
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Armed Forces (Pensions and Compensation) Act 2004 (c. 32) (“the 2004 Act”). It modifies certain provisions of the Armed Forces Early Departure Payments Scheme Order 2005 (“the EDP Scheme”) and the Armed Forces Pension Scheme 2005 (“the AFPS 2005”). The Armed Forces (Pensions) (Prescribed Modification) Order 2009 (S.I. 2009/262), made under section 1 of the 2004 Act, which came into force on 6th March 2009, satisfies the requirements of section 3(1)(b) (Accrued rights) of the 2004 Act. It enables the Secretary of State to modify rule A.5 of the AFPS 2005 even though such modification might or will adversely affect any entitlement or accrued rights of any member acquired before the power is exercised (see below as to the effect of those amendments to rule A.5).

Articles 3 and 4 of this Order amend articles 7 and 11 of the EDP Scheme to change the way that earnings are be adjusted for inflation when calculating final relevant earnings. The original Scheme rules applied increases to earnings falling within a previous tax year. The amendment applies increases to earnings falling within a previous year. It also corrects the way that periodical payments under the EDP Scheme are adjusted for inflation once the person receiving them reaches the age of 55 to avoid double indexation.

Article 5 amends article 12 of the EDP Scheme so that those who enter service to which Part 3 or 4 of Chapter 6 of the Territorial Army Regulations 1978 applies (during which they belong to the Non-Regular Permanent Staff Pension Scheme) cease to be entitled to periodical payments under the EDP Scheme whilst they are in such service. This brings the treatment of such people into line with others who re-enter service.

Article 7 amends rule A.5 of the AFPS 2005 to change the way that earnings are adjusted for inflation when calculating final pensionable earnings. The original Scheme rules applied increases to earnings falling within a previous tax year. The amendment applies increases to earnings falling within a previous year. It also provides that other than for rule A.10, this adjustment should be disregarded for all other purposes, including making adjustments to pensions in payment. The Pensions (Increase) Act 1971 (c. 56) (“the 1971 Act”) applies to pensions payable under the AFPS 05 by virtue of the Pensions Increase (Armed Forces Pension Schemes and Conservation Board) Regulations 2006 (S.I. 2006/801). This amendment removes the possibility of double indexation with the pensions being inflated both under the Scheme rules and the 1971 Act.

Article 8 amends rules A.7 and A.8 of the AFPS 2005 by allowing those who started their service on gratuity-earning terms but changed to service on pensionable terms to count that gratuity-earning service as qualifying and reckonable service where they have agreed to surrender their rights to gratuities in exchange for the change in their terms of service to pensionable terms. Similar amendments provide for the counting as qualifying and reckonable service that completed gratuity-earning service of those who subsequently rejoin on pensionable terms if the gratuity is repaid with interest within one year of becoming Scheme members.

Article 9 amends rule A.10 of the AFPS 2005 which provides that short breaks in service (of up to 6 months) are disregarded for the purposes of calculating qualifying and reckonable service. The usual rule is that any short break is disregarded allowing both periods of service to count towards the final pension. The amendment allows the break to be taken into account where re-employment is at a lower substantive rank so that the member will have a preserved pension in respect of the first period of service. This enables existing personnel to voluntarily take up posts at lower ranks (i.e. at a lower pay rate) without this adversely impacting the final level of their pension.

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

Articles 10 and 11 amend rules D.3 and D.4 of the AFPS 2005. Article 10 is amended so that a pension credit member with a pension sharing order made on or after 6th April 2009 will now be entitled to a pension from the lower age of 55. Article 11 amends rule D.4 so that those pension credit members whose pension sharing order was made before 6th April 2009 (and who can only get their pension at age 65) can apply for a pension and lump sum from age 55 in the same way as others not entitled to an immediate pension. Under D.4 the amount of pension will be actuarially reduced because it is being paid early.

Article 12 contains miscellaneous amendments to the AFPS 2005:

- it makes a minor amendment to rule A.4 to correct a typographical error (paragraph (1));

- it removes the requirement for the Secretary of State to consult with the Scheme medical adviser about the health of a person applying to join the Scheme after his service begins (paragraph (2));

- it amends rule D.5 to make clear that paragraph (2) applies also for the purpose of rule D.8 (paragraph (3));

- it amends rule D.7 so that a deferred member's breakdown in health is only 'permanent' if it will continue at least until the member reaches pension benefit age (65) (paragraph (4));

- it amends rule D.8 to provide an increased pension for a member who suffers a permanent breakdown in health after they left service. It provides a pension calculated under rule D.5 together with an additional periodical amount that represents the difference in the lump sum received and the sum he would have received had the member ceased service due to a permanent breakdown in health had that lump sum been exchanged under rule D.10 (paragraph (5));

- it amends rule D.10 to make it clear that the option to exchange a lump sum payable on retirement for an increased pension can be exercised either in respect of the individual's own pension or both that pension and any pension payable to another person as a result of other Scheme pension in respect of him (paragraph (6));

- it amends rule D.11 so that where a member in serious ill-health opts to exchange their pension for a lump sum, that part of the pension representing the person's guaranteed minimum pension under the Pension Schemes Act 1993 (c. 48) can be included (paragraph (7)).

A full regulatory impact assessment has not been produced on this instrument as it has no impact on the costs of business, charities or the voluntary sector.