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STATUTORY INSTRUMENTS

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**2006 No. 717**

**PENSIONS**

**The Armed Forces Pension Scheme  
etc. (Amendment) Order 2006**

<i>Made</i>	- - - -	<i>13th March 2006</i>
<i>Laid before Parliament</i>		<i>15th March 2006</i>
<i>Coming into force</i>	- -	<i>6th April 2006</i>

The Secretary of State for Defence, in exercise of the powers conferred on him by sections 1(1) and (3) and 10(2) and (3) of the Armed Forces (Pensions and Compensation) Act 2004<sup>(1)</sup>, makes the following Order:

**Citation and commencement**

1.—(1) This Order may be cited as the Armed Forces Pension Scheme etc. Amendment Order 2006.

(2) This Order comes into force on 6th April 2006.

**Interpretation**

2. In this Order—

“the AFPS 1975” has the meaning given in rule A.1(4) of the AFPS 2005,

“the AFPS 2005” means the Armed Forces Pension Scheme 2005 established by article 2 of the Armed Forces Pension Scheme Order 2005<sup>(2)</sup>, and

“the Scheme” means that Scheme.

**Eligible children**

3. In rule E.9 of the Scheme for paragraph (4) substitute—

“(4) In the case of a pensioner member who died before 6th April 2006, condition C is that the person is unable to engage in gainful employment because of physical or mental disability from which the person began to suffer before the age of 23.

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(1) 2004 c. 32.  
(2) S.I. 2005/438.

(4A) In the case of any other member, condition C is that the person is under 23 and was at the date of the member's death dependant on the member because of physical or mental impairment and unable because of that impairment to engage in gainful employment.”.

#### **Entitlement to ill-health pensions**

4.—(1) In rule D5(1) of the Scheme (early payment of benefits: active members with permanent serious ill-health) for sub-paragraph (a) substitute—

- “(a) in the opinion of the Secretary of State the member has suffered a permanent breakdown in health involving incapacity for any full-time employment,
- (aa) the Secretary of State has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on his occupation because of physical or mental impairment, and”.

(2) In rule D.6(1) of the Scheme (early payment of benefits: active members with significant impairment of capacity for gainful employment) for sub-paragraph (a) substitute—

- “(a) in the opinion of the Secretary of State the member has suffered a breakdown in health as a result of which his capacity for gainful employment is significantly impaired,
- (aa) the Secretary of State has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on his occupation because of physical or mental impairment, and”.

(3) In rule D.7(1) of the Scheme (early payment of benefits: deferred members with permanent serious ill-health) for sub-paragraph (a) substitute—

- “(a) in the opinion of the Secretary of State the member has suffered a permanent breakdown in health involving incapacity for any full-time employment (see rule D.5(2) and (3)),
- (aa) the Secretary of State has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on his occupation because of physical or mental impairment, and”.

(4) In rule D.8 of the Scheme (member's requests for review of ill-health awards)

- (a) in paragraphs (5) and (7) in the words following sub-paragraph (b) after “then” insert “the member's entitlement under rule D.6 ceases and”.
- (b) for paragraphs (9)(b) and (10)(b) substitute—
  - “(b) the conditions in rule D.6(1)(aa) and (b) are met,” and
- (c) in paragraph (9) in the words following sub-paragraph (b) for “as if the conditions mentioned in that rule were met at the time the member ceased to be in service by virtue of which he was eligible to be an active member of the Scheme” substitute “from the time when the ill-health condition (as defined in paragraph 1 of Schedule 28 to the Finance Act 2004) is first met”.
- (d) in paragraph (10) in the words following sub-paragraph (b) for “as from the date on which the review was requested” substitute “from the date when the ill-health condition (as defined in paragraph 1 of Schedule 28 to the Finance Act 2004) is first met”.

#### **Option for members in serious ill-health to exchange whole pension for lump sum**

5.—(1) Rule D.11 of the Scheme (option for members in serious ill-health to exchange whole pension for lump sum) is amended as follows.

- (2) In paragraph (1) for the words from “if” onwards substitute—
  - “if the Secretary of State—

- (a) is satisfied that the member is expected to live for less than one year, and
- (b) has received evidence from a registered medical practitioner that that is the case.”.
- (3) In paragraph (2) for “a member” substitute “an active member or a deferred member”.
- (4) After paragraph (2) insert—
  - “(2A) Where a pension credit member so opts, he is to be paid as soon as is reasonably practicable an amount that in the opinion of the Scheme actuary is equivalent to the value of his pension credit rights.”.

#### **Power to consult before determining questions, especially relating to ill-health**

6.—(1) The existing rule J.9 of the Scheme (determination of questions) is to become paragraph (1) of that rule.

- (2) After that paragraph insert—
  - “(2) But in determining any such question the Secretary of State may consult with such persons as he considers appropriate to advise him about the question and, in particular, in forming an opinion about any question relating to the health of any person for the purposes of Part D, he may consult the Scheme medical adviser.”.
- (3) In the following provisions of the Scheme omit “after consultation with the Scheme medical adviser”—
  - (a) rule D5(2) and (3) (early payment of benefits: active members with permanent serious ill-health),
  - (b) rule D.8(4)(b), (5)(a), (7)(a), (8)(b), (9) and (10) (member’s requests for review of ill-health awards),
  - (c) rule D.9(3), (4) and (5) (Secretary of State’s power to review ill-health awards), and
  - (d) rule D.15(6)(b) (procedure for election for allocation of pension).

#### **Early payment of pensions with actuarial reduction**

7.—(1) Rule D.4 of the Scheme (early payment of pensions with actuarial reduction) is amended as follows.

- (2) In paragraph (1)—
  - (a) for “D.2 or D.3”, in the first place where it occurs, substitute “or D2”,
  - (b) for “D.2 or D.3”, in the second place where it occurs, substitute “D2”,
  - (c) omit “or (3)”, and
  - (d) for the second sentence substitute—

“In this paragraph “the relevant age” means 55.”.

- (3) Omit paragraph (3).
- (4) In paragraph (4) omit “or, as the case may be, rule D.3(4)”.

#### **Allocation**

8.—(1) In rule D.14 of the Scheme (election to allocate pension) in paragraph (4) (limit on allocation to one-half of the member’s annual pension before any exercise of the option to exchange lump sum for pension) for “one-half” substitute “the permitted percentage”.

- (2) After that paragraph insert—

“(4A) In paragraph (4) “the permitted percentage” means 37.5% or such lower percentage as appears to the Scheme administrator to be capable of being allocated under this rule without risking that a part of the pension to which any person becomes entitled on the death of the member after 75 does not qualify as a dependants' scheme pension for the purposes of section 167 of the Finance Act 2004 (the pension death benefit rules) (see paragraphs 16 to 16B of Schedule 28 to that Act).”.

(3) In rule E.12(4) of the Scheme (amount of children’s pensions where a pensioner member leaves a surviving adult dependant and two or more children) for “(disregarding rules D.10, E.6 and E.7)” substitute “(disregarding any increase or reduction made by virtue of rule D.10, D.16, E.6 or E.7)”.

### **Applications to transfer in under rule F.7**

9. In rule F.8 of the Scheme (procedure for applications under rule F.7)—

(a) in paragraph (2) (under which an application for a transfer value payment to be accepted by the Scheme under the public sector transfer arrangements must be made within one year of the member becoming eligible to be a member of the Scheme) after “public sector transfer arrangements” insert “or to which paragraph (3) applies”,

(b) for sub-paragraph (a) of paragraph (2) substitute—

“(a) in the case of a transfer value payment to be made under the public sector transfer arrangements, must be made during the period of one year beginning with the day on which the member becomes eligible to be an active member,

(aa) in the case of a transfer value payment to which paragraph (3) applies, must be made during the period of one year beginning with the relevant day, unless paragraph (4) applies, and”.

(c) after paragraph (2) add—

“(3) This paragraph applies to—

(a) a transfer value payment from a personal pension scheme, or

(b) a transfer value payment relating only to voluntary contribution rights.

(4) This paragraph applies in the case of a transfer value payment within paragraph (3)(b) (“the relevant payment”) if—

(a) the applicant is also applying for the Scheme to accept a transfer value payment from a different occupational pension scheme from that by which the relevant payment is payable (“the second scheme”),

(b) the second scheme relates to the same employment as that to which the scheme by which the relevant payment is payable relates, and

(c) the transfer value payment payable by the second scheme relates to rights that are or include rights that are not voluntary contribution rights.

(5) In this article—

“occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993,

“relevant date” means the day on which the applicant becomes eligible to be an active member of the scheme or 6th April 2006, whichever is the later, and

“voluntary contribution rights” means rights under an occupational pension scheme that derive from voluntary contributions made by the applicant.”.

## Cases where certain charges under the Finance Act 2004 apply

10.—(1) After rule J.10 of the scheme insert—

### *“Payment and deduction of tax*

#### **Payment on behalf of members of lifetime allowance charge**

**J.11.**—(1) A member may request the person who is the scheme administrator for the purposes of section 217 of the Finance Act 2004 (“the administrator”) to pay on his behalf any amount that is payable by way of the lifetime allowance charge under section 214 of that Act when—

- (a) an event that is a benefit crystallisation event listed in the table in section 216(1) of that Act occurs in relation to him, and
  - (b) the member and the administrator are jointly and severally liable to the charge in respect of the event.
- (2) Such a request may only be made by notice in writing given before the event occurs.
- (3) The administrator may only comply with such a request if the member pays him the amount in question on or before the date on which the event occurs.

#### **Reduction of benefits and transfer values where lifetime allowance charge payable**

**J.12.**—(1) This rule applies if—

- (a) an event that is a benefit crystallisation event listed in the table in section 216(1) of the Finance Act 2004 (“the table”) occurs in relation to a member,
  - (b) the member and the person who is the scheme administrator for the purposes of section 217 of that Act (“the administrator”) are jointly and severally liable to the charge in respect of the event, and
  - (c) no request has been duly made under rule J.11 in relation to the event or, if such a request has been made, the administrator is prevented from complying with it by paragraph (3) of that rule.
- (2) Where this rule applies—
- (a) the administrator must pay the tax payable on the event,
  - (b) if the event is benefit crystallisation event 8 in the table (transfer to qualifying recognised overseas pension scheme), the amount or value of the sums or assets transferred must be reduced, and
  - (c) in the case of any other event, the amount or value of the benefits payable to or in respect of the member must be reduced.
- (3) The amount or value of the reduction must be such that, in the opinion of the Scheme actuary, it fully reflects the amount of the tax so paid.

#### **Deduction of special lump sum death benefits charge**

**J.13.** Before a payment is made that is a pension protection lump sum death benefit for the purposes of Part 4 of the Finance Act 2004 (see paragraph 14 of Schedule 29 to that Act), the person who is the scheme administrator for the purposes of section 217 of that Act may deduct from it any tax due in respect of the payment under section 206 of that Act (the special lump sum death benefits charge).”

(2) In the Arrangement of Rules of the Scheme after “J.10 Information and evidence” insert—

*“Payment and deduction of tax*

- J.11.** Payment on behalf of members of lifetime allowance charge
- J.12.** Reduction of benefits and transfer values where lifetime allowance charge payable
- J.13.** Deduction of special lump sum death benefits charge.”.

**Miscellaneous amendments relating to changes in status of schemes on 6th April 2006**

**11.**—(1) In rules D.2(1)(b), D.5(1)(b)(ii), D.6(1)(b)(ii) and D.7(1)(b)(ii) of the Scheme (entitlement to pensions where transfers in from other schemes have been accepted under Part F) for “was formerly entitled to rights under a personal pension scheme or a retirement annuity contract in respect of which a transfer value payment has been accepted” substitute “is entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (basic principles as to short service benefit) because of a transfer value payment having been accepted”.

(2) In rule F.7—

- (a) in paragraph (1) (applications for transfers in from schemes of the kind mentioned in paragraph (2) of that rule) for “under any of the following kinds of scheme or arrangement” substitute “under any scheme or arrangement to which a transfer value payment may be made under Chapter 4 of Part 4 of the Pension Schemes Act 1993 (transfer values)”, and
- (b) omit paragraph (2).

(3) In rule A.1(4) (definitions)—

- (a) in the definition of “personal pension scheme” for “has been approved” onwards substitute “is registered under section 153 of the Finance Act 2004 (registration of pension schemes)”, and
- (b) omit the definition of “retirement annuity contract”.

**Eligibility for membership of AFPS 2005 etc.**

**12.**—(1) In rule B.1(a)(ii) of the Scheme (eligibility for membership) for “a Nepalese person recruited in Nepal” substitute “an active member of the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949)”.

(2) In the definitions of “member” in article 3 of the Armed Forces Early Departure Payments Scheme Order 2005(3) and article 3(1) of the Armed Forces Redundancy Payments Scheme Order 2006(4) for “a Nepalese person recruited in Nepal” substitute “an active member of the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949)”.

**Evidence required for payments under the Armed Forces Early Departure Payments Scheme Order 2005**

**13.** In article 16 of the Armed Forces Early Departure Payments Scheme Order 2005(5) (lump sum awards: incapacity for armed forces service) for paragraph (1)(a) substitute—

- “(a) in the opinion of the Secretary of State the person is unfit for service as a member of the armed forces because of physical or mental impairment,
- (aa) the Secretary of State has received evidence from a registered medical practitioner of that unfitness.”.

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(3) S.I.2005/437.  
(4) S.I. 2006/55.  
(5) S.I. 2005/437.

## **Revocations**

**14.**—(1) The Armed Forces Pension Scheme Order 2005 is revoked to the extent specified in the third column of the Schedule.

(2) The revocations specified in the Schedule include the revocation of article 2(2) of the Armed Forces Pension Scheme Order 2005 and Schedule 2 to that Order (by virtue of which the AFPS 2005 temporarily had effect with the modifications specified in that Schedule and certain other modifications) which are spent.

Signed by authority of the Secretary of State for Defence.

13th March 2006

*Don Touhig*  
Under Secretary of State Ministry of Defence

## SCHEDULE

Article 14(1)

## REVOCATIONS

<i>Title of statutory instrument</i>	<i>Extent of revocation</i>
The Armed Forces Pension Scheme Order 2005 (S.I.2005/438)	<p>Article 2(2).</p> <p>In Schedule 1, in rule A.1(4) the definition of “retirement annuity contract”, in rule D.4 in paragraph (1) the words “or (3)”, paragraph (3) and in paragraph (4) the words “or, as the case may be, rule D.3(4)”, in rules D.5(2) and (3), D.8(4)(b), (5)(a), (7)(a), (8)(b), (9) and (10), D.9(3), (4) and (5) and D.15(6)(b), the words “after consultation with the Scheme medical adviser” and rule F.7(2).</p> <p>Schedule 2.</p>

**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) and is largely concerned with amending the rules of the Armed Forces Pension Scheme 2005 (“the Scheme”). Most of the amendments reflect changes that are consequential on the replacement on 6th April 2006 of the tax regime applying in respect of pensions under Part 14 of the Income and Corporation Taxes Act 1988 (c. 1) by Part 4 of the Finance Act 2004 (c. 12) (“Part 4”). Some minor amendments of the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437) (“the EDP Order”) and the Armed Forces Redundancy Payments Scheme Order 2006 (S.I. 2006/55) (“the Redundancy Order”) are also included.

Article 1 provides that this Order comes into force on 6th April 2006.

Article 2 sets out definitions.

Article 3 amends one of the conditions relating to the definition of eligible children where a child is suffering from mental or physical impairment so that the child must be under 23 and dependant on the deceased member at the date of his death. The requirement that the child be engaged in gainful employment is removed. The change does not apply if the member died before 6th April 2006 and was a pensioner member.

Article 4 makes minor amendments relating to ill-health pensions and lump sums so as to make the Scheme comply with the requirements of Part 4 relating to pensions and lump sums that are payable early.

Article 5 makes some similar amendments of rule D.11, which permits the commutation of the whole of a member’s rights where he is suffering from serious ill-health. It also amends that rule so that

pension credit members commuting their rights in those circumstances will receive an amount equal to the value of those rights.

Article 6 makes it clear that the Secretary of State may take advice before determining questions that arise under the Scheme and removes the requirement that the Secretary must consult the scheme medical adviser in certain cases.

Article 7 amends rule D.4 (which relates to the early payment of pensions with actuarial reduction) so as to remove the references to pension credit members.

Article 8 amends rule D.14(4) so as to restrict the amount of pension that a member may allocate to 37.5 per cent. or such lower percentage of the pension as will not risk a breach of the pension death benefit rules in Part 4. It also amends the formula used in rule E.12 for calculating children's pensions in cases where a pensioner member leaves a surviving adult dependant and two or more children, so as to increase those pensions in cases where the member allocated some pension to the surviving dependant.

Article 9 amends rule F.8 so as to extend the rule that applications for a transfer-in payment to be accepted by the Scheme must be made within one year of the member becoming eligible to be a member, so that that rule also applies to transfers in from personal pension arrangements or involving rights under an occupational pension scheme that derive from voluntary contributions. The change only applies for members joining the Scheme on or after 6th April 2006 and only applies to existing members from 6th April 2007.

Article 10 inserts two new rules (J.11 and J.12) providing for payment of the lifetime allowance charge under section 214 of the Finance Act 2004 on behalf of members, and for transfer values or benefits to be reduced where such a payment has been made without the member having made a payment to the Scheme to cover the tax. It also inserts a new rule (J.13) providing for the payment of special lump sum death benefits charge under section 206 of that Act.

Article 11 amends rules relating to entitlement to pensions and transfers in so as to simplify them by removing references to specific kinds of schemes, which would otherwise require modification because of the changes made by Part 4. It also adjusts the definitions in the Scheme to reflect those changes.

Article 12 amends rule B.1(a)(ii) of the Scheme, which relates to eligibility for membership of the Scheme, and similar provisions in the EDP Order and the Redundancy Order, so as to clarify which members with eligibility for other pension arrangements are excluded from the Scheme and the schemes established by those Orders.

Article 13 amends article 16 of the EDP Order so that its requirements for the payment of lump sums where ill-health occurs match those of the rules of the Scheme relating to payments in the event of ill-health, as amended by article 4 of this Order.

Article 14 introduces the Schedule, which contains revocations consequential on this Order. It specifically revokes the provisions in the Armed Forces Pension Scheme Order 2005 (S.I. [2005/438](#)), which modified the Scheme's rules for the period until 6th April 2006 (when the arrangements relating to the approval of pension schemes for tax purposes changed as a result of the coming into force of Part 4) and so are spent, and other provisions that made temporary modifications that are now spent.

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.