

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES PENSION SCHEME 2005 (AMENDMENT) ORDER
2011

2011 No. 1364

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

2.1 This instrument amends The Armed Forces Pension Scheme Order 2005 (S.I. 2005/438) (“the Principal Order”) which came into effect on 6 April 2005.

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

3.1 None.

4. Legislative Context

4.1. The Armed Forces Pension Scheme Order 2005 was made under the provisions of the Armed Forces (Pensions and Compensation) Act 2004 (“the 2004 Act”). The 2004 Act establishes a statutory framework for Armed Forces pensions, with the scheme rules set out in statutory instruments as for most other public service schemes. This allows routine changes, including those implementing wider Government policies that have been subject to Parliamentary scrutiny and debate, to be implemented quickly and economically.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom as does the instrument that it amends.

6. European Convention on Human Rights

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

7. Policy Background

7.1. The rules of The Armed Forces Pension Scheme 2005 provide for Pension Credit Members (PCMs) to receive their pension benefits from age 55, earlier than the age prescribed in Section 101C of the Pensions Schemes Act 2003. This instrument amends the scheme rules to provide for PCMs to receive their pension benefits immediately the PCM reaches age 65 or when the pension sharing order takes effect if that is later. A further change provides for a PCM to opt for early payment of their pension benefits from age 55 on actuarially reduced terms. These changes are necessary to comply with the Pension Schemes Act 1993.

7.2 On the death of a member, a surviving spouse, civil partner or adult dependant may only be paid a death-in-service lump sum if they are entitled to a pension under the scheme rules. To be entitled to a pension, the member must have completed a minimum two years' qualifying service on the date of death. The amendment made by this instrument provides for a surviving spouse, civil partner or adult dependant to qualify for a death-in-service lump sum irrespective of whether they are entitled to a pension.

7.3 This instrument amends the rules to reflect the fact that there are now two types of paternity leave, being ordinary paternity leave and additional paternity leave. The amendments mean that paid additional paternity leave is treated as 'assumed pay' and counts towards qualifying service.

7.4 In normal circumstances, if a scheme member leaves before pension age, the member's pension benefits are preserved until age 65. This instrument amends the rules to provide for a member to retire up to three months before reaching pension age (55) in order to take up a job in civilian employment or undertake a course of full time education or attend a training course and still qualify to receive a pension and lump sum on attaining pension age.

7.5 Currently, the rules provide for a pension to be paid to a person under age 23 if at the time of the member's death, the person is dependent on the member because of physical or mental impairment and is unable to engage in gainful employment. This instrument provides for a pension to be paid to a person who at the time of death was dependent on the member because of physical or mental impairment and is in the opinion of the scheme administrator unable to engage in full-time gainful employment regardless of age.

7.6 Finally, the Instrument amends the rules so that a member is not able to transfer in pension rights from another scheme after reaching pension age (55).

7.7 There are currently no plans to consolidate this instrument with the Principal instrument.

8. Consultation Outcome

8.1 The three single Services were consulted in February 2011. No objections were raised.

9.1 Guidance

9.1 Detailed guidance on the changes to the Armed Forces Pension Scheme 2005 will be announced and published as soon as practicable after the instrument is made, both in hard copy and on the MOD internal website and intranet.

10. Impact

10.1 This instrument is not expected to have an impact on business, charities or voluntary bodies.

10.2 This instrument is not expected to have an impact on the public sector.

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

11. Regulating Small Business

11.1 This legislation does not apply to small business.

12. Monitoring and review

12.1 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.