

EXPLANATORY MEMORANDUM TO

**THE ARMED FORCES PENSION SCHEME AND EARLY DEPARTURE
PAYMENTS SCHEME (AMENDMENT) ORDER 2014**

2014 No. 2958

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

The instrument makes amendments to the Armed Forces Pension Scheme Order 2005 and the Armed Forces Early Departure Payments Scheme Order 2005.

3. Matters of special interest to the Joint Committee on Statutory Instruments (JCSI)

Part 3 of the draft Order addresses points made in the JCSI's letter of 30 May 2014 in relation to article 3 of S.I. 2013/2914, which amended the Armed Forces Early Departure Payments Scheme Order 2005.

4. Legislative Context

4.1 The Armed Forces Pension Scheme 2005 ("the AFPS 05") is the pension scheme for members of the regular armed forces who joined or rejoined the services on or after 6 April 2005. Prior to this date, the pension scheme for regular armed forces was the Armed Forces Pension Scheme 1975 ("the AFPS 75"). Members of the AFPS 75 who were in service on 6 April 2006 were given a one-off option to transfer their AFPS 75 service to the AFPS 05. Those who did not so opt remained active members of AFPS 75. The Armed Forces Early Departure Payments Scheme Order 2005 ("the EDP Order") establishes the Armed Forces Early Departure Scheme ("the EDP Scheme"), which applies to personnel entitled to be members of the Armed Forces Pension Scheme 2005 ("the AFPS 05").

4.2 The amendment to the AFPS 05 applies to members of the AFPS 05 who did not exercise the option to transfer their AFPS 75 service to the AFPS 05, and whose AFPS 75 service preceded a gap in service. The AFPS 05 rules currently give them an option to aggregate their last period of AFPS 75 pensionable service with their current AFPS 05 service, providing their AFPS 75 service ended prior to 6 April 2005 and provided they opt to do so before they left service a second time. This amendment corrects an anomaly by enabling the aggregation of the last period of AFPS 75 service with AFPS 05 service, even if the AFPS 75 service ended on or after 6 April 2005. The amendment also renders valid any options to aggregate that were purportedly exercised by members, which were not valid at the time owing to their AFPS 75 service having ended on or after 6 April 2005. It will also extend the option to individuals who left between 1 January 2012 to 15 December 2013.

4.3 The Early Departure Payments (EDP) Scheme provides members of the regular armed forces, who leave service having completed at least 12 years “relevant service” with a Resettlement Grant. The purpose of a Resettlement Grant is to provide a lump sum payment to help members adjust to civilian life. This amendment will mean that their last period of AFPS 75 service counts as “relevant service” for the purposes of a Resettlement Grant without the person having opted to aggregate it with their AFPS 05 service for pension purposes.

4.4 The EDP scheme provides for a tax free lump and ongoing income payments providing the person is age 40 and over and has 18 years “relevant service”. Those who leave the Armed Forces with an EDP award and subsequently rejoin (on a lower rank and pay scale including Military Provost Guard Service (MPGS)) have their EDP reassessed when they leave for the second time. This can result in a reduced amount due to the final salary link. This amendment will ensure that where this happens in future, individuals will have their original EDP entitlement reinstated.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

7.1 The Armed Forces (Pension and Compensation) Act 2004 allows the Secretary of State to establish and amend benefit schemes for the armed forces in respect of termination of service. This instrument furthers the objectives of the Act by removing anomalies in two benefit schemes made under the Act, the Armed Forces Pension Scheme 05 and the Armed Forces Early Departure Payments Scheme 2005.

7.2 The current legislation does not support the aggregation of last period of AFPS 75 service with service under AFPS 05, if that service ended on or after 6 April 2005. This has a significant impact on Service Personnel, as the EDP and Redundancy Schemes only allow the last period of AFPS 75 service to count for the purpose of EDP and redundancy benefits where the individual has opted for that service to be aggregated with their AFPS 05 service for pension purposes. Although the numbers affected are relatively small - no more than 150 Service Personnel - the issues are complex and have taken longer than originally anticipated to resolve. There have been a number of service complaints and threats of legal action from those who were relying on incorrect information from the Department and who expected to receive benefits under the EDP Scheme or Redundancy Scheme.

7.3 There has been some media interest in this issue, predominantly focusing on personnel whose entitlements are affected because they were not allowed to aggregate their separate periods of service.

7.4 It is believed that the policy intent has always been that Service Personnel leaving the Armed Forces should receive these payments and legislation has been drafted to rectify the position for those that have been affected by this issue and for future cases.

7.5 Part 2 of the draft Order corrects an anomaly in the AFPS 05 by enabling members to aggregate their last period of AFPS 75 service with their AFPS 05 service, even if their last period of AFPS 75 service ended after 6 April 2005, and by rendering valid options that were purportedly made by members before they left which were invalid because their last period of AFPS 75 service ended after 6 April 2005. It will also extend the option to a category of people who have already left service.

7.6 Part 3 of the draft Order amends the EDP Scheme 2005. The Order provides for a Resettlement Grant to be paid for those with a gap in service between AFPS 75 and AFPS 05 Schemes, providing they have completed 12 years “relevant service” and aggregated their last period of AFPS 75 service with their current AFPS 05 service. The draft order will amend the EDP order to enable members with a gap in service between AFPS 75 and AFPS 05 pension schemes, to count their last period of AFPS 75 service as “relevant service” towards qualifying for a Resettlement Grant, but without the need to aggregate their two AFPS pensions.

7.7 Part 3 also corrects an anomaly in the EDP Scheme. The calculation of the EDP lump sum and income takes into account the number of years of “relevant service” the individual has completed and the greatest amount of relevant earnings for 365 consecutive days in the last three years falling within the period ending with the last day of service. This draft Order will allow individuals who subsequently rejoin in a lower rank and pay scale, having received an EDP award for the first period of service, to have this award reinstated where, if on leaving service for the second time, the re-assessment would have given them a lower EDP award.

8. Consultation outcome

The single Services were consulted over a three month period from August to October 2014. There was a great deal of support and no objections were raised.

9. Guidance

Information about this provision will be made available by means of placing a copy of the instrument on the Gov.UK website. Detailed guidance as to the amendment to the Armed Forces Pension Scheme 2005 and the Armed Forces Early Departure Payment Scheme will be announced in a DIN and

published on the MOD intranet site as soon as practicable after the instrument is made.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not significant.

10.2 The impact on the public sector is not significant.

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

10.4 An Equality Assessment has not been prepared for this instrument

11. Regulating Small Business

This legislation does not apply to small business.

12. Monitoring and Review

The MOD will continue to review and monitor the Armed Forces Pension Scheme 2005 and the Armed Forces Early Departure Payments Scheme as part of its day to day management.

13. Contact

Tracy Sexton at the Ministry of Defence Tel: 0207 218 0564, can answer any queries regarding this Instrument.