

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (PENSIONS)(PRESCRIBED MODIFICATION)
ORDER 2009**

2009 NO. 262

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

2. Purpose of the instrument

2.1 The Armed Forces (Pensions)(Modification) Order 2009 prescribes the manner of amending the Armed Forces Pension Scheme 2005 (“AFPS 05”) set out in Schedule 1 to the Armed Forces Pension Scheme Order 2005 (S.I. 2005/438) to amend the way in which inflation increases are applied for the purpose of determining final pensionable earnings and to clarify the method of applying inflation increases to pensions awarded under that scheme.

2.2 S.I. 2005/438 was made under the Armed Forces (Pensions and Compensation) Act 2004.

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

3.1 None.

4. Legislative Context

4.1 The 2004 Act establishes a statutory framework to enable new provision to be made for pensions and compensation schemes for the Armed Forces, with the scheme rules for both set out in statutory instruments. The Armed Forces Pension Scheme Order 2005 was made under section 1(1)(a) of the 2004 Act.

4.2 Section 3 of that Act requires that any change which ‘would or might adversely affect any entitlement, accrued rights or pension credit rights’ is made either by consent or by modifying the scheme in “the prescribed manner” (see section 3(1)(b)). This Order prescribes the manner of the modifications to the Scheme that we need to make.

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

7. Policy background

7.1 When the AFPS 05 was originally enacted it needed to make provision for pension increases as the Scheme was not covered by the Pensions (Increase) Act 1971. The Pensions Increase (Armed Forces Pension Schemes and Conservation Board) Regulations 2006 (S.I. 2006/801) ensured that pension increases would be automatic but no consequential amendment was made to the Scheme to remove the original provision. This oversight needs to be corrected.

7.2 There is also a drafting error in the rule governing final pensionable earnings which erroneously allows the inflation adjustment to be applied in respect of earnings falling within a previous tax year, rather than to earnings falling in a previous year. This error needs to be corrected.

8. Consultation outcome

8.1 Although the Armed Forces do not have Trade Union representation, this and the more detailed wider proposals which will be addressed in the substantive amendment, have been put to the Central Advisory Committee on Pensions and Compensation and also appear on our website. The Central Advisory Committee comprises representatives of the main ex-Service organisations, including the Forces Pensions Society, and serving personnel who represent each of the three Services. The Forces Pensions Society worked closely with the Department on the design of AFPS 05 and views the proposed substantive amendments as non-controversial and to reflect the policy intent at the time that the original Scheme was established (which remains the same now). No other comments have been received on this proposal.

9. Guidance

None.

10. Impact

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

11. Regulating small business

11.1 This legislation does not apply to small business.

12. Monitoring and review

12.1 During the passage of the Armed Forces (Pension and Compensation) Bill through Parliament, the Armed Forces Pay Review Body was asked to provide a regular, external validation of AFPS 05 in comparison with other schemes. This was to occur at least every five years (but more often if events justified it) and the arrangement was made to meet concerns expressed that there should be some independent oversight of the scheme. The first five yearly comparison is due in Spring 2010.

13. Contact

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