

# JSP 764

## PART 2

### EARLY LEAVERS RULES

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# Chapter 1

## INTRODUCTION

0101. The rules contained in this Part relate to members of the Regular Armed Forces who become entitled to payments because they have left the Regular Armed Forces before entitlement to a pension at or after the normal retirement age of 55 (or over) or on Tier 2 or 3 medical discharge.

Excluding:

- Active members of the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949),
- re-employed Queen's Gurkha Officers,

These payments are in respect of:

- Early Departure Payments (EDP) Scheme income and lump sum
- Resettlement Grant (RG)
- Lump Sum paid on Incapacity (Tier 1 ill health award)

0102. The Statutory Instrument (SI) bringing the regulations into force is the Armed Forces Early Departure Payments Scheme Order 2005 (SI 437/2005), which came into force on 6 April 2005. Subsequent amendments are sent out in SI 2006/1438, SI 2009/544 and 2013/2914. This guidance is an interpretation of the SI and does not supersede it. Changes to the scheme rules will be made by the laying of an SI in Parliament setting out the details of the changes. Changes will also be promulgated to personnel in Defence Instructions and Notices (DINs).

0103. Personnel are entitled to the terms and conditions that were agreed when they joined the Regular Armed Forces in respect of both the EDP Scheme and RG. Future changes to the schemes will therefore affect new entrants from a current date.

### **EXAMPLE**

If an individual joins the Regular Armed Forces with the expectation of a RG of £10,562 after 12 years' relevant and qualifying service, and the qualifying period is then increased to 15 years, he will still be entitled to receive the RG at the 12 year point.

or

If an individual joins the Regular Armed Forces with the expectation of an EDP payable at age 40 or over with at least 18 years service, offering a tax-free lump sum equivalent to 3 years' preserved annual pension and a taxable income stream of 50% of their preserved annual pension, then that is what he will get even if the qualifying criteria changes or, for example, the size of the income stream reduces in relation to preserved annual pension.

0104. References to 'he' throughout this document should be read as 'he or she', references to 'him' should be read as 'him or her' and references to 'his' should be read as 'his or hers'.

0105. A glossary of terms used in this guidance is at Part 4 of this JSP. Throughout the text of this document the words contained in the glossary will be in ***bold italic*** to indicate that an explanation is available.

## Chapter 2

# EARLY DEPARTURE PAYMENTS (EDP) SCHEME

### PURPOSE OF EDP

0201. The aim of the EDP Scheme is, in part, to provide a retention incentive to draw personnel through to at least age 40 and 18 years' relevant service and, in part, to provide compensation to those to whom it is not possible to offer a career to the normal retirement age of 55. These payments are available to Armed Forces Pension Scheme 2005 (AFPS 05) members and those who have opted out of AFPS 05 or the Armed Forces Pension Scheme 1975 (AFPS 75). Although those who have opted out will not have preserved benefits in AFPS 05, the policy intent is that their EDP benefits should be broadly equivalent to those of *members*, and the calculations should be made as if they were members. The term *relevant service* is used to differentiate the type of service which counts towards the criteria in para 0202 from *qualifying service* (which could include pension value transferred in from another pension scheme) and *calculation service* (which, like *reckonable service*, includes added years and pension value transferred in from another scheme). This differentiation is necessary because eligibility is not limited to AFPS 05 members.

### ELIGIBILITY

0202. To be eligible for the payment of an EDP on leaving the Regular Armed Forces a person must meet the following criteria:

- (a) he must be a regular member of the Royal Navy, the Royal Marines, the Army (excluding active members of the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949), or the Royal Air Force.
- (b) his conditions of service do not include *bonus conditions* (for example Medical Officers/Dental Officers), unless he meets the condition in para 0205.
- (c) he is not an active member of the AFPS 75 or the Reserve Forces Pension Scheme (RFPS 05), or the Non Regular Permanent Staff Pension Scheme,
- (d) he must be aged 40 or over and have at least 18 years' *relevant service*, and
- (e) he is not entitled to a separate Tier 2 or Tier 3 ill-health pension under Chapter 3 Part 1 of JSP 764. An individual who qualifies for a Tier 1 lump sum under Chapter 4 of this Part of JSP 764 who meets the criteria above will receive EDP benefits instead of his Tier 1 lump sum.

0203. An individual who leaves the Regular Armed Forces before reaching the EDP 18/40 Point who is later mobilised under Part 7 of the Reserve Forces Act 1996 (RFA 96) (or corresponding provisions under the Reserve Forces Act 1980 (RFA 80)) will not have his mobilised service counted for EDP purposes but it will serve to improve his **preserved pension**.

0204. There is no requirement to be a member of AFPS 05 to be eligible for payment of an EDP. This means that, although the individual will not be entitled to pension benefits as he has opted out of AFPS 75 or AFPS 05 he can still qualify for EDP. Members of AFPS 75 or the Reserve Forces Pension Scheme (RFPS 05) or the Non Regular Permanent Staff Pension Scheme, are specifically excluded as they remain subject to the rules of their respective schemes.

### **Exceptional grant of EDP to those on Bonus Terms**

0205. If a person on **bonus conditions** (and therefore normally excluded from EDP arrangements) is no longer required for service or medically discharged in the Regular Armed Forces, he will be entitled to EDP providing all the other conditions in para 0202 are met. Compassionate cases will be dealt with on a case by case basis. For detailed guidance on bonus arrangements see Part 4, Chapter 7.

### **CALCULATION OF EDP, PAYMENT PROFILE AND PRICE PROTECTION**

0206. EDP is first available at the point at which an individual BOTH completes 18 years' (or more) relevant service AND is at least 40 years old. This point is known as the 'EDP 18/40 Point'. Individuals will hit this point after different periods of service, as can be seen in the examples in para 0207. At the EDP 18/40 Point, the following becomes due:

- (a) a tax-free lump sum, calculated by multiplying  $\frac{3}{70}$  of the individual's **relevant earnings** by the length of their **calculation service**, on the member's day of departure, and
- (b) from the date of departure until age 55, a taxable payment (with no National Insurance liability) calculated by multiplying  $\frac{1}{140}$  of the individual's relevant earnings by their calculation service expressed as a monthly sum, paid in arrears.

This calculation results in an EDP lump sum equal to his **preserved pension lump sum** (which is three times his annual **preserved pension**) and a monthly EDP income equivalent to half of his annual preserved pension. The EDP income will remain at this level until age 55.

0207. For every additional complete year of Regular (but not mobilised) service beyond the EDP 18/40 Point, the monthly payment will be increased by 1.6667% of the preserved pension rate for AFPS 05 members. Although only complete years beyond the EDP 18/40 Point are used for the calculation of EDP income, AFPS 05 pension benefits (explained in Part 1 of this JSP) will take account of all reckonable service.

## EXAMPLES ASSUMING AFPS 05 MEMBERSHIP

Age	Relevant Service	EDP INCOME UNTIL AGE 55
40 yrs	18 yrs	equivalent to 50% of preserved pension based on 18 yrs relevant service
40 yrs	24.5 yrs	equivalent to 50% of preserved pension based on 24.5 yrs relevant service
44 yrs	18 yrs	equivalent to 50% of preserved pension based on 18 yrs relevant service
44 yrs	22 yrs	equivalent to 56.6668% of preserved pension based on 22 yrs relevant service
44 yrs	26 yrs	equivalent to 56.6668% of preserved pension based on 26 yrs relevant service
50 yrs	18 yrs	equivalent to 50% of preserved pension based on 18 yrs relevant service
50 yrs	28 yrs	equivalent to 66.6668% of preserved pension based on 28 yrs relevant service

0208. Payments between the age at which EDP is drawn and age 55 will not attract adjustments for inflation.

0209. At age 55, the monthly payment will be increased from the initial percentage calculated to the equivalent 75% of **preserved pension**. At age 55, the EDP income level is adjusted for inflation. This means that it will be increased to reflect inflation between the time that the initial award was made and age 55, and that it will increase every year thereafter in line with inflation. The adjustment for inflation will use the same figure as that applied to pensions under the Pensions (Increase) Act 1971.

0210. At the age of 65, the EDP income will cease and preserved pension benefits become payable. For members of AFPS 05, these benefits comprise of a pension lump sum (normally tax-free) equivalent to three times annual pension and a taxable pension, paid monthly in arrears. Both will be adjusted to take account of inflation between the individual's discharge from the Regular Armed Forces and his 65<sup>th</sup> birthday.

0211. Those who have opted out of AFPS 75 or AFPS 05 will receive a EDP income until age 65 irrespective of when the benefits flowing from their private arrangements become payable.

## A SLIGHTLY MORE COMPLEX EXAMPLE DEMONSTRATING HOW PARAS 0208 – 0211 WORK

An individual has served for 20 years 9 months relevant service by the time he reaches his 40<sup>th</sup> birthday. This would be his EDP 18/40 Point. He does not leave at the EDP 18/40 Point but serves a further 5 years 9 months. His final pensionable earnings is £45,000. He is an AFPS 05 member and his preserved pension will be based on 26 years 6 months service. His preserved pension benefits and EDP package work out as follows:

- His preserved taxable pension ( $£45,000 \times 26.5 \times \frac{1}{70}$ ) = £17,035.71 payable at age 65 when it will be adjusted for inflation.
- His preserved tax-free pension lump sum ( $£17,035.71 \times 3$ ) = £51,107.14 again, payable at age 65 when it will be adjusted for inflation,
- His EDP tax-free lump sum is £51,107.14 (same as the preserved pension lump sum) and is payable on his discharge.

- His annual taxable EDP income from date of discharge to age 55 will be equivalent to 50% of his preserved pension (£8,517.86) PLUS an extra 8.3335% (5 x 1.6667) of his preserved pension (£1,419.67) to recognise the additional 5 complete years. No proportional adjustment takes place to recognise the 9 months. Thus the total annual taxable EDP income is £9,937.53 and this will remain the same until age 55.
- At age 55 his annual taxable EDP income will rise to £12,776.78 + an adjustment to take account of inflation between his discharge from the Regular Armed Forces and his 55<sup>th</sup> birthday. This sum will rise in line with inflation every April thereafter. At age 65 this income will cease and his preserved pension benefits will come into payment.

### **EFFECT ON EDP AWARD OF REJOINING THE REGULAR ARMED FORCES VOLUNTARILY**

0212. If an individual in receipt of EDP rejoins the Regular Armed Forces voluntarily he will be required to repay any 'unexpired' proportion of his EDP lump sum and the EDP income stream would cease during the new period of service.

0213. The formula for working out the period represented by the lump sum is:

$$\frac{LP \times 365 \text{ days}}{FRE}$$

where LP is the amount of the lump sum and FRE is the amount of the person's *final relevant earnings*.

0214. The formula for working out the proportion of the lump sum which must be repaid is:

$$\frac{D}{RP}$$

where D is the number of days by which the break in service falls short of the period represented by the lump sum and RP is the number of days in whole period represented by the lump sum.

0215. If he subsequently leaves before age 55, the lump sum will be recalculated taking into account the additional service and paid at that later point. The revised lump sum will be reduced to take account of the lump sum already received or, in the case of someone who repaid part of his lump sum, it will be reduced by the amount he did not repay. During his service, his EDP income will cease. Providing he has not reached the age of 55, his EDP income will increase to take account of any complete additional years served as described in para 0206 (ie an extra 1.6667% of preserved pension for every complete year served beyond the EDP 18/40 Point).

## EXAMPLE

- An individual person who left the Regular Armed Forces at age 40 with 20 years on relevant earnings of £20,000 who was an AFPS 05 member would receive an EDP lump sum equal to his preserved pension lump sum and the EDP income would be equal to 50% of his preserved annual pension. He would receive an EDP lump sum of £17,143 ( $20 \times 20,000 \times \frac{3}{70}$ ) and a taxable income worth £2,857 ( $20 \times 20,000 \times \frac{1}{140}$ ) paid monthly in arrears. This sum is broadly equivalent to 313 days relevant earnings, so he would need to have a break in service of at least 313 days to avoid having to repay any of his EDP lump sum.
- If he returned to the Regular Armed Forces after a break of 213 days (worth £11,666 as a proportion of his EDP lump sum) he would have to repay £5,477 (100 days' worth of his EDP lump sum). Any further service would count for EDP should he leave again before age 55. His EDP income stream would cease during his new period of service.
- If he then served a further 10 complete years (leaving on relevant earnings of £30,000) he would be entitled to EDP again. He would receive a tax-free lump sum of £26,905 (£38,571 ( $\frac{3}{70} \times 30 \times 30,000$ ) less the £11,666 already received) and a taxable income worth £8,571 (worked out as: ( $\frac{1}{140} \times 30 \times 30,000$ ) divided by 100 multiplied by 133.334), paid monthly in arrears.

0216. If an individual who is a member of AFPS 05 rejoins the Regular Armed Forces having received an EDP and subsequently leaves after the age of 55 he will receive benefits under AFPS 05 rather than EDP income. If he is not a member of AFPS 05 his payments will recommence as detailed in para 0209 and stop when he reaches age 65.

## EFFECT ON EDP AWARD OF MOBILISATION UNDER PARTS 4, 5, 6 OR 7 OF THE RESERVE FORCES ACT 1996 (RFA 96) OR CORRESPONDING PROVISION OF THE RESERVE FORCES ACT 1980 (RFA 80)

0217. If an individual in receipt of EDP is mobilised under Parts 4, 5, 6 or 7 of the RFA 96, or corresponding provision of the RFA 80, his EDP lump sum will not be affected because he has no choice about whether or not he is mobilised. His EDP income will stop until he is demobilised and this is because such payments are, in part, compensation for not having a job in the Regular Armed Forces. The assessment of his pay as a reservist will take into account the shortfall between his civilian income, including EDP payments, and his military pay. Although mobilised service under Part 7 of RFA 96 will be added to his **preserved pension** it will not count as additional service for the purposes of improving his EDP income. For mobilised service under Parts 4, 5 & 6, or corresponding provision of the RFA 80, an individual will attract AFPS 05 benefits unless he has opted out of the scheme and it will not count as additional service for the purposes of improving his EDP income.

0218. If an individual who is a **deferred member** of AFPS 05 and is in receipt of EDP income, is mobilised under Part 7 of RFA 96 (or corresponding provision under RFA 80) and is in service on his 55<sup>th</sup> birthday, instead of his EDP resuming at 75% of **preserved pension** on departure, his AFPS 05 pension will come into payment on his demobilisation. This means that he will receive the pension benefits which would otherwise have been preserved until his 65<sup>th</sup> birthday. These benefits comprise of a tax-free pension lump sum equivalent to three times the annual pension and

a taxable annual pension paid monthly in arrears. These sums will be adjusted for inflation, as appropriate. If he were not a member of AFPS 05 his payments would restart at the level described in para 0209.

**EFFECT ON EDP AWARD OF TAKING UP FULL TIME RESERVE SERVICE/ ADDITIONAL DUTIES COMMITMENTS (FTRS/ADC) NON-REGULAR PERMANENT STAFF APPOINTMENTS**

0219. If an individual in receipt of EDP takes on a FTRS/ADC, NRPS appointment he will be required to repay any 'unexpired' proportion of his EDP lump sum on the first day of entry. As FTRS/ADC/NRPS appointments do not attract EDP awards, once the EDP lump sum is lost by the individual, it cannot be recovered. The formula for working out the proportion which must be repaid is as described in para 0214.

0220. The EDP income will be stopped during FTRS/ADC/NRPS service. When he leaves this employment his EDP income will resume at:

- (a) the same rate as initially awarded, if the individual is under 55; or
- (b) if the individual has reached his 55<sup>th</sup> birthday but is less than 65 it will resume at 75% of **preserved pension**. At age 55 (or beyond) EDP income will be adjusted for inflation as described in para 0209.

If the individual leaves at age 65 or later his EDP income will not restart. Instead, if the individual is an AFPS 05 member, his preserved AFPS 05 pension benefits will become payable. If the individual is not an AFPS 05 member it is assumed that his benefits from his private pension arrangements become payable at age 65.

0221. The effect of EDP awards as described above in para 0219 and 0220 only effect NRPS personnel who took up an appointment in the NRPS on or after 6th April 2009.

**GURKHA OFFER TO TRANSFER (GOTT)**

0222. Part 1 Chapter 11 of this JSP sets out the rules for the AFPS 05 GOTT. There were found to be a small number of former active members of the Gurkha Pension Scheme (GPS) who, had they been members of AFPS 05, would have met the conditions set out in para 0202 above and been eligible for EDP. SI 2007/2608 which came into force on 1 October 2007 sets out the rules for the AFPS 05 GOTT for active and former active members of the GPS and SI 2008 No. 299, which came into force on 29 February 2008, sets out provision to allow former active members of the GPS to have access to EDP benefits.

0223. Entitlement will be backdated to the date of the individual's discharge from the Brigade of Gurkhas. A tax-free lump sum will be paid, together with any arrears of payments under para 0206-0209 above, adjusted to take account of any GPS pension already paid in respect of that period. It is important that the difference between pension and EDP is noted for GOTT transferees, as pensions will be based on reckonable service which has been adjusted in respect of pre-1 July 1997 service (see Part 1, paras 1109-1112 for active GPS members and 1115-1117 for retired GPS members). For EDP relevant service is the amount of qualifying service the individual had. This is not adjusted downwards in respect of service credits in any way.

## Chapter 3

### RESETTLEMENT GRANT (RG)

#### AMOUNT OF RG AND REVIEW ARRANGEMENTS

0301. The purpose of the RG is to assist those leaving the Regular Armed Forces to resettle into civilian life after completing a substantial period of service and providing they meet the criteria in para 0302. The amount of the RG was £9,000 as at 6 April 2005 when the scheme began. The RG is £10,562 with effect from 1 April 2014. The RG is paid tax-free.

#### ELIGIBILITY

0302. A member of the Regular Armed Forces is entitled to a RG if, when he leaves the Armed Forces if:

(a) he has at least 12 years' *relevant service* from on or after 6th April 2005 but does not qualify for EDP,

(b) he is not entitled to a Tier 1 lump sum, a Tier 2 or 3 pension or a pension at age 55,

(c) he is not an active member of AFPS 75 or a member of RFPS 05, and

(d) he has either:

(1) not previously received an RG under these rules or the rules of AFPS 75, or

(2) if he has received an RG under these rules, and has rejoined voluntarily without a break of at least 31 days, he has repaid it,

or

(3) if he has received an RG under the rules of AFPS 75, and has rejoined voluntarily without a break of at least 121 days, he has repaid the necessary proportion of the RG.

There is no requirement for him to be a member of AFPS 05 and, because of this, it is not appropriate to use the term *qualifying service*. Thus *relevant service* is referred to instead.

#### EFFECT ON RG OF REJOINING THE REGULAR ARMED FORCES VOLUNTARILY

0303. If an individual who has received a RG under these rules rejoins the Regular Armed Forces voluntarily without a break of at least 31 days, he will be required to refund the full amount as a condition of re-entry.

0304. If he received a RG under AFPS 75 rules and rejoins the Regular Armed Forces voluntarily after 6 April 2005 but within 121 days of having received his RG, he will be required to refund a proportion of it as a condition of re-entry. The formula to calculate the amount to be refunded is:

$$(1 - \frac{A}{121}) \times \text{Resettlement Grant}$$

Where A is the break in service measured in days.

#### **EXAMPLE**

If an individual left the Regular Armed Forces on 1 March 2005 with an AFPS 75 RG of £12,000 and rejoined voluntarily on 1 May 2005 the break would be 60 days (which is 49.6% of the required period) and the balance to be repaid would be £6,048 (which is 50.4% of the £12,000 RG he received).

0305. If an individual who has refunded some of his RG (under AFPS 75 rules) subsequently leaves the Regular Armed Forces and is not entitled to any other terminal benefits (except a *preserved pension*), he is entitled to a lump sum equivalent to the number of days' grant he refunded at the current RG rate.

#### **EXAMPLE**

If the individual paid back 50.4% of his RG (as in the above example) and left again in six months time i.e. December 2013 he would receive a tax-free lump sum of £5,270 (50.4% of the £10,457 RG), providing he was not eligible for an EDP, a Tier 2 or 3 ill-health pension or a pension at age 55.

If the individual had reached the EDP 18/40 Point (see Chapter 2), he would receive his EDP instead. Equally, if he qualified for the payment of his pension or an ill-health award, he would receive these instead. The proportion of his RG that he had repaid would be lost to him.

### **EFFECT ON RG OF TAKING UP FTRS/ADC APPOINTMENTS**

0306. An individual who is in receipt of an RG under these rules and takes up a FTRS/ADC appointment without a break of at least 31 days will be required to refund the whole of his RG. FTRS/ADC appointments do not qualify for the award of an RG so, once lost by the individual, it cannot be recovered.

### **EFFECT OF MOBILISATION UNDER PARTS 4, 5, 6 OR 7 OF RFA 96 OR CORRESPONDING PROVISION OF RFA 80**

0307. Mobilisation under Parts 4, 5, 6 or 7 of RFA 96, or corresponding provision of RFA 80, will have no effect on the RG. This recognises the fact that individuals have no choice about whether or not they are mobilised.

## Chapter 4

# LUMP SUM ON INCAPACITY - TIER 1 MEDICAL DISCHARGE

### ELIGIBILITY

0401. A person who is discharged from the Regular Armed Forces on ill-health grounds is entitled to the immediate payment of a tax-free lump sum if:

- in the opinion of Vets UK (having received medical evidence from a registered medical practitioner) that he is unfit for military service but deems his potential for gainful employment in civilian life is not affected (Tier 1),
- he is a member of AFPS 05 (those who have opted out will have to look to their private pension arrangements to see what benefits might be available),
- he has at least two years *relevant service*,
- he is not entitled to a Tier 2 (ie for a Tier 2 award it would be deemed that his capacity for gainful employment in civilian life was significantly impaired), a Tier 3 ill-health award (ie for a Tier 3 award he would be deemed to be permanently incapable of any further full-time employment) or a lump sum in lieu of 5 years worth of pension having been given a life expectancy of less than 12 months (see Part 1, Chapter 3 of this JSP),
- he is not entitled to EDP (see Chapter 2 of this Part).

Tier 1 conditions are those which appear in Tariffs 12 -15 in the table in Part 4 of this JSP. In categorising in terms of tiers and relative capacity for gainful employment, no account will be taken of the individual's motivation or skills, or the employment market. When a Tier 1 medical discharge takes place the member's pension and pension lump sum are preserved until pension benefit age (currently age 65).

0402. An individual who is found unfit for military service with a Tier 1 condition at or beyond the EDP 18/40 Point will receive EDP in accordance with Chapter 2 of this Part. Under this condition the EDP and the preserved pension when it comes into payment will be tax free.

### Amount of lump sum

0403. The amount of this tax-free lump sum is calculated as  $\frac{1}{8}$  x *final pensionable earnings* for each year's relevant service with a minimum payment of 6 months' final pensionable earnings and a maximum payment of 2 years' final pensionable earnings.

## EXAMPLES:

### Example 1

If an individual who joined at age 20, was injured and discharged unfit for military service after 2 years' relevant service he would be entitled to a lump sum equal to six months' final pensionable earnings because the calculation ( $\frac{1}{8} \times$  final pensionable earnings  $\times 2$ ) results in a sum below the minimum payable.

### Example 2

If an individual who joined at age 20, was injured and discharged unfit for military service after 10 years' relevant service he would be entitled to a lump sum equal to 1 year and 3 months' final pensionable earnings ( $\frac{1}{8} \times$  final pensionable earnings  $\times 10$ ).

### Example 3

If an individual who joined at age 20, was injured and discharged unfit for military service after 17 years' relevant service he would be entitled to a lump sum equal to 2 years' final pensionable earnings because the calculation ( $\frac{1}{8} \times$  final pensionable earnings  $\times 17$ ) exceeds the maximum payment of 2 years' final pensionable earnings.

## EFFECT ON TIER 1 LUMP SUM OF REJOINING THE REGULAR ARMED FORCES OR TAKING UP FTRS/ADC APPOINTMENT

0404. If an individual who has received a Tier 1 payment rejoins the Regular Armed Forces, he will have to repay any 'unexpired' proportion of the payment as a condition of re-entry. The sum to be repaid will be calculated using the following formula:

$$\frac{(1 - A)}{(B) \times \text{Lump Sum Received}}$$

Where A is the number of complete months since discharge and B is the number of months *final pensionable earnings* he received.

### EXAMPLE

If an individual received a Tier 1 lump sum of £20,000 which represented 12 months' final pensionable earnings but rejoined the Armed Forces 9 months later, the required refund would be:

$$(1 - 9) \\ (12) \times £20,000 = (1 - .75) \times £20,000 = 0.25 \times £20,000 = £5,000$$

## REVIEW OF TIER 1 AWARD

0405. An individual discharged on Tier 1 ill-health grounds may submit a written request to Veterans UK (GL) asking for his condition to be reviewed at any time before the fifth anniversary of his discharge. The grounds for his request may be:

- (a) that the original decision was incorrect; or

(b) that the condition which brought about his medical discharge had deteriorated to such an extent as to significantly impair his capacity for gainful employment in civilian life.

0406. In exceptional circumstances requests for review will be considered 'out of time'.

0407. Requests for reviews will be considered by Veterans UK (GL) who may consider evidence from any medical sources acceptable to the Department and the claimant. Veterans UK (GL) will respond to the individual within two months. If an individual is not satisfied with the response then he can pursue through the IDR (see para 0913 of Part 1).

### **Incorrect original decision**

0408. Where Veterans UK (GL) agrees that the original decision was incorrect the award will be recalculated using Tier 2 principles and backdated to the date of medical discharge. In some cases the new lump sum will exceed the old but, in others, it will not and a recovery will be necessary. Using the examples at 0403, the following shows how benefits would be affected as the result of a successful application for review:

#### **Example 1**

An individual who joins at age 20 and is discharged unfit for military service (Tier 1) after 2 years' service will receive a tax-free lump sum equivalent to 6 months' final pensionable earnings. If he then had his case reviewed and recalculated using Tier 2 principles, he would get the following:

- A taxable pension based on 13 years' service (2 years actual service plus  $\frac{1}{3}$  of his service from date of discharge to age 55 (ie  $((55-22) \text{ divided by } 3)$  plus 2) backdated to the date of discharge and uprated in line with inflation.
- A tax-free lump sum based on 13 years service (uprated in line with inflation) less the lump sum already received. Thus the lump sum will be worth  $(3 \times \text{no. of yrs } (13)) 39 \times \frac{1}{70}$  (55.7% of annual final pensionable earnings) and the deduction would be 6 months pay (0.50% of final pensionable earnings). Thus a small lump sum would be payable (0.057% of final pensionable earnings).

#### **Example 2**

An individual who joined at age 20 and was discharged unfit for military service (Tier 1) after 10 years' service with a tax-free lump sum equivalent to 15 months' final pensionable earnings, who then had their case reviewed and recalculated using Tier 2 principles, would get the following:

- A taxable pension based on 18.333 years service (10 years actual service plus  $\frac{1}{3}$  of his service from date of discharge to age 55 (ie  $((55-30) \text{ divided by } 3)$  plus 10) backdated to date of discharge and uprated in line with inflation.
- A tax-free lump sum based on 18.333 years service (uprated in line with inflation) less the lump sum already received. The lump sum will be worth  $(3 \text{ times no. of yrs } (18.33)) 55 \times \frac{1}{70}$  (78.43% of annual pensionable pay). The lump sum received was worth 125% of final pensionable earnings. The previous lump sum exceeds the new lump sum by 46.57% of final pensionable earnings. Recovery of this sum would be achieved by agreement with the individual, or the terms of any court order.

### Example 3

An individual who joined at age 20 and was discharged unfit for military service after 17 years' service with a lump sum equivalent to 2 years' final pensionable earnings, who then had their case reviewed and recalculated using Tier 2 principles, would get the following:

- A pension based on 23 years service (17 years actual service plus  $\frac{1}{3}$  of his service from date of discharge to age 55 ie  $((55-37) \text{ divided by } 3) \text{ plus } 17)$  backdated to date of discharge and uprated in line with inflation.
- A tax-free lump sum based on 23 years' service (uprated in line with inflation) less the lump sum already paid. The lump sum will be worth (3 times no. of yrs (23))  $69 \times \frac{1}{70}$  (0.986% of final pensionable earnings). The old lump sum was worth 2 x final pensionable earnings. The old lump sum exceeds the new lump sum by 1.014 x final pensionable earnings. Recovery would be achieved by agreement with the individual or the terms of any court order.

### Deterioration

0409. Where Veterans UK (GL) agrees that there has been significant deterioration since the original award, above and beyond what would normally be expected, to warrant an ill-health pension under Tier 2 or Tier 3, the award will be recalculated from the date of the application for review. Using the examples at para 0411, the result of such a review would differ only in that the backdating would only be to the date of the application for review.

### MEDICAL DISCHARGE FOR AN ATTRIBUTABLE CONDITION WHICH EXISTED PRIOR TO 6 APRIL 2005

0410. The Armed Forces Compensation Scheme (AFCS) was introduced on 6 April 2005 and replaced **attributable** benefits in AFPS 75 for conditions caused on or after that date. Benefits for those who are medically discharged under Tier 1 because of an attributable condition caused before 6 April 2005 are as follows:

- (a) The member will be given the choice of either:
- (1) receiving what was referred to as a Service Invaliding Pension (SIP) under AFPS 75 topped up to the Minimum Guaranteed Income (MGI) (formally known as the Service Attributable Pension (SAP)), or
  - (2) receiving EDP (if the member has reached the EDP 18/40 Point) topped up to the MGI.

Both of the above would be tax-free. However, other benefits from AFPS 05 are not lost (eg **spouses'**, **civil partners'** and **eligible partners'** benefits for life) and other benefits from AFPS 75 are not gained (eg the option to commute pension to provide a larger lump sum).