



Ministry
of Defence

Public Sector Equality Duty

Armed Forces Pension Scheme: *Retrospective Remedy* –

Equality Impact Assessment (Supplement)

Re-joiners / Multiple Periods of Service

3 April 2023

Rejoiners / Multiple Periods of Service

Policy Decision

1. This policy details how the remedy will apply to in-scope members who re-joined the Armed Forces during the remedy period. Such members may re-join service in a different type of commitment, and may leave and re-join more than once, changing commitment more than once. The default policy in relation to remedy, as set out in the primary legislation, is that members are returned to the legacy scheme in which they most recently (before 1 April 2015) had pensionable service. However, where the member's previous service was under an older legacy scheme which had closed before that date and did not permit re-joiners, or where the member is re-joining in a different commitment (regular/reserve) the policy is a little more complex.
2. Members can only be returned to a legacy scheme which provides for the specific type of commitment under which they served during the remedy period: it is not possible to be returned to a regular scheme in relation to reserve service, and vice versa. Likewise, members who were previously in service under a legacy scheme which was closed to new members before 2015 will be returned to the legacy scheme for the relevant type of service which was open on 31 March 2012.
3. The default policy is set out in more detail in Enclosure 14 to the consultation document, which should be read in conjunction with this document. Broadly, the effect of the above policy on return to legacy schemes is that members with multiple periods of service will have:
 - a. A single election in respect of all periods of remediable service of the same type, where the legacy scheme rules provide that the service is considered continuous, or where they have aggregated the different periods of service.
 - b. A single election in respect of all periods of remediable service in the RFPS 05.
 - c. Separate elections in relation to periods of remediable service in different schemes.
4. The policy ensures that eligible re-joiners will be returned to the scheme to which they would have belonged had the AFPS 15 not been introduced and provided with the appropriate choice in relation to the relevant legacy scheme.

Exception: AFPS 75 pensioners

5. MOD has identified that this policy may have a detrimental impact on any members who:
 - had previous service under the AFPS 75,
 - re-joined regular service during the remedy period,
 - discharge before 1 October 2023 with either a pro-rated immediate pension or service invaliding pension in payment, and
 - are returned to the AFPS 05 for their remediable service.

6. Full details of how this situation might arise are set out in Enclosure 14 of the consultation, but the effect of this policy, if not mitigated in some way, would be to remove entitlement to the AFPS 75 pension in payment as it would revert to being a preserved award.

7. These members would be Immediate Choice members, as they are in receipt of pension benefits. Until they make their choice, their current pension benefits will remain in payment, although they will be rolled back to the AFPS 05. How their benefits are ultimately adjusted will be determined by the remedy choice they make:

- a. Election for reformed scheme benefits: the benefits to which they are entitled as a result of remediable service under the AFPS 05 will be adjusted to mirror the AFPS 75 benefits in payment.
- b. Election for legacy scheme benefits: the pension in payment will cease, the AFPS 75 award will become a preserved award, and the member will be entitled to a deferred pension under the AFPS 05.

8. The member's choice will determine their benefits, in accordance with the principles that the member should be returned to the position that they would have been in had the discrimination not occurred, and the purpose of the remedy is not to provide a windfall for members.

Analysis

9. 36,462 members of the McCloud cohort have multiple periods of service. The gender and ethnicity breakdown is:

- Women: 2,975 (8%)
- Men: 33,487 (92%)
- Ethnic minority: 12,183 (33%)
- White: 24,279 (67%)

a. Men are marginally over-represented in the affected cohort (92%) relative to representation across the Armed Forces (89% Regular / 84% Reserves).

b. Ethnic minorities are significantly over-represented in the affected cohort (33%) relative to representation across the Armed Forces (10% Regular / 6% Reserve).

10. The default policy on identifying the relevant legacy scheme to which members with remediable service return is set out in the primary legislation. It aims to ensure that members are placed into the same scheme that they would have joined had the discrimination not taken place.

11. The specific modifications which MOD proposes to make for re-joiner members who have discharged before 1 October 2023 with an AFPS 75 pension in payment are consistent with this approach. The aim is to ensure that members who wish to benefit from reformed scheme model will retain, by exception, benefits which are

equivalent to their AFPS 75 benefits under the pre-rollback positions. However, the option for members who choose legacy benefits will reflect the legacy position. At the date of this document, MOD is not aware of any members who would fall into this category, but as it could apply to anyone who discharges before 1 October 2023, provision is being made.

12. Generally, as the policy seeks to place members back into the position that they would have been in had the discrimination not taken place, regardless of sex or race, we take the view that it is unlikely that inequitable outcomes will arise. Mitigations are in place to ensure that members who fall into this very small cohort will not be adversely impacted by the change of pension regime following the implementation of the rollback, provided they are actually in receipt of a pension.