STATUTORY INSTRUMENTS

# 2019 No. 440

# PENSIONS

# The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2019

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| *Made - - - -* | *4th March 2019* |
| *Laid before Parliament* | *8th March 2019* |
| *Coming into force - -* | *8th April 2019* |

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

**Citation and commencement**

**1.** This Order may be cited as the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2019 and comes into force on 8th April 2019.

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

**2.** The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**b**) ("the 2011 Order") is amended in accordance with articles 3 to 7.

**Amendment of article 12**

**3.** In article 12 (injury and death – other exclusions)(**c**), for paragraph (3), substitute—

"(3) For the purposes of this article—

(a) "exogenous infection" means an infectious or contagious disease spread by person to person contact;

(b) an outbreak of an exogenous infection means the occurrence of cases of such infection in excess of what would normally be expected in a particular community, geographical area or season.".

**Amendment of article 14**

**4.** In article 14 (interpretation of Part 3)—

(a) the existing text becomes paragraph (1);

(b) in paragraph (1)(a), for the words "whichever is the later of the day" to the end, substitute "the relevant date";

(**a**) 2004 c. 32.
(**b**) S.I. 2011/517 as amended by S.I. 2011/2552, 2012/1573, 2013/436, 2014/412, 2015/413, 2016/557, 2017/247, 2018/293 and 2018/1099.
(**c**) Article 12 was amended by S.I. 2018/293. There are other amending instruments but none is relevant.

(c) after paragraph (1), insert—

"(2) In this article, "relevant date" in relation to an injury benefit has the meaning given by paragraphs (3) to (6).

(3) Subject to the following paragraphs, "relevant date" means the date on which the claim for the injury benefit was made under article 46(1) or is treated as made under article 46(3) (as the case may be).

(4) Where a decision concerning the injury benefit is made in respect of which conditions A and B are satisfied, "relevant date" means the date of the decision or, where more than one such decision is made, the date of whichever decision is later.

(5) Condition A is satisfied if the decision revises an earlier decision by—

(a) awarding benefit where no award of benefit was made in the earlier decision;

(b) changing the descriptor awarded so that the new descriptor is at a tariff level which is higher than the tariff level awarded for the injury in the earlier decision; or

(c) describing the injury or the further injury by an additional descriptor.

(6) Condition B is satisfied if the decision is—

(a) a decision by the Secretary of State under article 55, 56, 57 or 59;

(b) a decision by the Secretary of State under article 53 following a reconsideration of a decision referred to in paragraph (6)(a); or

(c) a decision by an appropriate tribunal, the Upper Tribunal, a Commissioner, or a court which revises a decision referred to in paragraph (6)(a) or (b).".

**Amendment of article 24A**

**5.** In article 24A (award of armed forces independence payment)(**a**), in paragraph (3), for "£145.35" substitute "£148.85".

**Amendment of article 24D**

**6.** In article 24D (payment of armed forces independence payment in respect of Motability)(**b**), in paragraph (2), for "£59.75" substitute "£61.20".

**Amendment of Schedule 3**

**7.**—(1) Schedule 3 (the tariff and supplementary awards), part 1 (descriptors, tariff levels and amounts – "the tariff") is amended as follows.

(2) In Table 3 (mental disorders)(**c**)—

(a) before item 1, insert—

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| "A1 | 4 | Permanent mental disorder causing very severe functional limitation or restriction[(aa)]."; |

(b) before table note (a), insert—

"(aa) Functional limitation or restriction is very severe where the claimant's residual functional impairment after undertaking adequate courses of best practice treatment, including specialist tertiary interventions, is judged by the senior treating consultant psychiatrist to remain incompatible with any paid employment until state pension age.".

(3) In Table 6 (neurological disorders, including spinal, head or brain injuries)(**d**), in the entry in column (a) in respect of item 22, for "8" substitute "7".

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(**a**) Article 24A was inserted by S.I. 2013/436 and amended by S.I. 2014/412, 2015/413, 2017/247 and 2018/293.
(**b**) Article 24D was inserted by S.I. 2013/436 and amended by S.I. 2014/412, 2017/247 and 2018/293.
(**c**) Table 3 was amended by S.I. 2014/412.
(**d**) Table 6 was amended by S.I. 2011/2552, 2014/412, 2017/247 and 2018/293.

(4) In Table 9 (musculoskeletal disorders)(**a**)—

(a) for the entry in column (b) (description of injury and its effects ("descriptor")) in respect of item 4, after "ankle," insert "foot,";

(b) after item 2A, insert—

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| "2B | 9 | Septic, rheumatoid or post traumatic arthritis requiring arthrodesis, osteotomy or total joint replacement."; |

(c) after item 16B, insert—

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| "16C | 12 | Recurrent subluxation of patella. |
| 16D | 12 | Hip, pelvis, knee, ankle, shoulder or wrist strain, sprain or overuse injury with confirmed significant osteochondral defect, and which has required or is expected to require operative treatment."; |

(d) after item 40, insert—

"(*) Post traumatic arthritis is arthritis which is secondary to a significant traumatic injury which was documented in the medical records at the time it occurred.".

**Saving provision relating to article 4**

**8.**—(1) The amendments made by article 4 are to have no effect in relation to—

(a) the determination of any claim for benefit and any question arising out of the claim under article 51 of the 2011 Order, where the claim was made or treated as made before 8th April 2019;

(b) the decision of the Secretary of State following a reconsideration under article 53 of the 2011 Order, where the application for a reconsideration under article 53(1) or the appeal referred to in article 53(5) was made before 8th April 2019;

(c) the decision of the Secretary of State following a review under article 55, 56, 57 or 59, where the application for a review was made before 8th April 2019;

(d) the revision of a decision relating to benefit by an appropriate tribunal, the Upper Tribunal, a Commissioner or a court, where the notice of appeal was received before 8th April 2019.

(2) In this article—

(a) "appropriate tribunal" means the appropriate tribunal as defined in section 12(1) of the Pensions Appeal Tribunals Act 1943 (interpretation)(**b**);

(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 (procedure in proceedings before Commissioner).

*Tobias Ellwood*
Parliamentary Under Secretary of State
Ministry of Defence

4th March 2019

(**a**) Table 9 was amended by S.I. 2011/2552, 2014/412, 2015/413 and 2017/247.
(**b**) 1943 c. 39.

## EXPLANATORY NOTE

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

This Order amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) ("the 2011 Order"), which provides for benefits to be payable to, or in respect of, a person by reason of injury, illness or death caused wholly, or partly, by service in the regular or reserve armed forces.

Article 3 amends article 12 of the 2011 Order to define, for the purposes of article 12, the terms exogenous infection and outbreak of exogenous infection.

Article 4 amends article 14 of the 2011 Order to provide that any reference to the amount specified in Table 10 of Schedule 3 to the 2011 Order (which lists the tariff amounts) is to the amount of the tariff at the date of the claim for the injury benefit concerned. The exception to this is if the award is revised due to the worsening of an injury, the development of an additional injury or a mistake. In these cases, any reference to the amount will be to the amount specified in the tariff on the date the award was revised. There is a saving provision in article 8.

Article 5 amends article 24A of the 2011 Order to increase the amount of the allowance known as "the armed forces independence payment" which is designed to provide financial support to cover extra costs that a recipient of that benefit may incur as a result of a relevant injury. That amount is increased to £148.85 per week.

Article 6 amends article 24D of the 2011 Order to increase the amount that may be paid in settlement of liabilities due under an agreement between a claimant and Motability in respect of the hire or hire purchase of a vehicle. That amount is increased to £61.20 per week.

Article 7 amends Schedule 3 to the 2011 Order by—

- inserting a new descriptor into Table 3;
- amending Table 6 to increase the tariff level for item 4;
- inserting new descriptors into Table 9, to make three temporary awards permanent.

Article 8 contains a saving provision in relation to the amendment in article 4, to ensure that the change made by article 4 will not affect the decision on a claim, application for reconsideration or review or an appeal, where the claim, application or appeal was made before 8th April 2019.

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

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