



Ministry
of Defence

Armed Forces Pension Schemes

Pension Forfeiture Policy

Foreword

The Armed Forces Pension Schemes allow the Secretary of State for Defence to withhold benefits payable under the Schemes in certain circumstances. This power provides assurance that those who commit grave and serious crimes that bring His Majesty's Armed Forces into disrepute or cause grave injury to defence or the State, should not receive a publicly funded pension.

The forfeiture policy applies to Armed Forces pensions and Royal Gibraltar Regiment pensions. The policy articulates the process to be followed to enact the forfeiture provisions contained in the legislation of the relevant Armed Forces Pension Scheme.

Brigadier Philip Bassingham-Searle
Head Armed Forces Remuneration

Preface

1. The Pension Forfeiture Policy is designed to be used by DBS who are the scheme administrators, Armed Forces Remuneration who are the scheme managers as well as unit admin personnel and scheme members. This publication contains the policy and legislation for the current scheme rules and guidance on the processes involved and best practice to apply when enacting pension forfeiture for an Armed Forces pension. Where you have any doubts or concerns over any aspect of this guidance, you should seek the advice of those detailed below.

2. The owner of this Policy is Head Armed Forces Remuneration. For further information on any aspect of this publication or to provide feedback on the content, contact:

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Forfeiture Pension Policy

The Legislation

1. The SofS¹ may withhold benefits payable under the Armed Forces Pension Schemes², if the member³:

- a. is convicted of treason;⁴ or
- b. is convicted of one or more offences under the Official Secrets Act 1911 to 1989 for which the member has been sentenced to at least 10 years imprisonment or two or more consecutive terms amounting to at least 10 years imprisonment;⁵
- c. is convicted of an offence in connection with their service which the SofS, considers is gravely injurious to the defence, security or other interests of the State⁶ including:⁷
 - i. those offences that are more likely, by their nature, to be potentially harmful to the relevant interests of state. Such offences include assisting, aiding, or communicating with the enemy including misconduct on operations, obstruction on operations, looting, failure to escape when captured by an enemy; taking part in mutiny; failure to suppress a mutiny in time of war or peace; and desertion in time of war or while on active service;⁸ or
 - ii. those offences that are not, by their nature, likely to be gravely injurious to the relevant interests of the state but may be so because of the particular way in which they are committed. For example, selling illegal drugs is unlikely by its nature to be an offence that is gravely injurious to the relevant interests of state. However, if the supply is to other members of the military (and so connected to service) and that causes serious illness or death to a number of soldiers such that a squadron or regiment is unable to respond to some crisis, or if the proceeds are being used to

¹ In this document, when SofS or Secretary of State is referred to, this means Secretary of State or Secretary of State on behalf of the Defence Council.

² Benefits that may be withheld include a member's pension, pension commencement lump sum, EDP and resettlement grant provided the circumstances and conditions for forfeiture under the scheme regulations and/or primary legislation are met.

³ These are the current rules, but usually the relevant rules are those that were in place at the time the offence was committed. MODLA will advise on which rules apply in the case concerned.

⁴ See J.6(2)(a) AFPS 75, H.6(1)(a) FTRS 97, F.5(2)(a) NRPS, J.6(1)(a) AFPS 05, H.6(1)(a) RFPS 05, Regulation 122(1)(a) AFPS 15

⁵ See J.6(2)(a) AFPS 75, H.6(1)(a) FTRS 97, F.5(2)(a) NRPS, J.6(1)(a) AFPS 05, H.6(1)(a) RFPS 05, Regulation 122(1)(a) AFPS 15

⁶ See J.6(3) AFPS 75, H.6(1)(b) FTRS 97, F.5(2)(b) NRPS, J.6(1)(b) AFPS 05, H.6(1)(b) RFPS 05, Reg 122(1)(b) AFPS 15

⁷ AFPS Pension Policy will consider convictions under this type of offence where the member has been sentenced to around 8 years or more imprisonment or two or more consecutive terms amounting to around 8 years or more imprisonment.

⁸ Other offences that may be considered include terrorism offences and many of those listed in the [Armed Forces Act 2006](#).

fund paramilitary activity against state agents, that may well be considered gravely injurious to the relevant interests of the State;

- d. has incurred a monetary obligation to the Crown as a result of a criminal, negligent or fraudulent act or omission by the member which arises out of or in connection with their service in the Armed Forces, for example damaging HM Forces property, such as barracks.⁹¹⁰

2. Where AF Pension Policy and MOD legal advisors agree that a case is made out for the recovery of a monetary obligation,¹¹ MOD will normally obtain a court order from a competent court¹² or award by an arbitrator or sheriff to enforce the debt. The reason for this is that the SofS can only forfeit a disputed debt where there is a court order, and it is not always apparent if the debt is disputed. However, there may be circumstances, where having obtained legal advice, SofS may decide it is appropriate to forfeit the debt without obtaining a court order.

3. The SofS may withhold pension entitlements to a person or dependant(s) who are convicted of the murder or manslaughter of the member or any other offence which involves the unlawful killing of the member.¹³ Under AFPS 75 and NRPS, SofS may also withhold pension entitlements to a surviving beneficiary¹⁴ where the member's pension entitlements were liable to be withheld by way of conviction for treason, one or more offences under the Official Secrets Act or an offence gravely injurious to the defence, security or other interests of the State and the beneficiary is also found guilty by way of conviction, whether as principal or accessory, for treason, one or more offences under the Official Secrets Act or an offence gravely injurious to the defence, security or other interests of the State.^{15 16}

4. In paragraph (3) above "unlawful killing" includes unlawfully aiding, abetting, counselling, or procuring the death of the member.¹⁷

Initial Consideration

⁹ H.6(c) FTRS 97, F.5(2)(c) NRPS, J.6(1)(c) AFPS 05, H.6(1)(c) RFPS 05, Reg 122(1)(c) AFPS 15

¹⁰ For AFPS 75 this paragraph should be read as the member has, after becoming a member of the Scheme, incurred a monetary obligation to the Crown which arises out of criminal, negligent or fraudulent act or omission by the member; **or** arises out of or in connection with the members service in the regular forces. See J.6(4) AFPS 75.

¹¹ Note there is no arbitrary threshold of monetary obligation to be met for SofS to consider forfeiture, rather it is the presence of wrongdoing by the service personnel from which the debt arises that is required. Every case needs to be decided on its own merits because SoS' discretion cannot be fettered by setting arbitrary limits on the monetary value or other circumstances in which the debt arose.

¹² The County Court, the High Court, Court of Appeal, Supreme Court, Court Martial, Summary Appeal Court, The Crown Court and Magistrates Court. As to whether the Pensions Ombudsman may be considered a competent court, legal advice should be sought on a case-by-case basis.

¹³ See J.7(3) AFPS 75, H.6(2) FTRS 97, F.6(3) NRPS, J.6(2) AFPS 05, H.6(2) RFPS 05, Reg. 122(2) AFPS 15

¹⁴ See part D (Death Benefits) NRPS and Part E (Death Benefits) AFPS 75

¹⁵ This is subject to rule F.5(4) where the person has a guaranteed minimum under section 14 of the 1993 Act.

¹⁶ See J.7(1)(2) AFPS 75, F.6(1)(2) NRPS).

¹⁷ See J.7(3) AFPS 75, H.6(3) FTRS 97, F.6(3) NRPS, J.6(3) AFPS 05, H.6(3) RFPS 05, Reg 122(3) AFPS 15

5. AF Pension Policy will check the Court Martial results¹⁸ published by the Military Court Service (MCS) on GOV.UK once a month to identify cases where it may be appropriate to forfeit a serving member's pension. Where AF Pension Policy become aware of a potential case, AF Pension Policy should request conviction and sentencing remarks from the MCS for further detail to decide whether a case for forfeiture is present. For example, where the charge at conviction is listed as 'assisting an enemy', this is insufficient detail to decide whether the act was 'gravely injurious to defence'. AF Pension Policy would need further detail as to the nature, effect and severity of the crime and the member's motivations to decide whether the act was 'grave' enough to be considered for forfeiture. Where the single Service Pay Colonels become aware of a current or ex-member who has been convicted of a relevant offence in either the civilian courts or Court Martial, they will notify AF Pension Policy of the potential forfeiture case via the multiuser mailbox. Where the single services are not made aware of any relevant civilian convictions, DBS AFVS APS and AF Pension Policy may identify these cases from other sources, including via the media or Crown Prosecution Service (CPS) upon publication of a news report or statement.¹⁹ Where DBS DMRWO become aware of a member with a monetary obligation that will not or cannot be cleared by the member's pay or other entitlements and recovery may be made from the member's pension entitlements under the relevant forfeiture provisions, DBS DMRWO will notify AF Pension Policy of the potential forfeiture case via the multiuser mailbox.

6. Upon notification or discovery of a potential forfeiture case, DBS AFVS APS will provide the following information to AF Pension Policy:

- a. the member's personal details, including the member's rank, role, and Service number.
- b. details of the Armed Forces Pension Scheme(s) of which the person is a member, including the member's accrued benefits, when the benefits will be in payment and when the member joined or transferred into the scheme.
 - i. if the member is or was previously an AFPS 75 member, the amount of Guaranteed Minimum Pension (GMP) the member is entitled to. The Government Actuary Department will need to be consulted to provide the amount of GMP the member is entitled to.
- c. details of the person's offence(s) including conviction and sentencing remarks obtained from the MCS where possible or if the person is convicted by a civilian court, reports by the press or other reliable sources of information. In the case of the imposition of a penalty incurring a monetary obligation to the Crown, details of the conduct resulting in that penalty, the amount of the monetary obligation and a copy of the court order for the debt.
- d. in cases falling under paragraph (1) (c) or (2), DBS AFVS APS must set out the reasons why it anticipates the SofS would consider the offence to be one which can be characterised as "gravely injurious to the defence, security

¹⁸ A report published by the MCS once a month detailing the convictions and sentences of Armed Forces personnel for the specified month.

¹⁹ News reports and CPS statements may be considered reasonable sources of information and means of notification in this context due to the high-profile nature of the convictions. It is not unreasonable to expect many of these cases to be covered by the media taking into account the difficulty of obtaining information on convictions that happen externally to the department.

or other interests of the State”. There is no definitive list of offences which fall under this category and each case must be considered on its own facts. However, there are two types of offences, set out in paragraphs (1)(c) (i) and (ii), which may fall under the umbrella of “gravely injurious” acts.

- e. in cases falling under (1)(c) or (1)(d), DBS AFVS APS must set out the reasons why it considers the conduct of the scheme member to be sufficiently connected with the member’s service to allow for pension benefits to be forfeited. Each case must be considered on its own facts. However, factors tending to show a sufficient connection with a member’s service could include that the scheme member had learned how to commit the crimes as part of their professional training (e.g. setting explosives, using other weapons); made preparations to commit the crimes whilst in service; committed the crimes whilst in service; or exploited previous service in order to avoid detection (e.g. using training on evasion techniques²⁰). DBS AFVS APS should consider whether the offence(s) could have been committed or the debt incurred but for the scheme member’s service. If not, it would tend to indicate that there is a sufficient connection with the member’s service. For example, where associations and friendships with colleagues and the individual’s trusted status are used to obtain valuable information. For example, where membership of the Armed Forces is used to obtain access to financial resources, loans or running bills e.g mess bills or Forces Help to Buy Loans. A member carrying out an offence using their own expertise and skills acquired before joining the Armed Forces rather than specialist knowledge acquired through training is an example where the connection would be absent e.g., a crime committed using technological skills acquired before joining.

Policy and Legal Consideration

7. After receiving the relevant information from DBS, AF Pension Policy should consider the following to decide whether a potential forfeiture case is present:
 - a. type of offence for which the person is convicted or the type and circumstances of the debt incurred to check if the pension entitlements can be forfeited, in accordance with the applicable scheme regulations. Note there is no requirement for AF Pension Policy or DBS AFVS APS to consider what proportion of the pension should be forfeited.
 - b. the scheme regulations effective at the time the offence was committed unless Counsel advises differently; and
 - c. whether the whole pension can be forfeited, if the member belongs to AFPS 75 and the member is entitled to GMP. Depending on the scheme regulations applicable in the case, connection may not need to be shown between the conviction and service to forfeit the GMP. In the present scheme rules, the exceptions in *J.6(5) AFPS 75*, *H.5(3) FTRS 97*, *F.5(4) NRPS*, *J.5(3) AFPS 05*, *H.5 (3-4) RFPS 05*, *Reg 121(3) AFPS 15* state where the member is not convicted of treason or an offence under the Official Secrets Act and the member is entitled to a GMP under section 14

²⁰ See judgment of Lord Bingham in the case of *R v Whitchelo [1997] EWCA Civ J0311-314*

of the 1993 Act, the GMP cannot be forfeited and only pension amounts exceeding the member's guaranteed minimum may be withheld.

8. If AF Pension Policy agree with DBS AFVS APS that a potential forfeiture case is present, AF Pension Policy should consult with MOD Legal Advisors to confirm which benefits may be subject to forfeiture and which scheme rules and primary legislation may apply.

9. MOD Legal Advisors will advise if there is a potential case of forfeiture. Counsel's opinion may be sought on a case-by-case basis²¹.

Ministerial Submission

10. If MOD Legal Advisors and, where appropriate, Counsel consider the case for forfeiture is made out and in the case of forfeiture under para 1(d) (monetary obligation) an order has been obtained from a competent Court allowing the debt to be enforced, AF Pension Policy should draft a submission to SofS noting:

- a. summary of the facts and circumstances giving rise to the proposed forfeiture, in accordance with paragraphs (5)(a) to (5)(c) above;
- b. the reasons for considering withholding the person's pension benefits whether in whole or in part, in accordance with paragraphs (5)(d) to (5)(e) above;
- c. Counsel advice will be attached, if sought, and MODLA will set out the legal implications of the proposed forfeiture in the submission;
- d. the duty to not make statements which may give rise to an expectation that the person's benefits will not be forfeited at all or to a lesser degree (see further details in paragraph (14));
- e. the financial implications in pursuing the case. For example, the Counsel's fees for advice. This paragraph requires approval from HOCs Finance or DBS Finance;
- f. whilst the existence of the power to forfeit pension benefits helps to preserve public confidence in HM Armed Forces and gives assurance that those who commit gravely serious crimes connected with their service should not receive public funds in the form of pension benefits, it should be noted in the submission, extensive media coverage and/ or public outrage are not in of themselves relevant considerations but may be indicative of the member's conduct having brought HM Armed Forces into disrepute or otherwise causing grave injury to the interests of Defence. This paragraph requires approval from DDC (Directorate of Defence Communications); and
- g. the sentencing remarks to be annexed to the ministerial submission where they can be obtained.

11. AF Pension Policy must draft the submission in accordance with current MOD submission rules prior to submission to the SofS.

Secretary of State Consideration

²¹ AF Pension Policy should obtain financial approval from HOCs for Counsel Fees. MOD Legal Advisors will draft Instructions to Counsel for AF Pension Policy's review, prior to submission.

12. SofS²² may exercise discretion considering the following factors:
- a. the seriousness with which the Court viewed the offence in accordance with the punishment imposed and the sentencing remarks;
 - b. the circumstances surrounding the offence and investigation;
 - c. the seniority of the service personnel or former service personnel (the more senior, the greater the loss of credibility and confidence);
 - d. whether the individual co-operated with the criminal investigation and trial, and whether the member pleaded guilty;
 - e. any mitigating factors mentioned in the sentencing remarks;
 - f. whether there are any other mitigating circumstances (e.g., whether the individual was suffering from an illness at the time of the offence);
 - g. the likely impact of forfeiture on the individuals' spouse and dependants;
 - h. any other matters which the SofS considers relevant;
 - i. where the SofS is minded to forfeit, they should consider whether to forfeit the entire pension (subject to any GMP) or a proportion thereof and give reasons for applying that figure;
 - j. other factors highlighted in the ministerial submission; and
 - k. whether the offence involved:
 - i. organised conspiracy amongst a number of service personnel;
 - ii. active support for criminals;
 - iii. the perversion of the course of public justice;
 - iv. the betrayal of an important position of trust for personal gain; and/or
 - v. the corruption or attempted corruption of junior service personnel.

13. If SofS does not agree the person's pension benefits should be forfeited, the case is not to be pursued further. The decision should be evidenced in writing and the reasons for the decision set out. DBS AFVS APS should retain a copy of this decision and the reasoning.

Letter Notifying of Intention to Forfeit Pension Benefits

14. If SofS decides the person's pension benefits should be forfeited, DBS AFVS APS will send a letter notifying the Scheme member or dependent(s) that SofS is

²² J.7(4)(a) AFPS 05, H.7 (4)(a) RFPS 05, and Reg 123(4)(b) AFPS 15 states the SofS may refer the question of forfeiture to the Social Security Commissioner.

considering the forfeiture of their entitlements.²³ ²⁴ The letter must include the following information:²⁵

- a. the reasons why the SofS is considering withholding the individual's pension benefits (e.g., because the scheme member has been convicted of treason);
- b. to what extent the SofS is considering withholding those benefits, whether in whole or in part, and specify the reasons for arriving at the proportion forfeited (e.g., the whole pension because of the gravity of the offence);
- c. invite representations within 28 days to ensure procedural fairness; and
- d. state clearly that representations should be addressed to DBS.

15. Care should be taken not to make any statements to the scheme member (or to members more generally) or dependent(s) that could give rise to the reasonable expectation that their benefits will not be forfeited at all or to a lesser degree when that is not in fact the case. An example would be specifying in the letter that a proportion of benefits will be forfeited and then later trying to forfeit a higher proportion.²⁶

Representations

16. After the 28-day window elapses, DBS AFVS APS should provide AF Pension Policy with any representations received from the member. AF Pension Policy must draft a follow up ministerial submission which should include:

- a. a summary of the provisional reasons in the first letter;
- b. the contentions made in the representations;
- c. a response to each representation, setting out why it does or does not affect the preliminary view reached; and
- d. any other matters that would be relevant for SofS to consider.

²³ The letter notifying of intention to forfeit pension benefits should ask that, where a recipient chooses to make representations, they provide documents or any proof of claim to support the representations made.

²⁴ Under current tax rules, MOD is legally bound to pay pension entitlements within 2 years. Besides the tax rules, there is no statutory deadline for the claim to be processed. Therefore, DBS may pause the processing of any claim to pay a pension from the member or dependent(s) until the consideration of forfeiture is complete and a decision has been made, provided it is within the 2-year timeframe. Where DBS pause the processing of a claim and forfeiture is later decided against, the pension will be backdated to the date of claim and arrears paid in full with any interest owed. However, if the member's or dependent(s) pension is already in payment no change can be made to the relevant pension until the SofS has made the decision to forfeit the pension and signed the certificate of forfeiture. The decision is then effective from this date.

²⁵ See J.8 AFPS 75, H.7 FTRS 97, F.7 NRPS, J.7 AFPS 05, H.7 RFPS 05 and Reg 123 AFPS 15

²⁶ See *Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd* [1991] 1 WLR 589. Care should be given in regard to 'Imperial Duty' at the relevant stages of decision making. Where discretion is exercised, it must be done in a genuine and rational manner so as to exclude extraneous considerations and to take into account those considerations that are obviously relevant to the decision in question. If there has been any statement made to the relevant member (or members more generally) and there is a reasonable expectation as a result, it may be necessary to take such statements into account in coming to a final conclusion.

17. Where the individual does not provide any representations, AF Pension Policy will provide SofS with a note to explain that no representations have been made and recommend that SofS, if still minded to forfeit, sign the forfeiture certificate to allow DBS to forfeit the individual's entitlement.

18. Where the individual makes representations, SofS should consider the representations made and any other relevant considerations in the follow up ministerial submission to decide whether any of the representations or relevant considerations impact the preliminary view reached that the individual's entitlements should be forfeited. SofS should expressly direct their consideration to the extent of the potential forfeiture and whether it should be whole or partial, in accordance with the gravity of the offence and impact on the member or dependent(s). This consideration should be reflected in the final letter of intent to the member and in any final reasoned decision in favour of forfeiture after.

Final Decision Letter and Certificate of Forfeiture

19. If SofS agrees that forfeiture remains appropriate after considering any representations made and any other relevant considerations,²⁷ SofS will sign a certificate of forfeiture. The decision to forfeit a member's pension is made effective from the date of signature. AF Pension Policy can then instruct DBS AFVS APS to forfeit the member's or dependent(s) pension entitlements and draft a letter of intent to the member or dependent(s) stating the decision has been made final and SofS intends to withhold their entitlements. The letter must include:

- a. The reasons why SofS intends to withhold the individual's pension benefits;
- b. a response to the representations, setting out why they do or do not affect the preliminary view reached;
- c. To what extent the SofS intends to withhold those benefits, whether in whole or in part, and specify the reasons for arriving at the proportion forfeited;
- d. The members or dependent(s) rights for the resolution of disputes (see paragraph (19)) and the person's right to take the matter to the Pension Ombudsman if not satisfied;²⁸
- e. If the SofS intends to withhold a benefit under forfeiture where monetary obligation applies, the member or dependent(s) must be given a certificate showing the amount withheld and the effect of its being withheld on the person's benefits under the Scheme.²⁹

²⁷ Where SofS no longer agrees that the pension benefits should be forfeited after the follow up ministerial submission, the case is not to be pursued further. The decision should be evidenced in writing and the reasons for the decision set out. DBS AFVS APS should retain a copy of this decision and the reasoning. DBS AFVS APS should send a notification letter stating that SofS is no longer considering the forfeiture of the member's or dependent's benefits.

²⁸ See J.8(2) AFPS 75, H.7(2) FTRS 97, F.7(2) NRPS, J.7(2) AFPS 05, H.7(2) RFPS 05, Reg 123(2) AFPS 15.

²⁹ See J.8(3) AFPS 75, H.7(3) FTRS 97, F.7(3) NRPS, J.7(3) AFPS 05, H.7(3) RFPS 05, Reg 123(3) AFPS 15.

Pensions Ombudsman

20. If the member or dependent(s) does not agree with SofS's intent, the person can challenge any forfeiture decision through the Internal Disputes Resolution Procedure. If MOD refuses their appeal, the person can liaise with the Money and Pensions Service and take the matter to the Pensions Ombudsman or appeal directly to the High Court. Either party has a right to appeal the Pensions Ombudsman's decision on any point of law and take the matter to the High Court. Further appeals could be heard up to the Supreme Court. MOD could decide not to take the action further at any stage if it was not in the national interest to do so. The Department may re-evaluate the financial cost and reputational risk at any stage if a decision is challenged. Any appeal from the Pensions Ombudsman on point of law will bring the matter before the court, which will increase legal costs but also lend itself to a considered and authoritative judgment on the parameters of possible forfeiture for Service Personnel under Armed Forces Pension Schemes.

21. AF Pension Policy and DBS AFVS APS should liaise with MOD Legal Advisers if a referral to the Pensions Ombudsman or High Court appears likely, to consider the legal risks, costs, and wider policy implications of any decision.

22. If a member appeals the decision and the appeal is successful, any pension that was withheld by way of forfeiture will be backdated to the effective date and arrears paid in full with any interest owed.

To note: Decisions about forfeiture and the fact that it is under consideration in individual cases is personal data and cannot be disclosed publicly due Data Protection legislation. However, after a decision has been made, the reasons for the decision may potentially be disclosable, so care should be taken to only include relevant information.