
STATUTORY INSTRUMENTS

2011 No. 1364

PENSIONS

**The Armed Forces Pension Scheme
2005 (Amendment) Order 2011**

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| <i>Made</i> | - - - - | <i>26th May 2011</i> |
| <i>Laid before Parliament</i> | | <i>6th June 2011</i> |
| <i>Coming into force</i> | - - | <i>27th June 2011</i> |

The Secretary of State makes this Order in exercise of the powers conferred by section 1(1) of the Armed Forces (Pensions and Compensation) Act 2004(1)—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Armed Forces Pension Scheme 2005 (Amendment) Order 2011 and comes into force on 27th June 2011.

(2) In this Order, “rules of the Scheme” means the rules of the Armed Forces Pension Scheme 2005 set out in the Armed Forces Pension Scheme Order 2005(2).

Amendment of the rules of the Scheme

2.—(1) The rules of the Scheme are amended as follows.

(2) In rule A.1(4)—

- (a) omit the definition of “paternity leave”; and
- (b) insert at the appropriate places—

““additional paternity leave” means leave which, in the opinion of the Secretary of State, corresponds to additional paternity leave within the meaning of regulation 4 or 14 of the Additional Paternity Leave Regulations 2010(3);”;

(1) 2004 c. 32.

(2) S.I. 2005/438. This has been amended in so far as is relevant as follows: rule D.2 was amended by article 11(1) of S.I. 2006/717 and article 3 of S.I. 2007/2608; rule D.3 was amended by articles 6 and 10 of S.I. 2009/544; rule D.4 was amended by articles 7 and 14 of, and the Schedule to, S.I. 2006/717 and articles 6 and 11 of S.I. 2009/544; rule E.9 was amended by article 3 of S.I. 2006/717 and rule F.8 was amended by article 9 of S.I. 2006/717.

(3) S.I. 2010/1055.

““ordinary paternity leave” means leave which, in the opinion of the Secretary of State, corresponds to paternity leave within the meaning of regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(4);”.

- (3) In rule A.3(2)(d) after “on” insert “ordinary paternity leave or on paid additional”.
- (4) Rule D.2 is modified as follows—
- (a) in paragraph (1) after “pension benefit age” insert “or, in the case of a member who is within paragraph (7) of this rule, the member attains pension age”;
 - (b) in paragraph (2) after “pension benefit age” insert “or, in the case of a member who is within paragraph (7) of this rule, attaining pension age”;
 - (c) after paragraph (6) insert—

“(7) A member is within this paragraph if the member satisfies the following two conditions—

 - (a) the first condition is that the member has attained at least 54 years and 274 days of age but not yet the pension age; and
 - (b) the second condition is that the Scheme administrator is satisfied that the member intends either—
 - (i) to enter civilian employment which would not be available if the member continued in service until pension age; or
 - (ii) to undertake a course of full time education, or a training course, which starts before the time at which the member reaches pension age.”.
- (5) For rule D.3(3) substitute—
- “(3) The pension and any lump sum become payable—
- (a) immediately on the pension credit member reaching pension benefit age; or
 - (b) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect.”.

(6) After rule D.3(5) insert—

“(6) If a pension credit member exercises the option under rule D.4, the Secretary of State must be reasonably satisfied that the total value of the benefits payable by virtue of its exercise is at least equal to the amount described in regulation 11 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (value of alternatives to pension credit benefit) (5).”.

(7) In rule D.4(1) for “D.3(3)(b)(i)” substitute “D.3”.

(8) Rule D.4(3) is modified as follows—

 - (a) insert “and” after paragraph (a);
 - (b) for paragraph (b) substitute—

“(b) the pension sharing order from which the pension credit rights derive has taken effect.”; and
 - (c) omit paragraph (c).

(9) Rule E.9 is modified as follows—

 - (a) for paragraph (4), substitute—

“(4) Condition C is that, because of physical or mental impairment—

(4) [S.I. 2002/2788](#); regulation 4 was amended by article 2 of, and paragraph 1(1) and (2)(a) and (b) of Schedule 17 to, [S.I. 2005/2114](#); regulation 8 was amended by article 2(17) of, and paragraph 1(1) and (3) of Schedule 17 to, [S.I. 2005/2114](#).

(5) [S.I. 2000/1054](#) to which amendments have been made which are not relevant.

- (a) the person is, in the opinion of the Scheme administrator, unable to engage in full-time gainful employment; and
 - (b) the person was dependent on the member at the date of the death.”; and
 - (b) omit paragraph (4A).
- (10) Rule E.15(1) is modified as follows—
- (a) after sub-paragraph (b) omit “or” and insert—
 - “(c) any person who, but for the application of rule E.1(2) or rule E.2(2), would be so entitled or to whom a pension may be awarded; or”;
 - (b) the existing paragraph (c) is re-designated accordingly.
- (11) In rule F.8(1)(c), omit “benefit”.

26th May 2011

Andrew Robathan
Parliamentary Under Secretary of State
Ministry of Defence

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the rules of the Armed Forces Pension Scheme 2005 (“the Scheme”). In this Explanatory Note “the 1993 Act” means the Pension Schemes Act 1993 c. 48 and “the 1999 Act” means the Welfare Reform and Pensions Act 1999 c. 30. References to a rule are to a rule of the Scheme.

Articles 2(2) and 2(3) amend rule A to reflect the fact that there are now two types of paternity leave, being ordinary paternity leave and additional paternity leave. The amendments mean that paid additional paternity leave counts towards assumed pay.

Article 2(4) amends rule D.2 to enable a member to retire up to 3 months before reaching pension age (55) in order to take up a job in civilian employment or to undertake a course of full time education or a training course and to receive the pension and lump sum on attaining the pension age.

Article 2(5) amends rule D.3(3) to provide that the pension and lump sum become payable immediately on the pension credit member reaching pension benefit age (65) or, if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect. Previously the rule provided for that to be the case where the pension sharing order was made before 6 April 2009, but where the pension sharing order was made after that date the rule provided that the pension and lump sum became payable immediately on the pension credit member reaching pension age (55) or, if it was later, when the relevant pension sharing order took effect. This change is necessary in order to comply with section 101C of the 1993 Act.

Article 2(6) inserts an additional paragraph after rule D3(5). This is necessary to comply with the 1999 Act, Schedule 5 paragraph 5(b) and the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I.2000/1054) which concern the calculation of the value of rights for a pension credit member.

Articles 2(7) and 2(8) amend rule D.4. Article 2(7) makes an amendment consequential upon the amendment made by article 2(5). Article 2(8) amends rule D4(3) to provide that a pension credit member may opt for early payment of a pension and lump sum on reaching pension age (55) but on actuarially reduced terms. This change is also necessary to comply with section 101C of the 1993 Act.

Article 2(9) amends the definition of “eligible child” in rule E.9.

Article 2(10) amends rule E.15(1) to enable, on the death of a member, a surviving spouse, civil partner or adult dependant to be paid a lump sum in circumstances where the member would not have qualified for a pension if his service had ceased otherwise than by reason of death.

Article 2(11) amends rule F.8(1)(c) so that a member will not be able to transfer in benefits into the Scheme after they have reached pension age (55).