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STATUTORY INSTRUMENTS

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**2014 No. 2336**

**The Armed Forces Pension Regulations 2014**

**PART 5**

**Retirement benefits**

**CHAPTER 3**

**Ill-health benefits**

**Entitlement to ill-health pension: active member with permanent serious ill-health**

**51.**—(1) An active member who has not reached normal pension age is entitled to immediate payment of an ill-health pension if—

- (a) in the opinion of the scheme manager, the member has suffered a permanent breakdown in health involving incapacity for any gainful full time employment;
- (b) the scheme manager has received evidence from a registered medical practitioner that the member is, and will continue to be, incapable of carrying on their occupation because of physical or mental impairment;
- (c) the member has at least 2 years' qualifying service or a transfer value payment otherwise than from another occupational pension scheme has been accepted in relation to the member under Part 8 (Transfers);
- (d) the member is not entitled to an ill-health pension under regulation 52(1) (entitlement to ill-health pension: active member with significant impairment of capacity for gainful employment); and
- (e) the scheme manager has agreed to the member becoming so entitled.

(2) For the purpose of these Regulations, a member's breakdown in health is "permanent" if the scheme manager is of the opinion that the breakdown will continue until the member reaches normal pension age.

(3) A member entitled to immediate payment of an ill-health pension is entitled to an added pension of any description if the retirement account specifies an accrued added pension of that description.

(4) The annual rate of an ill-health pension and any added pension payable under this regulation is calculated in accordance with regulation 54 (annual rate of ill-health pension: active members with permanent serious ill-health).

**Entitlement to ill-health pension: active member with significant impairment of capacity for gainful employment**

**52.**—(1) An active member who has not reached normal pension age is entitled to the immediate payment of an ill-health pension if—

- (a) in the opinion of the scheme manager—

- (i) the member has suffered a breakdown in health, as a result of which, their capacity for any gainful employment is significantly impaired; and
  - (ii) the breakdown will continue until the member reaches normal pension age;
  - (b) the scheme manager has received evidence from a registered medical practitioner that the member is, and will continue to be, incapable of any gainful employment because of physical or mental impairment;
  - (c) the member has at least 2 years' qualifying service or a transfer value payment otherwise than from another occupational pension scheme has been accepted in relation to the member under Part 8 (Transfers);
  - (d) the member is not entitled to an ill-health pension under regulation 51(1) (entitlement to ill-health pension: active member with permanent serious ill-health); and
  - (e) the scheme manager has agreed to the member becoming so entitled.
- (2) A member entitled to immediate payment of an ill-health pension is entitled to—
- (a) an added pension of any description if the retirement account specifies an accrued added pension of that description; and
  - (b) a retirement club transfer earned pension, if the retirement account specifies a club transfer earned pension.
- (3) The annual rate of an ill-health pension and any added pension payable under this regulation is to be calculated in accordance with regulation 55 (annual rate of ill-health pension: active members with significant impairment of capacity for gainful employment).

#### **Deferment of accrued earned pension attributable to a transfer payment**

**53.**—(1) In respect of any amount of accrued pension specified in the active member's account as at the end of the last day of pensionable service which is attributable to a transfer value payment or cash transfer sum ("payment") accepted in relation to the member under Part 8 (Transfers) in the 24 months before the relevant day and the scheme manager so directs, these Regulations apply as if the member had become a deferred member in respect of the rights that accrued in that service by virtue of that payment.

(2) Accordingly where paragraph (1) applies—

- (a) for the purpose of calculating the provisional amount of deferred added earned pension under regulation 35 (account to specify provisional amount of deferred pension), the amount of accrued earned pension is only the amount attributable to that transferred payment; and
- (b) for the purpose of calculating the amount of retirement earned pension or any club transfer earned pension under regulation 40 (account to specify amount of retirement pension), the amount of accrued pension is—
  - (i) the amount specified in the active member's account as at the end of the last day of pensionable service, less
  - (ii) the amount attributable to that payment.

(3) In paragraph (1), "the relevant day" means the day on which the scheme manager provided their opinion, mentioned in either regulation 51 (entitlement to ill-health pension: active member with permanent serious ill-health) or regulation 52 (entitlement to ill-health pension: active member with significant impairment of capacity for gainful employment), by virtue of which the member is entitled to the ill-health pension.

### **Annual rate of ill-health pension: active members with permanent serious ill-health**

54.—(1) The annual rate of an ill-health pension payable under regulation 51 (entitlement to ill-health pension: active member with permanent serious ill-health) is calculated in accordance with regulation 45 (annual rate of pension payable to active member who becomes pensioner member), in the same way as the annual rate of retirement earned pension is calculated, but—

- (a) the references to the member's retirement earned pension are taken to be references to the enhancement value of the earnings-related part of that pension; and
- (b) the early payment reduction is not subtracted.

(2) In this regulation—

“the earnings-related part”, in relation to the member's retirement earned pension, means the proportion of that pension not attributable to a transferred pension;

“the enhancement value” means multiplying A by B where—

- (a) A is the member's retirement earned pension divided by the sum of—
  - (i) for all years up to the last active scheme year, the number of scheme years (or parts of scheme years) for which amounts of earned pension were specified in the active member's account; and
  - (ii) in the last active scheme year, the number of calendar days (expressed as a proportion of a year), where the member was eligible for active membership; and
- (b) B is the greater of—
  - (i) the number of years (or parts of years) up to a maximum of 25 years which would have remained, if the active member had continued in scheme employment up to normal pension age; or
  - (ii) X plus N (both expressed as a number of years), where
    - (aa) X is the sum of—
      - (i) for all years up to the last active year, the number of scheme years (or parts of scheme years) for which amounts of earned pension were specified in the active member's account; and
      - (ii) in the last active scheme year, the number of calendar days (expressed as a proportion of a year), where the member was eligible for active membership; and
    - (bb) N is half of the number of years (or parts of years) from the last day of pensionable service until normal pension age.

(3) The annual rate of any added pension payable under regulation 51 (entitlement to ill-health pension: active member with permanent serious ill-health) is calculated in accordance with regulation 45 (annual rate of pension payable to active member who becomes pensioner member) in the same way as the annual rate of retirement added pension is calculated, but any early payment reduction is not subtracted.

(4) The annual rate of any club transfer pension payable under regulation 51 is calculated in accordance with regulation 45 in the same way as the annual rate of club transfer pension is calculated.

### **Annual rate of ill-health pension: active members with significant impairment of capacity for gainful employment**

55.—(1) The annual rate of an ill-health pension payable under regulation 52 (entitlement to ill-health pension: active member with significant impairment of capacity for gainful employment) is calculated in accordance with regulation 45 (annual rate of pension payable to active member who

becomes pensioner member), in the same way as the annual rate of retirement earned pension is calculated, but—

- (a) the references to the member’s retirement earned pension are taken to be references to the enhancement value of the earnings-related part of that pension; and
- (b) the early payment reduction is not subtracted.

(2) In this regulation—

“the earnings-related part”, in relation to the member’s retirement earned pension, means the proportion of that pension not attributable to a transferred pension;

“the enhancement value” means the value arrived at by multiplying A by B, where—

- (a) A is the member’s retirement earned pension divided by the sum of—
  - (i) for all years up to the last active scheme year, the number of scheme years (or parts of scheme years) for which amounts of earned pension were specified in the active member’s account; and
  - (ii) in the last active scheme year, the number of calendar days (expressed as a proportion of a year), where the member was eligible for active membership; and
- (b) B is X plus N, where—
  - (i) X is the sum of—
    - (aa) for all years up to the last active scheme year, the number of scheme years (or parts of scheme years) for which amounts of earned pension were specified in the active member’s account; and
    - (bb) in the last active scheme year, the number of calendar days (expressed as a proportion of a year), where the member was eligible for active membership; and
  - (ii) N is one-third of the number of years (or part of years) from the last day of pensionable service until normal pension age (both X and N to be expressed as a number of years).

(3) The annual rate of any added pension payable under regulation 52 (entitlement to ill-health pension: active member with significant impairment of capacity for gainful employment) is calculated in accordance with regulation 45 (annual rate of pension payable to active member who becomes pensioner member) in the same way as the annual rate of retirement added pension is calculated.

(4) The annual rate of any club transfer pension payable under regulation 52 is calculated in accordance with regulation 45 in the same way as the annual rate of retirement club transfer pension is calculated.

### **Entitlement to ill-health pension: deferred member with permanent serious ill-health**

**56.**—(1) A deferred member, who has not reached deferred pension age, is entitled to immediate payment of an ill-health pension if—

- (a) the member makes a claim to the scheme administrator for immediate payment of the pension;
- (b) the member has at least 2 years’ qualifying service or a transfer value payment otherwise than from another occupation pension scheme has been accepted in relation to the member under Part 8 (Transfers);
- (c) in the opinion of the scheme manager, after consulting the scheme medical adviser, the member has suffered a permanent breakdown in health involving incapacity for any gainful full-time employment; and

- (d) the scheme manager has agreed to the member becoming so entitled.
- (2) For the purpose of these Regulations, a member's breakdown in health is "permanent" if the scheme manager is of the opinion that the breakdown will continue until the member reaches deferred pension age.
- (3) A member entitled to immediate payment of an ill-health pension is entitled to—
  - (a) an added pension of any description if the retirement account specifies an accrued pension of that description; and
  - (b) a retirement club transfer earned pension, if the retirement account specifies a club transfer earned pension.
- (4) The annual rate of an ill-health pension, any added pension and any club transfer pension payable under this regulation is calculated in accordance with regulation 46 (annual rate of pension payable to deferred member who becomes a pensioner member) but without subtracting the early payment reduction.

#### **Scheme manager's review of ill-health awards**

- 57.—(1) This regulation applies if—
- (a) a member is entitled to a pension under regulation 51, 52 or 56 (entitlement to ill-health pension: active member with permanent serious ill-health; entitlement to ill-health pension: active member with significant impairment of capacity for gainful employment; or entitlement to ill-health pension: deferred member with permanent serious ill-health); and
  - (b) it appears to the scheme manager, after consulting the scheme medical adviser, that there is evidence that the scheme manager would not be of the same opinion as to the member's condition if the scheme manager reconsidered the question, as the opinion by virtue of which the entitlement arose.
- (2) The scheme manager may review the member's condition under this regulation.
- (3) No review is to be made under paragraph (2) after—
- (a) the member, in receipt of a pension under regulation 51 or 52 (entitlement to ill health pension: active member with permanent serious ill-health; or entitlement to ill-health pension: active member with significant impairment of capacity for gainful employment) has reached normal pension age; or
  - (b) the member, in receipt of a pension under regulation 56 (entitlement to ill-health pension deferred member with permanent serious ill-health) has reached deferred pension age.
- (4) If on any such review, in the case of a member who is entitled to a pension under regulation 51 (entitlement to ill-health pension: active member with permanent serious ill-health), the scheme manager is of the opinion that—
- (a) the member has not suffered such a breakdown as is mentioned in regulation 51, but
  - (b) the member meets the condition in regulation 52,

the scheme manager may determine that the member is to cease to be entitled to a pension under regulation 51 and to become entitled to a pension under regulation 52 at the end of the period of 3 months beginning with the date on which that determination is made.

- (5) If on any review under paragraph (2), in the case of a member who is entitled to a pension under regulation 52, the scheme manager is of the opinion that the member has not suffered such a breakdown as is mentioned in regulation 52, the scheme manager may determine that the member is to cease to be entitled to a pension under regulation 52 at the end of the period of 3 months beginning with the date on which that determination is made.

(6) If on any review under paragraph (2), in the case of a member who is entitled to a pension under regulation 56 (entitlement to ill-health pension: deferred member with permanent serious ill-health), the scheme manager is of the opinion that the member has not suffered such a breakdown as is mentioned in regulation 56, the scheme manager may determine that the member is to cease to be entitled to a pension under regulation 56 at the end of the period of 3 months beginning with the date on which that determination is made.

(7) If on any review under paragraph (2), the scheme manager proposes a change of pension payments, the scheme manager must—

- (a) notify the member in writing that the scheme manager proposes to make such a change;
- (b) include the reason for the scheme manager's decision; and
- (c) give the member information about rights under—
  - (i) the arrangements established by the scheme manager for the resolution of disputes relating to this scheme that are in force at the time the notification is given; and
  - (ii) Part 10 of the PSA 1993 (investigations: the Pensions Ombudsman).

#### **Member's request for review of ill-health awards**

**58.**—(1) This regulation applies if a member—

- (a) is entitled to a pension under regulation 52 (entitlement to ill-health pension: active member with significant impairment of capacity for gainful employment); or
- (b) has received a lump sum under regulation 19 of the EDP 2014 (lump sum awards: incapacity for armed forces service).

(2) The member may request a review of the member's condition under this regulation—

- (a) at any time before the fifth anniversary of the day on which the member became entitled to the pension or lump sum; or
- (b) after that time if, in the opinion of the scheme manager, the circumstances are exceptional.

(3) The request must be made by notice in writing to the scheme administrator in such form as the scheme manager requires, including reasons for the review.

(4) If a member requests a review of their condition under this regulation, the scheme manager must—

- (a) review the question whether the member has suffered a permanent breakdown in health involving incapacity for any gainful employment in relation to regulation 51 (entitlement to ill-health pension: active member with permanent serious ill-health); and
- (b) if the scheme manager is of the opinion that the member has suffered such a breakdown, determine whether—
  - (i) the member had suffered such a breakdown at the time when the member became entitled to the pension under regulation 52; or
  - (ii) the condition, by virtue of which the member became so entitled, has deteriorated so that the member suffered such a breakdown later.

(5) If on any review under paragraph (4), the scheme manager is of the opinion that the member—

- (a) has suffered such a breakdown as is mentioned in paragraph (4)(a); and
- (b) had done so at the time when the member became entitled to the pension under regulation 52,

then the member's entitlement under regulation 52 ceases and regulation 51 applies as if the conditions mentioned in that regulation were met at the time the member ceased to be in service by virtue of which the member was eligible to be an active member of this scheme,

and accordingly the member immediately becomes entitled to payment of such an amount as is specified in paragraph (6).

(6) The amount referred to in paragraph (5) is such an amount as represents the difference between the pension payments that have been made to the member under regulation 52 and those to which the member was actually entitled under regulation 51.

(7) If on any review under paragraph (4), the scheme manager is of the opinion that—

- (a) the member has suffered such a breakdown as is mentioned in paragraph (4)(a), but
- (b) the condition by virtue of which the member became entitled to the pension under regulation 52 has deteriorated so that the member suffered such a breakdown later,

then the member's entitlement to a pension under regulation 52 ceases and the member is entitled to a pension calculated under regulation 51 from the date on which the review was requested.

(8) If a member within paragraph (1)(b) requests a review of the member's condition under this rule, the Secretary of State must—

- (a) review the question whether the member has suffered a breakdown in health as a result of which the member's capacity for gainful employment is significantly impaired; and
- (b) if, the Secretary of State is of the opinion that the member has suffered such a breakdown, determine whether—

- (i) the member had suffered such a breakdown at the time when the member became entitled to payment of the lump sum under EDP 2014 regulation 19, or
- (ii) the condition by virtue of which the member became so entitled has deteriorated so that the member suffered such a breakdown later.

(9) If—

- (a) on any review under paragraph (8), the Secretary of State is of the opinion that the member—
  - (i) has suffered such a breakdown as is mentioned in paragraph (8)(a); and
  - (ii) had done so at the time when the member became entitled to payment of the lump sum under EDP 2014 regulation 19; and
- (b) the conditions in regulation 52(1)(b) and (c) are met then regulation 52 applies from the time when the conditions in 52(1)(a) are first met, and accordingly the member is entitled to a pension under that regulation payable from that time and the scheme manager may set off against such entitlement the amount of the lump sum paid under EDP 2014 regulation 19.

(10) If—

- (a) on any review under paragraph (8), the Secretary of State is of the opinion that—
  - (i) the member has suffered such a breakdown as is mentioned in paragraph (8)(a), but
  - (ii) the condition by virtue of which the member became entitled to payment of the lump sum under EDP 2014 regulation 19 has deteriorated so that the member suffered such a breakdown later, and
- (b) the conditions in regulation 52(1)(b) and (c) are met,

then regulation 52 applies from the date when the ill-health condition (as defined in paragraph 1 of Schedule 28 to the FA 2004) is first met, and accordingly the member is entitled to a pension under that regulation payable from that date.