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STATUTORY INSTRUMENTS

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**2010 No. 832**

**The Armed Forces (Redundancy, Resettlement and  
Gratuity Earnings Schemes) (No. 2) Order 2010**

**PART 3**

**THE ARMED FORCES GRATUITY EARNINGS SCHEME 2010**

**Payments to persons serving on gratuity earning terms**

**17.**—(1) The Scheme set out in this Part shall be known as the Armed Forces Gratuity Earnings Scheme 2010.

(2) A person serving in the armed forces and eligible for the payment of a gratuity on leaving service is entitled to a lump sum payment.

(3) A person is eligible for a lump sum payment under paragraph (2) if that person—

(a) is not eligible to join the AFPS 1975 or the Armed Forces Pension Scheme 2005<sup>(1)</sup> (AFPS 2005);

(b) has completed at least one year in service; and

(c) in the opinion of the Defence Council has completed that service to a satisfactory level.

(4) Any gratuity payable under this article shall be calculated in accordance with article 18(1).

(5) Subject to paragraph (6), where a person entitled to a gratuity payment under paragraph (2) continues to serve in the armed forces after the commitment period, payment of the gratuity shall be deferred until the end of any further service.

(6) Where paragraph (5) applies, a person may forgo the lump sum payable under paragraph (2) and opt instead to transfer any qualifying and reckonable service during the commitment period into the AFPS 2005 or any scheme set out in regulations under the Reserve Forces Act 1996<sup>(2)</sup>.

(7) The option to transfer service under paragraph (6) must be exercised before the commitment period ends.

(8) Where a person in receipt of a gratuity rejoins service, in respect of which a pension is payable within 5 years of the commitment period coming to an end, the gratuity may be converted into pension under paragraph (6), if it is repaid within 12 months of rejoining.

**Calculating gratuity payment**

**18.**—(1) Subject to articles 19 and 20, the gratuity payable under article 17(2), “the appropriate amount” is calculated in accordance with the following formula—

$$CY + AD \times GR$$

Where—

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(1) S.I. 2005/438

(2) 2005 c. 14.

**CY** is complete years' service;

**AD** is any additional days calculated at a rate of 1/365th for each day served; and

**GR** is the relevant gratuity rate as set out in the pension codes.

- (2) In paragraph (1), "relevant gratuity rate" means, as the case may be, the rate set out for—
- (a) a veterinary officer;
  - (b) a medical or dental officer;
  - (c) a cadet or person who is not a registered medical or dental practitioner; or
  - (d) any other person.

### **Authorised abatements from gratuity payment**

**19.**—(1) Subject to article 22, any gratuity payable to a medical or dental officer—

- (a) whose professional training has been completed with assistance under cadetship schemes for the entry of student doctors and student dentists, and
- (b) who fails to complete the commitment period after registering as a doctor or dentist with the General Medical Council or the General Dental Council of the United Kingdom,

shall be abated by a sum equivalent to the net amount of the education grant expended on tuition and maintenance during the period of training.

(2) Any public or service debt outstanding at the time of payment of a gratuity under article 17(2) may be abated prior to payment, subject to restrictions imposed by the Pensions Act 1995(3).

### **Impact of service on gratuity payment**

**20.**—(1) Where a person ceases to serve before the end of the commitment period the Defence Council may substitute the commitment period for the number of complete years' service in article 18(1).

(2) Where a person's service is terminated prior to the commitment period on account of unsatisfactory service, including misconduct, the Defence Council may award a gratuity at a rate not exceeding that for which the person could have been considered if they had been permitted to terminate service voluntarily.

(3) Where a person has completed service under the commitment period, but this service is considered by the Defence Council to be unsatisfactory, the Defence Council may withhold the whole or part of the gratuity due.

### **Maternity, adoption and paternity leave**

**21.**—(1) When calculating service for the payment of a gratuity under article 17(2)—

- (a) any period of paid ordinary maternity leave, ordinary adoption leave or paternity leave whether at the statutory minimum, reduced or full pay rate, will count as both qualifying and reckonable service;
- (b) if, more than six months before expiry of the commitment period and as a result of pregnancy or the adoption of a child, a person decides to retire or fails to complete the commission after pre-natal leave, ordinary maternity leave, additional maternity leave, ordinary adoption leave or additional adoption leave, the gratuity payment will be calculated pro rata.

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(3) 1995 c. 26.

(2) In paragraph (1)(b), “pre-natal leave” means unpaid leave that is taken prior to the birth of a child.

### **Death in service gratuity payment**

**22.**—(1) Where a person to whom a lump sum would have been payable under article 17(2) dies in service the lump sum will be paid as follows—

- (a) if the person leaves a surviving spouse, civil partner or eligible partner the gratuity shall be paid to that person;
- (b) if the person leaves no surviving spouse, civil partner or eligible partner, the gratuity may be divided equally among any eligible children;
- (c) if the person leaves no surviving spouse, civil partner or eligible partner, nor any eligible children, the Secretary of State may pay a lump sum to that person’s personal representatives.

(2) Any lump sum payable under paragraph (1) shall not be subject to any deductions under article 19(1).

(3) Where the deceased is not a member of the chaplaincy services, the Director General of the Naval Chaplaincy Services, the Chaplain General or the Chaplain in Chief (RAF), the lump sum payable under this article is—

- (a) equal to three times the representative rate of pay based on the number of whole years served under the AFPS 1975; or
- (b) if greater, the amount of gratuity the deceased would have received had the deceased been invalided at the date of death.

(4) Where the deceased is a member of the chaplaincy services, the Director General of the Naval Chaplaincy Services, the Chaplain General, or the Chaplain in Chief (RAF), the deceased is deemed to have held the rank of lieutenant commander, major or squadron leader, for the purposes of calculating the representative rate for the lump sum.

### **Surviving eligible partner**

**23.** A person is to be regarded as a surviving eligible partner of the deceased if the deceased left no surviving spouse or civil partner, but the person satisfies the Defence Council that at the time of the deceased’s death—

- (a) their relationship was exclusive, committed and long term;
- (b) their relationship was substantial;
- (c) they were not prevented from (as the case may be) marrying or forming a civil partnership; and
- (d) either the person was financially dependent on the deceased or they were financially interdependent.

### **Death in service short term pension**

**24.**—(1) If a person dies in service with an entitlement to a gratuity under article 22 leaving a surviving spouse, civil partner or any eligible children, a short term pension shall be paid as follows—

- (a) in the case of a surviving spouse or civil partner with no dependent eligible children in his or her care, an amount equal to 91 days of pay;
- (b) in the case of a surviving spouse or civil partner with one dependent eligible child in his or her care, an amount equal to 182 days of pay;

- (c) in the case of a surviving spouse or civil partner with two or more dependent eligible children in his or her care, an amount equal to 273 days of pay.
- (2) If a person dies in service with an entitlement to a gratuity under article 22 leaving any eligible children in the care of a person other than a surviving spouse or civil partner, a short term pension may also be paid as follows—
  - (a) in the case of one eligible child in the care of another person, an amount equal to 91 days of pay; and
  - (b) in the case of two or more eligible children in the care of another person, an amount equal to 182 days of pay.
- (3) Any persons irrespective of number, who qualify under the terms of paragraphs (1) or (2), shall be awarded a short term pension for the specified period.

### **Eligible child**

**25.**—(1) An eligible child for the purposes of any payments under articles 22 and 24, is any child who meets one of the conditions under paragraphs (2) to (9) and any of Conditions A to C in paragraphs (11) to (13).

(2) The first condition is that the child is a legitimate child of the deceased where the deceased was married to or in a civil partnership with the child's other parent before the death of the deceased.

(3) The second condition is that the child is an illegitimate child of the deceased born before or within 9 months of the deceased's death who was mainly dependent on the deceased at the time of the deceased's death.

(4) The third condition is that the child is an illegitimate child of—

- (a) the deceased's spouse, or
- (b) the deceased's civil partner,

who was born before or within 9 months of the deceased's death and who was or would have been mainly dependent on the deceased and who meets the condition in paragraph (10).

(5) The fourth condition is that the child is an adopted child of the deceased where the deceased was married to or had formed a civil partnership with the child's other adoptive parent.

(6) The fifth condition is that the child is an adopted child of the deceased, or the Defence Council is satisfied that the deceased had previously formed an intention to adopt the child before the deceased's death, and the child was mainly dependent on the deceased at the date of the deceased's death and meets the condition in paragraph 10.

(7) The sixth condition is that the child is a step-child of the deceased where the natural or adoptive parent of the child was married to the deceased or was the deceased's civil partner at the time of the deceased's death and where the child was mainly dependent on the deceased at the date of death and meets the condition in paragraph (10).

(8) The seventh condition is that the child is a grandchild of a person where the Defence Council considers that the child has been abandoned by its parents or the parents have died, where the child was mainly dependent on the deceased at the date of the deceased's death and meets the condition in paragraph (10).

(9) The eighth condition is that the child is a child of the natural or adoptive parent, or a step child of a person who was the deceased's eligible partner before the deceased's death and where the child was mainly dependent on the deceased at the date of death and meets the condition in paragraph (10).

(10) The condition referred to in paragraphs (4), (6), (7), (8) and (9) is that the child was financially dependent on the deceased at the date of the deceased's death or would have been had it been born before the death.

(11) Condition A is that the child is aged under 17.

(12) Condition B is that the child is aged under 23 and is—

- (a) in full time secondary education;
- (b) in full time further education that started immediately after ceasing full time secondary education; or
- (c) undertaking full-time vocational training which in the opinion of the Defence Council is unpaid or substantially unpaid.

(13) Condition C is that the person (who may be aged over 18), was dependent on the deceased at the date of the deceased's death because of physical or mental impairment and in the opinion of the Defence Council is incapable of earning a living.

(14) For the purposes of Condition B, a child who takes a break not exceeding 15 months between concluding secondary education and beginning full-time further education or vocational training is assumed to be continuing in such education or training during the break.

(15) Paragraph (14) does not apply at any time when the child's health is such that it is reasonable to assume that the child will not be capable of undertaking any further education or training.

(16) Nothing in paragraph (14) requires a child's compensation to be paid during the break.

(17) Any payments due to an eligible child under the age of 18 may be paid to the surviving spouse, civil partner or eligible partner of the deceased, or mother or father of the child, or other person responsible for the child's maintenance, or the child direct as may be decided by the Defence Council.

(18) Any payments due in relation to an eligible child under paragraph (13) may be made to a person at the discretion of the Defence Council.

### **Commuting service for teachers' or NHS pension**

**26.** A person serving under a short service commission who qualifies and opts for their service to be commuted as reckonable service into an existing scheme under sections 9 or 10 of the Superannuation Act 1972(4) or articles 11 or 12 of the Superannuation (Northern Ireland) Order 1972(5) will be responsible for the payment of both employer and employee contributions direct to the parent superannuation scheme as they fall due.

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(4) 1972 c. 11.

(5) S.I. 1972/1073 (N.I. 10)