
STATUTORY INSTRUMENTS

2005 No. 437

**The Armed Forces Early Departure
Payments Scheme Order 2005**

Early departure payments

Eligibility for early departure payments

8.—(1) A person is only eligible to become entitled to payments under article 9 if he meets conditions A to D.

(2) Condition A is that the person is a member of the armed forces, other than an excluded person.

(3) Condition B is that the person ceases to be in service as such a member on or after attaining the age of 40 and before attaining the age of 55.

(4) Condition C is that the person has completed a number of years' relevant service that equals or exceeds 18 years.

(5) Condition D is that the person is not entitled to the immediate payment of a pension under—

(a) rule D.5 of the AFPS 2005 (early payment of benefits: active members with permanent serious ill-health), or

(b) rule D.6 of that Scheme (early payment of benefits: active members with significant impairment of capacity for gainful employment).

(6) In paragraph (2) “excluded person” means—

(a) any person the terms of whose service exclude him from eligibility for payments under article 9, unless the Secretary of State has agreed to treat him as if they did not do so, and

(b) a person who is an active member of the AFPS 1975.

Entitlement to early departure payments

9.—(1) A person who is eligible to become entitled to payments under this article in accordance with article 8 (an “eligible person”) becomes so entitled as from the time when he ceases to be in service as mentioned in article 8(3).

(2) An eligible person is entitled under this article—

(a) to a lump sum payment, and

(b) to periodical payments in respect of the period beginning with the day following that on which he so ceases and ending with the day before his 65th birthday.

This is subject to paragraph (3) and article 12.

(3) A person is not entitled to a lump sum under this article if he has previously received a lump sum under this article that he was liable to repay under article 12(6) and has not repaid it.

(4) The lump sum is payable before the expiry of the period of 3 months beginning with the day on which the person ceases to be in service as mentioned in article 8(3).

(5) The periodical payments are to be made at monthly intervals in arrears.

Amount of payments under article 9

10.—(1) The annual amount of the periodical payments payable to an eligible person in respect of the part of the period mentioned in article 9(2) before he attains the age of 55 is the sum of—

- (a) the basic amount, and
- (b) the additional service allowance.

(2) The basic amount is $N/140$ ths of the person's final relevant earnings.

(3) The additional service allowance is calculated by multiplying 3.3334% of the basic amount by $(N - X)$.

(4) For the purposes of paragraphs (2) and (3)—

(a) N is the number of years' relevant service that the person is entitled to count for the purposes of Condition C in article 8(4), and

(b) X is the greater of—

(i) 18, and

(ii) the number of years' relevant service that the person was entitled to count when he attained the age of 40,

expressed in each case in years and fractions of a year, and

(c) if $N - X$ is not a whole number or zero, it is rounded down to the nearest whole number or to zero, as the case may be.

Sub-paragraph (a) is subject to paragraph (5).

(5) If the person's calculation service includes any period within sub-paragraph (b) or (c) of the definition of that service in article 5, N is increased by the number of years in that period (expressed in years and fractions of a year).

(6) The annual amount of the periodical payments payable to an eligible person in respect of the part of the period mentioned in article 9(2) after he attains the age of 55 is the person's basic amount multiplied by 1.5.

(7) The amount of the lump sum payable to an eligible person is—

(a) except where sub-paragraph (b) applies, three-seventieths of the person's final relevant earnings, multiplied by the length of person's calculation service (expressed in years and fractions of a year), and

(b) in a case where a lump sum has been paid to the person previously under article 9, the amount payable under sub-paragraph (a), less the amount so previously paid that has not been repaid under article 12(6).

(8) In the case of a person who would be an excluded person for the purposes of article 8(2), apart from the Secretary of State agreeing as mentioned in article 8(6)(a), the amounts of the payments under this article are to be reduced by such amount as the Secretary of State considers appropriate, after consultation with the Scheme actuary.

(9) This article is subject to articles 11 and 12.

Increases for inflation

11.—(1) Apart from any adjustment required by article 7, no other adjustment for inflation is to be made in determining the amount of any payment to be calculated in accordance with article 10(1) or (7).

(2) But in determining the annual amount of the payments calculated in accordance with article 10(6) when a person attains the age of 55, the amount of the person's final relevant earnings is adjusted for inflation.

(3) The reference in paragraph (2) to adjusting for inflation the amount of the person's final relevant earnings is to increasing it by the same amount as that by which an annual pension of an amount equal to those earnings would have been increased under the Pensions (Increase) Act 1971 when the person attained the age of 55 if the pension—

- (a) were eligible to be so increased, and
- (b) had come into payment on the first day after the person ceased to be in service as mentioned in article 8(3).

(4) In determining the annual amount of the payments calculated in accordance with article 10(6) at any time after the person attains the age of 55, it is to be assumed that those payments—

- (a) are payments of a pension eligible to be increased under the Pensions (Increase) Act 1971, and
- (b) came into payment when the person attained the age of 55,

and those payments are to be increased accordingly.

Effect of rejoining armed forces or entering certain reserve forces service on article 9 award

12.—(1) This article applies where a person who is entitled to payments under article 9—

- (a) enters service as a member of the armed forces again,
- (b) is called out for permanent service under Part 4, 5 or 6 of the Reserve Forces Act 1996⁽¹⁾ or under the Reserve Forces Act 1980⁽²⁾,
- (c) enters full-time service as a result of a commitment under section 24 of the Reserve Forces Act 1996 (commitment to a period of full-time service), or
- (d) enters service as a result of a commitment under section 25 of that Act (commitment to additional duties);

and in this article that service is referred to as “the new service”.

(2) The person is not entitled to any periodical payments under article 9 in respect of any period whilst he is in the new service.

(3) In the case of a person to whom paragraph (1)(a) or (b) applies, when the new service ceases—

- (a) if he is a person to whom paragraph (1)(a) applies who has attained the age of 55 or is an ill-health pensioner, he is not entitled to any further periodical payments under article 9,
- (b) if he is a person to whom paragraph (1)(a) applies otherwise than as a result of his being recalled for permanent service under Part 7 of the Reserve Forces Act 1996 or under the Reserve Forces Act 1980, then, subject to paragraph (a), a fresh entitlement under article 9 may arise in respect of the relevant service he has then completed (including the new service),
- (c) if he is a person to whom paragraph (1)(a) applies as a result of his being so recalled or to whom paragraph (1)(b) applies—
 - (i) the new service is disregarded for the purposes of articles 8 to 10, (and accordingly no fresh entitlement under article 9 may arise by virtue of the cessation of the new service), but
 - (ii) subject to paragraph (a), his former entitlement, by virtue of the cessation of the former service, to periodical payments due in respect of any period after the new service ceases revives

(1) 1996 c. 14.

(2) 1980 c. 9.

(4) For the purposes of paragraph (3), a person is an ill-health pensioner if on leaving the new service he is entitled to the immediate payment of a pension under—

- (a) rule D.5 of the AFPS 2005 (early payment of benefits: active members with permanent serious ill-health), or
- (b) rule D.6 of that Scheme (early payment of benefits: active members with significant impairment of capacity for gainful employment).

(5) In the case of a person to whom paragraph (1)(c) or (d) applies—

- (a) the new service is disregarded for the purposes of articles 8 to 10 (whatever his age when the new service ceases); and
- (b) accordingly—
 - (i) no fresh entitlement under article 9 may arise by virtue of the cessation of the new service, but
 - (ii) his former entitlement, by virtue of the cessation of the former service, to periodical payments due in respect of any period after the new service ceases revives.

(6) If the period beginning with the date when the person became entitled to the payments under article 9 and ending immediately before the date on which the new service begins (“the service break”) is less than the relevant period, the person must repay the relevant fraction of any lump sum payment made to him under article 9, unless he is a person to whom paragraph (1)(a) applies as a result of his being recalled for service under Part 7 of the Reserve Forces Act 1996 or under the Reserve Forces Act 1980 or to whom paragraph (1)(b) applies.

(7) For the purposes of paragraph (6), “the relevant period” in relation to any person to whom a lump sum payment has been made under article 9 is—

$$\frac{LP \times 365 \text{ days}}{FRE}$$

where—

LP is the amount of the lump sum, and

FRE is the amount of the person’s final relevant earnings by reference to which the lump sum was calculated under article 10.

(8) In paragraph (7) “the relevant fraction” means—

$$\frac{D}{RP}$$

where—

D is the number of days by which the number of days in the service break falls short of the relevant period, and

RP is the number of days in the relevant period.

Effect of emergencies etc.

13.—(1) This article applies where a person who would be entitled to payments under article 9 if he had ceased to be in service as mentioned in article 8(3) on the relevant date does not cease to be in such service on that date by reason only of—

- (a) circumstances which in the opinion of the Secretary of State amount to an emergency, or
- (b) his being a prisoner of war on that date.

(2) The person is treated for the purposes of articles 8 to 12 as having ceased to be in service on the relevant date.

- (3) In this article “the relevant date” means—
- (a) in the case of a person who was to have ceased to be in service on the date his commitment ended, that date,
 - (b) in the case of a person who agreed to continue in service after his commitment ended until the age of 55, the day before that on which he reached that age, and
 - (c) in the case of a person not within sub-paragraph (a) or (b) who was notified that a particular date was to be the last day of his service, that date.