



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation

6 March 2023



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Foreword

The Public Service Pensions and Judicial Offices Act 2022 provides an overarching framework to allow public service pension schemes to remedy the impact of unlawful age discrimination that had arisen under certain transitional arrangements put in place when these schemes were reformed between 2014 and 2016¹. Secondary legislation is also required to amend the rules of each affected public service pension scheme to implement the remedy for their members. The remedy was designed to be delivered in two stages: the first to bring the discrimination to an end (the prospective remedy²) from 1 April 2022, and the second, to be implemented on 1 October 2023, to remedy the discrimination that had taken place (for the Armed Forces) between 1 April 2015 and 31 March 2022 (the retrospective remedy³).

In the Armed Forces pension schemes, the prospective remedy was implemented through the Armed Forces Pensions (Amendment) Regulations 2022⁴, which came into effect on 1 April 2022. Since that date, all serving service personnel have been members of the Armed Forces Pension Scheme 2015 (AFPS 15).

The second stage is to deliver the retrospective remedy. This consultation document sets out the background to this part of the remedy and an explanation of legislative and policy changes required to implement it. The retrospective remedy is complex and affects people in different ways. I would, therefore, welcome input from scheme members and pension stakeholders to ensure that the final regulations and policies are based on the broadest possible understanding of how this remedy will affect members of our pension schemes.

Rt Hon. Ben Wallace MP, Secretary of State for Defence

¹ For background reading refer to <https://www.gov.uk/guidance/pensions-and-compensation-for-veterans>.

² The prospective remedy ensures that all serving Armed Forces personnel are members of AFPS 15 from 1 April 2022.

³ The retrospective remedy rolls back eligible scheme members to their legacy pension scheme for the period 1 April 15 – 31 March 2022 (the remedy period) and gives members a choice of pension benefits for that period.

⁴ S.I. 2022/323.

Chapter 1 – Consultation

Introduction

1.1. The Ministry of Defence (MOD) is required by the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 22) to introduce legislation and policies to implement the retrospective pension remedy in the Armed Forces Pension Schemes (AFPS).

1.2. In summary, the retrospective pension remedy, through the PSPJOA 22, provides for:

- eligible members⁵ to roll back to the relevant legacy pension scheme(s) for service between 1 April 2015 and 31 March 2022 (the remedy period),
- eligible members to choose between legacy scheme benefits or reformed scheme benefits at the point at which pension benefits, including Early Departure Payments (EDP), become payable, either on discharge or at deferred pension age, (deferred choice),
- eligible members already in receipt of pension benefits (and those in receipt of dependants' benefits) to be prioritised in making their choice (immediate choice).

Scope of the consultation

1.3. HMT consulted on the principles underlying the pension remedy across all public service pension schemes [in July 2020](#)⁶. The Government published its [response](#) to the public consultation in February 2021, and introduced the Public Service Pensions and Judicial Offices Bill in July 2021. The Bill became law, as the Public Service Pensions and Judicial Offices Act 2022 in March 2022. A significant amount of the remedy is delivered through the primary legislation and represents settled Government policy. The fundamental principles underlying the pension remedy set out in the primary legislation include:

- those who are eligible for the remedy,
- the principle that eligible members are rolled back into the relevant legacy scheme(s) for service during the remedy period, and

⁵ See the paragraph on eligibility at 3.11.

⁶ <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>.

- the principle that eligible members are offered a choice of reformed or relevant legacy scheme benefits for remediable service.

To implement the remedy fully, changes to the individual scheme rules, contained in secondary legislation, are also needed, in accordance with the PSPJOA 22, which from here on in will be referred to as 'the Act'. The drafting of the legislation is currently in progress. The MOD is required to consult on the policy to be implemented by the legislative changes and this document sets out details of these changes, and the policy underpinning them.

Who is this consultation aimed at?

1.4. This retrospective remedy applies to those members of:

- the Regular Armed Forces,
- the Non-Regular Permanent Staff (NRPS) of the Reserve Forces,
- the Reserve Forces who were eligible for membership of the Full Time Reserve Service (FTRS) 97 or Reserve Forces Pension Scheme (RFPS) 05,

who were in pensionable service on or before 31 March 2012 and on or after 1 April 2015, including those with a break in pensionable service of five years or less. The MOD will consult the list of stakeholders identified at [Annex B](#), though it would also be interested to hear from Armed Forces personnel, veterans and dependants in receipt of a survivor's pension and others affected by the retrospective remedy.

Questions

1.5. The MOD is consulting on the policies which will inform the amendments required to AFPS rules to implement the retrospective remedy for affected members. An overview of the retrospective remedy is contained in the main body of this consultation document and explanations of policy in specific areas can be found in the enclosures. The consultation has been designed this way to permit stakeholders to focus on areas relevant to them. A consolidated list of the specific questions MOD is posing in this consultation is at [Annex C](#).

Duration of the consultation

1.6. The consultation will run for 12 weeks from 6 March 2023 until 29 May 2023.

How to respond to this consultation

1.7. Responses may be submitted by:

- Completing the consultation online form: <https://forms.office.com/e/AH6qTfjmcM>
- By email to: People-AFPension-McCloud@mod.gov.uk. Ensure 'Remedy Consultation Response' is included in the email subject line.
- By post to: AFPS Retrospective Remedy Consultation, MOD Main Building, AF Remuneration, 6th Floor Zone M, Whitehall, SW1A 2HB.

MOD response

1.8. The MOD will consider all consultation responses carefully and aims to publish its response no later than September 2023. The MOD intends to implement the remedy to Armed Forces Pension Schemes with effect from 1 October 2023 and the pension regulations will be laid before Parliament in early September 2023. The consultation response and Regulations will be published at: <https://www.gov.uk/guidance/pensions-and-compensation-for-veterans>.

How we consult

1.9. This consultation is being conducted in line with the [Cabinet Office consultation principles](#) published in January 2016. These principles give clear guidance to Government departments on conducting consultations.

1.10. We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues we are consulting on), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to the contacts at Paragraph 1.7.

Equalities impacts

1.11. The MOD has conducted an Equality Impact Assessment (EqIA) under Section 149 of the Equality Act 2010, to comply with the Public Sector Equality Duty. An EqIA is a systematic and evidence-based tool which enables the Department to consider the likely impact of policies on

people with a protected characteristic⁷. The EqIA is published alongside this consultation. In addition to responses to the pension consultation, members are invited to provide their views on the EqIA. Once the consultation and subsequent analysis has been completed, the MOD will update and publish a revised EqIA alongside the consultation response.

Information and Data Handling

1.12. The MOD will process personal data in accordance with the applicable data protection legislation. You can find a copy of the MOD Privacy Notice [here](#)⁸, which will explain how the MOD will process personal data. This consultation follows the UK Government's consultation principles.

1.13. The published consultation response may include extracts from any submission made by an individual or organisation. Comments made by individuals will normally be non-attributable, but respondents should be aware that information provided during the course of this consultation may be released, on request, in accordance with the provisions of the Freedom of Information Act 2000. Personal data will likely be exempt. Comments submitted by an organisation are likely to be attributed to that organisation.

How long will we retain your data?

1.14. Data protection law requires that personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are collected. The MOD will retain a record of the statistical analysis of returns, including the number of respondents, but personal information, including names, will not be retained after the Armed Forces Pension Scheme (Amendment) Regulations 2023 are published.

Armed Forces Pension Schemes

1.15. There are eight Armed Forces Pension Schemes impacted by retrospective remedy, and these are detailed at [Annex D](#). Throughout this document the term legacy scheme can refer

⁷ Age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

⁸ <https://www.gov.uk/government/publications/ministry-of-defence-privacy-notice/mod-privacy-notice#why-are-we-collecting-or-processing-your-data>.

to one or more of AFPS 75, AFPS 05, EDP 05, FTRS 97, NRPS 11 and RFPS 05. The term reformed scheme refers to AFPS 15 and EDP 15.

Terminology

- 1.16. A glossary of other terms and definitions used throughout this document and its enclosures is at [Annex E](#) and it is advisable to familiarise yourself with the terms used.

Chapter 2 - Background

Public service pension reform: 2015

- 2.1. In June 2010 the Government established the Independent Public Service Pensions Commission, chaired by Lord Hutton of Furness. The Commission was asked to undertake a fundamental structural review of public service pension provision. The cost of providing public service pension schemes had increased significantly over the previous decades, with most of this increase falling to the taxpayer. At the same time, occupational pension provision in the private sector had changed significantly; employers were increasingly moving away from offering defined benefit pension schemes.
- 2.2. Lord Hutton considered that public service workers should be entitled to good quality, sustainable and fair defined benefit pension schemes. The Commission's final report in March 2011 recommended moving public service scheme members to reformed schemes with benefits calculated on a Career Average Revalued Earnings (CARE) basis rather than a final salary basis. To control for the risk of rising longevity, the Commission also recommended increasing the Normal Pension Age (NPA) to 60 for the uniformed services and to State Pension age for other schemes.

Court of Appeal: Discrimination Findings

- 2.3. Following negotiations with member representatives, the Government agreed to exempt older members from the pension scheme changes. In most schemes this meant that members who had been within ten years of the Normal Pension Age for their scheme on 31 March 2012 were allowed to remain in their existing schemes. In the Armed Forces pension schemes, such members were known as full protection members.
- 2.4. Members of the judges' and firefighters' pension schemes brought claims (the McCloud and Sargeant cases) in the Employment Tribunals on the grounds that the protection offered to older members constituted unjustified direct age discrimination and indirect race and sex discrimination. The argument's premise was that younger members were treated less favourably than older members who were given protections. The Court of Appeal ruled in December 2018 that the protection arrangements in place in the judges' and firefighters' pension schemes gave rise to unlawful age-related discrimination.

2.5. The Government sought permission to appeal to the Supreme Court. This application was refused on 27 June 2019. In a written ministerial statement on 15 July 2019, the Government confirmed that it accepted that the Court of Appeal's judgment had implications for all schemes established under the Public Service Pensions Act 2013, as all those schemes had provided protections under the transitional arrangements for older members. The Government confirmed that it would take steps to address the difference in treatment across all those schemes and in a subsequent written ministerial statement on 25 March 2020, that it would do this for all members with relevant service, not just those who had lodged a legal claim.

Public consultation

2.6. Between 16 July 2020 and 11 October 2020, the Government sought views on proposals to address the unlawful discrimination arising from the transitional arrangements, which had allowed older members to remain in their existing schemes. In February 2021, the Government response to the consultation confirmed that:

- the legacy schemes would close on 31 March 2022 to all members, with all active members becoming members of the relevant reformed schemes on 1 April 2022: and
- that those affected would be provided a choice, as to which scheme design would provide their benefits for the remedy period at the point at which such benefits became payable.

2.7. The response also confirmed that affected members who were already in receipt of pension benefits would be provided a choice between scheme designs as soon as possible, after the necessary changes and legislative processes to the schemes had been made.

Prospective and Retrospective remedy

2.8. The Act provides the framework to end the discrimination identified by the courts, and to implement the necessary changes to both scheme rules and policy to provide a remedy to those who have been affected. This is achieved through:

- prospective remedy: all legacy pension schemes were closed to further accrual from 31 March 2022. All scheme members serving on and after 1 April 2022 do so as members of the relevant reformed pension scheme,

- retrospective remedy: affected scheme members will roll back to the relevant legacy pension scheme(s) for the period 1 April 2015 – 31 March 2022 (the remedy period), with the ability to choose between the legacy scheme benefits and those that would have been offered by the reformed scheme for this period at the point pension benefits become payable. For clarity, member benefits will be paid from legacy schemes even if reformed benefits are chosen and this requires some changes to legacy schemes to be made.

2.9. The Armed Forces Pensions (Amendment) Regulations 2022 marked the implementation of the prospective remedy, making necessary consequential changes to scheme rules. The retrospective remedy for the Armed Forces pension schemes will be delivered through a mixture of amendments to the various AFPS rules, supporting policies and tax legislation. The policies which will underpin the scheme rules are the subject of this consultation.

2.10. The AFPS regulations, policy and administrative processes for implementing the retrospective remedy must be in place by 1 October 2023.

Chapter 3 - Armed Forces Pension Scheme Remedy

Introduction

3.1. This chapter explains in outline how the retrospective remedy will work for in-scope members. There are also several specific policy areas which are more complex (for example, dependant benefits or where members have made additional voluntary contributions to their pension), and the detail of these supporting policies are explained in separate enclosures.

Legislation

3.2. The Act⁹ applies to all the main public service pension schemes and received Royal Assent in March 2022. It provides the necessary powers to make consequential changes to public service pension schemes, and these changes must be made by 1 October 2023. Chapter 1 of the Act provides the framework for the remedy, including provision to make changes to public service pension scheme rules. Amendments are required to those rules, including those of the Armed Forces Pension Schemes, to implement the Government's remedy for the unlawful age discrimination found to exist in the transitional protection arrangements put in place for older members in 2015. The Act is the key primary legislation in relation to the remedy. How it provides for the retrospective remedy is detailed in this section. The Act also provides for HMT to make Treasury Directions¹⁰, which specify how certain powers under the Act are to be used by public service pension schemes when making their scheme regulations.

3.3. The McCloud remedy requires changes to the legislation governing eight Armed Forces Pension Schemes, and to the redundancy and compensation schemes. The MOD is currently drafting the necessary legislation, on the basis of the policy outlined in this document.

Retrospective remedy

3.4. Prior to 1 April 2015, Armed Forces pension schemes were designed as final salary or final rank schemes, and different schemes covered regular and reserve service. The reformed

⁹ <https://www.legislation.gov.uk/ukpga/2022/7/contents/enacted>

¹⁰ Treasury Directions are contained in the [Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#)

schemes introduced in 2015 were based on a different scheme design: they were Career Average Revalued Earnings (CARE) schemes. The unlawful age discrimination was contained in specific rules, which allowed older members of the legacy schemes to remain in those schemes, while younger members were obliged to transition to the reformed schemes on 1 April 2015: older members were, in effect, treated differently to younger members and the basis for that differential treatment was age, which was not able to be justified.

3.5. The reformed schemes themselves are not discriminatory and there will be some members who are financially better off in these schemes compared to the legacy schemes. As a result of this, the Government took the decision that, having removed the differential treatment by moving everyone back to their relevant legacy scheme, it would be unfair not to allow individuals the choice of which benefits (legacy or reformed) best suited them for the remedy period.

3.6. Accordingly, the outline for the retrospective remedy, which will be implemented on 1 October 2023, is as follows:

- All members with remediable service (in-scope members – see [Paragraph 3.11](#)) - will be rolled back into the relevant legacy scheme for service during the remedy period (1 April 2015 to 31 March 2022). The roll back is retrospective in effect. All remediable service will be pensionable under the relevant legacy scheme and cannot be pensionable under the reformed (AFPS 15 or EDP 15) schemes.
- Members who are entitled to pension benefits based (to any extent) on service in the remedy period (including those entitled to dependants' pensions) will be given a choice between benefits based on the relevant legacy scheme design or the reformed scheme design for their service in the remedy period.
- An immediate choice will be provided for pensioner members (and those in receipt of dependant benefits) as pension benefits in relation to remediable service are already in payment (see [Paragraph 3.24](#)).
- A deferred choice for remediable service will be provided to eligible active members, and those with deferred pension rights with service in the remedy period, shortly before their pension benefits, including EDP, are expected to come into payment.

3.7. The mechanism by which the retrospective remedy works is slightly different for immediate choice members and deferred choice members. The purpose, however, is the same for both: to place members back into the position they would have been in had the age discrimination not occurred and, to allow members to receive the reformed scheme benefits for that period

if they choose to do so. This section outlines the core concepts, explains the basic principles of the retrospective remedy mechanism, and then sets out, in general terms, how it will work for immediate choice members and deferred choice members.

Roll Back

3.8. Roll back is the term used to describe the process by which in-scope members are placed back into a relevant legacy pension scheme(s). Under the retrospective remedy, all in-scope members will roll back to the scheme to which they would have belonged had the AFPS 15 not been introduced on 1 April 2015. It is possible that some members may have remediable service in more than one legacy scheme as a result of the roll back, especially where they have regular and reserve service, or they are re-joiners with previous service in one of the older legacy schemes which were closed before 2015¹¹.

Remedy period and Remediable Service

3.9. The remedy period is the period during which the age discrimination occurred. It began with the implementation of the discriminatory rules on 1 April 2015 and ended when the differential treatment on the basis of age came to an end on 31 March 2022, with the transfer of all remaining members in the legacy schemes to the AFPS 15. The choice of scheme design (the core of the pension remedy) is only offered in relation to pensionable service which took place in this remedy period, and which would have been pensionable under a legacy scheme.

3.10. Pensionable service, for in-scope members, under a legacy or reformed scheme during the period 1 April 2015 – 31 March 2022 is referred to as 'remediable service'. It is important to note that remediable service includes service as a full protection member of a legacy scheme as well as service as a member of the AFPS 15 during the remedy period.

Eligibility – members in-scope

3.11. To be eligible for the retrospective pension remedy, a scheme member must:

¹¹ For example: where an in-scope member left the Armed Forces having been a member of AFPS 75 and subsequently, within five years, re-joined regular service as a member of the AFPS 15, their legacy scheme on roll back would be AFPS 05. This is because AFPS 75 was closed to new and re-joining members from 5 April 2005, and so AFPS 05 would be the only legacy scheme that they could join in the remedy period.

- have been in pensionable service under a relevant public service pension scheme¹²;
- have been in such pensionable service both on or before 31 March 2012 and on or after 1 April 2015 without a disqualifying break in service. A disqualifying break in service is a gap of longer than five years between pensionable service in the remedy period and the service on or before 31 March 2012.

3.12. Accordingly, the following cohorts who meet the above criteria are eligible for the retrospective remedy:

- Transition members with continuity of service.
- Active members.
- Deferred members.
- Pensioner members.
- Full Protection members.
- Individuals entitled to dependant and/or death lump sum benefits in respect of deceased members with remediable service.
- Members who joined Armed Forces pensionable service for the first time after 1 April 2012¹³ and had previous pensionable service in another Public Service Pension Scheme on or before 31 March 2012.

3.13. It may also be possible for any member who had opted out of the AFPS because of the introduction of the reformed schemes to opt back into the AFPS, subject to certain conditions. See [Enclosure 8](#) for further detail on conditions attached to opted out service.

Members out of scope for pension remedy

3.14. The following members are out of scope for pension remedy:

- Members who first joined pensionable public service on or after 1 April 2012.
- Members who have had a break in pensionable public service of more than five years¹⁴.

¹² A relevant public service pension scheme is defined as: NHS Pension Scheme; Civil Service Pension Scheme; Teachers' Pension Scheme; Armed Forces Pension Scheme; Police Pension Scheme; Firefighters' Pension Scheme, Judiciary Pension Scheme and Local Government Pension Scheme.

¹³ And were still in service on or after 1 April 2015 without a disqualifying break.

¹⁴ For note: where the break of pensionable public service begins after 1 April 2015, any service completed in the remedy period after the gap of five years would not be eligible for remedy. For example, if a member left on 31 January 2016 and re-joined in March 2021, the period 1 April 2015 to 31 January 2016 is remediable, the period from March 2021 is not.

- Reservists (except those on Full Time Reserve Service, Additional Duty Commitments, Non-Regular Permanent Staff or those on mobilised service who would otherwise have been eligible for RFPS 05)¹⁵.

3.15. An overview of pension remedy eligibility is outlined in the following table.

In service on or before 31 Mar 12 (a)	Scheme Joined (b)	Type of Service (c)	In service on or after 1 Apr 15 (d)	In scope for remedy (e)	Potential Choice for remedy period (f)
Yes	AFPS 75	Regular	Yes	Yes	Retain AFPS 75 benefits or choose reformed scheme benefits where service is unbroken. Scheme rules on multiple periods of service (i.e., broken service) are still being developed and further details will be published in due course.
Yes	AFPS 05	Regular	Yes	Yes	Retain AFPS 05 benefits or choose reformed scheme benefits.
No	AFPS 05	Regular	Yes	No	No election - remain in AFPS 15.
No	AFPS 15	Regular	Yes	No	No election - remain in AFPS 15.
Yes	Other relevant public service pension scheme	Regular	Yes	Yes	Retain AFPS 05 benefits or AFPS 15 equivalent benefits.
Yes	None	Volunteer Reserve	Yes	No	No election - remain in AFPS 15.
Yes	FTRS 97	Full Time Reserve Service	Yes	Yes	Retain FTRS 97 benefits or choose reformed scheme benefits. (NB: if a member has previous FTRS 97 service but began a new commitment, their election would be for RFPS 05 or reformed scheme benefits).
Yes	RFPS 05	Full Time Reserve Service/ADC/mobilised	Yes	Yes	Retain RFPS 05 benefits or choose reformed scheme benefits.
No	RFPS 05	Full Time Reserve Service/ADC/mobilised	Yes	No	Retain AFPS 15 benefits.
Yes	Other relevant public service pension scheme	Full Time Reserve Service/ADC/mobilised	Yes	Yes	Retain RFPS 05 benefits or reformed scheme benefits.

¹⁵ Part-time Reserve service was not generally pensionable under the AFPS before 1 April 2015.

Retrospective Remedy principles

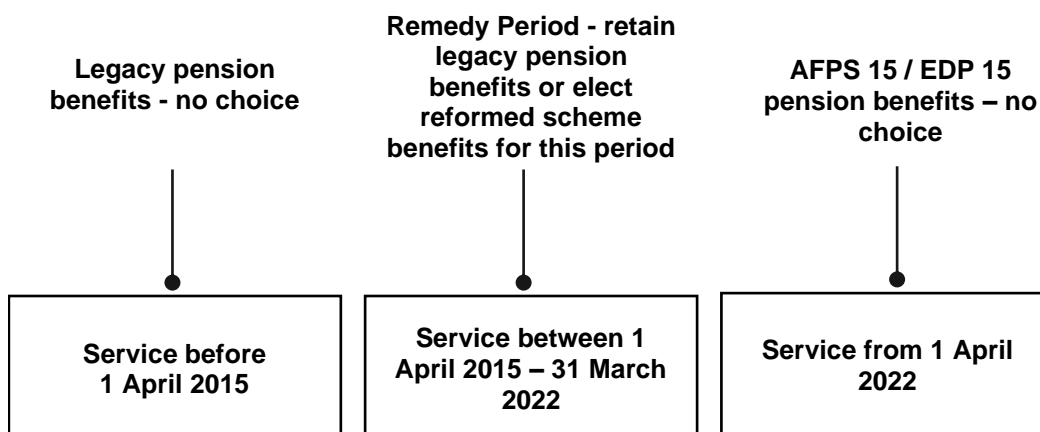
3.16. When roll back is implemented, the member will be in pensionable service under the relevant legacy scheme for the period of remediable service and, broadly, is entitled to the usual legacy benefits. Remediable service cannot be directly pensionable under the AFPS 15 after roll back. Therefore, the effect of roll back for all members is as follows:

- they are members of the relevant legacy scheme in relation to remediable service – this is retrospective,
- all benefits payable for remediable service are payable under the rules of the relevant legacy scheme,
- where a member chooses benefits based on the reformed scheme, they will be entitled to receive the benefits they would have received had they been a member of AFPS 15 / EDP 15 but these will be paid from the legacy scheme,
- where a member chooses reformed scheme benefits, they must meet the conditions of entitlement set out in the reformed scheme rules for those benefits¹⁶,
- pension rights that have been transferred in from another scheme are not rolled back, but see [Enclosure 10](#) for further details on pension transfers,
- added pension purchased in the AFPS 15 is not rolled back (for further details on member voluntary contributions, including those purchased in legacy schemes see [Enclosure 6](#)).

3.17. However, although pensioner members are rolled back at the same time as other members, the Act provides that benefits in payment will remain unchanged, until the member or in the case of dependants, the eligible decision maker (see [Enclosure 2](#) for dependant benefits) has made their immediate choice election. More details of how this process will work are set out from [Paragraph 3.24](#).

3.18. The retrospective remedy has no effect on pension benefits accrued before 1 April 2015 or those accrued after 1 April 2022, as shown below.

¹⁶ For example: where a member chooses reformed scheme benefits, their pension age for those reformed scheme benefits only will be governed by the reformed scheme rules.



Remediable Service Statement

3.19. The Act requires that schemes issue members with a Remediable Service Statement (RSS): Section 29 of the Act and Direction 20 of Treasury Directions set out what must be included in such statements. This legislation also covers the time frame within which the first RSS may be sent, the frequency with which different categories of member receive them after that point, and who is entitled to an RSS.

3.20. The purpose of an RSS is:

- to provide a member with the information they require to make a choice between legacy and reformed scheme benefits,
- to start the process for making various elections,
- to provide an opted-out member with information they require to decide whether to opt back into the scheme.

3.21. The Act provides that the pension scheme administrator must send every in-scope scheme member (active, deferred and pensioner) an RSS and this should be within 18 months of implementing the remedy (i.e., by 1 April 2025), unless a delay is considered to be reasonable in the circumstances. The RSS will show legacy and reformed pension benefits available to the member for the period of remediable service, enabling the member to compare benefits and when required, make an informed election. The exact composition of the statement will differ between members as it will be tailored to their circumstances (for example, annual update, leaving the Armed Services, survivor benefits, transferred in service etc), but broadly, the statement will cover the following, where relevant, in relation to the remediable service:

- A description and calculations of the benefits available under the legacy scheme.
- A description and calculations of the benefits which would be available under the reformed scheme.
- Details of any retrospective remedial voluntary contribution arrangements offered by the relevant scheme, and how to enter into these.
- Commutation options related to legacy and reformed scheme benefits.
- Details of relevant ill-health benefits.
- Details of benefits payable on the death of the member (death in service and survivor benefits).
- Pension rights transferred out of the scheme and how these will be treated.
- Pension rights acquired by transferred in service and how these are treated.
- Opted-out service – details of benefits available if the member were to opt back in, conditions for doing so, and the process.
- A description of pension tax issues (Annual Allowance or Lifetime Allowance) that may arise from an election¹⁷.
- Details of any gross under/overpayment which may arise if a particular choice is made, and an explanation of any interest due on such arrears or overpayments.
- A description of how to make an election.
- The deadline for the election.
- Any consequences of a late election and no election.
- Details of the scheme's internal dispute resolution procedure.

3.22. After the first RSS is issued, active members will receive one RSS per year. Treasury Directions specify that, with the exception of the first RSS, the RSS and annual Benefit Information Statement (BIS)¹⁸ should be combined. As these documents serve differing purposes, the MOD believes that it would be more appropriate to maintain these as separate documents and is discussing this with HMT. Deferred members will not receive a further RSS automatically (until they are close to their deferred pension age), but may request one, free of charge, from the scheme administrator once per calendar year as per existing provisions using AFPS Form 14¹⁹.

¹⁷ An RSS will not replace a Pension Savings Statement (PSS) which will continue to be issued to members who exceed the Annual Allowance.

¹⁸ The BIS is an annual statement provided to active members, it provides a snapshot of current and estimated future pension benefits, it is indicative and not a forecast tool.

¹⁹ AFPS Form 14 is a request for deferred pension benefits and can be found at <https://www.gov.uk/guidance/veterans-uk-armed-forces-pensions-forms>

3.23. The RSS is an important element of delivering the remedy. It is, however, a complex document and the volume of the information required for even straightforward cases, aligned with the scale of the business process and digital transformation required to deliver the remedy means there may be unforeseen issues which may result in a delay. The AFPS scheme administrator will endeavour to complete the initial RSS issue by 1 April 2025, prioritising those members and dependants who have a pension in payment and members who are due to leave the services imminently.

Question 1: Do you agree with or have any comment on the MOD decision not to combine the RSS and BIS?

Question 2: Do you think any further information is required in the RSS?

Immediate choice election – pensioner members

3.24. On implementation of the retrospective remedy, pensioner members are rolled back into the relevant legacy schemes along with active and deferred members. However, until the member makes an election, they will continue receiving the same benefits. Accordingly, Section 6 of the Act provides for pensioner members (including those with EDP in payment) or the beneficiaries of deceased members to be given an immediate choice.

3.25. The election period for an immediate choice begins on the date of issue of the RSS to the member (or eligible decision maker in the case of a deceased member). The Act provides that the immediate choice election must be made within one year from the issue of the RSS, unless the scheme manager decides an extension is reasonable based on the member's particular circumstances. The member's immediate choice will be between legacy scheme benefits or reformed scheme benefits for their remediable service. For some, their choice will result in no change to the benefits already in payment. However, if the member chooses alternative scheme benefits the scheme administrator will make all the necessary changes, backdated to the date the pension commenced, which will include calculations of any historic overpayments or underpayments.

3.26. An immediate choice, once made by a member in relation to either EDP or pension benefits in payment, is binding in relation to both schemes.

3.27. The scheme regulations will also bring the election period to an end as soon as the immediate choice is made, to allow scheme administrators to move forward with the implementation of the member's decision.

Deferred choice – Active and Deferred Members

- 3.28. In-scope active and deferred members who have been returned to the relevant legacy schemes(s) will be required to make a deferred choice in relation to benefits for their remediable service. A deferred choice permits the member to choose whether they wish to receive legacy scheme benefits or reformed scheme benefits in relation to their remediable service generally before those pension benefits come into payment. Pension benefits include the EDP but do not include the resettlement grant or generally a Tier 1 lump sum payment (but see ill-health provisions at [Enclosure 4](#) for exceptions).
- 3.29. The Act provides that, in general, the deadline for making a deferred choice should be within one year before benefits would become payable. Once the election deadline is set:
- The deferred choice **must** be made before the end of the election period.
 - If no choice is made, the default position is that the member will receive legacy benefits for their remediable service. There may be certain limited cases in which MOD may make a choice on behalf of the member (see [Paragraph 3.39](#)).
 - The deferred choice will lapse if the member dies after making it, but before pension benefits come into payment as a result.
 - The deferred choice may (in most cases) be revoked at any point up to one calendar month before the relevant pension benefits are due to come into payment.
 - A deferred choice made for the purposes of the EDP scheme, will also be binding in the connected AFPS (i.e., where a member elects for legacy EDP benefits, this is also an election for legacy AFPS benefits).
- 3.30. The MOD considers that different election deadlines are appropriate for different categories of AFPS member. In determining reasonable and appropriate deadlines for the various groups, MOD has taken into account a number of factors, including the member's need for targeted and up-to-date information; an appropriate length of time for the member to consider options, including the potential for seeking financial advice; and the time required by the scheme administrator to process the election. The MOD accordingly proposes to set the following deadlines for deferred choices made by active and deferred members, or in cases where an active or deferred member has died without making a deferred choice.
- 3.31. **Active members discharging at a pension/EDP point.** The deadline for making a deferred choice is three calendar months before the discharge date. MOD's proposed practice in this regard is as follows:

- The pension scheme administrator will write to eligible active members nine months prior to their terminal date if pension benefits, including any EDP, would be payable on discharge. The letter will contain the bespoke RSS providing the most up-to-date information for the member.
- The member will have a maximum of six months to consider their options and to make their deferred choice: the election period in relation to this deferred choice will end three calendar months before the member's final day of service.
- The MOD's policy is that the pension scheme administrator will issue a reminder to the member three months after the bespoke RSS is issued if they have not received a response.
- This timeline provides sufficient time for the pension scheme administrator to accurately calculate pension benefits and ensure they can make timely payment of pension benefits.

3.32. **Discharge at 'short notice'**. Where a member applies to leave or is discharged from the Armed Forces with less than nine months' notice (e.g., welfare, disciplinary, or other reasons as approved by the relevant Service), and pension or EDP benefits would be payable on discharge, the pension scheme administrator will issue the bespoke RSS as soon as practicable after they are notified by the relevant authority of discharge action. In cases where:

- the notice period is longer than nine months, then the election deadline will be three calendar months before discharge as per the standard discharge process set out above,
- the notice period is less than nine months, the member will still be given a period of six months from the date of issue of the bespoke RSS to make their election,
- no choice has been made by the date of discharge; legacy pension benefits may be paid for the period after discharge until the date of the election. These will be adjusted should the member's choice require it. In such cases the election is irrevocable as benefits will already be in payment.

3.33. **Medical Discharge**. Where a member is medically discharged the scheme administrator will, once notified by the relevant authority, have to assess medical information to determine the pension award. MOD's policy is that it is generally appropriate to make this assessment as near to discharge as possible due to the potential for any ongoing treatment and/or deterioration to change the medical assessment and thus the pension award. Therefore, the

member may not have sufficient time to make a deferred choice prior to pension benefits being put into payment. While an RSS will be issued as soon as practicable once the tiered assessment is complete, the member will still be given a period of six months from the date of issue of the RSS to make their election, but it should be noted:

- Scheme rules provide for members to appeal a tier assessment: where the member wishes to do this, they must notify the scheme administrator as soon as possible, and in any event before the expiry of the 6-month period from the date of the RSS. This will allow MOD to extend the election period until the appeal has been determined. If a member does not notify the MOD within the 6-month period, then legacy benefits will be paid as the default option, and this is irrevocable.
- If no election has been made by the date of discharge, legacy pension benefits may be paid for the period after discharge until the date of the election. These will be adjusted should the member's election require it. An election in such cases is irrevocable.

3.34. **Dependant benefits.** A member may die before making a deferred choice, or they may die after making their choice but before benefits are paid. In such cases, any choice made lapses and the scheme administrator will issue a revised RSS to the eligible decision maker as soon as practicable. For further details on dependant benefits see [Enclosure 2](#).

3.35. **Deferred members.** The pension scheme administrator will conduct tracing action approximately 12 months prior to pension benefits being payable (usually deferred pension age) to verify the deferred member's address. Once the address is confirmed, or if the member initiates contact, the member will be provided with an up-to-date RSS with details of how to make the election and the process for claiming pension benefits; this is anticipated to be within nine months of benefits being due. As with active members, the deferred member has six months to consider their options: the election period ends three calendar months before the date on which pension benefits would come into payment if claimed promptly.

<p>Question 3: Do you agree with or have any comment on the policy approach being taken by the MOD in respect to the time limits specified for election periods?</p>

Changing a deferred choice

3.36. Section 11(6) of the Act provides that no deferred choice may be revoked once benefits have been put into payment. For the AFPS, the MOD has taken the following approach in relation to revocation:

- Active or Deferred members who make a deferred choice by the standard deadline of three calendar months before benefits are due to come into payment, may revoke this choice at any point up until one calendar month before benefits are due to come into payment. If it is revoked a further choice can be made, as long as it is made at least one calendar month before benefits are due to come into payment.
- Active members who leave service before the end of the election period (i.e., short notice leavers) may not revoke their deferred choice once their election period ends. Those members who have not made their deferred choice, will receive legacy benefits by default. As benefits will be in payment, the scheme administrators will immediately begin the process of adjusting benefits once the deferred choice is made and, where necessary, put these into payment.
- If a deferred/active member has made a deferred choice and then dies prior to those benefits coming into payment, their election will lapse. The eligible decision maker will then receive a new RSS and will have three months to make an election.

Question 4: Do you agree with or have any comment on the policy approach being taken by MOD in respect to the latest point at which a deferred choice may be revoked?

Default position where no election is made

3.37. In cases where a member fails to make an election, the default position is that legacy scheme benefits would be payable in respect of the remediable service. However, the Act does provide that pension schemes may include in their rules provision which allows the scheme manager to treat an election as having been made. MOD has considered whether and how this power should be used in the context of the AFPS.

3.38. Given the wide range of benefits offered by the various Armed Forces schemes, and the difficulty of assessing the value which individuals might place on them, particularly, the non-financial benefits (e.g. whether benefits are payable to cohabitants and children born after service, pension age and differing ill-health pension provision), MOD's approach is that it will

be made clear to members that the default option is legacy benefits and so, in most cases, it will not treat a failure to make an election as a choice for reformed benefits. To do so would, in effect, substitute the scheme manager's assessment of which scheme would be more beneficial for the circumstances of the member, and this is not considered appropriate.

3.39. Exceptionally, there may be some cases where the scheme manager uses their discretion to make the choice on behalf of the member. In all cases, if no election is received by the scheme administrator, an investigation will always be carried out to determine all the circumstances prior to any decision being made.

Question 5: Do you have any comment on the MOD's policy approach to the default position when no election is made?

3.40. The process for members who have died before making an election is covered at [Enclosure 2](#).

Overpayments and Underpayments – Pensions in Payment

3.41. Where a pension is in payment before an election is made, and the member makes a choice which results in a change to benefits payable, the change to the pension benefits is backdated to the point when pension benefits initially became payable. A process of reconciliation will be necessary to ensure that the member has received the correct amount of pension over time, and this may result in one of the following situations:

- Underpayments, resulting in payments from the scheme to the member (e.g., additional pension or lump sum).
- Overpayments that have been made by the scheme to the member and which have to be repaid.

3.42. Interest will be both payable on arrears owed to members and charged in relation to overpayments. Detailed explanation on interest policy, as outlined in the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 is contained in [Enclosure 5](#).

3.43. The starting point for schemes considering whether to recover overpayments is set out in Section 14 of the Act, which provides that overpayments must be repaid to the scheme.

However, the Act also provides that schemes may decide whether to waive all or part of any such liabilities owed to the scheme. Treasury Directions set out factors to be considered by the scheme when considering whether to waive or reduce any such liability by the member and that the principles set out in *Managing Public Money*²⁰ should be followed.

3.44. Accordingly, the scheme administrator must have regard to the particular circumstances of the member and (if different) the person by whom the amounts are to be paid, giving due regard to whether, instead of, or in addition to reducing or waiving the liability, it is appropriate, in the reasonable opinion of the scheme manager to allow the member to pay the liabilities in instalments. In reaching a decision, the following will be considered:

- Whether the liability has arisen as a result of an immediate choice or a deferred choice election.
- Whether the member is deceased.
- Whether, in the reasonable opinion of the scheme manager, payment of the liability in full or in part would result in unreasonable hardship; and
- Whether, in the reasonable opinion of the scheme manager, there are any other exceptional circumstances which mean the liability should not be paid in full or in part.

The Enclosures

3.45. Enclosures 1 – 12 cover all the specific policy changes that are required to implement the remedy, a summary of each is below:

[Enclosure 1 - Commutation](#). Explains the different types of commutation and how a member's election might affect their commutation.

[Enclosure 2 - Dependant benefits](#). Explains how pension benefits for deceased members with remediable service will be dealt with post implementation including details on the eligible decision maker.

[Enclosure 3 - Early payment of deferred pension](#). Explains the remedy for those who apply to claim early payment of deferred pension.

[Enclosure 4 - Ill-health retirement](#). Explains the remedy for those who become eligible for, or are in receipt of, ill-health benefits.

²⁰ <https://www.gov.uk/government/publications/managing-public-money>

Enclosure 5 - Interest on underpayments and overpayments of pension benefits. Sets out the policy for applying interest to pension benefit underpayments and overpayments that arise as a result of an election.

Enclosure 6 – Members’ Voluntary Contributions. Explains the impact of pension remedy for those who have purchased Added Pension, Added Years and Additional Voluntary Contributions.

Enclosure 7 - Medical Officers and Dental Officers with legacy AFPS 05 remediable service. Explains the impact of retrospective remedy on the entitlement to MOD0 bonuses for those Medical and Dental Officers with accrued rights in AFPS 05.

Enclosure 8 - Opted out service. Sets out the policy for members who applied to opt out of the AFPS as a result of the discrimination associated with protection arrangements on the introduction of AFPS 15, and who now wish to apply to opt into the AFPS as a result of pension remedy.

Enclosure 9 - Redundancy. Sets out how remedy will be applied to those discharged from service under the provision of Armed Forces Redundancy Schemes 06, 10 or 20.

Enclosure 10 - Pension transfers. Explains how remedy is applied to members who have transferred scheme benefits into or out of the AFPS.

Enclosure 11 - Abatement. Explains how remedy will affect pension abatement after implementation.

Enclosure 12 - Early Departure Payments. Explains how the Act applies to payment of early departure benefits.

Chapter 4 – Conclusion

- 4.1 The purpose of the retrospective remedy is to remove past age discrimination for the remedy period and place all members in the position they would have been in before the discrimination occurred. However, some members may consider the reformed benefits are more suited to their circumstances and the retrospective remedy allows them to choose which scheme design should apply to them for the remedy period. Information will be provided to each member to allow them to make an election within a specified timeframe.
- 4.2 The retrospective remedy marks the final phase of removing the discrimination arising as a result of protections provided under the reformed schemes for older members when introduced in 2015. This consultation and its enclosures explain the policies that are required to implement the remedy and seek comment on specific aspects of those policies. The legislation required to amend the rules of the various armed forces pensions schemes will be made in September 2023 and come into force on 1 October 2023.

Annex A

Further Policy and Associated Factors

Divorce

1. There will be members eligible for remedy who divorced or dissolved a civil partnership on or after 1 April 2015 and as part of the financial settlement have a Pension Sharing Order, an Earmarking Order or Pension Attachment Order. Divorce legislation is complex and, at the time of publication of this consultation, the policy position for the Armed Forces pension schemes has not been finalised. The MOD will consult on the policy in this regard separately, once the position is finalised.

Re-joiners / Multiple Periods of Service

2. The MOD is still finalising policy in relation to a small cohort of former AFPS 75 members who re-joined into regular service during the remedy period, have left service on or before 30 September 2023, and are currently receiving pensions under the AFPS 75 and the EDP 15 or AFPS 15 schemes in relation to remediable service. The MOD will consult on the policy in this regard separately once the position is finalised.

Taxation

3. As a result of the remedy, members may face changes to their individual tax situation. The remedy may impact a member's Annual Allowance (AA), Lifetime Allowance (LTA) and any benefits in payment. For most members no tax adjustment will be required. However, a minority of members may see changes to their individual tax situation. Some elements of taxation policy remain under development, and guidance will be provided by HMRC.

Compensation

4. The Act provides that compensation may be paid by the scheme where a member (or their personal representatives) has incurred compensatable losses. The power to pay such compensation can only be exercised in accordance with Treasury Directions and in respect

of categories of loss defined in the Treasury Directions. The relevant Treasury Directions came into force on 19 December 2022 and deal with compensation in Chapter 3 of Part 2.

5. The Directions set out the factors to which the scheme must give regard when considering whether compensation may be appropriate. Any compensation payable is not designed to give members a financial advantage but to return them to the position they would have been in had the discrimination not occurred. They also define the type of losses for which compensation may be appropriate.
6. Generally, under the Treasury Directions compensation may be payable in relation to tax losses or for direct financial losses. Payments may be in the form of direct compensation payments to members, or indirect compensation, where the member receives additional benefits.
7. The MOD intends to offer indirect compensation in line with the provisions set out in Treasury Directions. Situations where indirect compensation may be payable would include where a member has used scheme pays to pay an Annual Allowance Tax Charge (AATC) or a Lifetime Allowance Tax Charge (LTAC) and the effect of roll back and/or their remedy election means they have made an overpayment.

Contingent decisions

8. Some individuals with remediable service may feel that they have been affected by the discrimination identified by the courts in ways which do not directly relate to the pension schemes: for example, in terms of decisions they may have made about their armed forces career. Further information on how individuals can raise such concerns will be provided in communication updates released in the lead up to implementation of the remedy in October 2023.

Annex B

List of Stakeholders to Consult

The MOD will invite views on this consultation document from the following organisations:

[The Confederation of British Service Organisations](https://www.cobseo.org.uk/) (https://www.cobseo.org.uk/)

[The Royal British Legion](https://www.britishlegion.org.uk/) (https://www.britishlegion.org.uk/)

[The Soldiers', Sailors', Airmen's and Families Association](https://www.ssafa.org.uk/) (https://www.ssafa.org.uk/)

[The Royal Navy and Royal Marines Charity](https://www.rnrmc.org.uk/) (https://www.rnrmc.org.uk/)

[The Soldiers' Charity](https://soldierscharity.org/) (https://soldierscharity.org/)

[The RAF Association](https://rafa.org.uk/) (https://rafa.org.uk/)

[The RAF Benevolent Fund](https://www.rafbf.org/) (https://www.rafbf.org/)

[The Navy Family Federation](https://nff.org.uk/) (https://nff.org.uk/)

[The Army Family Federation](https://aff.org.uk/) (https://aff.org.uk/)

[The RAF Family Federation](https://www.raf.mod.uk/serving-families/raf-families-federation/) (https://www.raf.mod.uk/serving-families/raf-families-federation/)

[The War Widows' Association](https://www.warwidows.org.uk/) (https://www.warwidows.org.uk/)

[The Forces Pension Society](https://forcespensionsociety.org/) (https://forcespensionsociety.org/)

[The White Ensign Association](https://www.whiteensign.co.uk/) (https://www.whiteensign.co.uk/)

[The British Medical Association](https://www.bma.org.uk/) (https://www.bma.org.uk/)

[The British Dental Association](https://bda.org/) (https://bda.org/)

[The Armed Forces Pay Review Body](https://www.gov.uk/government/organisations/armed-forces-pay-review-body)

(https://www.gov.uk/government/organisations/armed-forces-pay-review-body)

[The Senior Salaries Pay Review Body](https://www.gov.uk/government/organisations/review-body-on-senior-salaries)

(https://www.gov.uk/government/organisations/review-body-on-senior-salaries)

Annex C

Consultation questions

Question 1: ([Chapter 3 Para 3.23](#))

Do you agree with or have any comment on the MOD decision not to combine the RSS and BIS?

Question 2: ([Chapter 3 Para 3.23](#))

Do you think any further information is required in the RSS?

Question 3: ([Chapter 3 Para 3.35](#))

Do you agree with or have any comment on the policy approach being taken by the MOD in respect to the time limits specified for election periods?

Question 4: ([Chapter 3 Para 3.36](#))

Do you agree with or have any comment on the policy approach being taken by MOD in respect to the latest point at which a deferred choice may be revoked?

Question 5: ([Chapter 3 Para 3.39](#))

Do you have any comment on the MOD's policy approach to the default position when no election is made?

Question 6: ([Enclosure 1](#))

Do you have any comment on the MOD's proposed approach for Commutation and Resettlement Commutation?

Question 7: ([Enclosure 2](#))

Do you agree or have any comment on the proposed time limit of three months from date of issue of the RSS within which an eligible decision maker must make an election?

Question 8: ([Enclosure 2](#))

Do you agree with or have any comment on the policy relating to eligible decision makers?

Question 9: ([Enclosure 2](#))

Do you have any other comment on the policy approach to death benefits?

Question 10 ([Enclosure 3](#))

Do you agree with or have any comment on the MOD's proposed policy approach towards the early payment of deferred pensions?

Question 11: ([Enclosure 4](#))

Do you agree, or have any comment on, the MOD's policy approach that, where an RFPS 05 member may be eligible for a Tier 1 award under AFPS 15, this should be an election point?

Question 12: ([Enclosure 5](#))

Do you have any comment on the MOD's decision to use the midpoint date for the calculation of overpaid pension benefits?

Question 13: ([Enclosure 6](#))

Do you have any comment on the MOD's decision to pay compensation based on AFPS 15 added pension contributions?

Question 14: ([Enclosure 6](#))

Do you agree, or have any comment, on the approach the MOD has taken in opting for gross income to approximate tax relief amounts?

Question 15: ([Enclosure 7](#))

Do you have any comment on the approach the MOD has taken to the AFPS 05 MODO bonus scheme in respect of the retrospective remedy?

Question 16: ([Enclosure 8](#))

Do you agree, or have any comment, on the MOD's proposed policy for opted out service personnel to re-instate pensionable service in the AFPS?

Question 17: ([Enclosure 9](#))

Do you have any comments on the MOD's policy approach that the receipt of benefits under an armed forces redundancy scheme when service is terminated early should be an election?

Question 18: ([Enclosure 10](#))

Do you have any comment on the approach being taken in relation to pension transfers?

Annex D

Armed Forces Pension Schemes

There are eight Armed Forces Pension Schemes providing benefits for either regular or reserve service. These are:

- Armed Forces Pension Scheme 1975 (AFPS 75).
- Full-Time Reserve Service Pension Scheme 1997 (FTRS 97).
- Armed Forces Pension Scheme 2005 (AFPS 05).
- Armed Forces Early Departure Payments Scheme 2005 (EDP 05).
- Reserve Forces Pension Scheme 2005 (RFPS 05).
- Non-Regular Permanent Staff Pension Scheme 2011 (NRPS 11).
- Armed Forces Pension Scheme 2015 (AFPS 15).
- Armed Forces Early Departure Payments Scheme 2015 (EDP 15).

AFPS 75

The AFPS 75 covers regular members of the Armed Forces who joined before 6 April 2005 and did not transfer to the AFPS 2005. The rules of the scheme are contained in Schedules 1 and 3 to three identical instruments, setting out the rules of the scheme for each of the Services: Royal Navy (Order in Council), Army (Royal Warrant), and Royal Air Force (Queen's Order). The original legacy pension rules are found in Schedule 1 (which was replaced in its entirety with effect from 3 January 2011) and Schedule 3 contains the transitional provisions made in 2015, which include the unlawful provisions on full protection, but also cover the position for transition members with continuity of service. The scheme was closed to new members on 5 April 2005. The instruments can be found at <https://www.gov.uk/Government/publications/armed-forces-pension-scheme-1975-regulations>. It should be noted that the scheme rules have also been amended by other legislation related to the introduction of same sex marriage and opposite sex civil partnerships.

AFPS 05 and EDP 05

The AFPS 05 and EDP 05 schemes provide benefits to regular members of the Armed Forces. They were introduced on 6 April 2005 and the rules are contained in two statutory instruments: the Armed Forces Pension Scheme Order (SI 2005/438) and the Armed Forces Early Departure

Payments Scheme Order 2005 (SI 2005/437). The AFPS 05 rules are contained in two Schedules: Schedule 1 which contains the scheme rules, and Schedule 2 which contains the transitional provisions introduced in 2015. The scheme was closed to new members on 31 March 2015. The instruments can be found here <https://www.gov.uk/guidance/pensions-and-compensation-for-veterans#legislation>

FTRS 97

The FTRS 97 is made under the Reserve Forces Act 1996 and provides benefits for members who serve on certain types of reserve commitment. The scheme closed to new members on 5 April 2005. The scheme rules are contained in Defence Council regulations and a second Schedule containing transitional provisions was inserted in 2015.

<https://www.gov.uk/government/publications/reserve-forces-pension-scheme-regulations>.

NRPS 11

The NRPS 11 rules are contained in regulations made under powers in the Reserve Forces Act 1996, which effectively re-state provisions previously made under Part 3 of Chapter 9 of the Territorial Army Regulations 1978. Schedule 3 to the scheme was inserted in 2015 and contains the transitional provisions. The scheme provides benefits to non-regular permanent staff of the reserve forces and was closed to new members on 1 September 2011.

<https://www.gov.uk/government/publications/reserve-forces-pension-scheme-regulations>.

RFPS 05

The RFPS 05 was introduced on 6 April 2005 and provides benefits for members of the reserve forces who are on a full-time reserve service commitment, an additional duties commitment, or who are mobilised and who choose to join the scheme. The scheme rules are contained in Defence Council regulations, and Schedule 2 containing transitional provisions was inserted in 2015. The scheme was closed to new members on 31 March 2015.

<https://www.gov.uk/government/publications/reserve-forces-pension-scheme-regulations>.

AFPS 15 and EDP 15

On 1 April 2015, the Armed Forces Pension Scheme 2015 (AFPS 15) and Armed Forces Early Departure Payments Scheme 2015 (EDP 15) were introduced. The AFPS 15 provides benefits for all members of the Armed Forces, whether reserve or regular. The EDP 15 Regulations provide various benefits, some to regulars only and others to regulars and reserves. The schemes relevant for this consultation are the Early Departure Payment Scheme (EDP 15) and the Incapacity for Service Scheme (EDP 15 Tier 1). The rules of both schemes are contained in regulations made under the Public Service Pensions Act 2013 and are amended from time to time. These can be found at legislation.gov.uk: [SI 2014/2336](#) and [SI 2014/2328](#).

Note: when reviewing scheme regulations, please bear in mind all subsequent amendments.

Annex E

Glossary of terms used in the consultation document and supporting Enclosures

Term	Meaning
(The) Act	The Public Service Pensions and Judicial Offices Act 2022.
Abatement	If you re-join the Armed Forces and have a legacy pension in payment, it may be suspended or reduced to ensure that your pension and new salary combined does not exceed your previous salary. For those in receipt of EDP 05, this is suspended. AFPS 15 and EDP 15 are not subject to abatement.
Accrual	The rate at which pension benefits accrue for each scheme year. Each scheme is different in design and accrual rate.
Accrued Rights	The protected pension benefits a member has built up to a particular date.
Active Member	A member of the AFPS who is currently serving in the Armed Forces and accruing benefits under the scheme.
Added Pension	AFPS 15: An amount of extra annual pension that you can buy to increase either your retirement benefits and/or your dependants' benefits.
Added Years	AFPS 75/05: The purchase of extra years of reckonable service to increase your final pension and lump sum.
Additional Duty Commitments (ADC)	A period of service undertaken by a member of the Reserve Forces in accordance with Section 25 of the Reserve Forces Act 1996.
Additional Voluntary Contributions (AVC)	AFPS 75 only, additional tax-deductible payments made to increase pension or death benefits for the member and/or their dependants.
Annual Allowance (AA)	The AA is how much can be saved towards a pension each tax year without a tax charge applying. For Armed Forces Schemes this is determined by the capitalised value of the increase in the accrued benefits over the tax year (i.e. the growth of the pension in the tax year). The standard annual allowance since 6 April 2016 has been £40,000.
Armed Forces Compensation Scheme (AFCS)	A compensation scheme for all members of the Regular and Reserve Forces. It provides compensation for all injuries, ill-health and deaths mainly due (attributable) to service, the cause of which occurred on or after its introduction on 6 April 2005.
Armed Forces Pension Scheme 1975 (AFPS 75)	The Pension Scheme for Regular Service personnel, introduced in April 1975 and closed to new entrants on 6 April 2005.
Armed Forces Pension Scheme 2005 (AFPS 05)	The Pension Scheme for Regular Service personnel who joined the Armed Forces from 6 April 2005, and from 6 April 2006 for Regular Service personnel who elected to transfer from the

	AFPS 75 under the Offer to Transfer process. AFPS 05 closed to new members on 31 March 2015.
Armed Forces Pension Scheme 2015 (AFPS 15)	The Pension Scheme for Regular and Reserve Service personnel who join the Armed Forces from 1 April 2015, and those Service personnel who were already in Service on that date and did not qualify for (unlawful) transitional protection. Since 1 April 2022 it is the only pension scheme available to Regular and Reserve Forces personnel.
Attributable	The term used to describe circumstances where an injury or illness was caused or significantly aggravated by service in the Armed Forces, or a death was caused or significantly hastened by service in the Armed Forces.
Beneficiary	A person who has become entitled to receive any death benefit.
Career Average Revalued Earnings (CARE)	A CARE scheme delivers a defined benefit pension based on a member's salary in each year of employment, not just their final one. Each year's pension accrual is revalued in line with an index: for the Armed Forces this is the Average Weekly Earnings (AWE) Index.
Cash Equivalent Transfer Value (CETV)	A CETV is the expected cost of providing member's benefits within a scheme. It is used in pension sharing and pension transfers.
Club transfer	The Public Sector Transfer Club, also known as the Club, allows easier movement of employees and their pensions from one employer to another. Club members operate mainly within the public sector and rules are governed by the Cabinet Office.
Commutation	When a member gives up part of the pension income in return for a lump sum.
Compound Interest	Compound interest is calculated on the principal amount and the accumulated interest over the period.
Contingent decision	A decision that a member took or did not take as a result of the (actual or perceived) implications of the introduction of the reformed schemes.
Deferred Choice	The choice (or election) made by active or deferred members at the point when pension benefits, including Early Departure Payments, are due to come into payment. Covered under Section 10 of the Act.
Deferred Choice Underpin (DCU)	The provision for members to remain in, or be returned to, the legacy schemes for service between 1 April 2015 and 31 March 2022. At the point of retirement (or when benefits become payable) or as soon as practicable (for members who have already had a pension award), members would then be able to choose to instead receive reformed scheme benefits for that period.
Deferred Member	A member of the AFPS who has left the Armed Forces and has a preserved pension or a deferred pension not yet in payment.
Deferred Pension	If a member leaves Service before the normal pension age for that scheme, they will become a deferred member and are entitled to a deferred pension when they reach State Pension Age (for AFPS15), or the relevant Pension Benefit Age for the scheme to which they belong (i.e. 65 for AFPS 05).
Dependant	Collective term to describe a member's spouse, civil partner, eligible partner or eligible child.

Early Departure Payment (EDP) 2005	A payment made to members of AFPS 05 who leave the Regular Armed Forces before age 60, after a minimum of 18 years' qualifying service AND who are at least age 40.
Early Departure Payment (EDP) 2015	A payment made to members of AFPS 15 who leave the Regular Armed Forces before age 60, after a minimum of 20 years' qualifying service AND who are at least age 40.
Early Pension (Early payment of deferred pension)	The ability to draw a deferred pension before the relevant scheme's deferred pension age. This cannot be earlier than age 55 (though exceptions exist under ill health provision).
Election	Collective term used to cover immediate and deferred choice.
Election Period	The period of time within which a member must make a remedy election.
Eligible Child	A child, as defined in the relevant scheme rules, who is eligible for a child pension under the scheme rules.
Eligible Partner	An unmarried partner of the member, who meets certain conditions set out in scheme rules and is therefore entitled to a pension on the same terms as a spouse or civil partner.
Final Pensionable Rank / Final Pensionable Earnings	The basis on which legacy scheme pension benefits are determined and sometimes referred. Refer to specific schemes for details on how benefits are calculated.
Fixed Protection 2016 (FP 16)	Fixed Protection 16 (FP16) enables a member to 'fix' their LTA at a maximum of £1.25m. Further pension savings may not be accrued beyond 5 Apr 16, even if the pension's value is less than £1.25m. If an individual elected for this protection, they must have ceased to have been an active member of the AFPS from 5 April 2016. There are legacy FP schemes dating from 2011 and 2014.
Full Protection	Members who remained in their legacy schemes on 1 April 2015 because they met certain age-related criteria, and some re-joiners who met the criteria set out in the rules of each scheme, also based (at least in part) on age. In some other public service pension schemes these members are called transitionally protected members. With effect from 1 April 2022 full protection ended and all remaining members who were previously fully protected moved to AFPS 15.
Full Time Reserve Service (FTRS)	Full Time Reserve Service is a period of service undertaken by a member of a Reserve Force, in accordance with Section 24 of the Reserve Forces Act 1996.
Full Time Reserve Service Pension Scheme 1997 (FTRS 97)	The Pension Scheme applicable to Reserve Service personnel who entered into Full Time Reserve Service up to 5 April 2005. The Scheme was closed to new entrants and those starting new commitments from 6 April 2005.
Ill Health Benefits	If you are medically discharged from the Armed Forces owing to ill-health or injury, then you may be entitled to ill-health pension benefits. The type of benefits you will receive are dependent upon your individual circumstances, the scheme(s) you belong to and the degree of disability.
Immediate Choice	Under Section 6 of the Act members who already have benefits in payment or who have died by the time the remedy is implemented (as entitlement to the payment of benefits in relation to remediable service will have occurred) will be provided with an immediate choice.

Indexation	An annual increase in pension benefits in line with a given index value. For the AFPS pensions in payment increase in line with the Consumer Price Index and CARE re-valuation in line with AWE.
In-scope Member / Eligible Member	The remedy applies to pension scheme members who were in pensionable public service both on or before 31 March 2012 and on or after 1 April 2015, including those with a gap in service of no longer than five years. The detailed eligibility conditions are set out in Section 1 of the Act.
Internal Dispute Resolution Procedures (IDRP)	An internal dispute process required by the Pensions Act 1995. Under the IDRP process disputes can be considered independently by the Pension Ombudsman if they cannot be resolved internally.
Inverse Commutation	When a member gives up part or all of the lump sum in return for annual pension income.
Legacy Scheme	Legacy schemes are all Armed Forces Pension Schemes that were closed to new members by 1 April 2015; these are AFPS 75, AFPS 05, EDP 05, FTRS 97, RFPS 05 and NRPS 11.
Member	An individual who has joined the AFPS and is earning benefits under the Scheme (active member), has a deferred pension under the Scheme (deferred member), or is receiving a pension from the Scheme (pensioner member). In some cases this may also include pension credit members of the scheme.
Member Voluntary Contributions	Collective term which relates to Added Pension, Added Years and Additional Voluntary Contributions.
MODO	Medical Officer and Dental Officer.
Normal Pension Age	The earliest age at which a person is entitled to an unreduced pension payable immediately on leaving Service.
Opting Out	When an individual chooses not to become a member of an Armed Forces Pension Scheme, or chooses to leave the Scheme, if already a member.
Part Time Volunteer Reserve (PTVR)	Members of the Royal Naval and Royal Marines Reserves (the Maritime Reserves), the Army Reserve (formerly the Territorial Army) and the Royal Auxiliary Air Force. They train and serve alongside the regular forces during their spare time, but they may also be called up (mobilised) or volunteer (FTRS/ADC) for a period of service under Sections 24 or 25 of the RFA 1996.
Pension Commencement Lump Sum (PCLS)	More commonly referred to as 'the lump sum', this is a tax-free amount of money automatically paid to the member when they start to take benefits.
Pension Sharing Order	An Order made by the Court on divorce or dissolution of a civil partnership. It awards a share of pension benefits to a former spouse or civil partner, and they become a member of the Scheme in their own right.
Pensioner Member	Someone receiving a pension benefit from the Scheme.
Reformed Scheme	Armed Forces Pension Scheme 2015 and Early Departure Payment Scheme 2015.
Remediable Service	Any pensionable service that occurs in the remedy period, between 1 April 2015 and 31 March 2022, and which meets the criteria set out in the Act.

Remediable Service Statement (RSS)	A Remediable Service Statement is a document which will clearly show the value of pension scheme benefits available under the election. Among other information, it will show the default entitlement as the value of legacy pension benefits up to 31 Mar 22 (or end of service if earlier) and then AFPS 15 from that point forward (if there was service after Apr 22). The alternative will show legacy pension benefits up to and including 31 Mar 15 and then AFPS 15 / EDP 15 benefits from that point forward.
Remedy Period	The Government proposed that all eligible members of relevant public service pension schemes would be given the opportunity to choose which model of scheme benefits they would wish to receive (legacy scheme or the reformed 2015 scheme) for the period of 1 April 2015 – 31 March 2022 – known as the remedy period.
Resettlement Commutation	Only available in the AFPS 75 scheme to members who leave in good health under the age of 55. The member receives an additional lump sum and pays for it by a reduction in annual pension until the age of 55.
Retrospective Remedy	The roll back of members to their respective legacy schemes and a subsequent choice of benefits for the remedy period.
Roll Back	The term used to describe the process by which in- scope members are placed back into a relevant legacy pension scheme(s).
Scheme Administrator	DBS Vets UK has delegated authority to deliver scheme administration support, assisted through contractual arrangement with Equiniti Paymaster and Shared Services Connect Limited (SSCL).
Scheme Manager	The Scheme Manager is responsible for managing and administering the AFPS. The Secretary of State for Defence is the Scheme Manager for AFPS but delegates the management of the AFPS to two Boards – the Scheme Advisory Board and the Pension Board. Whilst authority is delegated, overall responsibility remains with the Scheme Manager.
Simple Interest	Simple interest is calculated on the principal, or original, amount and the time period elapsed.
Surviving Adult	A surviving spouse, civil partner or eligible partner dependent on the meaning within individual AFPS scheme rules.
Transfer Value	The value of the member's pension benefits, expressed as a sum of money when a member requests to transfer between two pension schemes.
Transition Member	A member with pensionable service in a legacy scheme and who is also in pensionable service under the AFPS 15. Unless the member also has continuity of service, the member's legacy pension remains deferred and is not linked with their new service in AFPS 15.
Transition Member with Continuity of Service	A transition member who has had no gap of more than five years between the date on which their pensionable service in the legacy scheme ended and the date on which they entered pensionable service under AFPS 15. This is subject to any such gap in service starting before the member's transition date and if the member is in pensionable service under certain other public pension schemes after (but not before) that transition date, that

	period of service is not included in the calculation of the gap in service.
Treasury Directions	Treasury Directions, which are contained in the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 specify how certain powers under the Act are to be used by public service pension schemes in their scheme regulations.



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 1: Commutation

6 March 2023



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Enclosure 1 - Commutation

Introduction

1. Armed Forces pension schemes offer different forms of commutation, all of which are permanent and cannot be reversed. Types of commutation are outlined at [Annex A](#) to this enclosure. In simple terms, commutation enables the member to 'trade' different types of pension benefits. This can be achieved by either increasing the monthly pension payment received in exchange for a reduction in an available lump sum or increasing/generating a lump sum by converting some or all of the monthly pension or EDP 15 payment. Commutation options vary between each of the schemes, and these are outlined in this enclosure.

Pensions not yet in Payment

2. Pension commutation must be applied for by the member before pension benefits come into payment. The election a member makes as part of pension remedy will directly affect the commutation options available as they differ between each of the Armed Forces Pension Schemes. To assist an election, the Remediable Service Statement (RSS) will include an illustration of the commutation options available to the member.

Pensions in Payment

3. Members or dependants who are in scope for pension remedy and are already in receipt of pension benefits would have made a choice regarding commutation before relevant pension benefits were paid. Following implementation of the pension remedy, the pension scheme administrator will provide the member or dependant with an RSS that will set out the value of pension benefits under the legacy and reformed pension schemes, including any prior commutation decisions.
4. As an election may affect eligibility for commutation and subsequently reduce or increase the value of a commutation lump sum or pension income, this may result in an overpayment being owed to the scheme or an underpayment being owed to the member. Any credit owed by the scheme or debit owed to the scheme will be subject to interest in line with HMT legislation and as detailed in [Enclosure 5](#). This information will be shown in the RSS.

AFPS 75 Resettlement Commutation

5. Resettlement Commutation is an option available to AFPS 75 members who leave with an immediate pension in payment, other than ill health benefits, before the age of 55. It allows the member to give up part of their monthly pension in order to increase their pension commencement lump sum. However, the reduction in pension is not permanent: the additional lump sum is repaid over the years between discharge and the age of 55. The original pension is restored in full, from the age of 55.
6. The implementation of the retrospective remedy will not provide an automatic right to pensioner members to revisit a decision made in respect of Resettlement Commutation. The scheme rules relating to Resettlement Commutation require the decision to commute to be taken before the member's last day of service, and the decision is irreversible. Resettlement Commutation, unlike other types of commutation, is not a permanent change to benefits; instead, it operates in a similar manner to a loan, with settlement reached at age 55.
7. Members who elected for Resettlement Commutation would have had most, or all, of their service in the AFPS 75 scheme. It is therefore unlikely that the member would have made a different decision at the point of discharge had the discrimination not occurred. Additionally, all AFPS 75 Full Protection members will have repaid their resettlement commutation by 1 October 2023. Reversing these decisions would have unintended consequences for the member and create a significant administrative burden on the scheme, which is not proportionate, given that the vast majority of these arrangements will have been settled. Revisions to a member's benefits may still be required, depending on the choice a member makes, as follows:
 - **Active members:** Active members who discharge at or after the age of 55 do not have an entitlement to AFPS 75 resettlement commutation. Active AFPS 15 members with accrued rights in AFPS 75 who are eligible for, and elect to take Resettlement Commutation when they leave, will have their Resettlement Commutation calculated in accordance with the existing accrued rights methodology introduced in 2015. The level of the lump sum that can be raised will vary depending on whether AFPS 75 or reformed scheme benefits are chosen for the remedy period: where the member chooses reformed scheme benefits, they will be treated as a transition member with effect from 1 April 2015.

- **Full Protection Pensioner Members:** Eligible AFPS 75 full protection members who have already left and taken Resettlement Commutation will be entitled to make an immediate choice of legacy or reformed scheme benefits in respect of their remediable service. All these members will have reached age 55 by the time they are able to make an election under the pension remedy, and their Resettlement Commutation will have been re-paid and legacy pension restored to its original value. Where an election choice is to retain existing benefits there will be no change. Where reformed scheme benefits are taken, a recalculation of the resettlement commutation award will be required, which may result in overpayments or underpayments.
- **Transition Pensioner Members:** Eligible AFPS 15 members with accrued rights in AFPS 75 who have already left and taken Resettlement Commutation will have had their Resettlement Commutation calculated in accordance with existing accrued rights methodology. These members are entitled to an immediate choice for legacy or reformed scheme benefits for their remediable service. If the member chooses reformed scheme benefits for the period of remediable service, there will be no change. If legacy scheme benefits are chosen, the pension benefits and Resettlement Commutation will need to be re-calculated, and this is almost certain to result in overpayments or underpayments.

8. In all cases, any over payments or underpayments will be subject to interest in accordance with [Enclosure 5](#). There may also be tax implications, which will depend on the individual case.

Question 6: Do you have any comment on the MOD's proposed approach for Commutation and Resettlement Commutation?

Trivial Commutation

9. In cases where trivial commutation has been taken previously, and the result of a remedy election is that an additional payment is due, the top up payment will be treated as a trivial commutation lump sum provided that:
- the additional payment is not more than £10,000; or
 - if the top-up payment is more than £10,000, the total of the top-up payment and the value of the member's rights under all registered pension schemes on the 'nominated

date' (the date on which a person's pension benefits were previously assessed) is not more than £30,000;

- where the aggregate of the first commutation lump sum and the new one is greater than £30,000, the entire additional rights due must be taken as pension under the scheme rules.

For example, a member who only has rights in the AFPS and had taken a lump sum of £13,000 previously, would be able to receive a top-up of up to £17,000. A lump sum of over £17,000 would all be paid as a pension.

10. Where these conditions are not met the payment cannot be paid as a trivial commutation lump sum, and the member will instead be entitled to a pension under the scheme rules, based on the value of the lump sum.

Types of commutation

Standard Commutation: Standard Commutation allows a member to surrender some of their monthly pension to generate a lump sum. This reduces pension payments upon retirement, but subsequently increases/generates a pension lump sum. AFPS 15 is the only scheme where members can take standard commutation. Scheme rules for standard commutation are:

- **AFPS 15.** A member may opt to commute up to 25% of their pension in exchange for a tax-free lump sum. For every £1 of reduced pension the member is to be paid a lump sum of £12.

Inverse Commutation: Inverse commutation enables some, or all, of a pension commencement lump sum to be surrendered to increase monthly pension income. Inverse commutation is available under the AFPS 05, RFPS 05 and EDP 15, as follows:

- **EDP 15:** Members who receive EDP 15, are eligible for Inverse Commutation. A member who has exercised this option, ceases to be entitled to payment of the EDP 15 lump sum.
- **AFPS 05 & RFPS 05:** Members are eligible for inverse commutation. A member who has exercised this option, ceases to be entitled to payment of the portion of the pension lump sum that has been commuted.

AFPS 75 Resettlement Commutation: Resettlement Commutation is available to AFPS 75 members only or those with accrued rights in AFPS 75 who leave at or after their Immediate Pension point, which is a minimum of 16 years' service and aged 37 for officers, and a minimum of 22 years' service and aged 40 years for other ranks. Individuals may apply to commute some of their monthly pension to generate an additional tax-free lump sum, (the resettlement commutation lump sum) which is on top of their basic pension lump sum. The resettlement commutation lump sum is then recovered from the individual's monthly pension payments between the date of leaving and age 55. At age 55, the monthly pension income is restored to its original pre-commutation value.

Trivial Commutation: Trivial commutation means a member may take the whole of their pension as a cash lump sum if the overall value of all their pension benefits under all registered pension schemes does not exceed a capital value of £30,000. The conditions for payment of

a Trivial Commutation Lump Sum are set by HMRC, and the rules for accessing trivial commutation differ between the schemes. The six existing conditions set by HMRC are:

- No trivial commutation lump sum has previously been paid to the member (by any registered pension scheme) or, if such a lump sum has previously been paid, paid before the end of the commutation period.
- The lump sum is paid in respect of a defined benefits arrangement or an in-payment money purchase in-house scheme pension or both²¹.
- On the nominated date the value of the member's pension rights (in all schemes) does not exceed £30,000.
- The lump sum is paid when the member has available LTA.
- The lump sum extinguishes the member's entitlements to benefits under the pension scheme.
- The lump sum is not paid before the age of 55 (only if the member has left after April 2017), or the ill health condition is met.

²¹ An in-payment money purchase scheme does not apply to the AFPS.



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 2: Dependants' Benefits

6 March 2023



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Enclosure 2 - Dependants' benefits

Introduction

1. All the Armed Forces Pension Schemes provide for the payment of benefits (pension and/or lump sum) where an active, deferred or pensioner member of the scheme dies. These benefits may be pension benefits, or a death in service payment, or both. A surviving spouse, civil partner, unmarried partner, or eligible children (referred to collectively as dependants), may be entitled to dependant pension benefits, which in some circumstances remain payable for the life of the dependant.
2. The pension benefit payable is based on the provisions of the specific scheme and whether the individual was an active, deferred or pensioner member when they died. Provision of dependant benefits varies between the schemes:
 - Unmarried partners are not eligible for a dependant's pension under the AFPS 75, the FTRS 97 and the NRPS 11 (unless the partner is also entitled to an award under the AFCS or Attributable Benefits schemes because the member's death is attributable to service), but they do have an entitlement under AFPS 05 and AFPS 15 if they meet certain conditions.
 - The older legacy schemes also have more restrictive conditions for determining which children are eligible for pension benefits.
3. There are three different kinds of benefits, which may be payable on the member's death:
 - Surviving partner pensions.
 - Eligible children's pensions.
 - Lump sum death benefits.
4. Dependants' benefits consist of a pension and, in some cases, a lump sum. Surviving partners are the member's spouse, civil partner or an unmarried partner who meets conditions set out in the rules. Eligible children's pensions are payable in respect of children (as defined in the relevant scheme rules) as follows:
 - under the age of 18 (17 in AFPS 75); or
 - in full-time education between the ages of 18 (17 in AFPS 75) and 23; or

- who are unable to engage in gainful employment due to physical or mental impairment (for life).
5. Scheme rules may also provide for the payment of a lump sum death benefit on the death of an active, deferred or pensioner member. In older schemes, the rules set out who would be entitled to the death benefit if it is payable – usually the surviving partner, children or estate of the member. In more recent schemes (since 2005), scheme rules provide that the member can nominate a person or body to receive the death benefits, and it is only in the absence of such nomination that scheme rules set out how it should be paid. Therefore, it is possible for death benefits of this kind to be paid to third parties (persons, charities, independent bodies) who are not otherwise entitled to a pension under the scheme rules.

Eligible Decision Maker

6. The scheme regulations for the remedy will set out who may make an election where a member has died. They are known as the eligible decision maker (EDM). The policy used by the scheme administrator to identify an eligible decision maker (EDM) is outlined in the [annex](#) to this enclosure. All further references to 'eligible decision maker' within this enclosure are made in the context of the definitions in the annex.
7. A key point to note is that the range of people who may be an EDM is wider than those who may be eligible for a pension under the legacy scheme. This is because, when determining the EDM, it is those individuals who would be eligible for a pension under the rules of the AFPS 15 who are considered, rather than those who would be eligible for the pension under the rules of the legacy scheme.

Time Limits and Process

8. The rules vary slightly, depending on whether the election is an immediate choice or a deferred choice:
- Immediate choice – death before 1 October 2023: the EDM will make the choice. The immediate choice is irrevocable once made.
 - Deferred choice – death after 1 October 2023: If the member has already made a deferred choice and dies before benefits become payable under that deferred choice,

then it lapses. The EDM, under the scheme rules, must then make a new deferred choice. If a member dies before making a deferred choice, the EDM makes the choice in their place.

9. The scheme administrator will initially have to establish who the EDM is, and in many cases this information will be held in service records or existing pension records. However, in some cases, especially those where the beneficiaries under the AFPS 15 rules are not the same as those who would be entitled under the legacy scheme rules, it may require some investigation. Once the EDM is identified, the Remediabable Service Statement (RSS) will be issued to them, to enable them to make an informed election, as follows:
- Immediate choice: the EDM will have one year from the issue of the RSS to make an immediate choice election. This is in line with the time limit for immediate choice elections in the Act.
 - Deferred choice: the EDM will have a period of three months from the date on which the final RSS is issued to make an election. This timeframe is designed to prevent any undue delays in the payment of pension benefits to the member's dependants.

Impact of Election on Benefits

10. Where the deceased member had been in receipt of a pension (including EDP) before their death, the EDM's choice may change the value of that pension retrospectively, resulting in possible overpayments or underpayments of pension to the deceased.
11. The effect of an election by an EDM may be that different individuals are now entitled to pensions and/or death benefit lump sums, or that the same individuals are entitled to payments of a different amount. Accordingly, overpayments and underpayments may arise in cases where dependants' pensions were already in payment or death lump sums have been paid.
12. MOD policy, in line with other schemes, in relation to immediate choice cases where the member died before 1 October 2023 and the EDM's choice would either reduce a child pension or disentitle the child is as follows:

- Where the child lives in the same household as the EDM, their pension will be adjusted in accordance with the election.
 - Where the child lives in a different household to the EDM, their pension may be increased in accordance with the election, but it will not be reduced or ended.
13. Where the member dies after 1 October 2023, the EDM's election applies in relation to all death benefits, and any child pension will be based on the election.
14. Where a member died before 1 October 2023, having made a nomination in respect of their death lump sum benefit under the rules of the AFPS 2015, that nomination will have effect for their remediable service as well, where the election is for reformed scheme benefits. Such a nomination will also have effect where the member's remediable service is in a scheme which permits nomination (AFPS 05 and RFPS 05). Nominations are not permitted under the rules of the AFPS 75, NRPS 11 or FTRS 97 schemes.

Underpayments and overpayments of benefits

15. As set out above, the implementation of the election may involve adjusting pensions in payment, resulting in overpayments and underpayments to the member or the scheme. Underpayments will be paid to the relevant party as soon as practicable, with interest.
16. The position where overpayments have occurred is a little more complicated, given that in many cases the overpayment will have arisen because of the election made by someone other than the party who has been overpaid. The general expectation under the Act is that where an overpayment has occurred, it will be recovered²². However, scheme regulations do provide the scheme manager with discretion to waive liability, in line with Treasury Directions, for all or part of an amount owed to the scheme, and this may be exercised in relation to the overpayment of benefits in these situations, where this is reasonable in the circumstances of the individual case.

²² Section 14 of the Act.

Armed Forces Compensation Schemes: AFCS, War Pension and Attributable Benefits

17. The various Armed Forces schemes, which pay compensation for attributable injuries may also make payments to dependants of deceased members where death is attributable to service. These payments are:
 - War Pension Scheme: spouse/civil partner pension and child(ren) allowance.
 - Attributable Benefits schemes: spouse and child compensation payments.
 - Armed Forces Compensation Scheme (AFCS) – survivor’s guaranteed income payment (SGIP) and child payments.
18. These payments are usually abated by the amount of any Armed Forces pension payable to the relevant beneficiary. An amendment to scheme rules will be made to allow the scheme to adjust the abatement accordingly where the amount of the pension changes because of the election.
19. The amount of the bereavement grant payable under the AFCS in respect of an active member differs depending on which pension scheme the member belongs to. The bereavement grant may be adjusted if the EDM elects for benefits based on a different pension scheme.
20. As a general rule any overpayments that result from an election will be recovered.

Interest and Taxation

21. Any adjustments to the deceased member’s pension which arise as a result of an election choice may have additional tax implications in relation to the Annual Allowance or Lifetime Allowance tax regimes. This will be the responsibility of the member’s personal representatives.
22. Interest is also chargeable to the member or any beneficiary of a death benefit in relation to any overpayments of pension/compensation, and likewise is payable by the scheme where there have been underpayments of pension/compensation. Further details on interest payments are contained at [Enclosure 5](#).

Question 7: Do you agree with or have any comment on the proposed time limit of three months from date of issue of the RSS within which an eligible decision maker must make an election?

Question 8: Do you agree with or have any comment on the policy relating to eligible decision makers?

Question 9: Do you have any other comment on the policy approach to death benefits?

Annex:

A. Eligible Decision Maker.

Eligible Decision Maker (EDM)

1. This annex outlines who can make an election when a member with remediable service dies before making an election, or when an election lapses as a result of death.
2. In cases where the sole beneficiary entitled to receive death benefits is;
 - an adult, that person is the EDM,
 - a child, the child's guardian is the EDM,
 - a body (corporate or unincorporate), the EDM is the member's personal representative. If there is no personal representative then it will be the scheme manager,
 - the member's estate, the EDM is the member's personal representative.
3. In cases where there are multiple beneficiaries, which include a surviving adult²³ entitled to receive death benefits, the EDM is the surviving adult.
4. In cases where there are multiple beneficiaries, which includes two or more adults, none of whom is a surviving adult and two or more of those adults are eligible children, the EDM is the person agreed upon by the adult eligible children. Where no decision has been communicated to the scheme manager by the end of the election period beginning with the date of issue of an RSS, the EDM will be the scheme manager.
5. In cases where there are multiple adult beneficiaries who are nominated as recipients of a lump sum death benefit, none of whom are a surviving adult or eligible child (whether or not an adult) then the EDM will be either the member's personal representative, or where there is no personal representative, the person agreed upon by the nominated adults. If no decision is communicated to the scheme manager by the end of the election period, beginning with the date of the issue of the RSS, the EDM will be the scheme manager.
6. In cases where the only beneficiaries are children, of which two or more are eligible children, the EDM will be the guardian of the children if they live in the same household. Where they live in different households, the EDM will be the member's personal representative, or where no personal representative exists, the scheme manager.

²³ A surviving adult is either a spouse, civil partner or eligible partner.

7. In cases where there are multiple child beneficiaries who are nominated as recipients of a lump sum death benefit and they are not eligible children, the EDM will be the children's guardian, provided they all live in the same household and have the same guardian. Where there is no guardian the EDM will be the scheme manager. If they live in different households the EDM will be the member's personal representative. If there is no personal representative, the EDM will be the scheme manager.

8. In cases where there are multiple beneficiaries with one or more adults and one or more children, the EDM will be the member's personal representative. Where there is no personal representative but one of the beneficiaries is a surviving adult, the surviving adult will be the EDM. If none of the beneficiaries are a surviving adult, but one or more are an eligible child, provided all the eligible children are under 18 and have the same guardian, the guardian would be the EDM. If they do not have the same guardian, the scheme manager will be the EDM. If all the children are over 18 the EDM is the person agreed upon by those children, but if no decision is communicated to the scheme manager by the end of the election period, beginning with the date of the issue of the RSS, the EDM will be the scheme manager. Where there is a mix of over and under 18-year-old children, the EDM is the person agreed upon by the children over 18 who are beneficiaries, and the guardian(s) of the eligible children under 18.

9. In any other case not covered by Paragraphs 2 to 8, the EDM is the scheme manager.



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 3: Early payment of deferred pension

6 March 2023



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Enclosure 3 - Early payment of deferred pension

Introduction

1. All pension schemes have a normal pension age and a deferred pension age:
 - normal pension age is the age at which active members will receive an immediate pension if they leave the service at that age (e.g. 55 (AFPS 05) or 60 (AFPS 15)),
 - deferred pension age is the age at which the pension is payable if the member leaves service before reaching normal pension age (e.g. 65 (AFPS 05)) or state pension age (AFPS 15).

As a rule, pensions may not be paid from a registered pension scheme before the member reaches the age of 55²⁴.

2. AFPS members, excluding NRPS 11, may, however, apply for their deferred pension to be paid early. For AFPS 75/FTRS 97 this can be from age 60 and for AFPS 15/AFPS 05 and RFPS 05 it is from age 55²⁵. When paid early, pensions are actuarially reduced²⁶, to reflect that the pension will be in payment for a longer period. Early Departure Payments are unaffected when claiming an early payment of pension. The following table outlines the deferred pension age for each scheme, and which benefits may be paid early and at what age.

Pension Scheme	Deferred Pension Age	Early Payment (actuarially reduced) option
AFPS 15	Higher of State Pension Age or 65	All deferred pension from age 55 with actuarial reduction.
AFPS 05	65	All deferred pension, including lump sum, from age 55 with actuarial reduction.
AFPS 75	60 for service up to and on 5 April 2006; and 65 for service on or after 6 April 2006.	Pension for service on or after 6 April 2006 from age 60 with actuarial reduction; this includes the lump sum
RFPS 05	65	All deferred pension, including lump sum, from age 55 with actuarial reduction

²⁴ The AFPS 75 has an exemption from this rule, which was introduced under the Finance Act 2004. The EDP schemes are not covered by this rule either, because they are unregistered schemes.

²⁵ This does not include deferred pensions which are paid early on the basis of ill-health.

²⁶ Based on age at time of application and age deferred pension would come into payment.

FTRS 97	60 for service up to 6 April 2006; and 65 for service on or after 6 April 2006	Pension for service on or after 6 April 2006 from age 60 with actuarial reduction; this includes the lump sum
NRPS 11	60	No early payment of deferred pension can be claimed on an actuarially reduced basis

Impact of Retrospective Remedy on early payment of deferred pension

3. The implementation of the retrospective remedy will not change the underlying scheme rules governing early payment of benefits, and members will be bound by the rules applicable to the scheme design under which they choose to receive benefits. This will be a factor for members to consider when making their remedy election in respect of benefits for their remediable service. Where members have an actuarially reduced pension in payment and opt for alternative scheme benefits in the remedy period, the value of those pension benefits will likely change. This is because the age at which an early pension can be drawn in the alternative scheme could be different.
4. Where a member has previously decided to receive payment of their pension on an actuarially reduced basis this cannot be reversed as a result of an election. This is because MOD considers that a decision to take a deferred pension early is one that is unlikely to have been influenced by the age-related discrimination.
5. After the implementation of the retrospective remedy, deferred members who wish to claim an actuarially reduced pension will be required to make their deferred choice before the pension is put into payment. A formal claim for an early pension, once submitted, cannot be withdrawn. Members should, therefore, ensure they have assessed all relevant details prior to claiming early pension benefits. Deferred members are able to receive one Remediable Service Statement (RSS) per year on request by submitting a Pension Form 14. This will provide deferred members with up-to-date information on their pension benefits before they submit their formal claim for early pension.

Early Payment of Pension – Immediate choice

6. Where the actuarially reduced pension is already in payment, the re-calculation of the actuarially reduced pension (and any associated lump sum payment) will include pension increases from the point of the discharge and use the relevant early payment factors for the alternative scheme. This will be clearly shown in the RSS.

7. Any change in scheme benefits as a result of an election may generate either overpayments owed to the pension scheme or underpayments owed to the member. These will be subject to interest (see [Enclosure 5](#)). Elections for alternative benefits may have tax implications.

Early Payment of Pension – Deferred Choice

8. Deferred members with remediable service who wish to take their pension early will need to contact the scheme administrator to claim the pension in the normal manner. On receipt of a claim for early payment of benefits, the scheme administrator will provide the deferred member with an RSS which will include details of the applicable actuarial reductions available under the legacy and reformed schemes. The member's election period will commence on issue of the RSS in respect of a claim for early pension. In line with the usual process for deferred members, an election may be changed (i.e. switch the decision between legacy and reformed scheme benefits), at any point up until one calendar month before benefits are due to come into payment. If the member does opt to change an election, a further choice can be made, as long as it is made at least one calendar month before benefits are due to come into payment. If a member changes their election within the specified time period, they will then be bound by the early payment rules of that particular scheme. Once benefits come into payment the election is irrevocable.

Question 10: Do you agree with or have any comment on the MOD's proposed policy approach towards the early payment of deferred pensions?



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 4: Ill-Health Retirement

6 March 2023



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Enclosure 4 - Ill-health Benefits

Introduction

1. Members of the Armed Forces who are medically discharged as a result of ill-health or injury are entitled to ill-health benefits. The pension and other benefits payable when a member leaves service early due to ill-health vary between schemes and depend mainly on the degree of ill-health/injury. While variation in scheme rules exists, AFPS 05/EDP 05 and AFPS 15/EDP 15 use the same tiered structure to pay pension (AFPS) and other (EDP) benefits. A summary of the ill-health pension benefits payable under each scheme is in the [annex](#) to this enclosure. Broadly:
 - the qualifying thresholds for ill-health benefits under AFPS 05 and AFPS 15 are the same,
 - the qualifying threshold for older legacy schemes, EDP 05 Tier 1 and EDP 15 Tier 1 is that the member meets the ill-health condition in Paragraph 1 of Schedule 28 to the Finance Act 2004²⁷. This threshold is not as high as the threshold in the AFPS 05 and AFPS 15.

Impact of Retrospective Remedy on Ill-Health Benefits

2. **Incapacity for Service (Tier 1: EDP 05 / EDP 15).** Where a member of the AFPS 05 or AFPS 15 is medically discharged due to incapacity for Armed Forces service, having effectively met the ill-health condition as described above, but their capacity to obtain civilian employment is not expected to be significantly impaired, they are entitled to a lump sum payment for Incapacity for Service under the relevant EDP legislation²⁸, based on their final salary and length of relevant service at discharge, subject to a cap. This is known as a Tier 1 award. Although the Tier 1 award is not itself part of the pension scheme, it is closely linked as members with a Tier 1 award may have this reviewed if they believe they should instead meet the criteria for a pension under the relevant AFPS, and where a member is entitled to both an EDP and a Tier 1 award, only the EDP is payable.

²⁷ <https://www.legislation.gov.uk/ukpga/2004/12/schedule/28>.

²⁸ SI 2005/437; SI 2014/2328.

3. As a general rule therefore, discharge at Tier 1 level will not be an election point for most personnel as pension benefits do not routinely come into payment at that point and the value of the Tier 1 is not based on pension benefits. There are three exceptions to this rule:
- Regular personnel with remediable service in the AFPS 05 who also meet the relevant criteria for a pension under the EDP scheme: they are entitled to the EDP payment.
 - Regular personnel with remediable service in the AFPS 75, as they will be required to make a decision in relation to the AFPS 75 service invaliding pension.
 - Reservist personnel with remediable service under the RFPS 05.

Reservists and Tier 1: an election point

4. Members of the RFPS 05 are not generally entitled to a Tier 1 Incapacity for Service lump sum, as this is only available to reservists who are members of the AFPS 15.
5. However, former members of the RFPS 05 who have transferred into the AFPS 15 are entitled to an EDP 15 Tier 1 lump sum, if they are medically discharged before the end of a commitment, having met the EDP 15 Tier 1 conditions. The value of the lump sum is calculated by reference to their service and salary in that particular commitment.
6. On 1 October 2023, eligible members will be rolled back into the RFPS 05 in relation to remediable service that would have been pensionable under the RFPS 05.
- Some of these members may have been discharged with a Tier 1 lump sum and will now be deferred members of the RFPS 05 in relation to that service.
 - Some may still be serving on a commitment which began before 1 April 2022 and may in the future be discharged with an entitlement to an EDP 15 Tier 1 award.
7. In addition to this, there may be full protection members of RFPS 05 who were medically discharged during the remedy period, but who did not receive a Tier 1 award because this was not available to members of RFPS 05. Where such a member makes an election for reformed scheme benefits, they will also be entitled to payment of a Tier 1 award under the EDP 15 legislation.
8. A member who is rolled back into the RFPS 05, having received an EDP 15 Tier 1 lump sum before roll back will no longer be entitled to that Tier 1 lump sum and would normally be expected to repay the amount. However, if that member then subsequently, at deferred

pension age, elected for reformed scheme benefits in relation to service during the remedy period, they would be entitled to repayment of the Tier 1 lump sum, which would be paid alongside their pension benefits. This defeats the objective of the Tier 1 lump sum, which exists to provide members of the pension scheme with financial assistance to help them adjust to their new circumstances following medical discharge.

9. Likewise, where a member with service under both the RFPS 05 and the AFPS 15 in the same commitment is medically discharged with an EDP 15 Tier 1, their lump sum would normally be calculated on the basis of their service since joining the AFPS 15 only. However, if they were to subsequently elect for reformed scheme benefits, they would be entitled to have their Tier 1 lump sum re-calculated to include their remediable service, with any balance paid plus interest. Again, this would seem to defeat the object of the Tier 1 lump sum.
10. Accordingly, MOD has decided that where a member:
 - has remediable service in the RFPS 05 (whether a transition member or a full protection member), and
 - is medically discharged at a level which would entitle them to a Tier 1 lump sum if they elected for reformed scheme benefits for that period of service, that member must make an election on discharge.

Immediate choice

11. Members with remediable service who have been medically discharged prior to 1 October 2023 will be pensioner members and thus entitled to make an immediate choice, unless they are members with remediable service in AFPS 05, with a Tier 1 award under both EDP 05 and EDP 15, who did not qualify for an EDP instead.
12. The main practical impact of the remedy relates to full protection members of the AFPS 75, NRPS 11 and FTRS 97 who were medically discharged, due to the differences between the thresholds for pension benefits between those schemes and the AFPS 05, RFPS 05 and AFPS 15, which all use the criteria of significant impairment (Tier 2) and serious ill-health (Tier 3).
 - These members will already be in receipt of an immediate pension based on legacy benefits and, if they discharged after 1 April 2022, may also have a tiered award under

AFPS 15/EDP 15. In such cases, the tier assessment used for their AFPS 15/EDP 15 benefits will also be used to calculate the value of their benefits if they elected for the reformed scheme benefits.

- In cases where the member left service prior to 1 April 2022, the pension scheme administrator will need to complete a medical tier assessment to determine which threshold they would meet under the AFPS 15/EDP15 rules, in order to establish the benefits that would have been payable under that scheme in relation to their remediable service, and to complete the Remediable Service Statement (RSS) accurately.
- Where a member disagrees with the medical tier assessment, they can appeal this and may not make their election until the review is complete.

Other Factors

13. An election may result in an underpayment or overpayment of benefits in relation to remediable service. These will be corrected, with interest payable, (for details on interest payments see [Enclosure 5](#)) and detailed in the RSS.
14. An election may also result in a change to the individual's tax position: general guidance on this will be contained in the RSS.

Armed Forces Compensation Scheme / War Pension Scheme / Attributable Benefits Schemes

15. The Armed Forces Compensation Scheme (AFCS) makes provision for compensation for injury or illness caused or made worse by service; or where death is caused by service in the Armed Forces on or after 6 April 2005. The Scheme applies equally to Regular and Reserve forces. In cases where disablement or death due to injury occurred prior to 6 April 2005 and it is attributable to service, compensation or supplementary allowances may be payable through the War Pension Scheme (WPS) and one of the Attributable Benefits Schemes.
16. Awards under the AFCS may be made while the member is in service, or afterwards in accordance with a tariff of injuries. All awards include a lump sum, and those at higher tariff levels also give personnel a guaranteed income payment (GIP), which is payable after the

member leaves service. The GIP is calculated by reference to the member's salary, age at discharge and the level of the award. Where the individual is also receiving payments from an AFPS or EDP, these are set off (abated) against the GIP, with only the balance of GIP payable to the individual. Where the amount payable from the pension scheme or EDP changes, so too will the amount of abated GIP which is payable.

17. Awards of war disablement pensions under the WPS are only made after a member has left service. The WPS also makes provision for other supplementary allowances, including the Allowance for Lower Standard of Occupation (ALSO). Members who have a war pension under the WPS may also qualify for compensation payments under the Armed Forces Attributable Benefits Scheme (AFAB), the Reserve Forces Attributable Benefits Scheme (RFAB) or the Non- Regular Permanent Staff Attributable Benefits Scheme (NRPS AB), which are usually paid alongside the member's occupational pension. Awards under the WPS and the various attributable schemes are abated by the value of any AFPS payments.

18. As the pension benefits received by a member affect the amount of the compensation benefits (due to abatement), changes to the value of these pension benefits will also affect the amount of compensation members receive after abatement²⁹. Accordingly, an election which results in changes to pension benefits in payment will necessitate a re-calculation of any compensation payments also being received. The RSS will outline changes to compensation payments alongside pension benefits.

Question 11: Do you agree with or have any comment on the MOD's policy approach that, where an RFPS 05 member may be eligible for a Tier 1 award under AFPS 15, this should be an election point?

²⁹ The value of the GIP, war pension, or annual compensation payment remains the same, but it is only the difference between that value and the amount paid from the pension schemes which is actually received by the member.

Ill-health Provision for AFPS members

EDP 15 Tier 1 scheme	<p>Tier 1: Incapacity for service</p> <ul style="list-style-type: none"> • A tax-free lump sum calculated by reference to salary at discharge and length of service, subject to a maximum cap. Members who qualify for EDP 15 payments (discharge at or after 20/40 point) will receive that instead of the Tier 1 lump sum. • Substantive Criteria: the member is, and will remain, incapable of service in the Armed Forces, and has ceased to be in such service. Broadly based on the ill-health condition in Paragraph 1 of Schedule 28 to the Finance Act 2004. • Incapacity for Service is generally considered to mean that while the individual can no longer continue in service in the Armed Forces their ability to gain civilian employment is not significantly impaired. • Payable to reservist and regular personnel in service under the AFPS 15. • Not a pension payment.
AFPS 15	<p>Tier 2: Significant Impairment of capacity for gainful employment</p> <ul style="list-style-type: none"> • those who are medically discharged, and the Secretary of State has determined that their capacity for any gainful employment is significantly impaired and is expected to remain so until they reach age 60 (normal pension age). • Pension is paid at an enhanced rate. <p>Tier 3: Permanent Serious Ill-health</p> <ul style="list-style-type: none"> • those who are medically discharged, and the Secretary of State has determined that they have suffered a permanent breakdown in health involving incapacity for any gainful full-time employment, which will continue until they reach normal pension age (60). • Pension is paid at an enhanced rate. <p>A deferred member can be awarded an immediate payment of an ill-health pension if in the opinion of the scheme manager, after consulting the scheme medical advisor, the member has suffered a permanent breakdown in health involving incapacity for any gainful full-time employment and the breakdown will continue until the member reaches deferred pension age.</p>
EDP 05 Tier 1 Scheme	<p>Tier 1: Incapacity for service</p> <ul style="list-style-type: none"> • A tax-free lump sum calculated by reference to salary at discharge and length of service, subject to a maximum cap. Members who qualify for EDP 05 payments (discharge at or after the 18/40 point) will receive that instead of the Tier 1 lump sum.

	<ul style="list-style-type: none"> • Substantive Criteria: the member is, and will remain, incapable of service in the Armed Forces, and has ceased to be in such service. Broadly based on the ill-health condition in Paragraph 1 of Schedule 28 to the Finance Act 2004. • Incapacity for Service is generally considered to mean that while the individual can no longer continue in service in the Armed Forces their ability to gain civilian employment is not significantly impaired. • Payable to regular personnel in service under the AFPS 05. • Not a pension payment.
AFPS 05	<p>Tier 2: Significant Impairment of capacity for gainful employment</p> <ul style="list-style-type: none"> • Those who are medically discharged, and the Secretary of State has determined that their capacity for gainful employment is significantly impaired. • Pension is paid at an enhanced rate. <p>Tier 3: Permanent Serious Ill-health</p> <ul style="list-style-type: none"> • Those who are medically discharged, and the Secretary of State has determined that they have suffered a permanent breakdown in health involving incapacity for any gainful full-time employment, which will continue until the member reaches pension age (55). • Pension is paid at an enhanced rate. <p>A deferred member can be awarded early payment of benefits if in the opinion of the Secretary of State, after receiving evidence from a registered medical practitioner that the member has suffered a permanent breakdown in health involving incapacity for any gainful full-time employment and the breakdown will continue until the member reaches deferred pension age.</p>
AFPS 75	<p>Standard Ill-health:</p> <ul style="list-style-type: none"> • A medical discharge, where the member meets the ill-health condition in Paragraph 1 of Schedule 28 to the Finance Act 2004. • The invaliding pension code is an enhanced rate of pension. <p>Attributable Benefits Scheme:</p> <ul style="list-style-type: none"> • Where the injury which led to the medical discharge is attributable to service, and the member meets other criteria (e.g. a war pension award for the relevant attributable condition), a compensation payment is paid which works as a top-up to the enhanced rate of ill-health pension. • AFAB is <u>not</u> a pension scheme but is only available to members of the AFPS 75 in respect of injuries which occurred before 6 April 2005.

NRPS 11	<ul style="list-style-type: none"> • Medical discharge having met the ill-health condition in the Finance Act 2004. • Immediate pension, enhanced for those with five or more years' service. • The NRPS also have an attributable benefits scheme, where the cause of the medical discharge was attributable to service and the injury occurred before 6 April 2005.
RFPS 05	<p>Note: RFPS 05 does not have an equivalent of the EDP Tier 1, so only two tiers of ill-health benefit in the regime.</p> <p>Tier 1: Significant Impairment of capacity for gainful employment</p> <ul style="list-style-type: none"> • Those who are medically discharged, and the Secretary of State has determined that their capacity for gainful employment is significantly impaired. • Pension is paid at an enhanced rate. <p>Tier 2: Permanent Serious Ill-health</p> <ul style="list-style-type: none"> • Those who are medically discharged, and the Secretary of State has determined that they have suffered a permanent breakdown in health involving incapacity for any gainful full-time employment, which will continue until they reach pension age (60). • Pension is paid at an enhanced rate.
FTRS 97	<ul style="list-style-type: none"> • Medical discharge, having met the ill-health condition under the Finance Act 2004. • Immediate pension, enhanced for those who have five or more years' service.



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 5: Interest on Under / Overpayments of Benefits

6 March 2023



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Enclosure 5 - Interest Payments on Under / Overpayments of Benefits

Introduction

1. The fundamental principle of the retrospective remedy is that members are able to choose the basis on which benefits for their remediable service are calculated. The Remediable Service Statement (RSS) is designed to ensure that members will have all the information they require to make that decision, in full knowledge of any implications. In some cases, generally where a pension is already in payment, this may result in monies being owed by the scheme to the member or beneficiary, or by the member or beneficiary to the scheme.
2. This sum of money will attract interest and how this is to be calculated is outlined in this enclosure. Scheme regulations will provide for the payment of interest, but the key rules in this regard are set by HM Treasury and contained in The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022³⁰ (the “Treasury Directions”). The Directions apply to all public service pension schemes subject to the remedy.
3. The Government’s intention is that the rate of interest will be subject to periodic review (at least once every five years) in consultation with the Government Actuary and will only apply prospectively (from the point of review onwards). Where an interest rate change occurs between an RSS being sent out and the member making their election, the latest revised interest rate will be used when applying interest to monies owed by the scheme to the member and to monies owed by the member to the scheme.

Legislation

4. Section 26 of the Act provides that scheme regulations may make provision for the payment of interest, and that this power must be exercised in line with Treasury Directions.
5. The Treasury rules on the application and calculation of interest are covered in Chapter 4 of Part 2 (Directions 13,14,15,16 and 19) of the Treasury Directions.

³⁰ <https://www.gov.uk/government/publications/public-service-pensions-and-judicial-offices-act-2022-treasury-directions>.

Interest rates

6. The Treasury Directions set out three relevant interest rates which may apply to amounts owed to or by the scheme:

- “The tax rate”: in accordance with the Taxes (Interest Rate) Regulations 1989, as if it were overpaid tax (the tax rate). **(Currently 2.5% as at January 2023³¹)**
- “The judgment rate”: the rate fixed, for the time being, by Section 17 of the Judgments Act 1838 and, in Scotland, the rate fixed, for the time being, by Section 9 of the Sheriff Courts (Scotland) Extracts Act 1892. **(Currently 8% as at January 2023³²)**
- “The NS&I rate”: the National Savings and Investment (NS&I) Equivalent Savings Rate **(Currently 2.3% as at January 2023)**. Historic NS&I rates relevant to the remedy period are set out below³³:

Effective From	Gross Annual Equivalent Rate
1 April 2014	1.10%
6 June 2016	0.80%
1 May 2017	0.70%
1 December 2017	0.95%
1 October 2018	1.00%
24 November 2020	0.15%
29 December 2021	0.35%
10 February 2022	0.50%
21 July 2022	1.20%
25 October 2022	1.80%
13 December 2022	2.30%

³¹ Current rates are available at this link: [HMRC interest rates for late and early payments - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/hmrc-interest-rates-for-late-and-early-payments).

³² Details available here: [The Judgment Debts \(Rate of Interest\) Order 1993 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1993/11/section/17).

³³ NS&I saver rates are available here: [Historical interest rates | NS&I](https://www.nsi.gov.uk/interest-rates).

Instances where interest is applicable

7. There are a number of circumstances where interest may arise as a result of the implementation of the remedy. Examples include but are not limited to:
 - **Member voluntary contributions.** On roll back, compensation (taking into account the amount of tax relief originally applied) will be issued where members had purchased AFPS 15 added pension and interest will be payable on that amount. Full details on how the remedy impacts on member voluntary contribution arrangements are contained in [Enclosure 6](#).
 - **Differences in pension benefits in payment.** Where an in-scope pensioner member has received pension benefits (pension, lump sum and/or Early Departure Payments) and subsequently elects for alternative scheme benefits, this will likely result in the scheme owing money to the member or the member owing money to the scheme. This includes both monthly pension benefits and lump sums. Interest will apply to both under and over payments.
 - **Pension transfers.** When pension benefits are transferred out of the AFPS into a non-Club pension scheme³⁴ prior to 1 October 2023, and the in-scope member subsequently chooses the alternative scheme benefits for their remediable service, the amount generated as the original transfer value may now be incorrect. This will attract interest. Full details on pension transfer arrangements are outlined in [Enclosure 10](#).

Interest rates

8. Where interest is payable in respect of an amount, the Treasury Directions set out how this is to be calculated.
9. The tax rate applies where a member is owed compensation from the scheme in relation to a tax loss as defined in the Act, as if the amount they are owed was overpaid tax.
10. Where a sum is owed **by a beneficiary to the scheme:**

³⁴ Cross refer to [Enclosure 10](#): Pension transfers.

- Interest will be calculated on that amount as **compound** interest, which accrues from day to day and the rate of interest to be applied will be the NS&I Equivalent Savings Rate.
11. Where a sum is owed **to the member by the scheme, the applicable rates may vary**. The general rule is that interest must be calculated as **simple** interest which accrues from day to day, at the judgment rate. **However, for some scenarios, this rate and method of calculation will change from the 29th day after an RSS is issued to the member, as follows:**
- It is calculated as compound interest, which accrues from day to day, at the NS&I rate.
12. A table setting out the various interest rates and their application can be found at the [annex](#) to this enclosure.

Interest periods

13. The Treasury Directions contain detailed rules for calculating the dates from which interest must be calculated. The approach is different, depending on whether monies are owed to the beneficiary by the scheme (arrears), or whether the beneficiary owes money to the scheme (overpayments), and also varies for arrears, after the RSS has been issued to the member. In this section, we set out a simplified explanation of the Treasury rules in this regard. Fuller details are set out in the table at the [annex](#).

Overpayments of lump sum made to member

14. Where a member owes monies to the scheme as a result of an overpaid lump sum, interest is calculated from the date that any overpaid benefits were paid to the date of repayment. Interest is compound, accruing daily, at the NS&I rate.

Overpayment of pension benefits made to member

15. Where a member owes monies to the scheme as a result of overpaid pension benefits, interest is calculated on the overpaid pension benefits from the mid-point to the date of repayment. Interest is compound, accruing daily, at the NS&I rate. The midpoint is the point halfway through the pension year (or if period less than whole pension year, halfway through that period).

16. In relation to overpaid pension benefits, the Treasury Directions give schemes a choice between using the date that overpayments were made or the mid-point date. In consultation with AFPS scheme administrators, the MOD has chosen to use the mid-point date as it is less likely to lead to delays and errors in calculating the overpayment amount. This policy option also aligns more closely with the Treasury Directions policy on underpaid pension benefits.

Question 12: Do you have any comment on the MOD's decision to use the midpoint date for the calculation of overpaid pension benefits?

Arrears owed to member

17. The way in which interest is calculated and paid where money is owed to a member is different, and depends on the nature of the underpayment:
- For pension arrears and added pension compensation payment: interest is calculated from the mid-point date to the date of repayment:
 - For the period up until the date 28 days after the issue of the RSS – simple interest, accruing daily, at the judgment rate; and
 - From the 29th day after the issue of the RSS to date of payment – compound interest, accruing daily, at the NS&I rate.
 - The mid-point date is defined as the day which falls half-way through the period which begins with the date on which pension benefits were first underpaid or added pension contributions were first overpaid and ends with the date 28 days after an RSS is first issued.
 - For lump sum payments: interest is calculated from the date on which the initial lump sum amount was paid:
 - to the date 28 days after an RSS is issued (or the date on which the balance was paid if earlier), simple interest, accruing daily, at the judgment rate; and
 - from the 29th day after the RSS was issued to the date of payment, compound interest, accruing daily, at the NS&I rate.
 - For direct financial losses: interest is calculated from the date the financial loss occurred to the date of payment at the judgment rate.
18. Pensioner Members have up to a year to make their election after receiving an RSS, and the monies actually owed to them can only be calculated once they have made their decision. The interest rate on any monies owed to them is reduced after 28 days in order to avoid the

possibility that members will delay making their election in order to receive a high rate of interest for a longer period. However, members who require a longer period in which to consider their decision will still receive interest, albeit at a lower rate, but compounded.

Netting Off

19. Where there are relevant amounts owed to the member and owed to the scheme, interest will be calculated separately on these amounts and then those amounts will be aggregated and netted off against each other so only one payment needs to be made.

Other Amounts

20. If interest is payable in relation to any other relevant amounts not outlined in this enclosure, the scheme administrator will provide details, explaining the rate of interest applied, and the calculation of the interest. If the beneficiary disagrees with the scheme manager's determination, they may appeal against it by writing to the scheme administrator with a reasoned explanation of a proposed alternative amount of interest, supported by any evidence that they consider relevant.
21. If an appeal is made, the scheme administrator will consider whether to alter their determination and provide:
 - an altered determination, or confirmation that the original determination stands,
 - a reasoned explanation of the decision, and
 - a description of the dispute resolution arrangements that apply to the scheme under Section 50 of the Pensions Act 1995.

Annex A

Retrospective Remedy Interest Calculations

		Interest Calculation Period 1					Interest Calculation Period 2			
1		Interest Calculated on	Interest calculated from	Interest calculated to	Interest rate	Compound/ Simple	Interest calculated from	Interest calculated to	Interest Rate	Compound/ Simple
	Overpaid pension benefits (owed to scheme)	Total overpaid amount	For overpaid benefits paid during each pension year, treat as having been paid halfway through the pension year (or if period less than whole pension year, halfway through that period).	Date of payment	NS&I Equivalent Savings Rate	Compound daily				
2	Underpaid pension benefits (owed to member)	Total underpaid amount	Date half-way through period beginning when pension benefits	28 days after RSS is first issued	8% (currently) (rate fixed by Judgments Act 1838 /	Simple daily	29 days after RSS is first issued	Date of payment	NS&I Equivalent Savings Rate	Compound daily

			were first underpaid		Sheriff Courts (Scotland) Extracts Act 1892)					
3	Overpaid lump sum benefits (owed to scheme)	Total overpaid amount	Date that lump sum benefits were paid initially	Date of payment	NS&I Equivalent Savings Rate	Compound daily				
4	Underpaid lump sum benefits (owed to member)	Total underpaid amount	Date that lump sum benefits were paid initially	28 days after RSS is first issued	8% (Judgments Act 1838 / Sheriff Courts (Scotland) Extracts Act 1892)	Simple daily	29 days after RSS is first issued	Date of payment	NS&I Equivalent Savings Rate	Compound daily
5	Compensation for AFPS 15 Added Pension contributions	Voluntary contributions paid after reduction for tax relief amounts	Date half-way through period beginning when voluntary contributions were first overpaid	28 days after RSS is first issued	8% (Judgments Act 1838 / Sheriff Courts (Scotland)	Simple daily	29 days after RSS is first issued	Date of payment	NS&I Equivalent Savings Rate	Compound daily

					Extracts Act 1892)					
6	Compensation for direct financial loss (owed to member)	Amount of financial loss attributable to discrimination/ remedy	Date financial loss arose	Date of payment	8% (Judgments Act 1838 / Sheriff Courts (Scotland) Extracts Act 1892)	Simple daily				

7	Compensation for part 4 tax loss (owed to member)	To be calculated in accordance with the Taxes (Interest Rate) Regulations 1989 as if that amount were overpaid tax								
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Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 6: Members' Voluntary Pension Contributions

6 March 2023



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Enclosure 6 - Members' Voluntary Pension Contributions

Introduction

1. Armed Forces Pension Schemes 75, 05 and 15 each provide their members with an option to increase benefits by making voluntary pension contributions. The benefits available through voluntary contributions differ between each scheme:
 - AFPS 75 permits members to purchase additional reckonable service, and enhanced pension benefits for member and dependants.
 - AFPS 05 permits members to purchase additional reckonable service.
 - AFPS 15 permits members to purchase added pension.
2. Added pension arrangements and additional reckonable service arrangements both provide additional pension benefits in accordance with the scheme design. Added pension permits the member to purchase an agreed amount of additional pension which, in line with scheme regulations, is revalued until retirement. In an additional reckonable service arrangement, the member purchases additional service in the form of an agreed number of years of reckonable service, which increases the member's reckonable service at retirement for the purposes of calculating their pension. A member who opts to purchase added pension under AFPS 15 can opt for a **member only** benefit or opt for **member and dependants' benefits**. As additional reckonable service increases the member's pension the benefit of such an arrangement applies both to members and dependants.
3. This enclosure outlines the impact of the retrospective remedy on those eligible members who have made voluntary contributions in the remedy period, or who would have done so, in certain circumstances.

Overarching Policy Intent

4. When members are rolled back to their legacy scheme on 1 October 2023, the roll back does not apply to any added pension purchased under AFPS 15 during the remedy period. The effect of the roll back is that the member will not have been a member of the AFPS 15 during the remedy period, and so was not eligible to enter into such arrangements³⁵. The Act

³⁵ Unless they had periods of PTVR service.

provides that schemes may either convert added pension to legacy benefits or offer members a compensation payment. MOD has worked with the Government Actuary's Department to consider different methods for converting AFPS 15 added pension into legacy reckonable service, but it has proved impossible to do this without considerable volatility of outcomes and inequitable results for members. In addition, Reservists who have taken out AFPS 15 added pension do not have an option to purchase additional reckonable service in their legacy schemes, which means conversion is not possible for this cohort. Taking into account all these factors, MOD has decided that the most fair and reasonable approach for those members who have purchased added pension in AFPS 15 is to pay compensation equivalent to a refund of all their added pension contributions with interest applied (see interest [Enclosure 5](#)).

AFPS 15 Added Pension

5. On implementation of the retrospective remedy all eligible members will be rolled back to their legacy scheme for the remedy period (1 April 2015 to 31 March 2022). Where an eligible member had entered into an agreement to purchase added pension under the AFPS 15 during the remedy period, they will be entitled to a compensation payment based on the contributions paid.
6. After 1 October 2023 all members, (including dependant members where the deceased had purchased added pension), who had purchased added pension during the remedy period will be notified that these are revoked and that a compensation payment will be made. The compensation payment will be calculated as follows: the amount paid in member voluntary contributions, less an amount equivalent to the tax relief the member would have received, plus any interest due. Further details on interest payments are at [Enclosure 5](#). For additional detail on taxation see details at [Paragraph 25](#).
7. For Active and Deferred members, the compensation payment will be processed and paid as soon as administratively possible after 1 October 2023.
8. For Pensioner members with AFPS 15 added pension in payment, the added pension will continue in payment up until an immediate choice is made. At that point, members will receive compensation equivalent to a refund of all their added pension contributions with interest applied, less any added pension already paid to the member. Members with an AFPS 15 added pension in payment will be prioritised when issuing Remediable Service Statements (RSS). The RSS will show the recalculated value of the AFPS 15 benefits with

the added pension removed. This will allow members to compare it against legacy scheme benefits when making a choice.

9. Part Time Volunteer Reserve (PTVR) service: some members with remediable service may also have had periods of PTVR service during the remedy period and may have purchased added pension. They remain members of the AFPS 15 in relation to their PTVR service during the remedy period and the treatment of any added pension purchased depends on when it was purchased. Where the member was in PTVR service on the day on which they entered into the arrangement to purchase the added pension, the added pension will remain in place, and will not be cancelled. If, however, the member was in remediable service on the day they entered into the arrangement, the added pension will be cancelled, and they will receive a compensation payment.
10. To mitigate the effects of the policy outlined above, members may take advantage of the following options, provided certain conditions are met (See [Paragraphs 11 and 12](#)):
 - Active members may apply to enter into a new AFPS 15 added pension arrangement. Members are normally limited to one added pension arrangement in any scheme year. If, however, a member has already taken out an added pension arrangement in the scheme year they receive the compensation payment, they may, by exception, enter into a second added pension arrangement in this year (using all or part of the compensation payment). This option will expire on 31 March 2025.
 - Members who are returned to AFPS 75 or AFPS 05 (except survivors of deceased members) may make an application to purchase additional reckonable service in AFPS 75 or AFPS 05 with retrospective effect (see [Paragraph 11](#)).
 - Members who are returned to AFPS 75 (except survivors of deceased members) may make an application to enter into remedial voluntary contribution arrangements to purchase enhanced benefits under Part C of that scheme for the remedy period. (Existing arrangements of this type were cancelled on the introduction of AFPS 15). (see [Paragraph 8](#)).

AFPS 75 and AFPS 05: Purchase of additional reckonable service

11. Where a member can show to the scheme manager's satisfaction that they would have purchased additional reckonable service in AFPS 75 or AFPS 05, had they remained in that legacy scheme during the remedy period, they will have an option to enter into a new AFPS 75 or AFPS 05 arrangement retrospectively, provided they meet the conditions outlined in this section. The reserve legacy schemes have no provision for the purchase of additional benefits; therefore, a similar option does not exist for reservists.
12. Scheme regulations will require members wishing to enter into these remedial arrangements to satisfy the scheme manager that it is more likely than not that they would have done this during the remedy period, had they been allowed to stay in their legacy scheme. An example of the kind of evidence the scheme manager will consider could include the question of whether a member had purchased AFPS 15 Added Pension during the remedy period.
13. On acceptance of an application, the new contract will be established under the standard rules of the legacy scheme, based on the member's age and actuarial factors relevant at the time the contract would have begun if the member had remained in their legacy scheme. For example, if the contract had commenced in 2016 the calculation would be based on the member's age and factors from 2016. For details on tax relief see [Paragraphs 25 -31](#).
14. Active members: any new contract established will require them to make monthly payments until age 55 (AFPS 75), or the age they nominate to end the contract (AFPS 05). In both cases the arrangement comes to an end if the member leaves service before reaching the relevant age. The following example shows how this would work:
 - In 2024 a member opts to purchase AFPS 75 additional reckonable service with a commencement date of 2016, having provided sufficient evidence that they would have previously done so, had they remained in AFPS 75.
 - In 2016 they were aged 40 and the contract period on set up will be for at least 15 years, i.e. until age 55 in 2031.
15. Pensioner and deferred members: these members may also apply to enter into legacy scheme Additional Voluntary Contributions (AVCs) arrangements. The contract duration is limited to the time they were in continuous regular service starting from the commencement

date of the contract, i.e. the contract ceases on the date they became a pensioner member or deferred member. For example:

- The contract commencement date is 2016 and normally would have been for 15 years, to end in 2031.
- However, the member left regular service in 2020. The member must pay the equivalent of four years of monthly contributions as a lump sum in accordance with current scheme rules (including interest – see [Enclosure 5](#)).

16. The following additional conditions are also relevant:

- The time limit for an application to purchase retrospective additional reckonable service is one year from the date of the issue of the initial RSS. If a member is re-employed in the remedy period as a regular and has remediable service in both APFS 75 and APFS 05, they can opt to buy added service in one or both schemes. However, the contract only lasts for the period during which they were an active member of that particular scheme.
- Members will need to be able to show that they would have met all the conditions set out in the relevant scheme rules at the point they wish the option to take effect.
- Any additional reckonable service purchased under a remedial voluntary arrangement will not be affected by the member's choice of pension benefits for the remedy period. The benefit of the additional reckonable service remains in the legacy scheme and affects the value of pension paid under legacy scheme rules. For example: where a member purchases an additional 15 years of reckonable service, with effect from 2016, and subsequently chooses reformed scheme benefits for the remedy period the additional reckonable service purchased will increase their reckonable service under the legacy scheme; it will not affect the reformed benefits.

AFPS 75: Purchase of Enhanced Pension

17. In addition to the ability to purchase added years, the AFPS 75 scheme allows members to enter into three other pension enhancement arrangements by making AVCs. These are:

- Member benefits based on actual final salary, rather than representative rate.
 - Increased pension for surviving spouse or civil partner.
 - Enhanced death in service lump sum.
18. Members with full protection in AFPS 75 were able to keep these AVCs, although they were finally brought to an end on 31 March 2022. Where members transitioned to AFPS 15, these arrangements were brought to an end on their transition date, although they had accrued rights to pro-rata benefits under these arrangements up to 31 March 2015. When these members are rolled back to AFPS 75 they may be able to either restore one or both of the first two arrangements retrospectively or enter into new ones, provided they can meet the conditions. The AFPS 75 enhanced death-in-service lump sum will not be made available because the AFPS 15 death-in-service lump sum is more generous.
19. Active, deferred or pensioner members who are rolled back to AFPS 75 may apply to retrospectively restore or enter into an arrangement to purchase enhanced pension benefits for the remedy period. Any such arrangement will come to an end on 31 March 2022, or the date the member left service if earlier.
20. Within the first 12 months after rollback (i.e. by 30 September 2024), the scheme administrator will notify all members who had any of the above enhanced pension AVCs cancelled on the introduction of AFPS 15 that they may apply to restore them. Any member who makes an application for the first time to purchase an enhanced pension AVC will have to show that it is more likely than not that they would have entered into the arrangement during the remedy period, had they not been moved to AFPS 15. The ability to exercise this option to purchase enhanced pension AVCs will end one year from the date of issue of the first RSS to the member.
21. If a member (other than an active member) applies to purchase an AVC benefit they will be required to pay all arrears of contributions, minus any amount for tax relief that they would have been entitled to, plus any interest due (for details on interest calculation see [Enclosure 5](#)). Active members will be entitled to tax relief at the time of purchase and so will not have their arrears of contributions reduced by tax relief.
22. The enhanced pension AVCs are for members only. There is no option for dependants to purchase this type of AVC.

UN and NATO Secondment

23. Secondment service in certain organisations (e.g. the UN and NATO) is non-reckonable service for AFPS pension purposes. AFPS members who undertake a period of secondment to organisations such as the UN or NATO have to join that organisation's pension scheme while they are seconded to them and contribute towards the pension during their period of secondment. Generally, personnel do not serve long enough to vest in the organisation's pension scheme and are given a refund of their contributions in the form of a lump sum when they leave. The AFPS 75, AFPS 05, RFPS 05 and AFPS 15 all allow members who return to the service from which they were seconded to have their seconded service recognised so that they do not suffer a financial penalty for undertaking such service. The rules provide that if the member pays all of the money they received from the seconded pension scheme into the Armed Forces pension scheme, they will be treated as though they had always been in pensionable service for that period. In the legacy schemes, the lump sum purchases the reckonable service that they would have accrued and in the AFPS 15, it purchases the earned retirement pension that they would have earned had they been in AFPS 15 service.
24. Where a member with remediable service has exercised this option, the period of service thereafter is treated as reckonable for pension purposes and will be included in the RSS comparison for when members make their election.

Taxation: Added Pension Compensation Payments and Remedial AVCs

25. Directions 5 and 12 of the Treasury Directions 2022 make provisions for how the scheme should calculate the tax relief under Section 188 Finance Act 2004 in relation to compensation for refunded contributions and for contributions owed to the scheme.
26. Active members will be eligible for tax relief when they make a payment for the remedial AVCs in the year they make the purchase. A member who isn't an active member of the scheme (a deferred or pensioner member) is not entitled to receive tax relief on the purchase of the remedial AVCs and as such the amount required to purchase the remedial AVCs is reduced by an amount to reflect tax relief. Assumptions used in the calculation of this are explained below.
27. When determining the amount of the tax relief to be deducted from contributions, the scheme administrator may adopt any approach which is reasonable in all the circumstances. The

Treasury Directions set out a few approaches that the scheme manager may take, but this list is not exhaustive.

28. The MOD's approach to calculating tax relief for remedial AVCs will be to use the member's gross salary figure in each relevant tax year to approximate the member's marginal rate to determine the level of tax relief provided on pension contributions in that year. This is because there are often significant differences between gross income and pensionable earnings in the Armed Forces. Members of the Armed Forces are entitled to claim tax relief on added pension/AVCs based on their gross income, and the MOD's approach will eliminate large differences between cohorts.
29. In all cases the scheme administrator will provide the member with an explanation of how the tax relief amounts for each of the relevant tax years have been determined.
30. A member may appeal against a determination of the amount of tax relief calculated by writing to the scheme administrator, together with a reasoned explanation of a proposed alternative amount, supported by any evidence the appropriate person considers relevant.
31. If an appeal is made, then the scheme manager must decide whether to alter its determination and provide:
 - an altered determination, or confirmation that the original determination stands,
 - an explanation of its decision,
 - a description of the Internal Dispute Resolution Procedure process that applies to the AFPS.

Question 13: Do you have any comment on the MOD's decision to pay compensation based on AFPS 15 added pension contributions?

Question 14: Do you agree with or have any comment on the approach the MOD has taken in opting for gross income to approximate tax relief amounts?



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 7: Medical Officers and Dental Officers with legacy AFPS 05 remediable service

6 March 2023



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Enclosure 7 - Medical Officers and Dental Officers with legacy AFPS 05 remediable service

Introduction

1. On the introduction of the AFPS 05, a bonus scheme was introduced for Medical Officers and Dental Officers (MODOs) in pensionable service under the AFPS 05. In general, the bonus scheme is in lieu of access to the EDP 05 scheme, although MODOs who discharge in certain circumstances retain access to the EDP 05 scheme. For example, if at the end of their medium commission MODOs apply for a full commission but are not accepted for further service, they are given access to the EDP 05 scheme provided they meet the relevant criteria of at least 18 years' service and are aged 40 or over. Officers who are made redundant or are medically discharged are also given access to the EDP 05 scheme.
2. The purpose of the bonus scheme is to retain valued, skilled personnel in service: payments are primarily linked to changes in commission, and different bonus payment patterns apply to primary and secondary healthcare MODOs. Although the bonus scheme forms part of the pay offer for MODOs it is very closely linked to the pension offer. This is because it applies for those MODOs who are in pensionable service under the AFPS 05 when they reach the bonus qualification points and replaces the EDP 05 scheme for those MODOs. The Bonus scheme is also extended to any MODOs who opt out of AFPS 05. This is because EDP 05 entitlement is based on relevant service and not predicated on being an active member of the AFPS 05 scheme³⁶.
3. The scheme entitles primary care MODOs and secondary care consultants to receive three and two bonuses respectively, at specific points in their career, with each bonus payment attracting a five-year return of service. Payments start at 80% of pensionable salary for primary care MODOs and 180% of pensionable salary for secondary care consultants.
4. The Bonus scheme does not apply to MODOs who transfer to the AFPS 15, from the point at which they do so. MODOs who are in pensionable service under the AFPS 15 are entitled to an EDP 15 on discharge, provided they meet the criteria for that scheme. However, the MOD's policy is that MODOs who transition from AFPS 05 to AFPS 15 retain a right to any

³⁶ The EDP value is, however, derived from membership of the pension scheme.

future pro-rated bonus when they meet the relevant bonus trigger points in respect of their service under the AFPS 05.

MODO Pension Remedy

5. The fundamental principles of pension remedy apply to MODO members who transitioned from the AFPS 05 to AFPS 15 and who will be rolled back to the AFPS 05 on 1 October 2023 for the remedy period (1 April 2015 – 31 March 2022). MODO members will then make their immediate or deferred choice at the relevant point. This will have the following impact on members with accrued rights in the MODO bonus scheme:
 - Members who are rolled back into the AFPS 05 are treated as though they had always been in pensionable service under the AFPS 05 for that period: accordingly, they are eligible for the MODO bonus scheme in respect of service for that period.
 - Those MODOs who reached a bonus qualification point during the remedy period and were paid a pro rata bonus at that point, will be entitled to a top up payment (including interest) to bring their MODO bonus payments to the correct level, rather than the pro-rata level to which they are currently entitled³⁷.
 - MODOs who reach bonus qualification points in relation to their AFPS 05 service after 1 April 2022 will be entitled to a pro-rata bonus for that service.
6. The MOD has considered the AFPS 05 MODO bonus scheme and how it would interact with the pension remedy. In particular, we considered the fact that there might be a considerable number of years between payment of a MODO bonus in respect of AFPS 05 service, and the point at which a MODO might make a deferred choice election for reformed scheme benefits.
7. The MOD's approach takes account of the following:
 - the principle that the pension remedy is offered at the point at which pension benefits become payable to the member,
 - the purpose of the Bonus scheme, i.e. retention of valued, experienced MODOs; and,
 - the close link between the Bonus scheme and the AFPS 05 pension scheme.

³⁷ Those eligible for a bonus payment and with AFPS 05 benefits will receive full (i.e. not pro-rated) bonus payments for their service in the remedy period.

8. In accordance with the general principles of the pension remedy, all MODO members (active, deferred or pensioner) who are entitled to a MODO bonus payment in respect of service in the remedy period will receive payments of the amount necessary to ensure that they have received the correct amount due to them, plus interest. The operation of this, in line with the Act, works slightly differently for different cohorts of members.
9. Where a member chooses to receive reformed scheme benefits in respect of their remediable service in the AFPS 05, they will be required to repay that proportion of their bonus which reflects service after 1 April 2015 in the AFPS 05. This follows the principle that where the member is choosing a particular model of benefits, they choose the entire package of such benefits and cannot pick and choose from different models³⁸. The MODO bonus scheme is designed to work alongside the original AFPS 05 scheme design and members of the AFPS 15 are not eligible. Thus, members who choose benefits based on the AFPS 15 model are not eligible for payments under the MODO Bonus scheme in relation to that service.

Pensioner Members / Deceased Members

10. MODOs who were pensioner members before 1 October 2023, or representatives of MODOs who were deceased prior to that date, will be provided with an immediate choice. They will receive a Remediable Service Statement (RSS) within 18 months of 1 October 2023 and will have up to one year to make their election. As with other cohorts of immediate choice members, their benefits will not change until an election is received. Any election may result in an overpayment owed to the scheme, or arrears owed to the member. Any relevant over/underpayment will include interest.

Active / Deferred Members

11. At the point of roll back, the return to AFPS 05 service will entitle these MODOs to payment of a bonus for their remediable service. A top up payment will be made where necessary, together with interest. This will be paid as soon as practicable after 1 October 2023.

³⁸ See Section 34 of the Act.

Implications where a MODO chooses reformed scheme benefits

12. As set out above, when the retrospective remedy is implemented, eligible MODO members formerly in AFPS 15 will roll back to AFPS 05 for the remedy period and will re-join the MODO bonus scheme for that period. Where required, any additional bonus payments will be paid, with interest. It is important to note that the benefits of pensioner and deceased members only change on making an election.
13. Where a MODO chooses reformed scheme benefits for the remedy period, one consequence will be that they will no longer be entitled to bonus payments for the AFPS 05 service during the remedy period. As explained above, this is because eligibility for such payments is based on service in the AFPS 05 and receipt of legacy benefits under that scheme. Where a member chooses reformed scheme benefits, they choose the entire package of such benefits.
14. Accordingly, where a MODO who has received bonus payments in respect of remediable service chooses reformed scheme benefits, their bonus payments will be recalculated as though they had transitioned to the AFPS 15 on 1 April 2015. Any overpayment, plus interest³⁹, will be a debt owed to the MOD, and will be recovered from pension payments due to the member, firstly from the AFPS 05 scheme (pension commencement lump sum and pension), but if that is not sufficient, from any other Armed Forces pension scheme in which they may have accrued pension rights.
15. MODOs will be issued with an RSS which will include comprehensive details of the effect of a choice on MODO bonuses received, and any overpayment owed to the scheme or underpayments owed to the member will be included.

Question 15: Do you have any comment on the approach the MOD has taken to the AFPS 05 MODO bonus scheme in respect of the retrospective remedy?

³⁹ Cross refer to [Enclosure 5](#): Interest on underpayments and overpayments.

Medical and Dental Cadetships

16. For in-scope MODOs who completed medical or dental cadetships and who require time-related calculations to determine eligibility for a MODO bonus, the starting point for pensionable service is the date of commissioning as recorded in the Joint Personnel Administration System. This approach aligns with the original MODO Bonus policy which is based on changes of commission type (short/medium/full), rather than length of service in years.

Taxation implication – bonuses

17. **Income Tax:** MODO bonuses are part of the pay offer and therefore subject to income tax at the marginal rate applicable to the individual. Where an overpayment of bonus arises because a member has chosen to receive reformed scheme benefits in respect of their remediable service, the overpayment will be calculated net of any income tax originally paid by the member.
18. **Annual Allowance.** The Annual Allowance taxation regime affects most MODOs and in some instances, bonuses may trigger the tapering⁴⁰ of a member's annual pension allowance (the limit on annual tax-free savings).

⁴⁰ <https://www.gov.uk/guidance/pension-schemes-work-out-your-tapered-annual-allowance>.



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 8: Opted-out service

6 March 2023



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Enclosure 8 - Opted Out Service

Introduction

1. Members of the Armed Forces Pension Schemes (AFPS) can exercise an option to opt out of their respective scheme at any time. Opting out of the AFPS means that while pension benefits will not accrue during the opted-out period, Service Personnel will retain any pension benefits already accrued. Opted out personnel can opt back into the AFPS at a later date, provided that certain eligibility criteria are met. For example, in AFPS 15 only one request to opt in can be made in any 12-month period and the individual must still be in service and under the age of 60.

Retrospective Provision for opted out service

2. Where a member opted out of the AFPS for service between 1 April 2015 and 31 March 2022 (the remedy period), Section 5 of the Act provides that they may apply to the pension scheme to consider whether their remediable service can be reinstated as pensionable service. Where relevant, an application to have remediable service reinstated will also apply to any service post 1 April 2022. The member will be able to choose, at the time of opting in, if they would like their post 1 April 2022 service reinstated or not, should the outcome of their application be successful.
3. For the scheme to determine whether a Service person is entitled to opt back in, the individual will be required to provide written evidence that their decision to opt out was made as a direct result of the discrimination identified by the courts in relation to the transitional protection arrangements or as a direct result of the introduction of the 2015 reformed scheme.
4. If the scheme administrator determines that the service person would be allowed to opt back into the scheme, they will be entitled to receive a Reinstatement Remediable Service Statement (R-RSS), setting out the benefits to which they would be entitled. If they then choose to opt back in, they will benefit from the same remedy provisions as other eligible members of the AFPS.
5. For all Service personnel, where a member has further service after 1 April 2022, applications considered under this provision will not only apply to service in the remedy

period but also to service on and after 1 April 2022. If the Service person does not wish to be opted in for their service on and after 1 April 2022, they will need to inform the scheme administrator at the same time as applying to opt back in for their remediable service.

6. A small change to scheme rules will be required to ensure that members are able to choose whether to:
 - opt back in for the remedy period, or
 - opt back in for the remedy period **and** for any service from 1 April 2022.

Approach to reinstate opted out service

7. On implementation of the remedy, the scheme administrator will contact Service Personnel who have opted out of the scheme and who would otherwise be eligible for remedy. They will then have one year from the date of issue of the scheme administrator's letter to make an application, along with supporting evidence, to enable a determination to be made on whether they could opt back into the scheme.
8. If the application is accepted, the following will apply:
 - For pensioner members: An R-RSS will be provided. This will outline the member's current pension benefits and the benefits that would be payable were they to opt back into the scheme. The statement will outline both legacy and reformed scheme benefits. The legacy benefits will be in relation to the scheme to which the Service person belonged prior to opting out. The Service person will have up to one year to decide whether to opt back in and at the same time and to make their immediate choice for pension benefits.
 - For Active/Deferred members: An R-RSS will outline the member's current pension benefits and the pension benefits that would be payable were they to opt back into the scheme. The statement will outline both legacy and reformed scheme benefits. The legacy benefits will be in relation to the scheme to which the Service person belonged prior to opting out. The member will then have to decide whether to have their remediable service, and any service post 1 April 2022, re-instated by opting back in or to remain opted out of the scheme. They will have up to one year from the date of issue of the R-RSS to decide whether to opt back in. If the decision is taken

to opt back in, the member will be treated thereafter as outlined in the main consultation (Paragraph 3.28) for active and deferred members.

9. In cases where applications to opt back in are rejected, Service Personnel will be able to appeal the decision through the scheme's Internal Dispute Resolution Procedure (IDRP), details of which will be outlined in the decision letter.

In the event of Death

10. In cases where an individual who has opted out of the scheme has died and would have been eligible for the retrospective remedy were it not for the period of opted out service, then the eligible decision maker (EDM) (see [Enclosure 2](#) for full details on who can make a decision on behalf of a deceased member) can submit evidence to have that remediable service reinstated. This includes where a deceased member had received their R-RSS but died before they had elected to opt back in.
11. If the EDM's application to have remediable service re-instated is successful they will be sent an R-RSS and will have three months to make an election. The EDM will also be able to make a deferred choice when: the deceased active or deferred member had chosen to opt back in but died before making their choice; or the deceased member died after making their choice, but before the benefits were put into payment.
12. Where a deceased member had made both their decision about opting-in and their election before their death, and those pension benefits are already in payment an eligible decision maker will not be able to change this.
13. In cases where an EDM's application to opt back in are rejected, they will be able to appeal the decision through the scheme's Internal Dispute Resolution Procedure (IDRP), details of which will be outlined in the decision letter.

Effect of Opting Back In

14. Opting back into the Armed Forces Pension Scheme and making an election may result in an underpayment or overpayment of benefits. These will be corrected, with interest payable (for details on interest payments see [Enclosure 5](#)) and detailed in the R-RSS.
15. Opting back into the Armed Forces Pension Scheme, as well as making an election, may result in a change to the member's tax position. Details will be included in the R-RSS.

Question 16: Do you agree with or have any comment on the MOD's proposed policy for opted out service personnel to re-instate pensionable service in the AFPS?



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 9: Redundancy



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Enclosure 9 - Redundancy

Introduction

1. Members of the Armed Forces do not have a right to statutory redundancy. However, there are circumstances in which an individual's service is terminated early and the Defence Council directs that they are eligible for compensation under the relevant Armed Forces redundancy scheme. The question of which scheme covers the individual is determined by their pension scheme at the date on which they leave service in circumstances where they are eligible for such compensation.
2. There are four Armed Forces redundancy schemes, although only three are affected by the pension remedy. These are:
 - **The Armed Forces Redundancy Scheme 2010 (AFRS10)**⁴¹ provides for compensation payable to regular personnel who are members of the Armed Forces Pension Scheme 1975 (AFPS75).
 - **The Armed Forces Redundancy Scheme 2006 (AFRS06)**⁴² provides for compensation payable to regular personnel who are members of the Armed Forces Pension Scheme 2005 (AFPS05).
 - **The Armed Forces Redundancy Scheme 2020 (AFRS20)**⁴³ provides for compensation payable to certain members of the Armed Forces Pension Scheme 2015 (AFPS15). The AFRS 20 covers members who are in regular service or on either an FTRS or ADC commitment at the time their service is terminated. Part-time Volunteer Reserves are excluded from AFRS 2020. The AFRS 20 also makes specific provision for members with accrued rights in a legacy scheme.
3. Members of the NRPS 11 who are made redundant will continue to receive compensation from the existing NRPS redundancy scheme. Compensation will be unaffected by the retrospective remedy.

⁴¹ Armed Forces (Redundancy, Resettlement and Gratuity Earnings Scheme) (No. 2) Order 2010 (SI 2010/832).

⁴² Armed Forces Redundancy Scheme Order 2006 (SI 2006/55).

⁴³ The Armed Forces Redundancy Scheme Order 2020 (SI 2020/1298).

Legislation

4. This enclosure outlines how the pension remedy will affect eligible members who leave service with an entitlement to compensation under AFRS 20, AFRS 10 or AFRS 06. The relevant AFRS legislation will be amended to reflect the policy intent.

Policy Intent

5. For the Armed Forces, the scheme under which a service person's redundancy compensation is calculated depends on the pension scheme of which they are a member, at the time of discharge. The value of the compensation payable to an individual takes account of their final relevant earnings, length of service, any uncompleted service (i.e. period between date of discharge and existing exit date) and whether an immediate pension or early departure payment qualification point has been reached at the time their service is terminated.
6. The AFRS 20 makes provision for the compensation payable to those who have only ever been members of the AFPS 15 (or whose previous periods of Armed Forces service were more than five years before the AFPS 15 service began), and it also has detailed provisions for calculating the compensation payable to AFPS 15 members with eligible service in a legacy scheme (which may include members who are not eligible for the pension remedy). The calculations take into account all relevant service in the Armed Forces, which is defined differently depending on the type of commitment. The compensation for members with relevant legacy service is pro-rated, based on legacy style rules and AFRS 20 style rules, and varies depending on whether the member has met a particular qualification point.
7. As the Armed Forces redundancy schemes are intrinsically linked to the member's pension schemes, members with remediable service who have their service terminated early, and who are eligible for payments under one of the redundancy schemes, will be required to make an immediate choice at that point. A member who chooses legacy scheme benefits for their period of remediable service will be entitled to redundancy on those terms, and a member who chooses reformed scheme benefits will be entitled to benefits calculated as though they had been a member of the AFPS 15 during the period of remediable service.
8. The requirement to make an immediate choice in respect of pension benefits will apply even where pension benefits will not come into payment on discharge. If this is not done, the MOD cannot properly calculate the compensation due to the member on discharge. We considered

whether the choice for active and deferred members should remain a deferred choice, but this would lead to potentially complicated reconciliations at pension age, if the member makes a choice which means their pension benefits are different to those on which the redundancy compensation is based. In this regard, it is worth noting that, prior to the introduction of the AFRS 20, reservists were not entitled to redundancy benefits. Accordingly, where a reservist member of the AFPS 15 chooses legacy RFPS 05 benefits for their remediable service, they would have no entitlement at all to redundancy benefits for the remedy period and, had they been in receipt of redundancy benefits, would be required to repay these.

9. We believe that providing an election at the point of redundancy prevents further uncertainty for the member and ensures that all those made redundant are treated in the same way.
10. **Redundancy after 1 April 2015 and prior to 1 October 2023.** Members with remediable service whose service is terminated early before the retrospective remedy is implemented, would have left, or will leave, with compensation benefits. Those benefits are likely to be the following:
 - Fully protected members of legacy schemes before 1 April 2022: calculated under the terms of the AFRS 10 or AFRS 06 only.
 - AFPS 15 members with remediable service who were discharged before 1 January 2021: as the AFRS 20 was not introduced until 1 January 2021, it is likely that such members received compensation under the relevant legacy scheme as the AFRS 20 does not cover them.
 - AFPS 15 members with remediable service who were discharged on or after 1 January 2021: calculated under the terms of the AFRS 20.
11. The majority of these members will also have pensions in payment (and so be required to make an immediate choice), but there may be some who have a deferred pension. All members whose service was terminated early will be required to make an immediate choice in relation to their remediable service regardless of whether they are a pensioner or deferred member.
 - Where a member with remediable service chooses legacy benefits for the remedy period, their redundancy compensation will be re-calculated under the terms of the relevant legacy redundancy scheme.

- Where a member with remediable service chooses reformed scheme benefits for the remedy period, their redundancy compensation will be re-calculated under the terms of the AFRS 20, provided they left service on or after 1 January 2021.
 - Where a member with remediable service was discharged prior to 1 January 2021, the MOD intends to default these individuals to the relevant legacy redundancy scheme, because there was no redundancy scheme in place for members of the AFPS 15 up until that point. The compensation payment for these members will not change, irrespective of their election for pension benefits. Accordingly, deferred members will make a deferred choice in the normal way, as they approach deferred pension age and pensioner members will make an immediate choice.
12. It is possible that a member may make a choice in respect of their pension benefits, which will require an adjustment to the compensation they have already received under one of the redundancy schemes. If an underpayment has occurred, arrears plus interest will be paid. If the member has been overpaid, the amount of the overpayment plus interest will be recovered. This is in the accordance with the principle that the purpose of the remedy is to put members into the position they would have been in but for the discrimination, and not to provide them with a windfall payable from the public purse. Details of how interest payments are calculated are at [Enclosure 5](#).
13. **Redundancy after 1 October 2023.** Any member made redundant after 1 October 2023, regardless of whether a pension comes into payment immediately or is deferred, will make an immediate choice at the point of redundancy as otherwise it will not be possible to calculate their redundancy payment correctly (see Paragraph 8 above).

Question 17: Do you have any comments on the MOD's policy approach that the receipt of benefits under an Armed Forces redundancy scheme when service is terminated early should be an election point?



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 10: Pension transfers

6 March 2023



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Enclosure 10 - Pension Transfers

Introduction

1. In some circumstances, AFPS members with accrued pension rights in an occupational pension scheme from an employment prior to joining the Armed Forces, or within a personal pension scheme, may request to transfer the value of some, or all, of those benefits into their Armed Forces Pension Scheme (AFPS). Similarly, AFPS members who leave the Armed Forces and join another occupational pension scheme⁴⁴ may request to transfer the value of some, or all of those benefits into that scheme. There are three types of pension scheme transfers: Club transfer⁴⁵, Club Local Government Pension Scheme (LGPS) transfer⁴⁶, and a non-Club transfer⁴⁷.
2. This enclosure sets out how the AFPS will deal with transfers in and out of a scheme where rights acquired by remediable service (in the AFPS or another public service scheme) are involved. Rights acquired by transferred in service before 1 October 2023 are not automatically affected by the rollback and scheme regulations are required to provide for them.
3. The general principles of the pension remedy apply to transferred benefits: the policy intent is that members will be able to exercise the remedy choice in relation to benefits purchased by a transfer payment which was attributable to remediable service in a public service scheme. After rollback, there will only be two armed forces schemes which will be able to accept transferred in pension rights during the remedy period in relation to a member with remediable service: these are the AFPS 05 and the RFPS 05. See [Paragraph 10](#). Accordingly, members will be able to make an election for either AFPS05/RFPS05 benefits or reformed scheme benefits. However, pension benefits may have been transferred out of all armed forces schemes during this period.

⁴⁴ Pension transfers out are limited to occupational schemes – Section 68 Pension Schemes Act 2015

<https://www.legislation.gov.uk/ukpga/2015/8/contents>

⁴⁵ A Club transfer refers to the transfer of pension benefits between members of the Public Sector Transfer Club. The Club is a network of public and private sector occupational pension schemes. These transfers are completed on special terms, so they receive a similar amount of pension in their new scheme regardless of salary. A list of Club members is at:

<https://www.civilservicepensionscheme.org.uk/media/wdcj1lmg/public-sector-transfer-club-list-jan-2021.pdf>

⁴⁶ An LGPS transfer is a Local Government Pension Scheme transfer. LGPS is a member of the Club but there are specific policies relating to pension remedy.

⁴⁷ A non-Club transfer is a transfer of pension benefits from or to a pension scheme that is not in the Club.

4. Pension benefits transferred in to the AFPS in respect of service after 1 April 2022 will buy pension in AFPS 15 and benefits transferred out of AFPS 15 in respect of service after 1 April 2022 will buy benefits in the receiving organisation's reformed pension scheme.

General Principles

5. The Public Service Pension Club (the 'Club') is a network of public and private sector occupational pension schemes which makes it easier for individuals who move between employers covered by participating schemes to transfer their accrued pension rights. The essence of the Club system is that members who transfer on this basis will receive benefits from the new scheme in relation to their transferred rights which are similar to the benefits they would have received under their old scheme.
6. It is also possible to transfer benefits into and out of the AFPS to occupational pension schemes which are not Club schemes. Such transfers are done on a Cash equivalent Transfer Value (CETV) basis, where the value of the benefits being transferred is assigned a cash value by the sending scheme, and the receiving scheme determines the value of the benefits they will purchase in that scheme: it is not a like for like swap.
7. Although the scheme regulation will make separate provision for Club and CETV transfers, the principles underlying the remedy approach to both regimes are the same. Any member eligible for remedy who may have completed, or will complete, a transfer of remediable service benefits will receive a remedy choice.

Transfers Out: completed before 1 October 2023

8. Where a member has transferred pension rights out of the AFPS 15 in the period before 1 October 2023, and the value of those rights includes rights relating to remediable service, then the scheme manager must:
 - in consultation with the scheme actuary, value the remediable rights as if they had been legacy scheme rights, and then as if they had been reformed scheme rights,
 - calculate the difference between the higher of these two values and the value actually paid to the receiving scheme, paying the difference to the receiving scheme, on the same terms as the original transfer value,
 - provide the receiving scheme with the details of the two valuations.

Transfer Out: completed on or after 1 October 2023

9. The scheme manager must calculate the value of remediable service rights on both the legacy scheme basis and the reformed scheme basis and provide the receiving scheme with those details. The higher of the two values is the value which is transferred to the receiving scheme.

Transfers In

10. The general rule is that transferred in rights relating to remediable service which were originally transferred into the AFPS 15 will be treated as legacy scheme benefits, and the value will be varied so that they match the value of the benefits under the legacy scheme that would have been purchased at the time of the transfer.
11. The scheme manager may accept any payments made by the sending scheme and add this to the existing transfer payment received by the member. The scheme manager must also, in consultation with the scheme actuary, calculate the pension that the member would be entitled to in relation to the transferred in remediable rights under the legacy scheme and the reformed scheme, as this information must be shown on the member's Remediable Service Statement (RSS).
12. When the member makes their remedy choice, the value of the transferred in remediable rights will be varied to match the effect of that choice: legacy or reformed scheme benefits.
13. Where pension benefits are already in payment and the member makes an election for alternative benefits there is a potential for an underpayment or overpayment of benefits to have been made to the member in relation to their remediable rights. This may result in a payment being due to the member or due to the scheme, interest will be applied. See [Enclosure 5](#).

Question 18: Do you have any comment on the approach being taken in relation to Pension Transfers?



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 11: Abatement

6 March 2023



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Enclosure 11 - Abatement

Introduction

1. Historically, Government policy was that those who leave public service with a pension in payment and subsequently take up further employment covered by the same pension scheme or employer, should not earn more by way of pension and new salary combined than they earned on their last day of service. The pension in payment may be partially or fully abated (suspended or reduced) so that the new rate of pay and pension does not exceed the old rate of pay. In general, abatement rules apply to legacy scheme pensions only, although there is a form of abatement in the EDP 15 scheme and AFPS 15 pensions in payment are suspended where the member returns to AFPS 15 service within 28 days.
2. For the Armed Forces, traditional abatement rules apply if a pensioner member of the AFPS 75, AFPS 05, or RFPS 05 scheme enters into a period of further service in Regular service, Full Time Reserve Service (FTRS) or on an Additional Duties Commitment (ADC). The rules vary slightly between schemes, but the general principle is that where the member is re-employed on the same or higher salary, then their pension is abated in full. Where they are re-employed on a lower salary, the abatement rules provide for an amount to be calculated and deducted from their pension. If a re-employed member changes commitment or is promoted during their re-employed service, the abatement is re-assessed. Abatement lasts only for the period of the further Armed Forces service, and the full pension is restored once the member is no longer in further service.

Effect of Remedy on Abatement – pension in payment

3. The abatement rules continue to apply to remediable service and the effect of a remedy election may affect the amount that is abated. Some small changes are required to scheme rules to enable the recalculation of the abatement following the member's election.
4. A member who has re-joined with a pension in payment, which is then abated will have a right to make an immediate choice in relation to that pension. Where the effect of the member's choice is a change to the amount of the pension in payment, the abatement will need to be re-assessed, with retrospective effect. The usual scheme rules relating to the effect of promotions and changes in commitment will apply. It is also worth noting that, while it is only the legacy pension which is abated, the abatement calculation takes into account

AFPS 15 benefits and so will also take into account any reformed scheme benefits paid by the legacy scheme following an election.

5. The Remediable Service Statement (RSS) will include details of any current abatement of a member's pension and the amount that would be abated if the member made an immediate choice for alternative scheme benefits.

Early Departure Payments: in payment on 1 October 2023

6. EDP 05 scheme rules provide that when a member re-enters service either as a Regular or Reservist (FTRS/ADC), the EDP is suspended. The monthly EDP 05 payment ceases for the duration of the period of further service and any unexpired portion of the EDP 05 lump sum may need to be repaid. If the member subsequently chooses legacy scheme benefits, this could result in an increase in the amount of EDP 05 benefits, which may require a further portion of the lump sum to be re-paid.
7. EDP 15 rules provide that when a member re-enters service as a Regular they can either choose to keep their EDP 15 in payment (and consequently do not accrue any further EDP 15 in relation to the new service) or choose to have the EDP 15 suspended for the duration of the further service and have it re-calculated when they leave. If the member re-joins into full-time reserve service, the EDP remains in payment as reserve service cannot be qualifying service for EDP purposes.

Other Factors

8. Any overpayment or underpayments that arise as a result of the abatement adjustment will be subject to the interest rules as outlined in [Enclosure 5](#) and this will be detailed in the RSS.
9. Where a member is entitled to a refund of pension following the abatement adjustment, this will be paid as a lump sum and taxed as pension income. It is possible that, in such cases, a member may pay more tax on the arrears than if they had been taxed at their marginal rate in the relevant year. In these circumstances the pension administrator will, on request, provide the individual with their pension schedule so that the member can seek to reclaim any overpaid tax through HMRC.



Ministry
of Defence

Armed Forces Pension Scheme: Retrospective Remedy

Consultation Enclosure 12: Early Departure Payment (EDP)

6 March 2023



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Enclosure 12 - Early Departure Payment

Introduction

1. There are two Early Departure Payment (EDP) schemes, EDP 05 and EDP 15, which are unique to the Armed Forces. Both are employer-financed retirement benefit schemes, the rules of which are set out in legislation. They provide for the payment of a lump sum and monthly income when service in the Regular Forces ends and immediate pension benefits are not payable from the associated pension schemes⁴⁸. The EDP 05 scheme covers regular personnel in service which is pensionable under the AFPS 05 and the EDP 15 scheme covers regular personnel who are in pensionable service under the AFPS 15.
2. Qualification for an EDP payment is based on reaching age 40 and service length requirements being met⁴⁹. The rationale for the EDP is to retain regular personnel to the mid-career point and to compensate members for the fact that a full career to Normal Pension Age (NPA) in the associated pension scheme is usually not possible.
3. The value of the EDP payment is based entirely on the value of the deferred pension in the associated pension scheme, broadly as follows:
 - EDP 05 monthly payment is based on 50% of the deferred AFPS 05 pension up until the age of 55, and it then increases to 75% of the deferred pension; a tax-free lump sum is also payable on discharge, equivalent to 3 x the deferred pension.
 - EDP 15 monthly payment is 34% of the deferred AFPS 15 pension; a tax-free lump sum is also payable on discharge, equivalent to 2.25 x the deferred pension.
 - In both schemes, the payments are index-linked from the age of 55.
4. The EDP remains in payment⁵⁰ from the point of leaving service until the associated deferred pension age; age 65 (AFPS 05) or the higher of age 65 or the individual's State Pension Age (AFPS 15). Accordingly, an EDP may remain in payment for many years before the deferred pension from the associated AFPS is payable.

⁴⁸ AFPS 05 and AFPS 15.

⁴⁹ For EDP 05 length of service in the regular forces is 18 years, for EDP 15 length of service in the regular forces is 20 years. Service in the Royal Gibraltar Regiment is not service in the regular forces, as defined.

⁵⁰ Though EDP 05 is subject to abatement should an individual re-join the regular forces or enter into a FTRS/ADC commitment in the Reserve Forces and EDP 15 can be stopped at the member's request if they re-join the Regular forces.

Impact of Retrospective Remedy on EDP

5. Where a member with remediable service leaves service with an entitlement to EDP, they will normally have an entitlement to a deferred pension under either AFPS 05 or AFPS 15 in respect of the same period(s) of regular remediable service. The value of the EDP is directly based on the value of the accrued pension in the associated AFPS. As a result, the Act provides that where a remedy election is made in relation to the EDP, it will also be effective for the associated pension scheme. It is only necessary to make one election to cover the remediable service in both schemes. The below sets out when members will make an election:
- Eligible active members who discharge with entitlement to an EDP will make their deferred choice at the point of leaving the service.
 - Eligible members who have already left service with an EDP in payment will be given an immediate choice.
 - Eligible members who left service with an EDP in payment and are in receipt of a pension under AFPS 05 or AFPS 15 before 1 October 2023, will be offered an immediate choice in relation to the AFPS pension, which will also be effective for the purposes of the related EDP scheme.
6. The principle underlying the remedy is that, so far as is possible, members with remediable service should make their choice about which benefits are payable at the point that pension benefits become payable. For those who leave with an entitlement to EDP, this point is the day after they leave service. The Act⁵¹ provides, effectively, that where the same period of remediable service is pensionable in more than one scheme, the choice the member makes for one scheme is effective for both.
7. For those with an immediate choice, any change in benefits payable under EDP or AFPS because of an election could result in an underpayment owed to the member or an overpayment owed to the scheme. Such debts will carry interest and must be recovered. For further information on how interest is applied see [Enclosure 5](#).

⁵¹ Sections 9 and 13 of the Act.

AFPS 75 and EDP 15

8. The Act provides that remediable service is retrospectively treated as service under a legacy scheme and reformed scheme benefits are treated as if paid by the legacy scheme. EDP 05 and EDP 15 benefits are not subject to the same tax regime as registered pension schemes, as they are both employer-financed retirement benefits.

9. Members of the AFPS 75 with remediable service may choose reformed scheme benefits, at a point where they would meet the qualification criteria for EDP 15. If they do so, these benefits would be payable from a registered pension scheme but should not be subject to the taxation regime to which registered pension schemes are subject. The MOD is working with HMRC to ensure that tax regulations will exempt such payments from the pensions tax regime.