

EXPLANATORY MEMORANDUM TO

THE ARMED FORCES REDUNDANCY SCHEME 2006, THE ARMED FORCES REDUNDANCY ETC. SCHEMES 2010 AND THE ARMED FORCES PENSION SCHEME 2005 (AMENDMENT) ORDER 2011

2011 No. 3013

1. This Explanatory Memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

The Order amends the two redundancy compensation schemes for the regular Armed Forces. It also amends the Armed Forces Resettlement Commutation Scheme 2010, the Armed Forces Resettlement Grant Scheme 2010 and the Armed Forces Pension Scheme 2005.

3. Matters of special interest to the Joint Committee on Statutory Instruments (JCSI)

None.

4. Legislative Context

4.1 The two redundancy compensation schemes for the regular Armed Forces are the Armed Forces Redundancy Scheme 2006, established by the Armed Forces Redundancy Scheme Order 2006 (S.I. 2006/55), and the Armed Forces Redundancy Scheme 2010, established by the Armed Forces (Redundancy, Resettlement and Gratuity Earnings) (No.2) Order 2010 (S.I 2010/832). The compensation due to a member of the regular Armed Forces will depend on which of the two redundancy schemes is applicable to the member's terms of service and this is determined by which occupational pension scheme the person belongs to.

4.2 The 2010 Order also established the Armed Forces Resettlement Commutation Scheme 2010, which allows service personnel to commute part of their occupational pension into a lump sum, and the Armed Forces Resettlement Grant Scheme 2010, which allows for a lump sum payment to be made to personnel who leave the regular armed forces provided they meet specified conditions.

4.3 The Armed Forces Pension Scheme 2005 is an occupational pension scheme established by the Armed Forces Pension Scheme Order 2005. It applies to members of the regular armed forces who began service on or after 5 April 2005, and to former members of the Armed Forces Pension Scheme 1975 who opted to transfer to the AFPS 05.

5. Territorial Extent and Application

The Order extends to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure, and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The amendments made by the Order are described in the Explanatory Note.

7.2 The amendment to article 6 of the Armed Forces (Redundancy, Resettlement and Gratuity Earnings) Scheme (No.2) Order 2010 alters the definition of redundancy reckonable service to include a person's previous service in the armed forces only where that service has been aggregated with their current service, in other words service that counts as qualifying service for an immediate pension. Previously, the definition of redundancy reckonable service could have included previous service that did not count towards a person's immediate pension. This could have disadvantaged a person who left on redundancy terms without an immediate pension.

7.3 The background to the amendment to Rule B.5 of the Armed Forces Pension Scheme 2005 is that paragraph 14 of Schedule 18 to the Finance Act 2011 allows individuals to choose to retain their £1,800,000 million lifetime tax allowance (rather than the new, £1,500,000 million lifetime tax allowance), provided they cease to accrue pension benefits on 5 April 2012. The amendment to Rule B.5 ensures that any individuals who exercise this one-off option and thus cease to become active members while remaining in service, are not treated as deferred members of the Scheme for any other purpose. In this way, they are not subject to the many disadvantages consequent upon becoming a deferred member, such as having to wait till age 65 to receive a pension when they have left service.

7.4 A significant amendment to rule E.15 of the Armed Forces Pension Scheme 2005 removes the Secretary of State's discretion to pay the lump sum death benefit to any one of (1) the member's nominee, (2) the spouse, civil partner or surviving adult dependant, and (3) the member's personal representatives. Under the amended rule, the lump sum must be paid to the nominee (if there is one). If there is no nominee, it must be paid to the spouse, civil partner or surviving adult dependant (if there is one). If there is no-one in that category, it must be paid to the member's personal representatives. This accords with long-standing published policy that the lump sum benefit should go to the member's spouse or substantial partner if there is one. A recent Pensions Ombudsman determination made the Department aware that rule E.15 was not consistent with the policy intent. The amendment also brings the rule into line with the equivalent provision in the Armed Forces Pension Scheme 1975, where there is no discretion as between spouse or partner and the members' personal representatives.

8. Consultation outcome

Serving officers from the Royal Navy, Army and Royal Air Force with responsibility for Service pay and pensions have been briefed and consulted on these arrangements. No objections have been raised.

9. Guidance

Detailed guidance as to the amended redundancy compensation schemes and the amended Armed Forces Pension Scheme 2005 will be announced and published as soon as practicable after the Order is made, both in hard copy and on the MOD intranet site.

10. Impact

A Regulatory Impact Assessment has not been prepared for this Order as it is not expected to have an impact on business, charities or voluntary bodies.

11. Regulating Small Business

This legislation does not apply to small business.

12. Monitoring and review

These provisions are subject to continued monitoring and review.

13. Contact

Contact James Longworth, Ministry of Defence, 0207 218 0377, email CLS-LegC@mod.uk if you have any queries on this memorandum.