

Pensions & Compensation Policy Instruction

The Armed
Forces Pension
Schemes

PCPI 08/14

2014

Reference: CDP Remuneration – AFPS - AFPS75 – Policy – AWOL Detention

Absence Without Leave, Detention and Reduction in Rank as a Punishment (Pension Rank)

Which schemes are affected:	AFPS75
Who should read this:	DBS Veterans UK
Date of Issue	14 August 2014
When it takes effect:	Immediately
Review date:	1 April 2016
Contact points:	CDP Rem AFPS Pol 2, 9621 84354

ISSUE

1. The effect on immediate and deferred pension entitlement following:
 - A. periods of Absence Without Leave (AWOL), detention; and
 - B. reduction in rank as a punishment.

A. POLICY INTENT – AWOL and Detention

2. The AFPS 75 Amendment 2010 rules (see Annex A) do not allow any periods of AWOL or detention to qualify or reckon for pension purposes:
 - **AWOL** does not qualify or reckon for pension, even if the member was in receipt of pay for the period. For the Army only, periods of AWOL of less than five days that took place before 3 January 2011, can count, as this is in effect an accrued right that cannot be removed (this means that Veterans UK will need to retain the manual work around to add back any periods pre 2011, that would have been allowed under the Army Pension Warrant 1977).
 - **Detention** does not qualify or reckon for pension, on the basis that while in detention a member will not be in receipt of pensionable

earnings. For the Army only, periods of detention of less than seven days that took place before 3 January 2011, can count as this is in effect an accrued right that cannot be removed (see above comment re manual work around).

RISK

3. Compliance with this instruction reduces the potential risk of entitlements being applied incorrectly, noting that the treatment of periods of AWOL and detention for the Army prior to 3 Jan 2011, differs from the other two Services.

COMMUNICATION

4. The primary audience for this PCPI is Veterans UK. However, the content will be of interest to MCTC Colchester and a copy has been issued to them for information.

BACKGROUND

5. The Army Pension Warrant 1977 Article 140, allowed periods of AWOL and detention to qualify and reckon for pension purposes up to certain limits:

- AWOL – periods of five days or less
- Detention – periods of seven days or less

6. When the harmonised rules for the AFPS 75 were drafted, it was realised that these same provisions were not stated in the Naval Order in Council or Queen's Regulations for the RAF. For Army personnel only, periods of AWOL and detention within the limits stated would still be allowed to count as qualifying and reckonable service provided they were before 3 January 2011, when the current harmonised rules came into force.

B. POLICY INTENT - Reduction in Rank as a Punishment

7. Immediate Pension - the normal rules on pension rank at rule A2 of the AFPS75 Amendment 2010 will apply in cases where discharge is within a five year period in which a higher rank (acting or substantive) was held for more than two of those years. The immediate pension will be based on standard rates for the higher rank held. If the discharge is 'with disgrace' the lower rates of pension will apply.

8. Service beyond five year point - if, however, service in the Armed Forces continues for more than 5 years after reduction in rank, no account of the higher rank held will be taken into consideration; the best two out the last five years rule at A2 prevails.

9. Less than two years in rank – the rule at D6(5) affects the pension rank for immediate pension when the individual has not held the higher substantive or acting rank for two years. In the case of an OR7 [SSgt] with less than two years in rank, the pension rank would be based on OR6 [Sgt] (if that rank had been held for two years), even though the reduction in rank as a punishment

may have been to OR4 [Cpl]. The rule at D14(2)(a) also refers - the immediate pension is based on the pension rank of OR6 [Sgt] (if that rank had been held for two years), and any rank addition due for OR7 [SSgt] is added at deferred pension age, but noting the restriction to one rank higher in the event of misconduct.

BACKGROUND

10. The rule at D6(5) if taken in isolation suggests that individuals who are reduced in rank as a punishment are awarded their immediate pension at the reduced rank. However, this applies only to an individual who has not held the higher substantive or acting rank for two years. The pension rank rule at A2 prevails. The rules will be clarified in line with the draft amendment at Annex A.

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**ANNEX A
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Current Regulations in AFPS75

Rule A2

A.2 Pension rank

- (1) Unless paragraph (4) applies, a member's pension rank is the highest substantive rank or paid acting rank that the member has held for the qualifying period.
- (2) The qualifying period is—
- (a) in the case of a substantive rank of OF-7 or above, one year;
 - (b) in the case of a substantive rank between OF-1 and OF-6, two years;
 - (c) in the case of a paid acting rank of OF-1 or above, three years (or periods amounting in total to three years);
 - (d) ***in the case of a rank of OR-9 or below, two years (or periods amounting in total to two years) within the member's last five years of pensionable service.***
- (3) If—
- (a) a member has held two ranks,
 - (b) the member held neither of those ranks for the qualifying period, and
 - (c) the aggregate of the periods for which the member held those ranks is at least equal to the qualifying period for the lower rank,
- the member is to be treated for the purposes of paragraph (1) as having held the lower rank for the qualifying period.
- (4) If—
- (a) the member's last substantive rank is higher than that given by paragraph (1), and
 - (b) any of conditions A to C is met, the member's pension rank is that higher rank.
- (5) Condition A is that the member dies in service.
- (6) Condition B is that rule D.7 (ill-health pension) applies.
- (7) Condition C is that the member is notified by the Defence Council that the member is to be treated for the purposes of AFRS as having become redundant.

Draft Amendment to Rule A2 (Pension Rank)

In paragraph (1) after (4) insert-

“ [4A or] 4B”.

After paragraph (4) insert-

(4B) If a member's pension rank has been reduced under rule D6(5) the member's pension rank for the purposes of this rule will be the highest rank held for a period of 2 years within the member's last five years of pensionable service.”.

Rules A10 and A11:

A.10 Qualifying service

References to a member's qualifying service are to the aggregate of—

- (a) every period in respect of which the member **received pensionable earnings (other than a period during which the member was absent without leave)** or is treated as having receiving assumed pay;
- (b) any period during which the member was on unpaid leave;
- (c) any period during which the member was on loan to an organisation and was required to be an active member of a pension scheme open to members of that organisation; and
- (d) any other period which, immediately before 3rd January 2011, the member was entitled to count as qualifying service under any former provision of the Scheme.

A.11 Reckonable service

(1) Subject to the following provisions of this rule, references to a member's reckonable service are to the aggregate of—

- (a) every period served by the member—
 - (i) as an officer after the age of 21, or
 - (ii) otherwise than as an officer after the age of 18, in respect of which the member **received pensionable earnings (other than a period during which the member was absent without leave)** or is treated as having receiving assumed pay;
 - (b) any period by which the member's reckonable service is increased under—
 - (i) rule C.2 (purchase of additional reckonable service);
 - (ii) rule C.3 (loan to another organisation); or
 - (iii) rule F.3 (transferred-in service); and
 - (c) any other period which, immediately before 3rd January 2011, the member was entitled to count as reckonable service under any former provision of the Scheme.
- (2) A member's reckonable service may not exceed—
- (a) if the member's pension rank is that of OF-1 or above, 34 years;
 - (b) otherwise, 37 years.
- (3) Paragraph (1)(a) does not include a period during which the member was eligible to be an active member by virtue of rule B.2 (pensioner members recalled under the Reserve Forces Acts); but see rule D.9.

Rule D6(5)

D.6 Amount of immediate pension: other ranks

(1) This rule applies if—

- (a) a member is entitled to a pension under rule D.1;
 - (b) the member's pension rank is that of OR-9 or below; and
 - (c) the ill-health condition is not met.
- (2) Subject to the following provisions of this rule and rule D.10 (increase at age 60 or 65), the annual amount of the pension is the aggregate of—
- (a) the amount specified, for a person of the member's pension rank with the number of whole years' reckonable service that the member has, in the

relevant table in the pension code in force on the member's last day of pensionable service;

(b) if rule D.8 (reckonable service in excess of whole years), D.14 (rank addition) or D.15 (professional supplement) applies, an additional amount calculated in accordance with that rule; and

(c) if the member served as an officer for a period of at least two years, an additional amount calculated in accordance with paragraph (8).

(3) Unless paragraph (4) applies, for the purposes of this rule the relevant table is that setting out standard rates of service pension for ratings and other ranks.

(4) If the member is discharged in accordance with a sentence of dismissal with disgrace passed by the Court Martial, for the purposes of this rule the relevant table is that setting out lower rates of service pension for ratings and other ranks.

(5) **If the member's pension rank is one from which the member was reduced by way of punishment for an offence, paragraph (2)(a) applies as if the member's pension rank were that held on the member's last day of pensionable service**, unless—

(a) rule D.7 (ill-health pension) applies; or

(b) the Defence Council directs that this paragraph shall not apply.

(6) For the purposes of paragraph (5) a reduction in the member's rank under section 293 of the Armed Forces Act 2006(a) (effect of custodial sentence or sentence of detention) is to be treated as a reduction by way of punishment.

Rule D14

D.14 Rank addition: other ranks

(1) This rule applies if—

(a) a member is entitled to a pension under rule D.1 or D.11;

(b) the member's pension rank is that of OR-9 or below; and

(c) the member has held a substantive or paid acting rank, higher than the member's pension rank—

(i) for a single period of which at least one year (but less than two years) fell within the qualifying period; or

(ii) for two or more periods of which at least one year in total (but less than two years) fell within that period.

(2) The amount of the rank addition is that given by the formula

$$(Y - X) \times Z / 730$$

where—

X is the amount that would be given by rule D.6, D.7 or D.12 (as the case may be) if references to this rule were disregarded;

Y is what that amount would be if the member's pension rank were—

(a) **if during the qualifying period the member was reduced in rank on grounds of misconduct, one rank higher than the member's pension rank;**

(b) otherwise, the higher rank mentioned in paragraph (1); and

Z is the number of days (within the qualifying period) for which the member held that higher rank.

(3) Paragraphs (4) to (6) apply if—

- (a) the member has held two ranks, both higher than the member's pension rank; and
 - (b) the aggregate of the periods for which the member has held those ranks (within the qualifying period) is at least one year.
- (4) If the member has held the higher of those ranks for less than one year within the qualifying period, this rule applies as if the lower of those ranks had been held for the aggregate of the periods for which either rank was held.
- (5) But, if the lower of those ranks is a substantive rank and the higher is a paid acting rank, in paragraph (4) the reference to the aggregate of the periods for which either rank was held does not include any period for which the substantive rank was not held.
- (6) If the member has held the higher of those ranks for at least one year within the qualifying period—
- (a) this rule applies in relation to the lower of those ranks, even if the member held that rank for less than one year within that period; but
 - (b) the period for which the higher of those ranks was held is to be disregarded in calculating the amount of the rank addition in respect of the lower.
- (7) In this rule—
- “the amount of the rank addition” means the additional amount mentioned in rule D.6(2)(b), D.7(2)(b) or D.12(1)(b)(ii) (as the case may be);
 - “the qualifying period” means the qualifying period.