

EXPLANATORY MEMORANDUM TO

THE ARMED FORCES EARLY DEPARTURE PAYMENTS SCHEME (AMENDMENT) ORDER 2013

2013 No. 2914

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 Instrument makes two amendments to the Armed Forces Early Departure Payments Scheme Order 2005.

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

None.

4. Legislative Context

4.1 The Armed Forces Early Departure Payments Scheme Order 2005 (“the EDP Order”) establishes the Armed Forces Early Departure Scheme (“the EDP Scheme”), which applies to members of the Armed Forces Pension Scheme 2005 (“the AFPS 05”). The AFPS 05 is the pension scheme for members of the regular armed forces who joined or rejoined the services on or after 6 April 2005. Prior to this date, the pension scheme for regular armed forces was the Armed Forces Pension Scheme 1975 (“the AFPS 75”). Members of the AFPS 75 who were in service on 6 April 2005 were given a one-off option to transfer their AFPS 75 service to the AFPS 05. Those who did not so opt remained active members of AFPS 75.

4.2 The EDP Scheme provides for a tax-free lump sum and ongoing income payments to members of the regular armed forces leaving service before they are entitled to retirement pensions or other benefits from the AFPS 2005 providing they have reached age 40 or over and completed at least 18 years “relevant service”. The EDP Order also provides for the payment of resettlement grants for armed forces personnel who have completed 12 years “relevant service” and for a one-off lump sum payment for those service personnel who are deemed unfit for service.

5. Territorial Extent and Application

This instrument 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. Under the EDP Scheme, the calculation of the EDP lump sum and income takes into account the number of years of “relevant service” the individual has completed.

7.2 An anomaly has been identified in the current definition of “relevant service”, for which no policy justification has been identified. The rules currently prevent personnel who were active members of AFPS 75 who did not opt to transfer their service to AFPS 05 but who became active members of AFPS 05 by leaving service and subsequently rejoining the armed forces as members of AFPS 05, from aggregating their last period of service under AFPS 75 with their current period of service under AFPS 05 for the purposes of the EDP Scheme. This is in contrast to Service personnel who have had two separate periods of service as active members of AFPS 05 whose first period of service will count towards relevant service for the purposes of calculating benefits under the AFPS 05. Some of the first group (“the affected group”), contrary to their expectation, will not be able to qualify for an EDP or a resettlement grant under the current rules because they have insufficient “relevant service”, and others will receive a lower lump sum paid on unfitness for service than they otherwise would have done.

7.3 The anomaly also has implications for the redundancy compensation scheme applying to members of the AFPS 05. The Armed Forces Redundancy Scheme Order 2006 (S.I 2006/55) calculates the amount of redundancy compensation payable to an individual by reference to the definition of “relevant service” in the EDP Order. This is in contrast to the redundancy compensation scheme applying to members of AFPS 75, which takes into account a person’s service before a break in service (provided the person has opted to aggregate that service for pension purposes).

7.4. The draft Order will amend The EDP Order so that for a member of the affected group the definition of “relevant service” can include a period of service while the person was an active member of the AFPS 75. However, the period will only count as “relevant service” where the person opts to aggregate the period for pension purposes under Part G of AFPS 2005 (which allows the aggregation of only the last period of service where there is more than one period of previous service). In addition, the period will only count as relevant service where the person has not already received any pension payments or certain other benefits under AFPS 75 in respect of that period. The effect of the amendment is that a significant number of people will be entitled to EDP benefits that they would otherwise not have been entitled to, and a significant number of redundant personnel will be entitled to more redundancy compensation than they would otherwise have been entitled to.

7.5 The draft Order will also make a second amendment to the EDP Order to make clear, in accordance with the original policy intent, that the exclusion of

members of the AFPS 75 from entitlement to resettlement grants is restricted to active and pensioner members of the AFPS 1975 and does not apply to deferred members of AFPS 75.

8. Consultation outcome

The three single Services were consulted over a three month period from August to October 2013. There is a great deal of support and no objections were raised.

9. Guidance

Information about this provision will be made available by means of placing a copy of the Instrument on the Gov.UK website. Detailed guidance as to the amendment to the Early Departure Payment scheme will be announced in a DIN and published on the MOD intranet site as soon as practicable after the Instrument is made.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not significant.

10.2 The impact on the public sector is not significant.

10.3 An Impact Assessment has not been prepared for this Instrument.

10.4 An Equality Assessment has not been prepared for this Instrument

11. Regulating Small Business

This legislation does not apply to small business.

12. Monitoring and Review

The MOD will continue to review and monitor the Armed Forces Early Departure Payments Scheme as part of its day to day management.

13. Contact

Tracy Sexton at the Ministry of Defence Tel: 0207 218 0564, can answer any queries regarding this Instrument.