

EXPLANATORY MEMORANDUM TO

THE ARMED FORCES PENSION SCHEME AND EARLY DEPARTURE PAYMENTS SCHEME (AMENDMENT) REGULATIONS 2015

2015 No. 466

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

This memorandum contains information for the Joint Committee on Statutory Instruments (JCSI).

2. Purpose of the Instrument

2.1 New public service pension schemes are required to be in force on 1 April 2015 and all schemes will need to have supporting legislation in place before that date. The Armed Forces Pension Regulations 2014 (AFPS 2014) and The Armed Forces Early Departure Payments Scheme Regulations 2014 (EDPS 2014) were made on 31 August 2014, laid before Parliament on 4 September 2014 and come into force on 1 April 2015.

2.2 This statutory instrument makes minor amendments to both sets of regulations and inserts a cost cap figure into the Armed Forces Pension Regulations 2014.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 This SI includes amendments made in response to questions raised by the JCSI in their letters of 22 October 2014.

3.2 Section 12(1) of the Public Service Pensions Act 2013 sets the requirement to have scheme regulations which 'set a rate, expressed as a percentage of pensionable earnings of members of the scheme'. This section is the subject of the Public Service Pensions Act 2013 (Commencement No 5) Order 2014 which gives a commencement date of 1 April 2015 for section 12(1). At the time the AFPS 2014 regulations were laid a rate was not available. This amending instrument inserts a rate for the employer cost cap provision into Part 9.

4. Legislative Context

4.1 The Public Service Pensions Act 2013 establishes a statutory framework to lay regulations introducing new public service pension schemes. It also provides the authority to close existing public service pension schemes to new members and to transfer existing members to the new schemes, unless they qualify for transitional protection.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

7.1 The employer cost cap figure has now been determined and this instrument introduces that figure in order to comply with the requirements of Section 12(1) of the Public Service Pensions Act 2013. The instrument also makes clarifying and correcting amendments. Part 2 makes amendments to the AFPS 2014 and Part 3 makes amendments to the EDPS 2014.

AFPS 2014 Regulations

7.2 Regulations 3 and 38 are amended to clarify the definition of “pensioner member’s account”. Regulations 43, 44, 45, 51, 52 and 56 are amended by substituting “pensioner member’s account” for “retirement account”.

7.3 Amendments are made to regulation 32 to clarify that added pension purchased by a lump sum contribution is also to be included in the active member’s account.

7.4 Regulation 74 is amended in sub-paragraph (5) (a) by substituting “(6)” for “(5)”.

7.5 Regulation 79 is amended by inserting a rule to prevent unintended dual payments of a death benefit lump sum where a deceased Service person had been both an active member of the scheme and a pensioner member of a connected scheme. Regulation 81 is similarly amended to cover a deceased Service person who had been a pensioner member of the scheme as well as a pensioner member of a connected scheme. Regulation 81 is further amended to correct a reference and to make a minor correction to the lump sum calculation. A similar amendment to the lump sum calculation on the death of a pension credit member is made to Regulation 82.

7.6 Regulation 91 is amended by substituting “regulation 92” for all references to “regulation 91” at sub-paragraphs (6) (a) and (6) (b) (ii). Regulation 108 (2) is amended to include wording equivalent to that in 110 (2) to provide further clarification.

7.7 Regulation 114 is amended by inserting a rate for the employer cost cap.

7.8. Regulation 121 is amended in paragraph (1) by substituting “regulation 132 (information and evidence)” for “regulation 128 (information and evidence)”.

EDPS 2014 Regulations

7.9 Regulation 4 is amended by inserting a definition of “AFPS 14 regulations”.

7.10 Regulation 8 is amended by inserting “regulations” after AFPS 14 at the end of sub-paragraph 5 (b) and amends paragraph 7 (b) to read “ a person who is not eligible to be a member of AFPS 14” under the definition of “excluded person”. This achieves the policy intent of preventing an individual who is not eligible to be a member of the new scheme being able to claim an early departure payment under these provisions, rather than preventing an individual who is eligible but who chooses not to be a member being able to make a claim.

7.11 Regulations 16 and 19 are amended to insert the word “regulations” after “AFPS 14” wherever that phrase is used.

Consolidation

7.12 These regulations are the first amendment to these instruments and therefore there is no requirement for consolidation at this point.

8. Consultation outcome

8.1 A public consultation was launched on the draft AFPS 14 scheme regulations and draft EDP 2014 regulations. None of the responses called for a review of any part of the draft legislation.

8.2 A further consultation is not required for this amending SI as its purpose is to make minor amendments to correct references and provide further clarification. The cost cap figure will be published on the defence intranet.

9. Guidance

9.1 Updated guidance to the scheme regulations will be issued in due course which will be made available both in hard copy and on the internal intranet site.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities or voluntary bodies.

11. Regulating Small Business

11.1 The legislation does not apply to small business.

12. Monitoring and Review

12.1 These provisions are subject to continued monitoring and review as required.

13. Contact

Tracy Sexton at the Ministry of Defence, Central Legal Services Tel: 0207 218 0564 can answer any queries regarding the instrument.