

## SUMMARY OF RESPONSES TO CONSULTATION DOCUMENT DATED 16 JANUARY 2009 ON ARMED FORCES PENSION PROVISION

### 1. INTRODUCTION

1.1 There are three pension schemes available to members of the Regular Armed Forces, called-out/recalled Reservists and members of the Full Time Reserve Service (FTRS). The Armed Forces Pension Scheme 1975 (AFPS 75) was available to all, although Reservist who did not have a deferred or immediate pension prior to mobilisation tended not to serve long enough to vest and the FTRS section of the pension scheme was ruled to be in ultra vires as it should have been made under the Reserve Forces Act 1996 (RFA 96). AFPS 75 closed to new entrants on 6 April 2005. The Armed Forces Pension Scheme 2005 (AFPS 05) and the Reserve Forces Pension Scheme (RFPS) were introduced for new entrants to the Regular Armed Forces and FTRS respectively on 6 April 2005. Those called-out under Parts 4, 5 and 6 of RFA 96 (or corresponding provisions of RFA 80) are eligible to be members of RFPS and those recalled under Part 7 are eligible to be members of AFPS 05. This consultation relates to AFPS 75 rules only.

1.2 The rules for AFPS 75 are contained in three prerogative instruments: one for each of the Armed Forces. All three prerogative instruments contain provision for members of the Armed Forces to realise a lump sum on top of their pension lump sum. In some many officer cases the payment of the second lump sum would breach the provisions of the Finance Act 2004 by exceeding the 25% of pension pot limit the Act applies to tax-free lump sums from pension schemes. Internal consideration and liaison with HMRC resulted in the view that the provisions should be removed from the pension scheme and placed instead in a separate prerogative instrument.

1.3 When AFPS 75 was closed in 2005 one of the amendments was designed allow those who left the Service and rejoined within one month to rejoin AFPS 75. However, a defect in the rule means that it does not achieve this aim and proposal 2 seeks to put this right. The proposals were put out for internal consideration at the same time that they were put out to consultation.

1.4 A consultation exercise was undertaken in January 2009 seeking comments and suggestions on the proposals to remove Resettlement Commutation from the pension scheme and to correct the re-entry rule. Consultation was principally with the members of the Central Advisory Committee on Pensions and Compensation, a statutory advisory body established to advise ministers on matters relation to Armed Forces pensions and compensation. Members include representatives of the ex-Service organisation such as the Royal British Legion (RBL), British Limbless Ex-Service Men's Association (BLESMA) and the War Widows Association (WWA). Comments were also invited via our website.

1.5 The consultation exercise ended in February 2009. The breakdown of respondents is as follows:

War Pensions Committees	1
SSAFA-Forces Help	1
BLESMA	1

Forces Pensions Society	1
RN personnel	1
Army personnel	1
RAF personnel	1
Ex-Service personnel	1

## 2. CONSULTATION PROPOSAL AND SUMMARY OF RESPONSES

**2.1 Proposal 1: to move the Resettlement Commutation (RC) provisions from the pension scheme in order that members of the Armed Forces may continue to realise the maximum RC lump sum without breaching the A Day limit.**

2.2 No objections were raised.

2.3 One respondent asked whether provision could be made for personnel who had left the Services with the year to be allowed to take RC under these terms. One ex-Serviceman asked whether he could have exceptional permission to take RC after leaving service.

*Comment:* As the 2004 Finance Act states specifically that, once in payment, a member's pension may not reduce, it was not possible to incorporate the suggested provision or to agree exceptions.

2.4 One respondent asked whether the RC would still be tax-free.

*Comment:* We were able to confirm that it would.

**2.5 Proposal 2: that the re-employment rules be corrected to allow AFPS 75 members who leave the Services and rejoin within 30 days to re-join AFPS 75.**

2.6 No objections were raised.

2.7 Two respondents made the point that this rule should not only benefit to those joining the Special Forces (SF).

*Comment:* It is confirmed that the rule will not be limited to those joining SF even though it was the position of those who would transfer to the permanent cadre of the SF which inspired the rule in the first place.

2.8 One respondent asked whether the malfunctioning of the rule provided a loophole for individuals who wanted to revisit their Offer to Transfer (OTT) option.

*Comment:* Strict rules for revisiting OTT decisions were put in place in 2005. They were that people would be allowed to revisit their decision if:

a. their Personal Benefit Statement contained inaccuracies which would substantially affect the comparisons contained therein; or

b. having made their decision, they subsequently received a redundancy notice as part of the 2004 of the redundancy round which finished in April 2008.

This issue has no bearing on either of the criteria state at a. or b. Therefore no loophole exists for the use of those who want to revisit their OTT decision on the grounds that they had changed their minds or their circumstances had changed.

2.9 One respondent asked whether the malfunctioning of the rule meant that those who were promoted from the ranks and those who transferred from one Service to another could, if they wished, have transferred to AFPS 05.

*Comment:* It was confirmed that this was the case for those promoted from the ranks or those who transferred from one Service to another between 6 April 2006 to 5 April 2009 (when the proposed change comes into force).

## **CONCLUSION**

3.1 We are grateful to all respondents for their constructive comments. As a result of the consultation the Resettlement Commutation rules will be removed from AFPS 75 to stand alone and the re-entry rules will be corrected to allow those who leave and rejoin within one month to rejoin AFPS 75.

3.2 Copies of the prerogative instruments are available from The Stationery Office.