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STATUTORY INSTRUMENTS

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**2005 No. 437**

**The Armed Forces Early Departure  
Payments Scheme Order 2005**

*Interpretation etc.*

**General interpretation**

**3. In this Order—**

“active member” has the same meaning as in the Armed Forces Pension Scheme 2005 (see rule A.1(4) of that Scheme);

“the Armed Forces Early Departure Payments Scheme” is to be read in accordance with article 2(1);

“the AFPS 1975” means the occupational pension scheme arrangements, other than the AFPS 2005, that are open to members of the armed forces and set out in—

- (a) Orders in Council made under section 3 of the Naval and Marine Pay and Pensions Act 1865<sup>(1)</sup>,
- (b) the Army Pensions Warrant 1977<sup>(2)</sup>, and
- (c) Orders and regulations made under section 2 of the Air Forces (Constitution) Act 1917<sup>(3)</sup>,

or any instrument amending or replacing any of those instruments;

“the AFPS 2005” means the Armed Forces Pension Scheme 2005 established by article 2 of the Armed Forces Pension Scheme Order 2005<sup>(4)</sup>;

“calculation service” has the meaning given in article 5;

“deferred member” has the same meaning as in the AFPS 2005 (see rule A.1(4) of that Scheme);

“final relevant earnings” has the meaning given in article 6;

“member”—

- (a) in relation to the army, does not include a member—
  - (i) of the Royal Irish Regiment (Part Time), or
  - (ii) in the case of a Nepalese person recruited in Nepal, of the Brigade of Gurkhas, and references to service, in relation to service as a member of the armed forces, are to be read accordingly;
- (b) in relation to the AFPS 2005 or the AFPS 1975, means an active member, a deferred member or a pensioner member;

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<sup>(1)</sup> 1865 c. 73.

<sup>(2)</sup> which is available from Her Majesty’s Stationery Office.

<sup>(3)</sup> 1917 c. 51.

<sup>(4)</sup> S.I.2005/438.

“pensioner member” has the same meaning as in the AFPS 2005 (see rule A.1(4) of that Scheme);

“relevant service” has the meaning given in article 4;

“the Scheme” means the Armed Forces Early Departure Payments Scheme;

“the Scheme actuary” means the actuary appointed by the Secretary of State for the time being to provide a consulting service on actuarial matters relevant to the Scheme;

“the Scheme medical adviser” means the medical adviser appointed by the Secretary of State for the time being to provide a consulting service on medical matters relevant to the Scheme;

“tax year” means a year of assessment for income tax purposes.

### **Meaning of “relevant service”**

**4.** For the purposes of the Scheme “relevant service”, in relation to any person, means the aggregate of the following periods—

- (a) any period on or after 6th April 2005 during which the person is in service as a member of the armed forces, that is service in respect of which he—
  - (i) receives earnings that are pensionable earnings for the purposes of the AFPS 2005 (or would be if he were an active member of that Scheme), or
  - (ii) is treated under rule A.3 of the AFPS 2005 as receiving assumed pay (or would be so treated if he were such a member),
- (b) any period for which the member is in service to which rule C.6 of the AFPS 2005 applies (purchase of added years for members seconded to NATO or the UN etc.) (or would apply if he were such a member),
- (c) in the case of any person who is or has been an AFPS 1975 transferee (as defined in rule K.1(2) of the AFPS 2005), the period of qualifying service he is (or was) entitled to count under rule K.3 of the AFPS 2005,
- (d) in the case of any person who—
  - (i) was in service before 6th April 2005 by virtue of which he was eligible to be an active member of the AFPS 1975, but
  - (ii) was not such a member in respect of that service,
 the period of qualifying service that he would have been entitled to count under rule K.3 of the AFPS 2005 (service credited from the AFPS 1975) if he were an AFPS 1975 transferee (as defined in rule K.1(2) of the AFPS 2005) and rule K.3(2) of that Scheme (under which service before the age of 21 as an officer and service before the age of 18 otherwise than as an officer is counted) were disregarded.

### **Meaning of “calculation service”**

**5.** For the purposes of the Scheme “calculation service”, in relation to any person, means the aggregate of the following periods—

- (a) the person’s relevant service,
- (b) in the case of a person who is an active or deferred member of the AFPS 2005, any period the person is entitled to count as reckonable service for the purposes of that Scheme under rule C.3 of that Scheme (effect of making contributions), and
- (c) in the case of such a person in respect of whom a transfer value in respect of his rights under another pension arrangement has been accepted under Part F of that Scheme (transfers),

any period the person is entitled to count as reckonable service for the purposes of that Scheme as a result of the transfer.

### **Meaning of “final relevant earnings”**

6.—(1) For the purposes of the Scheme “final relevant earnings”, in relation to any person, means the greatest amount that is the person’s total relevant earnings for 365 consecutive days falling within the period of three years ending with the last day of his relevant service.

(2) In paragraph (1) “relevant earnings”, in relation to a person in service as a member of the armed forces, means—

- (a) basic pay in the service by virtue of which the person is a member for a person of his rank and seniority, and
- (b) any other amount if and to the extent that the Secretary of State has determined that it is to be treated as relevant earnings for this purpose.

This is subject to paragraph (4).

(3) Accordingly, subject to paragraph (2)(b), “relevant earnings” does not include—

- (a) any allowances,
- (b) any additional amounts payable in respect of particular qualifications or duties, the location of service or the conditions in which service is temporarily performed, or
- (c) without prejudice to paragraphs (a) and (b), any additional amounts payable to medical or dental officers as such.

(4) “Relevant earnings” does not include any description of payment that the Secretary of State has determined is not to be treated as relevant earnings, unless it is expressly provided to the member on the basis that it is relevant earnings for this purpose.

(5) If the person was not in service as a member of the armed forces during any period of 365 consecutive days falling within the period of three years mentioned in paragraph (1), that paragraph applies as if it referred to the person’s annualised relevant earnings in the period of relevant service ending with the last day of his relevant service as such a member.

(6) The person’s annualised relevant earnings in a period of service are the amount given by the formula—

$$\frac{RE \times 365}{N}$$

where—

**RE** is the person’s relevant earnings for the period, and

**N** is the number of days in the period for which relevant earnings were received.

(7) If at any time during the period of three years mentioned in paragraph (1) the person is treated under rule A.3(1) of the AFPS 2005 as receiving assumed pay, or would be if he were a member of that Scheme, for the purposes of that paragraph his relevant earnings for each day during that period when he is so treated include the assumed pay for that day.

### **Adjustments for inflation in determining final relevant earnings**

7.—(1) For the purpose of determining a person’s final relevant earnings under article 6, the amount of relevant earnings, as determined in accordance with article 6, for any day falling in a tax year earlier than the tax year in which his relevant service ends is adjusted for inflation.

(2) The reference in paragraph (1) to adjusting for inflation the amount of relevant earnings for a day are to increasing it by the same amount as that by which an annual pension of an amount equal

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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to those earnings would have been increased under the Pensions (Increase) Act 1971<sup>(5)</sup> on the day following that on which the member's relevant service ends if the pension—

- (a) were eligible to be so increased, and
- (b) had come into payment on the first day of the next tax year after the tax year in which the day falls.