



# Ministry of Defence

Ministry of Defence  
Main Building  
Whitehall  
London SW1A 2HB  
United Kingdom

Our Reference: [REDACTED]

Dear [REDACTED],

Thank you for your e-mail to the Ministry of Defence (MOD) dated [REDACTED] in which you requested the following information:

- 1) in the minutes of the 149th Central Advisory Committee on Pension and Compensation meeting, dated 10 Dec 2008, there is a reference to a letter being sent to committee members detailing amendments to ,AFPS 75, AFPS 05, the Early Departure Payment Scheme and RFPS. (see extract below - point 7 on agenda) Could you please send me a copy of this fact sheet or refer me to where I can get a copy.
- 2) in the minutes of the 150th Central Advisory Committee on Pension and Compensation meeting dated 19t Oct 2009 point 7 (see below extract) the minutes refer to a "fact sheet on harmonisation" . Could you please send me a copy of this fact sheet or refer me to where I can get a copy.
- 3) in the minutes of the 151st Central Advisory Committee on Pension and Compensation meeting dated 9th June 2010 (see extract below) there is a reference to a Defence Information Notice which had been drafted on the restatement (or harmonisation) of AFPS 75 (and the Full Time Reserve Service Regulations), could you send me a copy of this or refer me to where I can find a copy of this?

I am treating your correspondence as a request for information under the Freedom of Information Act (FOI) 2000. I can confirm that the MOD does hold some information within the scope of your request; this is provided in the attached documents. I can advise there is no information held regarding Part Two of your request. However under Section 16 of the FOI Act (Advice and Assistance) the attached Defence Information Note does provide a section on harmonisation which may be of assistance to your enquiry.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, 1st Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>.

Yours sincerely,

Defence People

1	<b>Title</b>	Restatement of Armed Forces Pension Scheme 1975 (AFPS 75) and Full Time Reserve Service (FTRS) Regulations
2	<b>Audience</b>	All Service Personnel who are members of AFPS 75 or FTRS-AFPS 75
3	<b>Applies</b>	Immediately
4	<b>Expires</b>	When rescinded or replaced
5	<b>Replaces</b>	
6	<b>Reference</b>	2010DIN01-124
7	<b>Released</b>	July 2010
8	<b>Channel</b>	01 – Personnel
9	<b>Subject</b>	Restatement of AFPS 75 and FTRS regulations. Introduction of Single Service Attributable Benefits Schemes. The removal of all provisions from AFPS 75 deemed 'unauthorised payments' under the Finance Act 2004 to form separate arrangements.
10	<b>Content</b>	Advice about the above changes and reinforcement of no fundamental policy changes to the AFPS 75 scheme.

## Key points:

- **The changes came into force from 6 April 2010. Members will not be affected as current policy remains the same.**
- The requirements of the Finance Act 2004 have necessitated the removal of all payments deemed to be 'unauthorised' (not related to pensions) from the pension scheme and these have been placed under separate arrangements.
- The Armed Forces Pension Scheme 75 (AFPS 75) pension regulations have been harmonised in three new prerogative instruments so that, as far as possible, each Service has the same text.
- The attributable injury and survivors' elements of AFPS 75 have been removed to form a stand-alone arrangement known as the Armed Forces Attributable Benefits Scheme (AFAB).
- The Full Time Reserve Service (FTRS) regulations have been removed and placed in a new tri-service scheme called the Reserve Forces (Full-Time Reserve Service Pension Scheme 1997) Regulations 2010.

## Introduction

1. All payments deemed to be unauthorised payments under the tax regime introduced by the Finance Act 2004 have had to be removed from AFPS 75. Unauthorised payments relate to attributable benefits, redundancy lump sums, resettlement grants, resettlement commutation, gratuity earners and gallantry awards. Regulations relating to the Full Time Reserve Service have also been removed. In addition the opportunity has been taken to harmonise the 3 individual single Service AFPS 75 rules.

## Redundancy Lump Sums, Gratuity Earners, Resettlement Commutation and Resettlement Grants

2. The tax changes mean that any unauthorised payments made by an occupational pension scheme would be subject to punitive tax charges both for the individual and the scheme. The provisions have now been placed in Statutory Instrument (SI) 2010 No. 832 made under the Armed Forces (Pensions and Compensation) Act 2004 entitled The Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No. 2) Order 2010. The SI harmonises the existing rules for the Royal Navy and Royal Marines, Army and Royal Air Force.

## Gallantry Awards

3. Existing provisions for the payment of money to holders of Gallantry Awards, their representatives or estates have been moved to a Royal Warrant applicable to all the Services. Award holders, their representatives or estates are entitled to claim payment if the Honour was awarded in recognition of deeds committed whilst serving in the Regular Armed Forces.

## AFPS 75 Pension Scheme

4. Prior to 6 April 2010, AFPS 75 was set out in three different prerogative instruments: the Naval and Marine Pay and Pensions (Non Effective Benefits and Family Pensions) Order 2009, the Army Pensions Warrant 1977 and the Queen's Regulations for the RAF. Although all three sets of rules covered the same scheme they were quite different in terms of language and format. This has led to issues of interpretation, both for those covered by the scheme and for those administering it. The requirements of the Finance Act 2004 have also provided an opportunity to harmonise the single Service rules. The AFPS 75 regulations are now set out in three new prerogative instruments which have been harmonised so that, as far as possible, each Service has the same text and format. The new prerogative instruments are the Naval and Marine (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010, the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant 2010 and the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010. The AFPS 75 regulations are set out in Schedule 1 to the prerogative instruments. **Members will not be affected as current policy remains the same.**

5. The attributable injury and survivors elements of AFPS 75 (benefits for injury or death caused by service before 6 April 2005) are now covered under the new attributable benefits schemes. A separate scheme has been made for each Service. **There are no changes in the level of entitlements.** The scheme will top up any ill health pension paid to the same guaranteed level of benefit as set out in the Pension Codes. The Armed Forces Attributable Benefits Scheme is set out in Schedule 2 to the prerogative instruments.

#### **FTRS Pension Scheme**

6. Prior to 6 April 2010 the rules relating to pension provision for FTRS-AFPS 75 personnel were contained in AFPS 75. The AFPS 75 rules are set out in prerogative instruments in accordance with the Naval and Marine Pay and Pensions Act 1865, the Pensions and Yeomanry Act 1884 and the Air Force (Constitution) Act 1917. These Acts, however, give no powers to make provisions for Reserves and therefore, up to now, all payments for FTRS personnel have had to be individually approved by HM Treasury.

7. During the exercise to re-state the provisions of the AFPS 75, the opportunity was taken to remove the existing FTRS provisions and place them in a 'stand alone' scheme under correct legislation. The provisions are now contained in a new tri-service scheme under Defence Council Regulations called the Reserve Forces (Full-Time Reserve Service Pension Scheme 1997) Regulations 2010. The scheme is closed to all new entrants. Existing members of the old FTRS-AFPS 75 will automatically be transferred to the new scheme. **All terms and conditions of service remain unchanged.**

#### **Summary**

8. There are no fundamental policy changes to any of the above provisions other than the requirements brought about by general changes to the law affecting occupational pensions. The requirements of the Finance Act 2004 to remove all unauthorised payments from the pension scheme have also provided the opportunity to harmonise the AFPS 75 regulations.



## MINISTRY OF DEFENCE

MOD Main Building,  
London, SW1A 2HB

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Letter to CAC members, copied to website

Our Reference: SP Pol Pens/05.09.02.05.01

Date 30 October 2008

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Dear

### **CONSULTATION DOCUMENT: PROPOSED AMENDMENTS TO ARMED FORCES PENSION PROVISION**

1. This is the first time that members of the Central Advisory Committee have been consulted on pensions-related issues. I recognise that not all members will have the knowledge/experience to comment but I would welcome comments or suggestions from any member. Further, if any member would like to discuss any of the proposed amendments I am happy to field questions by telephone, letter or email.

#### **Issue**

2. Amendments are proposed to the Armed Forces Pension Scheme 2005 (AFPS 05), the Reserve Forces Pension Scheme (RFPS) and the Early Departure Payments (EDP) Scheme. The main issue is the clarification of the rules of the inflation adjustment on final earning because, as written, there is a risk of double indexation. Other changes are routine and many will be mirrored in the RFPS as, in many respects, the rules of AFPS 05 and RFPS are the same.

#### **Timing**

3. The Central Advisory Committee are invited to consider the attached amendments out of committee and to submit comments or observations by 28 November 2008.

#### **Background**

4. AFPS 05 and the EDP Scheme were introduced for new entrants to the regular Armed Forces on 6 April 2005. RFPS was introduced on the same date for new mobilised reserves and new entrants to the Full Time Reserve Service (FTRS). AFPS 05 and RFPS are modern, non-contributory, final salary pension schemes. AFPS 05 has a normal pension age of 55: normal pension age for RFPS is age 60. The EDP Scheme is designed to draw regular Service personnel through to age 40 and to compensate those who cannot be offered service through to age 55: EDP benefits are outside the occupational pension scheme. Both AFPS 05 and EDP scheme are statutory schemes which rely on the Armed Forces (Pensions and Compensation) Act 2004 as their authority. Amendment is by Statutory Instrument (SI) and subject to negative resolution. RFPS relies on the Reserve Forces Act 1996 and amendment is by Regulations approved by the Defence Council.

5. Members of AFPS 75 who were in service on that date and still in service on 6 April 2006 were given the opportunity to transfer to AFPS 05. Members of the FTRS section of AFPS 75 were given the opportunity to transfer to RFPS in the same time frame. In the event about 8% of those eligible opted to transfer to the new schemes.

6. The draft explanatory memorandum describes the amendments but members of the CAC will want to understand the policy intent as well as the operation of change. As the clarification of the operation of the rule on adjustment of inflation covers all AFPS 05 pensions (ie both those accruing now and those which have been either preserved or put into payment) we have to first lay an SI to prescribe what we intend to do. This draft SI is at Annex A. In order to help the Merits Committee the draft SI which will achieve the amendments has been attached to the SI. It appears at Annex B to this letter.

7. Articles 2, 3 and 5 achieve the clarification of the method of adjusting final earnings for inflation in relation to EDP (at Articles 2 and 3) and AFPS 05 (at Article 5. Article 5 will be replicated in the amendment to the RFPS regulations. Personnel entitled to benefits under these schemes have been paid in accordance with the policy intent, which is as set out in Joint Service Publication 764, our scheme booklets, the Offer To Transfer material and the information which appears on our website.

8. Article 4 amends the EDP Scheme to ensure that individuals who leave the regular Armed Forces with EDP benefits and join the Non-Regular Permanent Staff (NRPS) are treated exactly the same as those who either rejoin the regular Armed Forces or take up Full Time Reserve Service posts. The omission of NRPS from Article 12 of the EDP rules has the effect of allowing those who have been compensated for not having an Armed Forces job through to age 55 to keep that compensation even though they have a new Armed Forces job.

9. There are currently a small number of individuals who are serving on gratuity earning, rather than pensionable, terms. We are no longer taking people on on gratuity earning terms but, for those who are, we want a provision whereby an individual can change their mind and count the gratuity earning service as pensionable service. This means either foregoing the gratuity or, if it has been paid, repaying it. Typically, individuals ask to make this change if they know that they are to be offered a further period of Armed Forces service at the end of their gratuity earning term. This is an AFPS 05 measure only.

10. Article 7 protects the position of people who leave with a preserved pension and subsequently rejoin the regular Armed Forces in a lower rank or in the same rank but with lower X-Factor. As currently written, anyone who rejoins the regular Armed Forces within six months of leaving will have their service counted as continuous. This means that, for example, a Warrant Officer I who leaves at age 45 with a preserved pension, who rejoins as a member of the Military Provost Guard Service (MPGS) at the rank of private (which is the entry rank for MPGS) on a lower X-Factor would be significantly disadvantaged in respect of the pension for the earlier period of service as it would be automatically aggregated. This draft rule would allow people to join the MPGS secure in the knowledge that their accrued benefits were protected. This measure is not needed for RFPS as each period of service is pensionable separately thus preserving the value of any pension earned in a period where earnings were higher.

11. Article 8 covers a number of small routine changes some of which correct drafting anomalies and some of which bring the scheme into line with other pensions regulations. All the provisions in Article 8 will be replicated in the amendment to RFPS.

12. Article 8 (1) removes the need for scheme administrators to consult the scheme medical adviser when an individual who has opted out of the scheme opts to rejoin. This does not mean that they will not consider medical advice and evidence from the individual's doctor will normally be sufficient. The change does not preclude seeking the opinion of the scheme medical adviser, it simply means that it is not a requirement.

13. Articles 8 (2) and (3) make it clear that the definition of 'permanent' used for the award of an ill-health pension using the maximum enhancement or reckonable service applies to the rules governing a prognosis in respect of the condition which leads to a deferred member's request for the early payment of his preserved pension. In other words both an applicant for the early payment of a preserved pension and an applicant for an enhanced ill-health pension will have to satisfy the scheme administrator that the deterioration in their health involves incapacity for any full-time employment until age 65. This clarification is provided to help members and administrators interpret the rules clearly.

14. Articles 8 (4) and (5) are necessary because, under HMRC Pension Tax Simplification rules, pension schemes will not be able to pay a second pension lump sum unless an error has been made. AFPS 05 and RFPS rules allow a review of ill-health benefits in the event of an unexpected deterioration of a condition for which an individual received an ill-health pension. This deterioration would not constitute an error, thus we are no longer able to pay the difference between the lower and higher lump sum without both the scheme and the individual paying a significant tax charge on the 'top up'. These amendments allow us to change the lump sum into an increase in the member's pension calculated in line with the inverse commutation rules, which ensures that the member does not lose out.

15. AFPS 05 and RFPS allow an individual to give up part or all of his pension lump sum in exchange for an increase in pension. Article 8 (6) clarifies that the increase can be either in respect of his own pension only or in respect of his own pension and any spouse/partner benefits due. The way it was originally drafted could lead to misinterpretation in that it could be read that he could increase his spouse/partner benefits only, with his own benefits remaining at the lower level.

16. Article 8 (7) reflects a change in DWP rules. It used to be the case that where an individual opted to change all of his pension for a lump sum because he had a life expectancy of less than 12 months, the Guaranteed Minimum Pension (GMP) could not be part of the calculation. The GMP is an element of pension which is paid as part of some contracted out pensions until state pension age. At state pension age the contracted out scheme stops paying the GMP and the state incorporates it in the state provision. DWP have changed their rules to allow the GMP to be part of the calculation.

17. Finally, we will be including a new Article to reflect the relaxation in the DWP legislation regarding the pension benefit age for the ex-spouses or ex-civil partners of AFPS members. The Welfare Reform and Pensions Act 1999 specifies that when a court makes an order for a Pension Sharing Order (PSO), and the date at which the resulting benefits may be paid is an age between 60 and 65 to be decided by the scheme. When a PSO is made the beneficiary is known as a Pension Credit Member (PCM). The PCM is a member of the pension scheme in their own right but may not add to or transfer out their pension credit. The PCM benefit age adopted by AFPS 75, AFPS 05 and RFPS is currently 65 for new PSOs, and is in line with the preserved pension age for current active members of these schemes.

18. DWP regulations are changing to allow these benefits to come into payment at age adopted by HMRC as the earliest age at which an occupational pension may be paid save in cases of ill-health. Please note that these changes of minimum pension age do not affect active members of AFPS 75 who are entitled to leave service after 16 years reckonable service after age 21 for officers and 22 years reckonable service after age 18 for other ranks. This is because the change was under the provision of the 2004 Finance Act and AFPS 75 was closed to new entrants before the commencement of the Act's provisions on 6 April 2006. AFPS 05 meets the HMRC requirement as it has a normal pension age of 55 and a preserve pension age of 65. Those who give at least 18 years service and attain at least the age of 40 (the 18/40 Point) but leave before age 55 are entitled to benefits from the Early Departure Payments (EDP) Scheme. The EDP lump sum is equal to the preserved pension lump sum and monthly EDP income is equal to between 50-75% of preserved pension. However, it is not a pension: it is in part an incentive to serve until the 18/40 Point and in part compensation for the fact that the majority of Service personnel cannot be offered employment to age 55.

19. The change is permissive: schemes do not have to adopt these minimum ages. This change comes in in April 2009 and the Department wishes to adopt age 55 as the benefit age for PCMs in AFPS 75, AFPS 05 and RFPS, age 55 being the earliest age at which most occupational pensions (but see para 18) may be paid from April 2010. The adoption of age 55 from the outset has been discussed informally with colleagues at the Forces Pension Society (FPS) in the policy development stage of drafting. The adoption of age 50 for one year only, is likely to give rise to a huge rush of applications for existing PCMs and disquiet from those who, for some reason, do not benefit from it (eg. delays in sealing the PSO or 50<sup>th</sup> birthdays falling shortly after 5 April 2010).

20. We have received a number of complaints from PCMs about having to wait longer than the PDM for their pension and this change will go some way to meeting their concerns. Those who have already had a PSO sealed will be entitled to take advantage of the earlier benefit age but the amount per year they were expecting to receive will need to be adjusted by the scheme actuary to take account of the longer period of time the pension will be in payment. Benefits arising from PSOs sealed after 6 April 2009 will automatically be calculated on the basis that they will come into payment at age 55.

## **Conclusion**

21. These proposed amendments serve to:

- Clarify and simplify the rules (paras 4-7, paras 12-13 and para 15);
- ensure equal treatment of EDP benefits for those taking up other Armed Forces posts ( para 8);
- preserve the former arrangements for gratuity earners to transfer to pensionable terms (para 9);
- protect the accrued benefits of those rejoining on lower pay in less than six months (para 10);
- convert the value of an otherwise unauthorised lump sum on review of ill-health into extra pension (para14); and
- reduce the pension benefit age for PCMs (paras 16-20).

If you have any comments on the attached proposals that you wish to make before the legislation is finalised, I would be very happy to receive them. I should be grateful if you let me have them by 28 November.

Yours sincerely,