

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES PENSIONS (AMENDMENT) REGULATIONS 2024

2024 No. 491

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Andrew Murrison MP, Minister for Defence People and Families at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Philip Bassingham-Searle, Head of Armed Forces Remuneration, at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Nazia Lodhi at the Ministry of Defence, Telephone: 020 72184354 or email: nazia.lodhi100@mod.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

- 4.1 This instrument makes provision in respect of pensions payable to members of the Armed Forces Pension Scheme 2015 (AFPS15). The purpose is to remedy the discrepancies caused by the use of provisional Average Weekly Earnings (AWE) estimates in the 2021 and 2022 HM Treasury Orders to revalue pension benefits accrued in the AFPS 15. Section 3 of the Public Service Pensions Act 2013 (the 2013 Act) provides the overarching framework to allow the Scheme Regulations to remedy the impact of the discrepancy on active scheme members in AFPS 15 at any point between 1 April 2020 and 31 March 2022.
- 4.2 This instrument amends the AFPS 15 scheme to provide eligible members with additional accrual, known as ‘the index supplement’ and the ‘retirement index supplement’, to correct the discrepancies in members’ pension accounts for the relevant years.

Where does the legislation extend to, and apply?

- 4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom, and it applies to members of the AFPS 15 wherever they are in the world.

5. Policy Context

What is being done and why?

- 5.1 Reformed public sector pension schemes were established by regulations made under section 3 of the of the 2013 Act. The AFPS 15 is set out in the Armed Forces Pension Scheme Regulations 2014 (SI 2014/2336). The 2013 Act requires that AFPS 15 CARE pension pots are revalued annually to ensure they track inflation and maintain their value. This revaluation, known as indexation, is based on the change in AWE year on year.
- 5.2 The revaluation rate is set by an annual HM Treasury Order made under section 9(2) of the 2013 Act. On 6 July 2023, HMT published a Written Ministerial Statement (WMS) confirming that the HM Treasury Orders for the scheme years 2020/21 and 2021/22 erroneously used provisional Office for National Statistics (ONS) estimates for the AWE index, rather than the finalised figures. ONS practice is to publish each year provisional AWE figures for the September to September in November, followed by the final figure in December. The 2021 Order specified 2.4% whereas the December figure was 2.6%; and the 2022 Order specified 4.1% whereas the December figure was 4.5%. As the provisional figures were lower in both years, this has led to affected members' accrual rate being 0.6% lower than if the finalised AWE figures had been used.
- 5.3 The use of provisional estimates was an unintended deviation from the standard approach used between 2015 and 2020 and it is the Government's view that the practice of using finalised figure should have been maintained in 2021 and 2022.
- 5.4 The Armed Forces Pensions (Amendment) Regulations 2024 (SI XXX) make consequential amendments to the Armed Forces Pension Scheme Regulations 2014 to place affected members in the same position as if the finalised figures had been used. For a member of AFPS 2015 who was in active service throughout the affected period, their accrued pension up to 31 March 2022 will be around 0.6% larger.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The 2013 Act provides an overarching framework to allow scheme regulations to correct the impact of the discrepancy on members who were in active service in one of the affected PSPS at any point between 1 April 2020 and 31 March 2022.

Why was this approach taken to change the law?

- 6.2 The WMS by HM Treasury confirmed the corrected pension benefit amounts will be provided through amendments to scheme regulations.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 This instrument is subject to a statutory duty to consult representatives of persons likely to be affected under section 22 of the 2013 Act. The MOD therefore ran a stakeholder consultation exercise on these measures between 22 January 2024 and 4 March 2024. Although the draft regulations were not published, a detailed consultation document, containing the proposed amendments and explanation of the policy measures to be addressed in the legislation were provided to key stakeholders and members of the Armed Forces Pension Board, who were invited to comment. One

response was received and no major objections were raised. The stakeholder agreed the proposed amendment would achieve its policy aim and MOD has proceeded to finalise this instrument on this basis.

- 7.2 The MOD will respond to stakeholders no later than the day before this instrument will be laid.

8. Applicable Guidance

- 8.1 Guidance will not be provided as the instrument makes technical changes to remedy a discrepancy and place affected members in the same position as if the Treasury Orders of 2021 and 2022 had used revised AWE estimates. No action by members is required.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because of the negligible impact. The amendment seeks to remedy an error by providing additional accrual to members to correct the position.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no impact on business, charities or voluntary bodies because the instrument relates to public sector pensions.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no or no significant impact on the public sector because the uplift is limited to active members of the AFPS15 in Service at any point between 1 April 2020 and 31 March 2022; who are not eligible for the 2015 McCloud remedy; or are eligible for the remedy and choose reformed scheme benefits when they come to claim a pension.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is that the rules of the armed forces pension schemes are kept under regular review by the Ministry of Defence.
- 10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Defence People and Families has made the following statement regarding Human Rights: In our view the provisions of The Armed Forces Pensions (Amendment) Regulations 2024 are compatible with the Convention rights.

12.2 The instrument is subject to negative resolution procedure and does not amend primary legislation.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).