

2011 No. 3013

PENSIONS

The Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 (Amendment) Order 2011

<i>Made</i>	- - - -	<i>14th December 2011</i>
<i>Laid before Parliament</i>		<i>19th December 2011</i>
<i>Coming into force</i>	- -	<i>10th January 2012</i>

The Secretary of State, in exercise of the powers conferred by section 1(1) of the Armed Forces (Pensions and Compensation) Act 2004(a), makes the following Order:

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 (Amendment) Order 2011 and comes into force on 10th January 2012.

PART 2

AMENDMENT OF THE ARMED FORCES REDUNDANCY SCHEME ORDER 2006

Revocation of article 10 (effect of previous award on later award) of the Armed Forces Redundancy Scheme Order 2006

2. The Armed Forces Redundancy Scheme Order 2006(b) is amended by revoking article 10.

(a) 2004 c. 32.

(b) S.I.2006/55. Article 10 was amended by S.I. 2011/208.

PART 3

AMENDMENT OF THE ARMED FORCES REDUNDANCY ETC. SCHEMES (NO. 2) ORDER 2010

Amendment of the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No.2) Order 2010

3. The Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No.2) Order 2010(a) is amended as set out in this Part and references to articles are references to articles of that Order.

Amendment of article 6 (redundancy reckonable service)

4.—(1) In paragraph (1) of article 6(b)—

- (a) omit “Subject to article 16”;
- (b) for “redundancy reckonable service” substitute “Redundancy reckonable service”; and
- (c) for “whether current or previous service” substitute “whether current or previous aggregated service” .

(2) In article 6(5), for the definition of “previous service” substitute—

““previous aggregated service” means a period of service as a member of the armed forces which terminated before current service began and which has been aggregated with the member’s current service under rule G.3, G.4 or G.5 of the Armed Forces Pension Scheme 1975(c).”.

Amendment of articles 11, 12 and 13 (concerning amount of payment under article 10)

5. In articles 11, 12 and 13, for “articles 14 to 16” substitute “articles 14 to 15”.

Revocation of article 16 (effect of award under article 10 on later award)

6. Article 16 is revoked.

Amendment of article 29 (resettlement commutation)

7. In article 29, omit paragraph (4).

Amendment of article 35 (entitlement to resettlement grants)

8. In article 35(1)(a), for “is” substitute “was, immediately before ceasing service,”.

(a) S.I. 2010/832 as amended by S.I. 2011/208.

(b) Article 6 was amended by S.I. 2011/208.

(c) The Armed Forces Pension Scheme 1975 is set out in three prerogative instruments, namely the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010, the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Royal Warrant, and the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010, made on 15 December 2010.

PART 4

AMENDMENT OF THE ARMED FORCES PENSION SCHEME ORDER 2005

Amendment of the Armed Forces Pension Scheme Order 2005

9. The Armed Forces Pension Scheme Order 2005(a) is amended as set out in this Part and references to rules are references to rules of that Order.

Amendment of rule A.1 (interpretation: general)

10. In rule A.1—

- (a) after the definition of “final pensionable earnings” insert—
“fixed protection member” has the meaning given in rule B.6; and
- (b) in the definition of “member”, after “deferred member” insert “a fixed protection member.”.

Insertion of new rule B.5

11. After rule B.5 insert—

“Fixed Protection Members

B.6.—(1) “Fixed protection member” means a person who—

- (a) is a member of the armed forces; and
- (b) has ceased to be an active member as described in rule B.4 for the reasons set out in paragraph (2).

(2) The reasons referred to in paragraph (1)(b) are that the member has given notice to an officer of Her Majesty’s Revenue and Customs of their intention to rely upon the lifetime allowance transitional protection afforded by paragraph 14 of Schedule 18 to the Finance Act 2011(b).

(3) Service as a fixed protection member is not pensionable service, qualifying service or reckonable service.

(4) Rules A.1(5) and (6), D.5, D.6, D.11, D.14, E.1, E.2, E.3, E.10, E.16, E.22, E.25, and E.27 are to be construed as if the references to “active member” also apply to a fixed protection member.”.

Amendment of rule D.1 (retirement after reaching pension age)

12. For rule D.1(1), substitute the following—

“D.1.—(1) The general rule is that a member is entitled to a pension for life and a lump sum if—

- (a) in the case of a member other than a fixed protection member, the member ceases to be in pensionable service at or after reaching pension age; or
- (b) in the case of a fixed protection member, the member ceases to be in service at or after reaching pension age.”.

(a) S.I. 2005/438 as amended by S.I. 2011/1364. There have also been other amendments to S.I. 2005/438 that are not relevant to this Order.

(b) 2011 c. 11.

Amendment of rule E.15 (death of a member: lump sum benefit)

13.—(1) For rule E.15(1), substitute—

“(1) If a member dies before reaching the age of 75, the Secretary of State may pay a lump sum to any of the following—

- (a) the person or persons nominated by the member in accordance with rule E.21;
- (b) if there is no person within sub-paragraph (a), to any person who is entitled to a pension under rule E.1 in respect of the member, or to whom a pension may be awarded under rule E.2 in respect of the member;
- (c) if there is no person within sub-paragraph (a) or (b), to 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
- (d) if there is no person within sub-paragraphs (a), (b) or (c), to the member’s personal representatives.”.

(2) For rule E.15(4), substitute—

“(4) A lump sum paid under this rule may not be paid more than two years after the day on which the Scheme administrator first knew, or could reasonably be expected to have known, of the member’s death.”.

(3) After rule E.15(4), insert—

“(5) The annual amount of pension paid to a person under this Part shall be increased by such amount as the Defence Council, after consulting with the Scheme actuary, may determine, if—

- (a) the Defence Council have determined that a lump sum should be paid to the person under this Part, but the lump sum is not paid within two years of the date of the death; or
- (b) the Defence Council have determined that, but for paragraph (1), a lump sum would have been paid to the person.”.

Andrew Robathan
Parliamentary Under Secretary of State
Ministry of Defence

14th December 2011

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Armed Forces Redundancy Scheme Order 2006 (S.I. 2006/55), the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes)(No. 2)Order 2010 (S.I. 2010/832) and the Armed Forces Pension Scheme Order 2005 (S.I. 2005/438).

Part 2 amends the Armed Forces Redundancy Scheme 2006. This is the redundancy compensation scheme for members of the Armed Forces Pension Scheme 2005 (“the AFPS 05”) , including those who have transferred to that scheme from the Armed Forces Pension Scheme 1975 (“the AFPS 75”).

Article 10 of the Armed Forces Redundancy Scheme Order 2006 is revoked, so that the receipt of redundancy compensation for a previous period of service will not disqualify that service from being taken into account when calculating an award on a later redundancy.

Part 3 amends the Armed Forces Redundancy Scheme 2010 (“the AFRS 2010”), which is the redundancy compensation scheme for members of the AFPS 75. It also amends the Resettlement Commutation Scheme 2010, which also applies to members of the AFPS 75. Both schemes are

established by the Armed Forces Redundancy, Resettlement and Gratuity Earnings Schemes (No.2) Order 2010 (“the AFRRG Order”).

Article 6 of the AFRRG Order, applying to the AFRS 2010, is amended. Previously, the definition of “redundancy reckonable service”, when applied to a person who left and later rejoined the armed services, included all of the person’s previous service. It now includes previous service only where that service counts as qualifying service for the purposes of an immediate pension under the AFPS 75, in other words where the previous service has been aggregated with their current service under rule G.3, G.4 or G.5 of the AFPS 75.

Article 16 of the AFRRG Order, applying to the AFRS 2010, is revoked, so that the receipt of redundancy compensation for a previous period of service will not disqualify that service from being taken into account when calculating the award on a later redundancy. Consequential changes are made to articles 6, 11, 12 and 13, so that these provisions are no longer subject to article 16.

Article 29(4) of the AFRRG Order, applying to the Armed Forces Resettlement Commutation Scheme 2010, is revoked. This corrects an error in the AFRRG Order, as the paragraph comprised a rule of a scheme (the life commutation scheme) established under the AFPS 75 prerogative instruments.

Article 35 of the AFRRG Order, applying to the Armed Forces Resettlement Grant Scheme 2010, is amended to correct a minor drafting error. The amendment puts beyond doubt that a person has to have left service before being entitled to a resettlement grant.

Part 4 amends the Armed Forces Pension Scheme Order 2005.

A new rule B.6 is added to the Scheme. Officers who opt to rely on paragraph 14 of Schedule 18 of the Finance Act 2011 to retain their lifetime tax allowance of £1,800,000 will remain in the Scheme for as long as they remain in paid service, but after 5 April 2012, they will cease to be active members and will cease accruing pension benefits. They will be known as “fixed protection members”. Rule B.6(4) provides that for specified purposes, they will be treated as active members rather than non-active members. For example, the amount of ill-health pension under rule D.5 for fixed protection members is to be determined according to the formula in rule D.5 applying to active members. However, their last day of reckonable service will be 5 April 2012, and their final pensionable earnings and the amount of their ill-health pension will reflect this.

Consequential changes are made to the interpretation provisions at rule A.1.

Rule D.1 is amended to allow a fixed protection member to receive a pension and lump sum immediately after ceasing to be in service, provided they have reached pension age while in service.

Rule E.15, regarding the lump sum benefit payable on the death of a member who is under 75 years old, is amended. Rule E.15(1) now requires the lump sum to be paid to the member’s nominee, if there is one. If there is no nominee, the lump sum is to be paid to the member’s spouse, civil partner or surviving adult dependant. Rule E.15(1)(c) provides that this is the case even where the deceased member had not served the requisite two years’ qualifying service for the spouse, civil partner or surviving adult dependant to receive an annual pension. If there is no spouse, civil partner or surviving adult dependant, the lump sum is to be paid to the member’s personal representatives. The amended rule E.15(4) provides that the lump sum cannot be paid more than two years after the Scheme administrator knew (or could reasonably be expected to have known) of the death. The new paragraph (5) enables a dependant’s annual pension to be increased if they were not awarded a lump sum for the sole reason that the two-year deadline was missed.

STATUTORY INSTRUMENTS

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