



The Ministry of Defence

**ARMED FORCES AND RESERVE FORCES COMPENSATION
SCHEME: Consultation on the amendments to the Tariff effective
from September 2008**

Summary of responses

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1. INTRODUCTION

1.1 The Armed Forces and Reserve Forces Compensation Scheme (AFCS) came into force on 6 April 2005 to provide for benefits to be payable for injury, illness or death caused by Service on or after that date. Benefits payable consist of an immediate tax-free lump sum for injury and, for the more seriously injured, an additional Guaranteed Income Payment, payable on discharge, tax-free for life. Awards are calculated using a tariff-based system. The Tariff describes the various injuries or conditions for which compensation is available under the Scheme and specifies a corresponding award level for each one.

1.2 The legislation underpinning the Scheme has been amended to make a number of changes to the tariff descriptors. These were primarily to allow for temporary awards made under the Scheme rules to be made permanent (temporary awards can be made where an injury is sufficiently serious to warrant an award of injury benefit but there is no existing tariff descriptor to apply). The rules stipulate that for the award to be made permanent, the Tariff must be amended within one year of the date of the award to include the injury for which the temporary award was made. At the same time the opportunity was taken to amend other tariff descriptors for the sake of clarity, or to allow for experience of claims or, where appropriate, to take into account the approach taken elsewhere in other Schemes and in the Courts.

1.3 A short consultation exercise on the proposed changes was undertaken in June 2008 with representatives of ex-service organisations such as the Royal British Legion, British Limbless Ex-Service Men's Association (BLESMA) and the War Widows Association who are members of the Statutory Central Advisory Committee on pensions and compensation as well as internally with military staff representing the three Services. The consultation exercise ended on 1 July 2008. Of the nine external organisations, four responses were received; Eastern War Pension Committee, BLESMA, War Widow's Association and Combat Stress.

2. CONSULTATION PROPOSAL AND SUMMARY OF RESPONSES.

2.1 **Proposal: To make amendments to the AFCS injury Tariff by inserting a number of additional descriptors as well as amending existing injury descriptors. The amendments are primarily to allow for temporary awards made under Article 20 of the Scheme rules to be made permanent but a number of other changes were made for the sake of clarity and to take into account experience from live claims or, where appropriate, the approach taken in other Schemes and in the Courts.**

2.2 Comments received were in the main supportive of the planned changes particularly the flexibility to make changes based on experience. There were a couple of points that required clarifying and some suggested areas for improvement. The question of whether the changes would be retrospective was raised by more than one organisation. Outlined below are the main issues raised together with the MOD's response.

2.2.1 It was suggested that the tariff level award for deep second or third degree or full thickness burns to the face with poor cosmetic results despite treatment in Table 1 needed to be increased as it was felt that the current maximum of tariff level 7 did not fully take into account the long-term effects of such injuries particularly for female service personnel.

Comment: Partially accepted. The current descriptor at level 7 in Table 1 for severe burns to the face and level 8 in Table 2 for facial injury not due to a burn will remain as they are. This retains equity across the Scheme (other injuries at level 7 include permanent loss of, or loss of use of, or permanent functional limitation and restriction). Awards under AFCS do not differentiate between men and women nor older or younger age and include recognition of psychological symptoms resulting from the injury, although separate awards can be made for a diagnosed mental illness. However it is accepted that it is appropriate to specify an additional category at a higher level for very severe burns or injury to the face that result in loss of facial features. This recognises the profound effect that loss of chin, lip, ear or nose has on functions such as respiration, swallowing, and hearing as well as verbal and non-verbal communication. To facilitate this, additional descriptors have been inserted at level 6 in Table 1 and level 7 in Table 2, one tariff level higher than each of the existing descriptors for similar injuries but where loss of, or severe damage to, these structures is not present.

2.2.2 There was some confusion over the proposed additional entries for loss of use of hands or feet in Table 5 – a consultee's suggestion was that Table 5 which deals with amputations was not the best place for these which would be more properly addressed by inserting additional entries in Table 2.

Comment: Accepted. Amendments have been made to the additional entries in Table 5 for loss of use of hands or feet to make it clear that these relate to the type of injury where partial amputation has led to total loss of any functional use of the hand or foot. These would then properly sit within Table 5 which deals with amputations. Additional descriptors in Table 2 for loss of use of hands or feet caused by injuries other than partial amputation were already included in the proposal.

2.2.3 A concern was raised that the improvements in Table 3 in respect of mental health injuries was limited to two upward minor adjustments in the middle of the table. It was felt that this did not address the concern that the

mental health tariffs in general are set too low with the highest at level 8 which it was felt did not take into account that individuals may be so affected by their mental disability that they will be medically discharged and have an extremely poor prognosis for the quality of the remainder of the individual's life.

Comment: Not accepted. The tariff levels were informed by existing, established models such as the Judicial Studies Board award guidelines and the Criminal Injuries Compensation Scheme. The increased awards for items 2 and 3 in Table 3 of the AFCS take into account recent civil awards and the updated Criminal injuries Compensation Scheme tariff. The armed forces are a selected healthier than average population and serious psychotic illness is much less common than in the general community. Other disorders including adjustment disorders and anxiety states including PTSD, as well as obsessive compulsive disorder are seen broadly as in the civilian community. Over the last few years understanding of these disorders has much increased and effective interventions have been identified. MOD and the single services through the chain of command support good mental health amongst serving personnel and veterans. The aim first is prevention of mental symptoms and illness by awareness raising, peer support and resilience building. Where people do become ill there is early detection followed by referral to best practice effective interventions. The work with the health departments, MOD and the ex-service charities including Combat Stress, is developing accessible acceptable mental health services being piloted with evaluation and then wider rollout across the country. The literature confirms that even where people delay seeking help that these common mental health problems can still be treated with functional improvement if not to cure. Against this background the proposed Table 3 descriptors and awards are considered equitable and reflective of contemporary understanding. Notwithstanding this, the Scheme will continue to be monitored to ensure that it operates as intended, allowing action to be taken where evidence supports the need for change.

2.2.4 Suggestion was made that these changes should be applied retrospectively to past cases that have already been decided.

Comment: Not accepted. The amendments to the Tariff descriptors are separate from the increases in the Tariff levels proposed in the Service Command paper (a separate consultation has been conducted for these changes). They are not being applied with retrospective effect in line with normal practice not to apply general changes and improvements to past claims. This was the approach in the changes to the AFCS introduced in June 2006, October 2007 and the amendments in February 2008 (apart from those related to the multiple injury rules) which included amendments to the Tariff. This is in keeping with the long standing general policy of

successive Governments not to confer improvements to pension and compensation retrospectively. The Multiple Injury Rule change and the planned increase in the Tariff levels are exceptions to this approach. In both those cases it was accepted that the rules or tariff levels should have been different from the start of the Scheme. That is not the case with these consequential changes. These are either a result of temporary awards (in which case any increase or arrears of benefit are paid to the individual concerned) or to clarify certain aspects identified as a result of live claims or appeals, or in order to keep pace with changes made elsewhere in the courts and other schemes. Such general changes/improvements would only be applied from a future date.

3. Other issues raised.

3.1 Comments were also received on other areas not related to the tariff changes. These were either new issues or were related to administration of the Scheme rather than the rules. These have been responded to individually. Where action is not already being taken, the issues raised will be used to inform future consideration of the Scheme.

4 Conclusion

4.1 As a result of consultation clarifications have been added to make clear the purpose of certain new descriptors. Additionally, although not a direct result of consultation, an additional descriptor has been inserted to provide a higher award for burns to the face where this includes loss of facial features which partially answers the concern raised.

4.2 Action on the proposed changes has now concluded with the amending Order laid before Parliament on 14 August 2008 and coming into force on 16 September 2008. It is intended to conduct a full review of the Scheme in 2010 (after five years of operation) in order to allow enough cases to support any evidence-based analysis. In the meantime the Scheme is constantly monitored to ensure that it operates as intended. This allows action to be taken ahead of a full review where evidence supports the need for change.

4.3 Details of the Armed Forces Compensation Scheme can be found on the MOD website: www.veterans-uk.info