

The Reserve Forces Pension Scheme 2005 (Amendment) Regulations 2012

The Defence Council makes the following Regulations in exercise of the powers conferred by sections 4(2) to (5) and 8(1) and (3) of the Reserve Forces Act 1996(a)—

Citation and commencement

1. These Regulations may be cited as the Reserve Forces Pension Scheme 2005 (Amendment) Regulations 2012 and come into force on the day after they are made.

Amendment of the rules of the Reserve Forces Pension Scheme 2005

2. The rules of the Reserve Forces Pension Scheme 2005 set out in the Reserve Forces Pension Scheme Regulations 2005(b) are amended as follows.

Amendment of rule A.1 (interpretation: general)

3. In rule A.1(4)—

- (a) after the definition of “final pensionable earnings” insert—
““fixed protection member” has the meaning given in rule B.6;”;
- (b) in the definition of “member”, after “deferred member” insert “a fixed protection member,”;
- (c) omit the definition of “paternity leave”; and
- (d) insert at the appropriate places—
““additional paternity leave” means leave which, in the opinion of the Secretary of State, corresponds to additional paternity leave within the meaning of regulation 4 or 14 of the Additional Paternity Leave Regulations 2010(c);”;
““ordinary paternity leave” means leave which, in the opinion of the Secretary of State, corresponds to paternity leave within the meaning of regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(d);”.

Amendment of rule A.3 (meaning of “assumed pay”)

4. In rule A.3(2)(d) after “on” insert “ordinary paternity leave or on paid additional”.

Insertion of new rule B.6 (fixed protection members)

5. After rule B.5 insert—

(a) 1996 c. 14.
(b) These Regulations have been amended by the Reserve Forces Pension Scheme Regulations 2006 and the Reserve Forces Pension Scheme Regulations 2009. These instruments are not statutory instruments and copies of the Regulations can be obtained from www.mod.uk.
(c) S.I. 2010/1055.
(d) S.I. 2002/2788; regulation 4 was amended by article 2(17) of, and paragraph 1(1) and (2)(a) and (b) of Schedule 17 to, S.I. 2005/2114; Regulation 8 was amended by article 2(17) of, and paragraph 1(1) and (3) of Schedule 17 to, S.I. 2005/2114.

“Fixed Protection Members

B.6—(1) “Fixed protection member” means a person who—

- (a) is a member of the armed forces; and
 - (b) has ceased to be an active member as described in rule B.5 for the reasons set out in paragraph (2).
- (2) The reasons referred to in paragraph (1)(b) are that the member has given notice to an officer of Her Majesty’s Revenue and Customs of their intention to rely upon the lifetime allowance transitional protection afforded by paragraph 14 of Schedule 18 of the Finance Act 2011(a).
- (3) Service as a fixed protection member is not pensionable service, qualifying service or reckonable service.
- (4) Rules A.1(5) and (6), D.5, D.6, D.11, D.14, E.1, E.2, E.3, E.10, E.16, E.22, E.25, and E.27 are to be construed as if the references to “active member” also apply to a fixed protection member.”.

Amendment of rule D.1 (retirement after reaching pension age)

6. For rule D.1(1) substitute—

- “(1)The general rule is that a member is entitled to a pension for life and a lump sum if —
- (a) in the case of a member other than a fixed protection member, the member ceases to be in pensionable service at or after reaching pension age; or
 - (b) in the case of a fixed protection member, the member ceases to be in service at or after reaching pension age.”.

Amendment of rule D.3 (pension credit members’ pensions)

7.—(1) For rule D.3(3) substitute—

- “(3) The pension and any lump sum become payable—
- (a) immediately on the pension credit member reaching pension benefit age; or
 - (b) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect.”.

(2) After rule D.3(5) insert—

- “(6) If a pension credit member exercises the option under rule D.4, the Secretary of State must be reasonably satisfied that the total value of the benefits payable by virtue of its exercise is at least equal to the amount described in regulation 11 of the Pension Sharing (Pension Credit Benefit) Regulations 2000(b) (value of alternatives to pension credit benefit).”.

Amendment of rule E.9 (meaning of “eligible child”)

8. For rule E.9(4) substitute—

- “(4) Condition C is that, because of physical or mental impairment—
- (a) the person is, in the opinion of the Scheme administrator, unable to engage in full-time gainful employment; and
 - (b) the person was dependent on the member at the date of the death.”.

(a) 2011 c. 11.

(b) S.I. 2000/1054 to which amendments have been made which are not relevant to these Regulations.

Amendment of rule E.15 (death of a member: lump sum benefit)

9.—(1) For rule E.15(1) substitute—

“(1) If a member dies before reaching the age of 75, the Secretary of State may pay a lump sum to any of the following—

- (a) the person or persons nominated by the member in accordance with rule E.21;
- (b) if there is no person within sub-paragraph (a), to any person who is entitled to a pension under rule E.1 in respect of the member, or to whom a pension may be awarded under rule E.2 in respect of the member;
- (c) if there is no person within sub-paragraph (a) or (b), to any person who, but for the application of rule E.1(2) or rule E.2(2), would be so entitled or to whom a pension may be awarded; or
- (d) if there is no person within sub-paragraph (a), (b) or (c), to the member’s personal representatives.”.

(2) For rule E.15(4) substitute—

“(4) A lump sum paid under this rule may not be paid more than two years after the day on which the Scheme administrator first knew, or could reasonably be expected to have known, of the member’s death.”.

(3) After rule E.15(4) insert—

“(5) The annual amount of pension paid to a person under this Part shall be increased by such amount as the Defence Council, after consulting with the Scheme actuary, may determine, if—

- (a) the Defence Council have determined that a lump sum should be paid to the person under this Part, but the lump sum is not paid within two years of the date of the death; or
- (b) the Defence Council have determined that, but for paragraph (1), a lump sum would have been paid to the person.”.

Amendment of rule F.8 (procedure for applications under rule F.7)

10. In rule F.8(1)(c) omit “benefit”.

On behalf of the Defence Council

15th February 2012

Andrew Robathan

Member of the Defence Council

Ursula Brennan

Member of the Defence Council

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the rules of the Reserve Forces Pension Scheme 2005 (“the Scheme”). In this Explanatory Note “the 1993 Act” means the Pension Schemes Act 1993 c. 48 and “the 1999 Act” means the Welfare Reform and Pensions Act 1999 c. 30. References to a rule are to a rule of the Scheme.

Rule A.1 is amended to introduce the category of “fixed protection members”, with consequent addition to the definition of “member”. In addition there are now two types of paternity leave, being ordinary paternity leave and additional paternity leave. Rule A.3 is amended so that paid additional paternity leave counts towards assumed pay.

An additional paragraph is inserted after rule B.5. Under rule B.6 officers who opt to rely on paragraph 14 of Schedule 18 of the Finance Act 2011 to retain their lifetime tax allowance of £1,800,000 will remain in the Scheme for as long as they remain in paid service, but after 5 April 2012, they will cease to be active members and will cease accruing pension benefits. They will be known as “fixed protection members”. Rule B.6(4) provides that for specified purposes, they will be treated as active members rather than non-active members. For example, the amount of ill-health pension under rule D.5 for fixed protection members is to be determined according to the formula in rule D.5 applying to active members. However, their last day of reckonable service will be 5 April 2012, and their final pensionable earnings and the amount of their ill-health pension will reflect this.

Rule D.1 is amended to allow a fixed protection member to receive a pension and lump sum immediately after ceasing to be in service, provided they have reached pension age while in service.

Rule D.3(3) is amended to provide that the pension and lump sum become payable immediately on the pension credit member reaching pension benefit age (65) or, if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect. Previously the rule provided for that to be the case where the pension sharing order was made before 6 April 2009, but where the pension sharing order was made after that date the rule provided that the pension and lump sum became payable immediately on the pension credit member reaching pension age (55) or, if it was later, when the relevant pension sharing order took effect. This change is necessary in order to comply with section 101C of the 1993 Act.

An additional paragraph is inserted after rule D.3(5). This is necessary to comply with the 1999 Act, Schedule 5 paragraph 5(b) and the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I.2000/1054) which concern the calculation of the value of rights for a pension credit member.

Rule E.9 is amended to change the definition of “eligible child”.

Rule E.15, regarding the lump sum benefit payable on the death of a member who is under 75 years old, is amended. Rule E.15(1) now requires the lump sum to be paid to the member’s nominee, if there is one. If there is no nominee, the lump sum is to be paid to the member’s spouse, civil partner or surviving adult dependant. Rule E.15(1)(c) provides that this is the case even where the deceased member had not served the requisite two years’ qualifying service for the spouse, civil partner or surviving adult dependant to receive an annual pension. If there is no spouse, civil partner or surviving adult dependant, the lump sum is to be paid to the member’s personal representatives. The amended rule E.15(4) provides that the lump sum cannot be paid more than two years after the Scheme administrator knew (or could reasonably be expected to have known) of the death. The new paragraph (5) enables a dependant’s annual pension to be increased if they were not awarded a lump sum for the sole reason that the two-year deadline was missed.

Rule F.8(1)(c) is amended so that a member will not be able to transfer benefits into the Scheme after they have reached pension age (55).