
STATUTORY INSTRUMENTS

2018 No. 1111

PENSIONS

**The Armed Forces Pension Schemes and Early Departure
Payments Schemes (Amendments Relating to Flexible
Working and Miscellaneous Amendments) Regulations 2018**

Made - - - - 18th October 2018

Laid before Parliament 26th October 2018

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1(1) and 10(2) of the Armed Forces (Pensions and Compensation) Act 2004⁽¹⁾ and sections 1(1) and (2)(h), 2(1) and 3(1), (2) and (3)(a) of, and paragraph 8 of Schedule 2 and Schedule 3 to, the Public Service Pensions Act 2013⁽²⁾.

In accordance with section 21 of the Public Service Pensions Act 2013, the Secretary of State has consulted the representatives of such persons as appear to the Secretary of State likely to be affected by Parts 1 (insofar as it is relevant to Parts 4 and 5) and Parts 4 and 5 of these Regulations.

In accordance with section 3(5) of the Public Service Pensions Act 2013, Part 1 (insofar as it is relevant to Parts 4 and 5) and Parts 4 and 5 of these Regulations are made with the consent of the Treasury.

PART 1

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Armed Forces Pension Schemes and Early Departure Payments Schemes (Amendments Relating to Flexible Working and Miscellaneous Amendments) Regulations 2018.

(2) The following provisions of these Regulations come into force on 1st December 2018—

(a) this Part;

(1) 2004 c. 32.

(2) 2013 c. 25.

- (b) regulation 2(1) and (8) to (11);
 - (c) regulation 3(1) and (5);
 - (d) regulation 5(1), (7) and (9).
- (3) The remainder of these Regulations come into force on 1st April 2019.

PART 2

Amendment of the Armed Forces Pension Scheme Order 2005

Amendment of the Armed Forces Pension Scheme Order 2005

2.—(1) Schedule 1 to the Armed Forces Pension Scheme Order 2005 (the Armed Forces Pension Scheme 2005)(3) is amended as follows.

(2) In rule A.1(4) (interpretation: general), insert in the appropriate places in the alphabetical order the following definitions—

“flexible service” means one or both of the following types of service—

- (a) part-time service;
- (b) restricted separation service,

and references to a member serving on flexible terms must be construed accordingly;

“part-time service” means—

- (a) for enlisted members, a period of service where the member is serving in accordance with an arrangement provided for in regulations made under section 329(2)(ha) of the Armed Forces Act 2006(4);
- (b) for members who are officers, a period of service on equivalent terms of service;

“restricted separation service” means—

- (a) for enlisted members, a period of service where the member is serving in accordance with an arrangement which does not restrict the member’s service in a particular area but does make it subject to other geographic restrictions provided for in regulations made under section 329(2)(i) of the Armed Forces Act 2006(5);
- (b) for members who are officers, a period of service on equivalent terms of service;

“service reduction percentage” has the meaning given in rule A.2A;”.

(3) After rule A.2 (meaning of “pensionable earnings”), insert—

“A.2A Meaning of “service reduction percentage”

(1) In these Rules, the “service reduction percentage” in respect of a period of flexible service is given by the formula, expressed as a percentage—

$$\frac{(A - B)}{A}$$

Where—

A is the basic pay which the member would have received in respect of that period of flexible service had the member not been serving on flexible terms;

(3) S.I. 2005/438; relevant amending instruments are S.I. 2006/717, 2009/544, 2011/1364, 2011/3013 and 2015/568.

(4) 2006 c. 52. Section 329(2)(ha) was inserted by section 1 of the Armed Forces (Flexible Working) Act 2018 (c. 2).

(5) 2006 c. 52. Section 329(2)(i) was substituted by section 1 of the Armed Forces (Flexible Working) Act 2018 (c. 2).

B is the basic pay received by the member in respect of that period of flexible service.

(2) For the purposes of the Scheme, a period of flexible service ends and another begins when any change in the service reduction percentage occurs.”.

(4) In rule A.4 (meaning of “final pensionable earnings”), after paragraph (1), insert—

“(1A) Where a member served on flexible terms during any part of the period of 3 years mentioned in paragraph (1), the member’s final pensionable earnings are calculated as though the member had not served on flexible terms for that period.”.

(5) In rule A.8 (reckonable service)—

(a) in paragraph (1), in the full out words after sub-paragraph (i), for “paragraph (2)” substitute “paragraphs (2) and (3)”;

(b) after paragraph (2), insert—

“(3) Where a member has served on flexible terms, the reckonable service the member is entitled to count for each period of such service is reduced by the service reduction percentage applicable to that period of flexible service.”.

(6) In rule C.1 (member’s option to pay contributions to increase service)—

(a) in paragraph (5), for “If a member” substitute “Subject to paragraphs (5A) and (6), if a member”;

(b) after paragraph (5), insert—

“(5A) Subject to paragraph (6), where a member who has exercised the option under paragraph (1) is serving on flexible terms—

(a) the member may, for the period of that flexible service, pay the same amount of contributions as would be payable if the member was not serving on flexible terms; and

(b) if the member does not pay the contributions under sub-paragraph (a), the member may opt, within the period of 365 days beginning with the first day after the period of flexible service has ended, to pay the difference between the amount of contributions the member would have paid under sub-paragraph (a) and the contributions actually paid—

(i) by such instalments as the member may agree with the Scheme administrator; or

(ii) by lump sum.”.

(7) In rule C.3 (effect of making contributions)—

(a) in paragraph (2), after sub-paragraph (b), insert—

“(ba) a member has served on flexible terms during any part of the contractual option period,”;

(b) after paragraph (5), insert—

“(6) Where the member has served on flexible terms during the contractual option period—

(a) for the purposes of paragraph (3), a contribution paid under rule C.1(5A)(a) or (b) is treated as a contribution paid at the rate originally required under the contract,

(b) for the purposes of paragraph (4), a contribution paid under rule C.1(5)(a) in respect of a period of flexible service where the member has not opted to pay the difference under rule C.1(5A)(b) is treated as a contribution paid at a reduced rate.

- (7) In this rule, “the contractual option period” has the meaning given by rule C.1(7).”
- (8) In rule E.3 (amount of pensions under rules E.1 and E.2: active members), omit paragraph (6)(a)(6).
- (9) In rule E.4 (amount of pensions under rules E.1 and E.2: deferred members), omit paragraph (3)(a)(7).
- (10) In rule E.5 (amount of pensions under rules E.1 and E.2: pensioner members), omit paragraph (3)(a)(8).
- (11) In rule E.21 (nominations for lump sum death benefits), after paragraph (6), insert—
- “**(7)** Where the member marries or enters into a civil partnership on or after 1st December 2018, any existing nomination ceases to have effect from the date of the marriage or civil partnership.”
- (12) In rule H.2 (abatement of pensions on re-employment: general rules), after paragraph (1), insert—
- “**(1A)** For the purposes of paragraph (1), where the re-employed pensioner was serving on flexible terms on the last day of the re-employed pensioner’s old service, the old rate is calculated as though the re-employed pensioner had not been serving on flexible terms on that day.”
- (13) In rule H.3 (abatement of pensions: effect of changes after re-employment)—
- (a) for paragraph (1), substitute—
- “**(1)** This rule applies each time one of the following events (“the re-employment event”) occurs after the re-employed pensioner enters the new service—
- (a) the re-employed pensioner is re-employed in another post;
- (b) the post in which the re-employed pensioner has been re-employed is regraded;
- (c) the re-employed pensioner commences a period of service on flexible terms, including where the re-employed pensioner resumes a period of such service following a period in which that service was suspended; or
- (d) the re-employed pensioner’s period of flexible service is varied, suspended for more than 30 consecutive days or terminated.”;
- (b) in paragraph (2), for “re-employment or regrading” substitute “re-employment event”.
- (14) In rule H.5 (adjustment of basic pay in old service), after paragraph (2), insert—
- “**(3)** For the purposes of this rule, where the re-employed pensioner was serving on flexible terms on the last day of the re-employed pensioner’s old service, the annual rate of the basic pay payable to the re-employed pensioner is calculated as though the re-employed pensioner had not been serving on flexible terms on that day.”

3.—(1) Schedule 2 to the Armed Forces Pension Order 2005 (transitional provision)(9) is amended as follows.

(2) In paragraph 1 (interpretation), insert in the appropriate places in the alphabetical order the following definitions—

““flexible service” has the meaning given in rule A.1(4) of Schedule 1;

(6) Rule E.3 was amended by [S.I. 2014/560](#).

(7) Rule E.4 was amended by paragraph 7 of Schedule 3 to [S.I. 2014/560](#).

(8) Rule E.5 was amended by paragraph 7 of Schedule 3 to [S.I. 2014/560](#).

(9) Schedule 2 was inserted by regulation 13 of [S.I. 2015/568](#) to make transitional provision for members who were transferred to a new Armed Forces Pension Scheme on 1 April 2015 and who retained accrued rights in the Scheme. The former Schedule 2 to the Armed Forces Pension Order 2005 was revoked by [S.I. 2006/717](#).

- “part-time service” has the meaning given in rule A.1(4) of Schedule 1;
- “restricted separation service” has the meaning given in rule A.1(4) of Schedule 1;
- “service reduction percentage” has the meaning given in rule A.2A of Schedule 1;”.
- (3) In paragraph 14 (active transition member with permanent serious ill-health who leaves service before reaching age 55)—
- (a) in sub-paragraph (4), after sub-paragraph (c) of the substituted rule D.5(5) insert—
- “(d) For the purposes of calculating the member’s pensionable service in the AFPS 2015 under this rule, any period of pensionable service which is also a period when the member has served on flexible terms is reduced by the service reduction percentage applicable to that period of service.”;
- (b) in sub-paragraph (5), after sub-paragraph (d) of the substituted regulation 54(2)(b) insert—
- “(e) For the purposes of calculating the member’s pensionable service in the AFPS 2015 under sub-paragraphs (b)(i), (c) and (d)(ii)(aa), any period of pensionable service which is also a period when the member has served on flexible terms is reduced by the service reduction percentage applicable to that period of service.”.
- (4) In paragraph 17 (active transition member with significant impairment of capacity for gainful employment who leaves service before reaching age 55)—
- (a) in sub-paragraph (4), after sub-paragraph (c) of the substituted rule D.6(3) insert—
- “(d) For the purposes of calculating the member’s pensionable service in the AFPS 2015 under this rule, any period of pensionable service which is also a period when the member has served on flexible terms is reduced by the service reduction percentage applicable to that period of service.”;
- (b) in sub-paragraph (5), after sub-paragraph (d) of the substituted regulation 55(2)(b) insert—
- “(e) For the purposes of calculating the member’s pensionable service in the AFPS 2015 under sub-paragraphs (b)(i) and (c), any period of pensionable service which is also a period when the member has served on flexible terms is reduced by the service reduction percentage applicable to that period of service.”.
- (5) In paragraph 40 (final salary link for a transition member with continuity of service), for sub-paragraph (2), substitute—
- “(2) If a member’s final pensionable earnings on leaving service as a member of AFPS 2015 are lower than the member’s final pensionable earnings on their last day of reckonable service in the AFPS 2005, the member’s final pensionable earnings are to be determined as if paragraph (1) of rule A.4 of the AFPS 2015 were replaced by the following—
- “(1) In these Rules, “final pensionable earnings”, in relation to a member, means the greatest amount that is the member’s total pensionable earnings for 365 consecutive days falling within the period beginning three years before their last day of reckonable service in the AFPS 2005.””

PART 3

Amendment of the Armed Forces Early Departure Payments Scheme Order 2005

Amendment of the Armed Forces Early Departure Payments Scheme Order 2005

4.—(1) The Armed Forces Early Departure Payments Scheme Order 2005(10) is amended as follows.

(2) In article 3 (general interpretation), insert in the appropriate places in the alphabetical order the following definitions—

““flexible service” means one or both of the following types of service—

- (a) part-time service,
- (b) restricted separation service,

and references to a person serving on flexible terms must be construed accordingly;

“part-time service” means—

- (a) for enlisted persons, a period of service where the member is serving in accordance with an arrangement provided for in regulations made under section 329(2)(ha) of the Armed Forces Act 2006;
- (b) for persons who are officers, a period of service on equivalent terms of service;

“restricted separation service” means—

- (a) for enlisted persons, a period of service where the member is serving in accordance with an arrangement which does not restrict the member’s service in a particular area but does make it subject to other geographic restrictions provided for in regulations made under section 329(2)(i) of the Armed Forces Act 2006;
- (b) for persons who are officers, a period of service on equivalent terms of service;

“service reduction percentage” has the meaning given in article 3B;”.

(3) After article 3A (meaning of “a person with dual entitlement”), insert—

““Meaning of “service reduction percentage”

3B.—(1) In this Scheme, the “service reduction percentage” in respect of a period of flexible service is given by the formula, expressed as a percentage—

$$\frac{(A - B)}{A}$$

Where—

A is the basic pay which the person would have received in respect of that period of flexible service had the person not been serving on flexible terms;

B is the basic pay received by the person in respect of that period of flexible service.

(2) For the purposes of the Scheme, a period of flexible service ends and another begins when any change in the service reduction percentage occurs.”.

(4) In article 5 (meaning of “calculation service”)—

- (a) the existing article is re-numbered as paragraph (1);
- (b) after paragraph (1) as so re-numbered, insert—

“(2) Where a person has served on flexible terms, the person’s relevant service for each period of such service, calculated for the purposes of determining the person’s calculation service under paragraph (1)(a), is reduced by the service reduction percentage applicable to that period of flexible service.”.

(5) In article 6 (meaning of “final relevant earnings”), after paragraph (7), insert—

“(8) Where a person served on flexible terms during any part of the period of three years mentioned in paragraph (1), the person’s final relevant earnings are calculated as though the person had not served on flexible terms for that period.”.

(6) In article 10 (amount of payments under article 9), after paragraph (7), insert—

“(7A) Where a person has served on flexible terms, for the purposes of determining T under paragraph (4)(zb)(i), the person’s relevant service for each period of flexible service is reduced by the service reduction percentage applicable to that period of flexible service.”.

PART 4

Amendment of the Armed Forces Pension Regulations 2014

Amendment of the Armed Forces Pension Regulations 2014

5.—(1) The Armed Forces Pension Regulations 2014(11) are amended as follows.

(2) In regulation 3 (interpretation), insert in the appropriate places in the alphabetical order the following definitions—

““flexible service” means one or both of the following types of service—

- (a) part-time service;
- (b) restricted separation service,

and references to a member serving on flexible terms must be construed accordingly;

“part-time service” means—

- (a) for enlisted members, a period of service where the member is serving in accordance with an arrangement provided for in regulations made under section 329(2)(ha) of the Armed Forces Act 2006;
- (b) for members who are officers, a period of service on equivalent terms of service;

“restricted separation service” means—

- (a) for enlisted members, a period of service where the member is serving in accordance with an arrangement which does not restrict the member’s service in a particular area but does make it subject to other geographic restrictions provided for in regulations made under section 329(2)(i) of the Armed Forces Act 2006;
- (b) for members who are officers, a period of service on equivalent terms of service;

“service reduction percentage” has the meaning given in regulation 23A;”.

(3) After regulation 23 (pensionable earnings), insert—

““Meaning of “service reduction percentage”

23A.—(1) In these Regulations, the “service reduction percentage” in respect of a period of flexible service is given by the formula, expressed as a percentage—

$$\frac{(A - B)}{A}$$

Where—

A is the basic pay which the member would have received in respect of that period of flexible service had the member not been serving on flexible terms;

B is the basic pay received by the member in respect of that period of flexible service.

(2) For the purposes of these Regulations, a period of flexible service ends and another begins when any change in the service reduction percentage occurs.”.

(4) In regulation 54 (annual rate of ill-health pension: active members with permanent serious ill-health), after paragraph (4), insert—

“(5) For members who have served on flexible terms, when calculating the enhancement value, for the purposes of A and X—

- (a) for all years up to the last active year, all scheme years or any parts of a scheme year (expressed as a proportion of a year) during any period of flexible service for which amounts of earned pension were specified in the members account, are reduced by the service reduction percentage applicable to that period of flexible service; and
- (b) if the member was serving on flexible terms during the last active scheme year, the number of calendar days (expressed as a proportion of a year) during any period of flexible service when the member was eligible for active membership, are reduced by the service reduction percentage applicable to that period of flexible service.”.

(5) In regulation 55 (annual rate of ill-health pension: active members with significant impairment of capacity for gainful employment), after paragraph (4), insert—

“(5) For members who have served on flexible terms, when calculating the enhancement value, for the purposes of A and X—

- (a) for all years up to the last active year, all scheme years or any parts of a scheme year (expressed as a proportion of a year) during any period of flexible service for which amounts of earned pension were specified in the members account, are reduced by the service reduction percentage applicable to that period of flexible service; and
- (b) if the member was serving on flexible terms during the last active scheme year, the number of calendar days (expressed as a proportion of a year) during any period of flexible service when the member was eligible for active membership, are reduced by the service reduction percentage applicable to that period of flexible service.”.

(6) In regulation 76 (meaning of “final pensionable earnings”), after paragraph (4), insert—

“(5) Where a member served on flexible terms during any part of the period of 3 years mentioned in paragraph (1), the member’s final pensionable earnings are calculated as though the member had not served on flexible terms for that period.”.

(7) In regulation 84 (nominations for lump sum death benefits), after paragraph (4), insert—

“(4A) Where the member marries or enters into a civil partnership on or after 1st December 2018, any existing nomination ceases to have effect from the date of the marriage or civil partnership.”.

(8) In regulation 94 (periodical contributions: special cases)—

- (a) after “a period of absence from work”, insert “, serves on flexible terms”; and
- (b) in paragraph (c), after “the scheme year after the absence”, insert “or service on flexible terms”.

(9) In regulation 121(1) (forfeiture of benefits), for “paragraph (2) of regulation 132 (information and evidence)”, substitute “paragraph (1) of regulation 122 (events enabling forfeiture)”.

PART 5

Amendment of the Armed Forces Early Departure Payments Scheme Regulations 2014

Amendment of the Armed Forces Early Departure Payments Scheme Regulations 2014

6.—(1) The Armed Forces Early Departure Payments Scheme Regulations 2014(12) are amended as follows.

(2) In regulation 4 (general interpretation), insert in the appropriate places in the alphabetical order the following definitions—

““flexible service” means one or both of the following types of service—

- (a) part-time service;
- (b) restricted separation service,

and references to a person serving on flexible terms must be construed accordingly;

“part-time service” means—

- (a) for an enlisted person, a period of service where the member is serving in accordance with an arrangement provided for in regulations made under section 329(2)(ha) of the Armed Forces Act 2006;
- (b) for a person who is an officer, a period of service on equivalent terms of service;

“restricted separation service” means—

- (a) for an enlisted person, a period of service where the member is serving in accordance with an arrangement which does not restrict the member’s service in a particular area but does make it subject to other geographic restrictions provided for in regulations made under section 329(2)(i) of the Armed Forces Act 2006;
- (b) for a person who is an officer, a period of service on equivalent terms of service;

“service reduction percentage” has the meaning given in regulation 5A;”.

(3) In regulation 5 (meaning of “final pensionable earnings”), after paragraph (7) insert—

“(8) Where a person served on flexible terms during any part of the period of 3 years mentioned in paragraph (1), the person’s final pensionable earnings are calculated as though the person had not served on flexible terms for that period.”.

(4) After regulation 5 insert—

“Meaning of “service reduction percentage”

5A.—(1) In this scheme, the “service reduction percentage” in respect of a period of flexible service is given by the formula, expressed as a percentage—

$$\frac{(A - B)}{A}$$

Where—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

A is the basic pay which a person would have received in respect of that period of flexible service had the person not been serving on flexible terms;

B is the basic pay received by the person in respect of that period of flexible service.

(2) For the purposes of the Scheme, a period of flexible service ends and another begins when any change in the service reduction percentage occurs.”.

(5) In regulation 20 (amount of lump sum on incapacity for armed forces service), after paragraph (1), insert—

“(1A) For members who have served on flexible terms, when calculating length of service for the purpose of paragraph (1), all years and parts of a year during any period of flexible service are reduced by the service reduction percentage applicable to that period of flexible service.”.

16th October 2018

Tobias Ellwood
Parliamentary Under Secretary of State
Ministry of Defence
Craig Whittaker
Mike Freer

18th October 2018

Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Armed Forces Pension Scheme Order 2005 (S.I. 2005/438), the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437), the Armed Forces Pension Regulations 2014 (S.I. 2014/2336) and the Armed Forces Early Departure Payments Scheme Regulations 2014 (S.I. 2014/2328).

Part 2 amends the Armed Forces Pension Scheme Order 2005 to reflect the introduction of flexible service (part-time service and restricted separation service) in the armed forces, following the passage of the Armed Forces (Flexible Working) Act 2018 (c. 2). The amendments make the necessary adjustments to ensure that pensions and other benefits are calculated correctly.

Other amendments in Part 2—

- remove the restriction on reckonable service used to calculate the pension payable to a surviving same sex spouse or civil partner;
- provide that marriage or entering into a civil partnership revokes an existing nomination for the death in service lump sum; and
- ensure that a member who has accrued rights in the 2005 pension scheme, and who retires on a lower salary than their final salary in the 2005 scheme will have their pension calculated by reference to the higher salary.

Part 3 amends the Armed Forces Early Departure Payments Scheme Order 2005 to reflect the introduction of flexible service in the armed forces.

Part 4 amends the Armed Forces Pension Regulations 2014 to reflect the introduction of flexible service in the armed forces.

Other amendments in Part 4—

- provide that marriage or entering into a civil partnership revokes an existing nomination for the death in service lump sum; and
- correct an error in the provisions relating to forfeiture of pensions.

Part 5 amends the Armed Forces Early Departure Payments Scheme Regulations 2014 to reflect the introduction of flexible service in the armed forces.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.