

**RESERVE FORCES PENSION SCHEME (AMENDMENT) REGULATIONS
2009**

The Defence Council, in exercise of the powers conferred on them by sections 4(2) to (4) and 8(1) and (3) of the Reserve Forces Act 1996(a), make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Reserve Forces Pension Scheme (Amendment) Regulations 2009.

(2) These Regulations come into force on 6th April 2009.

(3) In these Regulations “the Scheme” means the Reserve Forces Pension Scheme 2005 established by regulation 2(1) of the Reserve Forces Pension Scheme Regulations 2005(b) and set out in Schedule 1 to those Regulations.

Amendments to the Scheme

2. The Scheme is amended in accordance with regulations 3-5.

Adjustments for inflation in determining final pensionable earnings

3. For rule A.5 substitute—

“(1) For the purpose of determining a person’s final pensionable earnings under rule A.4(1), the amount of pensionable earnings, as determined in accordance with rule A.4, for that part of the period of 365 days that falls 365 days or more before the last day of service is adjusted for inflation.

(2) Any adjustment made for the purpose of determining final pensionable earnings shall be disregarded for all other purposes.

(3) The reference in paragraph (1) to adjusting for inflation the amount of pensionable earnings for part of a period is to increasing it by the same amount as that by which an annual pension of an amount equal to those earnings would have been increased under the Pensions (Increase) Act 1971(c) on the day following the last day of service assuming that the pension—

- (a) were eligible to be so increased; and
- (b) had come into payment on the day after the period ends.”.

Pension credit members’ pensions

4.—(1) In rule D.3 (pension credit members’ pensions) for paragraph (3) substitute—

“(3) The pension and any lump sum become payable—

- (a) where the pension sharing order is made before 6th April 2009—
 - (i) immediately on the pension credit member reaching pension benefit age, or
 - (ii) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect;
- (b) where the pension sharing order is made on or after 6th April 2009—

(a) 1996 c. 14.

(b) These Regulations have been amended by the Reserve Forces Pension Scheme Amendment Regulations 2006. Copies of both sets of Regulations can be obtained from SPPol(PCV), Ministry of Defence, Main Building, Whitehall, London SW1A 2HB.

(c) 1971 c. 56.

- (i) immediately on the pension credit member reaching age 55, or
- (ii) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect."

(2) For rule D.4 (early payment of pensions with actuarial reduction) substitute—

"(1) A member who is not entitled to immediate payment of a pension under rule D.1, D.2 or D.3 may opt for immediate payment of a reduced pension and lump sum under this rule if the member has reached age 55 and paragraph (2) or (3) applies.

(2) This paragraph applies if the member—

(a) either—

- (i) is entitled to count at least two years' qualifying service in total under the Scheme, or
- (ii) is entitled to a short service benefit by virtue of section 71 of the Pension Schemes Act 1993(a) (basic principles as to short service benefit) because of a transfer value payment having been accepted, and

(b) has ceased to be in service that qualifies him to belong to the Scheme.

(3) This paragraph applies if the pension is derived from pension credit rights and the pension sharing order from which the rights derive has taken effect.

(4) If a member exercises the option under this rule, the amount of the annual pension to which he becomes entitled is first calculated as mentioned in accordance with rule D.2(3) and (4) or D.3(4) and (5), as the case may be, and then that amount is reduced by such amount as the Secretary of State determines after consulting with the Scheme actuary.

(5) If a member exercises the option under this rule, the amount of the lump sum to which he becomes entitled is first calculated in accordance with rule D.2(3) and (5) or D.3(5), as the case may be, and then that amount is reduced by such amount as the Secretary of State determines after consulting with the Scheme actuary.

(6) The option under this rule may only be exercised by notice in writing to the Scheme administrator in such form as the Secretary of State requires."

Other amendments to the Scheme

5.—(1) In paragraph (4) of rule A.4 (meaning of "final pensionable earnings") for "for the purposes of that paragraph" substitute "for the purposes of those paragraphs".

(2) For rule B.2 (persons with other pension arrangements) substitute "A person is not eligible to be an active member of the Scheme in respect of his service if he belongs to the scheme constituted by the former pension arrangements for reservists in respect of that service".

(3) In paragraph (2) of rule D.5 (early payment of benefits: active members with permanent serious ill-health) for "For the purposes of these Rules" substitute "For the purposes of this rule and rule D.8".

(4) In rule D.7 (early payment of benefits: deferred members with permanent serious ill-health)—

(a) in paragraph (1)(a) for "(see rule D.5(2) and (3))" substitute "(see rule D.5(3) and paragraph (5) below)"; and

(b) after paragraph (4) insert—

"(5) For the purpose of this Rule, a member's breakdown in health is "permanent" if, in the opinion of the Secretary of State, it will continue at least until the member reaches pension benefit age."

(5) In rule D.8 (member's request for review of ill-health award under rule D.6) for paragraph (7) substitute—

(a) 1993 c. 48.

- “(7) If on any review under paragraph (4) the Secretary of State is of the opinion that—
- (a) the member has suffered such a breakdown as is mentioned in paragraph (4)(a), but
 - (b) the condition by virtue of which he became entitled to the pension under rule D.6 has deteriorated so that he suffered such a breakdown later,

then the member's entitlement to a pension under rule D.6 ceases and he becomes entitled to a pension calculated in accordance with paragraph (7A).

- (7A) The pension to which a member is entitled under paragraph (7) shall consist of—
- (a) a pension calculated under rule D.5, and
 - (b) an increase in that pension by an amount equal to the amount that a pension would be increased if the option to exchange a lump sum under rule D.10 were exercised where the amount of the lump sum exchanged is the difference between the lump sum paid to the member under rule D.6 and the lump sum which the member would have received had the member been entitled to it under rule D.5.”.

(6) In paragraph (1) of rule D.10 (option to exchange lump sum for pension) for “an increase in the amount of pension payable to himself or to any other person under these Rules” substitute—

- “an increase—
- (a) in the amount of pension payable to himself under these Rules, or
 - (b) in the amount of pension payable to himself and to any other person under these Rules as a result of his membership of the Scheme.”.

(7) In rule D.11 (option for members in serious ill-health to exchange whole pension for lump sum), omit paragraph (4).

On behalf of the Defence Council

Date

Members of the Defence Council



The image shows two handwritten signatures in black ink. The top signature is written in a cursive style and appears to read 'M. P. Jones'. The bottom signature is also cursive and appears to read 'Paul Jeffrey'.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Reserve Forces Act 1996 (c. 14). They modify certain provisions of the Reserve Forces Pension Scheme Regulations 2005 (as amended by the Reserve Forces Pension Scheme Amendment Regulations 2006) which establish the Reserve Forces Pension Scheme 2005 ("the Scheme").

Regulation 3 changes the way that earnings are inflated under rule A.5 when determining the final relevant earnings used for calculating awards under the Scheme (which looks at the best of the last 3 years of service). The original Scheme rules applied increases to earnings falling within a previous tax year. The amendment applies increases to earnings falling within a previous year.

Regulation 3 also clarifies that any adjustment is to be disregarded for all other purposes, which includes increases to pensions in payment. The Pensions (Increase) Act 1971 (c. 56) ("the 1971 Act") provides that certain state pensions in payment are adjusted year on year for inflation. When the Scheme was originally made, pensions payable under it did not come within the 1971 Act. By virtue of the Pensions Increase (Armed Forces Pension Schemes and Conservation Board) Regulations 2006 (S.I. 2006/801), pensions payable under the Scheme are now treated as falling within the 1971 Act. The amendment removes the possibility of pensions being inflated both under the Scheme rules and the 1971 Act.

Regulation 4 reduces the age at which a pension credit member is entitled to an immediate pension under rule D.3 from pension benefit age (65) to age 55 for those with pension sharing orders made on or after 6th April 2009. Pension credit members who are not entitled to the immediate payment of a pension may under rule D.4 can instead now opt for the immediate payment of a reduced pension from age 55.

Regulation 5 sets out miscellaneous amendments to the Scheme.

Paragraph (1) amends rule A.4 to correct a mistake.

Paragraph (2) amends the eligibility criteria for joining the Scheme in rule B.2 so that someone is able to become a member of the Scheme even if they belong to another occupational pension scheme (other than the former pension scheme for reservists) in respect of the same service (regulation 5(1)).

Paragraph (3) amends rules D.5 and D.7 so that a deferred member's breakdown in health is only permanent if it will continue at least until the member reaches pension benefit age (65) (regulation 4(2) and (3)).

Paragraph (4) amends rule D.8 to provide an increased pension for a member who ceased to serve as a result of a significant impairment in health and who then suffers a permanent break down in health at a later date. It provides a pension under rule D.5 together with an additional amount that represents the difference in the lump sum received and the sum he would have received had the member ceased service due to a permanent breakdown in health if that lump sum had been exchanged under rule D.10 (regulation 4(4)).

Paragraph (5) amends rule D.10 to make it clear that the option to exchange a lump sum payable on retirement for pension may relate only to the individual's own pension or both to that pension and other Scheme pensions in respect of him (regulation 4(5)).

Paragraph (6) amends rule D.11 so that where members in serious ill-health opt to exchange the whole of their pension for a lump sum, the part of the pension representing the person's guaranteed minimum pension under Pension Schemes Act 1993 (c. 48) may be included (regulation 4(6)).

A full regulatory impact assessment has not been produced on this instrument as it has no impact on the costs of business, charities or the voluntary sector.