 15 Fracture or dislocation of two or more fingers, other than index, on one hand which have caused, or are expected to cause, significant functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 97 15 Fracture or dislocation of two or more fingers, other than index, on both hands, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
- 98 15 Fracture or dislocation of one finger, other than index, on both hands, which has caused, or is expected to cause, significant functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 99 15 Fracture or dislocation of index finger on one hand, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.

100	15	Fracture or dislocation of one finger, other than index, on one hand, which has caused or is expected to cause significant functional limitation or restriction beyond 26 weeks.
101	15	Fractured fibula from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
102	15	Fracture of three vertebral transverse or spinous processes.

(\*) An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

(\*) An award for dislocation includes ligament and other soft tissue damage not requiring operative treatment.

(\*) Where a fracture results in a dislocation only one award is payable.

**Table 9 -Musculoskeletal disorders(\*)**

<i>Item</i>	<i>Column (a) Level</i>	<i>Column (b) Description of injury and its effects (“descriptor”)</i>
1	9	Permanent severely impaired grip in both hands.
2	9	Septic arthritis or other pathology requiring arthrodesis or total joint replacement.
3	10	Ligament injury which has resulted in full thickness rupture, affecting both knees, ankles, shoulders, elbows or wrists, causing permanent significant functional limitation or restriction.
4	11	Ligament injury which has resulted in full thickness rupture, affecting one knee, ankle, shoulder, elbow or wrist, causing permanent significant functional limitation or restriction.
5	11	Ligament injury which has resulted in full thickness rupture, affecting both knees, ankles, shoulders, elbows, wrists which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, from which the claimant is expected to make a substantial recovery beyond that date.
6	11	Traumatic back injury (with medically verified neurological signs and vertebral damage) extending over several levels of vertebrae, 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.
7	11	Radiologically confirmed juxta-articular aseptic necrosis of hip or shoulder.
8	11	Ligament injury short of full thickness rupture, to both knees, ankles, shoulders, elbows or wrists, causing permanent significant functional limitation or restriction.
9	11	Permanent severely impaired grip in one hand.
10	11	Radiologically confirmed osteoarthritis of both hips, both knees, both ankles, both shoulders, both elbows or both wrists (caused by a repetitive or attrition injury), causing permanent significant functional limitation or restriction.
11	12	Two frozen shoulders, or other shoulder pathology, which have caused, or are expected to cause, significant functional limitation or restriction beyond 26 weeks.
12	12	Ligament injury short of full thickness rupture, to both knees, ankles, shoulders, elbows or wrists, which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks, from which the

- claimant has made or is expected to make a substantial recovery beyond that date.
- 13 12 Ligament injury short of full thickness rupture, to one knee, ankle, shoulder, elbow or wrist, causing permanent significant functional limitation or restriction.
- 14 12 Ligament injury which has resulted in full thickness rupture, affecting one knee, ankle, shoulder, elbow or wrist, which has caused, or is expected to cause, significant functional limitation at 26 weeks, from which the claimant has made, or is expected to make a substantial recovery beyond that date.
- 15 12 Full thickness muscle or tendon unit rupture which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 16 12 Traumatic back injury (with medically verified neurological signs and vertebral damage), extending over several levels of vertebrae which has caused, or is expected to cause, significant functional limitation or restriction beyond 13 weeks.
- 17 13 Frozen shoulder, or other shoulder pathology, which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 18 13 Two frozen shoulders, or other shoulder pathology, which have caused or are expected to cause significant functional limitation at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 19 13 Ligament injury short of full thickness rupture, to both knees, ankles, shoulders, elbows or wrists from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 20 13 Muscle or tendon unit injury short of full thickness rupture, which has caused, or is expected to cause, significant functional limitation or restriction beyond 26 weeks.
- 21 13 Two muscle or tendon unit injuries, short of full thickness rupture, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
- 22 13 Full thickness muscle or tendon unit rupture, from which the claimant has made, or is expected to make a substantial recovery within 26 weeks.
- 23 13 Ligament injury short of full thickness rupture, to one knee, shoulder, ankle, elbow or wrist which has caused, or is expected to cause, significant functional limitation or restriction at 26 weeks with substantial recovery beyond that date.
- 24 13 Traumatic back injury with one or more intervertebral disc prolapses or vertebral body or facet joint fractures which has caused or is expected to cause, significant functional limitation or restriction beyond 13 weeks.
- 25 13 Radiologically confirmed osteoarthritis of hip, knee, ankle, shoulder, elbow or wrist (caused by repetitive or attrition injury) causing permanent significant functional limitation or restriction.
- 26 13 Overuse injury of lower limb requiring, or expected to require, operative treatment.
- 27 13 Hip, knee, ankle, shoulder, elbow or wrist strain, sprain or overuse injury, which has required, or is expected to require, operative treatment.
- 28 14 Frozen shoulder, or other shoulder pathology, which has caused, or is expected to cause, significant functional limitation or restriction at 6 weeks,

		from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
29	14	Ligament injury short of full thickness rupture to one knee, ankle, shoulder, elbow or wrist, which has caused or is expected to cause, significant functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
30	14	Muscle or tendon unit injury short of full thickness rupture, which has caused or is expected to cause significant functional limitation or restriction at 13 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
31	14	Tendon or ligament rupture of finger, thumb or toe which has required, or is expected to require, operative treatment.
32	14	Back sprain or strain, with one or more intervertebral disc prolapses which has caused, or is expected to cause significant functional limitation or restriction beyond 13 weeks.
33	14	Low back or neck pain syndrome.
34	14	Anterior knee pain syndrome in both knees which has caused, or is expected to cause, significant functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery beyond that date.
35	14	Overuse injury of foot or heel, which has required or is expected to require operative treatment.
36	15	Knee meniscus injury which has caused, or is expected to cause, significant functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.
37	15	Anterior knee pain syndrome in one knee which has caused, or is expected to cause, significant functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery beyond that date.
38	15	Direct hernia which has required operative treatment.
39	15	Frozen shoulder which has caused, or is expected to cause, significant functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.
40	15	Ligament injury short of full thickness rupture, to one knee, ankle, shoulder, elbow or wrist which has caused, or is expected to cause, significant functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 13 weeks.

(\*) An award for an injury in this table includes compensation for any expected consequential osteoarthritis.

(\*) An award for dislocation includes ligament and other soft tissue damage not requiring operative treatment.

(\*) References to back in this table include cervical, thoracic, lumbar or sacral vertebral segments.

**Table 10 –Tariff amounts**

<i>Column (a)</i> <i>Level</i>	<i>Column (b)</i> <i>Amount</i>
1	£570,000
2	£470,000

3	£380,000
4	£290,000
5	£175,000
6	£140,000
7	£90,000
8	£60,000
9	£40,000
10	£27,000
11	£15,500
12	£10,000
13	£6,000
14	£3,000
15	£1,200

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## PART 2

### SUPPLEMENTARY AWARDS

#### Supplementary award following traumatic physical damage

1.—(1) Subject to the provisions in this article a supplementary award is payable where—

- (a) an injury is a traumatic physical injury;
- (b) the injury is described by a descriptor in Table 2 of the tariff.

(2) Subject to sub-paragraph (3), the supplementary award is £60,000 where the injury is accompanied by—

- (i) incontinence of the bowel or bladder, or both;
- (ii) impotence;
- (iii) infertility; or
- (iv) physical disfigurement due to an injury to external genitalia.

(3) Where an injury is accompanied by more than one of the effects specified in paragraphs (i) to (iv) of sub-paragraph (2) a supplementary award of £60,000—

- (a) is payable for each of the paragraphs which apply; but
- (b) for each condition is payable once only.

(4) The supplementary award is £40,000 where the injury—

- (a) results in the loss of one kidney, or
- (b) treatment for the injury requires a kidney to be removed,

in either case without the development of chronic renal failure.

#### Other supplementary awards

2.—(1) A supplementary award of £3,000 is payable where—

- (a) an injury is a limb injury, including a fracture of a limb;
- (b) the injury is described by a descriptor in Table 2 or Table 8 of the tariff; and
- (c) the injury is accompanied by acute compartment syndrome requiring operative treatment.

(2) A supplementary award of £1,000 is payable where—



- (a) an injury is blast injury to ears;
- (b) the injury is described by a descriptor in Table 7 of the tariff; and
- (c) the tympanic membrane of one ear is perforated.
- (3) A supplementary award of £1,000 is payable where—
- (a) an injury is a fracture;
- (b) the injury is described by a descriptor in Table 8 of the tariff; and
- (c) the fracture is an open fracture.
- (4) Where sub-paragraph (2) applies and the tympanic membrane of both ears is perforated two supplementary awards of £1,000 are payable.

## SCHEDULE 4

Article 24(2), (6)(c)

## TABLE OF FACTORS

Table of Guaranteed Income Payment Factors

<i>Column (a)Age at last birthday</i>	<i>Column Factor</i>	<i>(b)GIP</i>	<i>Column (a)Age at last birthday</i>	<i>Column Factor</i>	<i>(b)GIP</i>
16	1.205		37	1.000	
17	1.202		38	0.986	
18	1.199		39	0.972	
19	1.196		40	0.957	
20	1.192		41	0.943	
21	1.189		42	0.928	
22	1.185		43	0.913	
23	1.182		44	0.897	
24	1.170		45	0.882	
25	1.157		46	0.866	
26	1.145		47	0.849	
27	1.132		48	0.833	
28	1.120		49	0.816	
29	1.107		50	0.799	
30	1.094		51	0.781	
31	1.081		52	0.763	
32	1.068		53	0.744	
33	1.055		54	0.724	
34	1.041		55	0.705	
35	1.028		Over 55	0.705	
36	1.014				

## SCHEDULE 5

Article 74(d)

## CATEGORIES OF SPECIFIED INJURIES

Table

<i>Item</i>	<i>Column (a) Specified injury</i>	<i>Column (b) Table used in original decision</i>
1	Non-freezing cold injury	Table 2 or Table 4
2	Permanent mental disorder	Table 3
3	Amputation of or loss of use of one or both upper limbs	Table 5
4	Amputation or loss of use of one or both lower limbs	Table 5
5	Brain or head injury	Table 6
6	Spinal cord injury	Table 6
7	Spinal injury	Table 6
8	Brachial plexus injury	Table 6
9	Hearing loss of at least 50dB averaged over 1, 2 and 3kHz in one or both ears	Table 7
10	Blast injury, acute acoustic trauma due to impulse noise or physical trauma to ear or ears	Table 7
11	Skull fracture	Table 8
12	Traumatic back injury with spinal damage	Table 9

## SCHEDULE 6

Article 78(3)(b)

MODIFICATION TO PART 3 FOR THE PURPOSE OF DETERMINING  
A FURTHER LUMP SUM FOR A QUALIFYING INJURY**Preliminary**

1. The following articles in Part 3 are modified.

**Modification of article 14 (interpretation of Part 3)**

2. In article 14—
  - (a) for paragraph (b) substitute—
 

“(b) “relevant amount” means the amount determined in accordance with article 77(3);”;
  - (b) for paragraph (c) substitute—
 

“(c) “relevant percentage” means the percentage of guaranteed income payment determined in accordance with article 77(5) or (7);”.

**Modification of article 18 (amount where injury or injuries are described by one descriptor)**

3. In article 18—
  - (a) for “injury or more which is described by one descriptor” substitute “ qualifying injury ”; and
  - (b) for “descriptor” the second time it appears substitute “ qualifying injury ”.

**Modification of article 19 (amount where 100% guaranteed income payment determined)**

4. In article 19—
  - (a) in paragraph (1)(a) for the words “one injury or more which is described by more than one descriptor” substitute “ more than one qualifying injury ”; and
  - (b) in paragraph (2) for “descriptor” substitute “ qualifying injury ”.

**Modification of article 20 (allocation of descriptors to body zones)**

5. In article 20—
  - (a) in paragraph (1)(a) for “one injury or more which is described by more than one descriptor” substitute “ more than one qualifying injury ”;
  - (b) in paragraph (1)(c) for “one injury or more is described by two or more descriptors” substitute “ two or more qualifying injuries gives rise to an entitlement ”;
  - (c) in paragraph (2)—
    - (i) for “injury or injuries which is described by a separate descriptor” substitute “ qualifying injury ”; and
    - (ii) after “tariff levels 1 to 11” insert “ , where the tariff level is determined in accordance with article 76, ”.
  - (d) in paragraph (4)—
    - (i) for “or more injuries described by one descriptor extend” substitute “ ”qualifying injury extends”; and
    - (ii) for “descriptor” the second time it appears substitute “ qualifying injury ”; and
  - (e) in paragraph (5) for “descriptor” the second time it appears substitute “ qualifying injury ”.

**Modification of article 21 (amount where injury or injuries are described by two or more descriptors at tariff level 11 or above in more than one body zone)**

6. In article 21—
  - (a) in paragraph (1)(a) for “one or more injury which is described by more than one descriptor” substitute “ more than one qualifying injury ”;
  - (b) in paragraph (1)(b) for “the descriptors of the injury or injuries” substitute “ the qualifying injuries ”;
  - (c) in paragraph (1)(c)—
    - (i) for “descriptor” substitute “ qualifying injury ”;
    - (ii) after “tariff levels 1 to 11” insert “ , where the tariff level is determined in accordance with article 76, ”; and
  - (d) in paragraph (2) for “descriptor” each time it appears substitute “ qualifying injury ”.

**Modification of article 22 (amount where injury or injuries are described by more than one descriptor – other cases)**

7. In article 22—
  - (a) in paragraph (2)(a) for “one injury or more which is described by more than one descriptor” substitute “ more than one qualifying injury ”;
  - (b) in paragraph (2)(b) for “the descriptors of the injury or injuries” substitute “ the qualifying injuries ”;
  - (c) in paragraph (2)(d) for “the descriptor or descriptors” substitute “ the qualifying injury or injuries ”;
  - (d) in paragraph (3)—
    - (i) for “injuries described by a descriptor” substitute “ qualifying injuries ”; and

- (ii) after “tariff levels 1 to 11” insert “, where the tariff level is determined in accordance with article 76, ”; and
- (e) in paragraphs (4) and (5) for “descriptor” each time it appears substitute “ qualifying injury ” and the references to “descriptors” in these paragraphs are to be construed accordingly.

## SCHEDULE 7

Article 94(1)

## REVOCATIONS

<i>Instruments</i>	<i>References</i>	<i>Extent of revocation</i>
The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005	S.I. 2005/439	The whole Order
The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2006	S.I. 2006/1438	The whole Order
The Armed Forces (Gurkha Compensation) Order 2007	S.I. 2007/2609	The whole Order
The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2008	S.I. 2008/39	The whole Order
The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 2) Order 2008	S.I. 2008/2160	The whole Order
The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 3) Order 2008	S.I. 2008/2942	The whole Order
The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2009	S.I. 2009/3236	The whole Order
The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2010	S.I. 2010/1723	The whole Order

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order revokes and re-enacts the Armed Forces and Reserve Forces (Compensation Scheme) 2005 S.I. 2005/439 (“the Scheme”), with modifications incorporating the recommendations of the Review of the Armed Forces Compensation Scheme by Admiral the Lord Boyce (Cm 7798). The Scheme 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.

Part 1 provides for citation, commencement and, together with Schedule 1, interpretation of the Order.

Part 2 establishes the Scheme by providing for compensation to be payable in respect of injuries caused by service, the worsening of non-service injuries and for death caused by service. It excludes injuries caused by, or occurring during, social events, slipping and tripping, home to duty travel and sport, unless the injuries occur in specified circumstances. In the case of sport and adventurous training the activity must be approved by the services. Provision is made for the modification of the Scheme for the reserve forces, the modifications being set out in Schedule 2.

Part 3 sets out the benefits which are payable for injury caused by service and the conditions attaching to the payment. The benefits are a lump sum, a supplementary award, a guaranteed income payment payable for life, a fast payment and, in limited circumstances, the reimbursement of medical expenses. The lump sum is calculated with reference to the severity of the injury sustained. A tariff, set out in Part 1 of Schedule 3, contains tables which list descriptors of injuries and tariff levels, and a table which gives amounts corresponding to those levels. There are 15 tariff levels. The maximum lump sum payable for a tariff level 1 injury is £570,000. Supplementary awards are payable where the injury is accompanied by one of the conditions specified in Part 2 of Schedule 3, but subject to the cap of £570,000.

Guaranteed income payment is payable for more serious injuries. There are four bands - 100%, 75%, 50% and 30%. The payment commences when service ends, or from the date of claim, if later, and is payable for life. The amount of guaranteed income payment is calculated by means of a formula based on the age of the member of the forces when service ends or at the date of claim, if later.

A fast payment in the sum of £60,000 is payable only for more serious injuries. It is off-set against the lump sum payable. Medical expenses are a discretionary provision. Seriously injured personnel who move to live permanently overseas within a year of leaving service may claim reimbursement of certain expenses.

This Part also contains provision for the calculation of awards in cases where more than one injury is sustained in one incident. In all cases benefit is paid for each injury caused by service. For the most seriously injured (where the amount of guaranteed income payment is 100%) the tariff amount is paid in full up to the cap of £570,000. In other cases a percentage of the tariff amount is paid for some of the injuries sustained. There is also provision for injury to a pair of like parts of the body in sequential incidents, for example, to one leg and then the other leg.

Where a person has sustained an injury of a description for which no provision is made in the tariff a temporary award is payable, if that injury is sufficiently serious to warrant an award. The injury must be listed in the International Statistical Classification of Diseases and Related Health Problems or in the Diagnostic and Statistical Manual of Mental Disorder.

Part 4 sets out the benefits which are payable in respect of a member of the forces whose death is caused by service. Survivor's guaranteed income payment and a bereavement grant are payable to a surviving spouse, surviving adult dependent or surviving civil partner. Child's payment is payable to "eligible" children. An eligible child is a child or adopted child of the deceased or a child dependent on the deceased who is under 18 or under 23 and in full-time education or vocational training. Provision is also made for children over 18 who are unable, due to physical or mental disability, to support themselves. A bereavement grant for a person who dies in service is £25,000 but may be reduced depending on which armed forces pension scheme the member of the forces belonged to. The grant in respect of a member who dies after leaving service is £37,500. Survivor's guaranteed income payment and child's payment are calculated in a similar way to guaranteed income payment. The amount of survivor's guaranteed income payment is 60% of the full amount of guaranteed income payment. The first two eligible children each receive child's payment of 15% of guaranteed income payment and a third child 10%. Where there are four or more eligible children the percentages are reduced.

Part 5 makes provision for adjusting the amount of benefit payable in specified circumstances. Guaranteed income payment, survivor's guaranteed income payment and child's payment is adjusted to take account of pensions paid under an armed forces' pension scheme, and, in the case of the reserve forces, another occupational pension scheme. Benefit will also be reduced if a person receives damages or compensation from another scheme in respect of the same injury or death. In addition, benefit may be reduced by up to 40% where the negligence or misconduct of a member of the forces has contributed to the injury or death. This Part also provides that benefit will cease if a former member of the armed forces is admitted as an in-pensioner to the Royal Hospital, Chelsea.

Part 6 deals with the manner of making a claim, specifies circumstances where a claim is not required and provides for the date of a claim and time limits for making claims. For injury, the time limit is 7 years from the date of the injury, or the worsening of a non-service injury, and in the case of an illness, the date on which medical advice is first sought or the date on which service ends whichever is the earlier. For death, the time limit is 3 years from the date of death. A claim for a fast payment must be made within 6 months of the injury. Medical expenses must be approved before they are paid, except in cases of a medical emergency. There are some exceptions

to the time limits where a person is unable to make a claim, or instruct another person to make it, due to physical or mental illness. There are also exceptions in specified exceptional circumstances. Part 7 makes provision for the adjudication of claims. Provision is made for the manner of making decisions and the information to be provided with a decision, for interim awards and for reconsideration and review of decisions in specified circumstances. A person who has received an award in-service can apply for a review of that award within a year of leaving service, providing the final decision in relation to that award was made not more than 7 years earlier. There is also provision to apply for a review in exceptional circumstances where an injury has unexpectedly got worse.

The burden of proving any issue under the Scheme lies on the claimant, but where records have been lost there is a presumption in favour of the claimant. The standard of proof is on a balance of probabilities. Provision is also made for the production of evidence, with the Secretary of State being required to produce relevant medical or other records which are in the Department's possession.

Parts 8 and 9 make provision for the payment of benefit. These provisions include the date on which benefit becomes payable, suspension of benefit in certain circumstances, and a power to appoint persons to act on behalf of persons under 18 and persons unable to act for themselves. Part 10 provides a power to up-rate guaranteed income payment, survivor's guaranteed income payment and child's payment. It also provides a mechanism for a notional up-rating of a person's salary to take account of inflation. This is used for the purpose of calculating guaranteed income payment, survivor's guaranteed income payment and child's payment where a member of the forces makes a claim or dies after service ends.

Part 11 makes provision for payment of additional benefits for those who claimed under the Scheme before this Order comes into force. All those who have been awarded injury benefit under the AFCS 2005 of less than £570,000 will receive a further lump sum payment, subject to the cap of that amount. Guaranteed income payment, survivor's guaranteed income payment and child's payment is to increase, as it is to be calculated on revised factors. In certain specified circumstances an additional bereavement grant will be paid.

Part 12 includes various general transitional provisions, revocations and savings.

**Status:**

Point in time view as at 09/05/2011.

**Changes to legislation:**