

The Reserve Forces Non Regular Permanent Staff (Redundancy Scheme) Regulations 2012

Made - - - - *8th August 2012*

Laid before Parliament *8th August 2012*

Coming into force - - *9th August 2012*

The Defence Council in exercise of the powers conferred by sections 4(2) and (3) and 6(2) of the Reserve Forces Act 1996(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Reserve Forces Non Regular Permanent Staff (Redundancy Scheme) Regulations 2012 and come into force on 9th August 2012.

The Non Regular Permanent Staff Redundancy Scheme

2. The Scheme set out in these Regulations has effect and is to be known as the Non Regular Permanent Staff Redundancy Scheme 2012.

Interpretation

3. In these Regulations —

“NRPS” means the Non Regular Permanent Staff;

“the Scheme” means the Non Regular Permanent Staff Redundancy Scheme 2012;

“treated as having become redundant” includes selection for redundancy as part of a programme for the planned reduction of the armed forces.

Entitlement to payment under the Scheme

4.—(1) Where the conditions in paragraph (2) are met, a person (A) is entitled to receive a payment under the Scheme calculated in accordance with regulation 5.

(2) The conditions are—

(a) while serving as a member of the NRPS, A is notified by the Defence Council that A is to be treated for the purposes of the Scheme as having become redundant; and

(b) A ceases to serve as a member of the NRPS because A is treated as having become redundant in pursuance of the notification in sub-paragraph (a).

(3) The condition in paragraph (2)(b) is not met where A’s service as a member of the NRPS is terminated on medical grounds.

(4) A is entitled to a payment under the Scheme on the date A ceases to serve as a member of the NRPS.

(5) Subject to regulation 8(3), payment must be made within 3 months of the date on which the person ceases to be a member of the NRPS.

Calculation of payment

5.—(1) Subject to paragraph (3), a person (A) who is entitled to receive a payment under the Scheme is to receive a sum equal to $1/12^{\text{th}}$ of A's annual rate of basic pay multiplied by the number of years of A's redundancy reckonable service.

(2) Payment is to be calculated on the basis of whole years served and no payment is to be made in respect of any period of less than a year.

(3) The payment must not exceed a sum equal to A's annual rate of basic pay.

(4) In this regulation—

(a) Subject to sub-paragraph (b), "basic pay" means —

(i) the rate of pay (on the last day of service) to which a person of A's rank and A's increment level is entitled; and

(ii) any other amount which the Defence Council have determined is to be treated as basic pay.

(b) "basic pay" does not include —

(i) allowances; or

(ii) additional amounts payable in respect of particular qualifications or duties, the location of the service or the conditions in which service is performed.

(5) "Redundancy reckonable service" has the meaning given in regulation 6.

Redundancy reckonable service

6.—(1) "Redundancy reckonable service" means the aggregate of A's current period of service including any period during which A was —

(a) in service and in receipt of basic pay;

(b) in receipt of statutory maternity pay;

(c) in receipt of statutory adoption pay;

(d) on ordinary adoption leave;

(e) on ordinary maternity leave;

(f) on ordinary paternity leave or on paid additional paternity leave; or

(g) on unpaid leave for a period which the Defence Council has agreed in advance can count for this purpose.

(2) In this regulation —

(a) "additional paternity leave" means leave which, in the opinion of the Defence Council, corresponds to additional paternity leave within the meaning of the Additional Paternity Leave Regulations 2010(a);

(b) "current period of service" means the period that A has served as a member of the NRPS, beginning on the date A began to serve as a member of the NRPS (or, if A began to serve on more than one occasion, the latest date on which A began to serve) and continues without interruption until the date on which A's service ceases for the reason referred to in regulation 4(2)(b);

(a) S.I. 2010/1055.

- (c) “ordinary adoption leave” means leave which, in the opinion of the Defence Council, corresponds to ordinary adoption leave prescribed in regulations made under section 75A(2) and (2A) of the Employment Rights Act 1996(a);
- (d) “ordinary maternity leave” means leave which, in the opinion of the Defence Council, corresponds—
 - (i) in relation to any period before 22nd August 1996, to leave under section 33 of the Employment Protection (Consolidation) Act 1978(b); and
 - (ii) in relation to any period on or after 22nd August 1996, to ordinary maternity leave prescribed in regulations made under section 71(2) and (3) of the Employment Rights Act 1996(c);
- (e) “ordinary paternity leave” means leave which, in the opinion of the Defence Council, corresponds to paternity leave within the meaning of regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(d).

Effect on payment of entering new service in regular or reserve forces

7.—(1) This regulation applies where—

- (a) after ceasing to be a member of the NRPS for the reason referred to in regulation 4(2)(b), a person (A) enters new service, and
- (b) before or after entering that new service, A receives a payment under the Scheme.

(2) If the period beginning with the date on which A becomes entitled to the payment under the Scheme and ending immediately before the date on which A enters new service (“the service break”) is less than the relevant period, A must repay the relevant fraction of the payment A received under the Scheme.

(3) In this regulation —

- (a) “new service” means—
 - (i) service as a member of the regular forces;
 - (ii) full-time service as a result of a commitment under section 24 of the Reserve Forces 1996 (commitment to a period of full time service); or
 - (iii) service as a result of a commitment under section 25 of that Act (commitment to additional duties);
- (b) the “relevant period” is deemed to be the number of days equal to the sum of the following formula —

$$\frac{P \times 365}{B}$$

where—

P is the amount of the payment, and

B is the person’s annual rate of basic pay by reference to which the payment was calculated under regulation 5;

- (c) the “relevant fraction” must be calculated in accordance with the following formula—

- (a) 1996 c. 18; section 75A was inserted by section 3 of the Employment Act 2002 (c. 22); section 75A(2A) was inserted by section 11(1) and paragraph 33 of Schedule 1 to the Work and Families Act 2006 (c. 18).
- (b) 1978 c. 44; section 33 was amended by section 23 of the Trade Union Reform and Employment Rights Act 1993 (c. 19) and subsequently repealed by section 242 and Part 1 of Schedule 3 to the Employment Rights Act 1996.
- (c) Section 71 was substituted by section 7 and Part 1 of Schedule 4 to the Employment Relations Act 1999; section 71(3) was substituted by section 11(1) and paragraph 31 of Schedule 1 to the Work and Families Act 2006; section 71(4) was amended by sections 17(1) and 2(a) to (c) of the Employment Act 2002; section 71(7) was substituted by sections 17(1) and (3) of the Employment Act 2002.
- (d) S.I. 2002/2778; regulation 4 was amended by article 2(17) and paragraphs 1(1) and 2(a) and (b) of Schedule 17 of S.I. 2005/2114; regulation 8 was amended by article 2(17) and paragraphs 1(1) and (3) of Schedule 17 of S.I. 2005/2114.

$$\frac{R - S}{R}$$

where —

R is the sum of the formula in sub-paragraph (b), and

S is the number of days in the service break;

(4) “regular armed forces” has the meaning given by section 374 of the Armed Forces Act 2006(a).

Revocation of redundancy decision

8.—(1) This regulation applies where the conditions set out in regulation 4(2) are met and the Defence Council later revokes the notification.

(2) Where A has received a payment under the Scheme, A must repay the entire sum received.

(3) In all other cases, A ceases to be entitled to receive a payment under the Scheme.

6th August 2012

Gerald Howarth
On behalf of the Defence Council

8th August 2012

Tom McKane
On behalf of the Defence Council

EXPLANATORY NOTE

(This note is not part of the Defence Council Regulations)

These regulations create a Scheme which enables members of the Non Regular Permanent Staff (NRPS) to receive a payment where their service is terminated because they are treated as having become redundant. The regulations apply to commissioned officers and to non-commissioned personnel.

Regulation 4 sets the circumstances in which a person is entitled to receive a payment under the Scheme. Regulation 5 sets out the basis on which the payment is calculated.

Regulation 6 defines the term “redundancy reckonable service”. This is relevant for ascertaining the period of time served in the NRPS that will count for the purposes of calculating the amount that will be paid under the Scheme.

Regulation 7 requires a person to repay part of the lump sum received if after leaving the NRPS, the person re-enters certain parts of the armed forces. This regulation will not apply unless the “service break” is less than the “relevant period”. The service break runs from the date the person leaves the NRPS and ends when they enter new service. The length of the relevant period is calculated on the basis of the formula in regulation 7(3)(b). This formula factors in the length of the person’s redundancy reckonable service and the amount of their lump sum. The formula in regulation 7(3)(c) is used to calculate the fraction of the lump sum that must be paid back..

In those cases where the Defence Council revokes a notification given to a person (because the decision to treat that person as having become redundant is reversed), regulation 8 ensures that any lump sum received under the Scheme must be repaid if the person resumes their service in the

(a) 2006 c. 52.

NRPS. If however the person is still waiting for payment of the lump sum when they resume service, their entitlement to the payment will cease and no payment will be due.