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STATUTORY INSTRUMENTS

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**2005 No. 437**

**PENSIONS**

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

|                               |         |                        |
|-------------------------------|---------|------------------------|
| <i>Made</i>                   | - - - - | <i>8th March 2005</i>  |
| <i>Laid before Parliament</i> |         | <i>14th March 2005</i> |
| <i>Coming into force</i>      | - -     | <i>6th April 2005</i>  |

The Secretary of State for Defence, in exercise of the powers conferred on him by sections 1(1) and 10(2) of the Armed Forces (Pensions and Compensation) Act 2004<sup>(1)</sup>, hereby makes the following Order:

*Preliminary*

**Citation and commencement**

1.—(1) This Order may be cited as the Armed Forces Early Departure Payments Scheme Order 2005.

(2) This Order comes into force on 6th April 2005.

*The Armed Forces Early Departure Payments Scheme*

**Establishment of the Armed Forces Early Departure Payments Scheme**

2.—(1) This Order provides for a Scheme to be known as “the Armed Forces Early Departure Payments Scheme”.

(2) The Scheme provides for—

- (a) entitlement to a lump sum payment and periodical payments when membership of the armed forces ceases and certain conditions as to age and service are met (see articles 8 to 13), and
- (b) entitlement to a lump sum payment where those conditions are not met but at the time membership of the armed forces ceases the member—
  - (i) meets certain conditions as to length of service (see article 14), or

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(1) 2004 c. 32.

(ii) is unfit for service as such a member (see article 16).

*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>(2)</sup>,
- (b) the Army Pensions Warrant 1977<sup>(3)</sup>, and
- (c) Orders and regulations made under section 2 of the Air Forces (Constitution) Act 1917<sup>(4)</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>(5)</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;

“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;

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(2) 1865 c. 73.

(3) which is available from Her Majesty’s Stationery Office.

(4) 1917 c. 51.

(5) S.I.2005/438.

“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 to those earnings would have been increased under the Pensions (Increase) Act 1971(6) 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.

### *Early departure payments*

#### **Eligibility for early departure payments**

**8.—(1)** A person is only eligible to become entitled to payments under article 9 if he meets conditions A to D.

(2) Condition A is that the person is a member of the armed forces, other than an excluded person.

(3) Condition B is that the person ceases to be in service as such a member on or after attaining the age of 40 and before attaining the age of 55.

(4) Condition C is that the person has completed a number of years' relevant service that equals or exceeds 18 years.

(5) Condition D is that the person is not entitled to the immediate payment of a pension under—

(a) rule D.5 of the AFPS 2005 (early payment of benefits: active members with permanent serious ill-health), or

(b) rule D.6 of that Scheme (early payment of benefits: active members with significant impairment of capacity for gainful employment).

(6) In paragraph (2) “excluded person” means—

(a) any person the terms of whose service exclude him from eligibility for payments under article 9, unless the Secretary of State has agreed to treat him as if they did not do so, and

(b) a person who is an active member of the AFPS 1975.

#### **Entitlement to early departure payments**

**9.—(1)** A person who is eligible to become entitled to payments under this article in accordance with article 8 (an “eligible person”) becomes so entitled as from the time when he ceases to be in service as mentioned in article 8(3).

(2) An eligible person is entitled under this article—

(a) to a lump sum payment, and

(b) to periodical payments in respect of the period beginning with the day following that on which he so ceases and ending with the day before his 65th birthday.

This is subject to paragraph (3) and article 12.

(3) A person is not entitled to a lump sum under this article if he has previously received a lump sum under this article that he was liable to repay under article 12(6) and has not repaid it.

(4) The lump sum is payable before the expiry of the period of 3 months beginning with the day on which the person ceases to be in service as mentioned in article 8(3).

(5) The periodical payments are to be made at monthly intervals in arrears.

#### **Amount of payments under article 9**

**10.—(1)** The annual amount of the periodical payments payable to an eligible person in respect of the part of the period mentioned in article 9(2) before he attains the age of 55 is the sum of—

(a) the basic amount, and

(b) the additional service allowance.

(2) The basic amount is  $N/140$ ths of the person's final relevant earnings.

(3) The additional service allowance is calculated by multiplying 3.3334% of the basic amount by  $(N - X)$ .

- (4) For the purposes of paragraphs (2) and (3)—
- (a) **N** is the number of years' relevant service that the person is entitled to count for the purposes of Condition C in article 8(4), and
  - (b) **X** is the greater of—
    - (i) 18, and
    - (ii) the number of years' relevant service that the person was entitled to count when he attained the age of 40,
 expressed in each case in years and fractions of a year, and
  - (c) if  $\mathbf{N} - \mathbf{X}$  is not a whole number or zero, it is rounded down to the nearest whole number or to zero, as the case may be.

Sub-paragraph (a) is subject to paragraph (5).

(5) If the person's calculation service includes any period within sub-paragraph (b) or (c) of the definition of that service in article 5, **N** is increased by the number of years in that period (expressed in years and fractions of a year).

(6) The annual amount of the periodical payments payable to an eligible person in respect of the part of the period mentioned in article 9(2) after he attains the age of 55 is the person's basic amount multiplied by 1.5.

- (7) The amount of the lump sum payable to an eligible person is—
- (a) except where sub-paragraph (b) applies, three-seventieths of the person's final relevant earnings, multiplied by the length of person's calculation service (expressed in years and fractions of a year), and
  - (b) in a case where a lump sum has been paid to the person previously under article 9, the amount payable under sub-paragraph (a), less the amount so previously paid that has not been repaid under article 12(6).

(8) In the case of a person who would be an excluded person for the purposes of article 8(2), apart from the Secretary of State agreeing as mentioned in article 8(6)(a), the amounts of the payments under this article are to be reduced by such amount as the Secretary of State considers appropriate, after consultation with the Scheme actuary.

(9) This article is subject to articles 11 and 12.

### **Increases for inflation**

**11.**—(1) Apart from any adjustment required by article 7, no other adjustment for inflation is to be made in determining the amount of any payment to be calculated in accordance with article 10(1) or (7).

(2) But in determining the annual amount of the payments calculated in accordance with article 10(6) when a person attains the age of 55, the amount of the person's final relevant earnings is adjusted for inflation.

(3) The reference in paragraph (2) to adjusting for inflation the amount of the person's final relevant earnings 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 when the person attained the age of 55 if the pension—

- (a) were eligible to be so increased, and
- (b) had come into payment on the first day after the person ceased to be in service as mentioned in article 8(3).

(4) In determining the annual amount of the payments calculated in accordance with article 10(6) at any time after the person attains the age of 55, it is to be assumed that those payments—

- (a) are payments of a pension eligible to be increased under the Pensions (Increase) Act 1971, and
  - (b) came into payment when the person attained the age of 55,
- and those payments are to be increased accordingly.

### **Effect of rejoining armed forces or entering certain reserve forces service on article 9 award**

**12.**—(1) This article applies where a person who is entitled to payments under article 9—

- (a) enters service as a member of the armed forces again,
- (b) is called out for permanent service under Part 4, 5 or 6 of the Reserve Forces Act 1996(7) or under the Reserve Forces Act 1980(8),
- (c) enters full-time service as a result of a commitment under section 24 of the Reserve Forces Act 1996 (commitment to a period of full-time service), or
- (d) enters service as a result of a commitment under section 25 of that Act (commitment to additional duties);

and in this article that service is referred to as “the new service”.

(2) The person is not entitled to any periodical payments under article 9 in respect of any period whilst he is in the new service.

(3) In the case of a person to whom paragraph (1)(a) or (b) applies, when the new service ceases—

- (a) if he is a person to whom paragraph (1)(a) applies who has attained the age of 55 or is an ill-health pensioner, he is not entitled to any further periodical payments under article 9,
- (b) if he is a person to whom paragraph (1)(a) applies otherwise than as a result of his being recalled for permanent service under Part 7 of the Reserve Forces Act 1996 or under the Reserve Forces Act 1980, then, subject to paragraph (a), a fresh entitlement under article 9 may arise in respect of the relevant service he has then completed (including the new service),
- (c) if he is a person to whom paragraph (1)(a) applies as a result of his being so recalled or to whom paragraph (1)(b) applies—
  - (i) the new service is disregarded for the purposes of articles 8 to 10, (and accordingly no fresh entitlement under article 9 may arise by virtue of the cessation of the new service), but
  - (ii) subject to paragraph (a), his former entitlement, by virtue of the cessation of the former service, to periodical payments due in respect of any period after the new service ceases revives

(4) For the purposes of paragraph (3), a person is an ill-health pensioner if on leaving the new service he is entitled to the immediate payment of a pension under—

- (a) rule D.5 of the AFPS 2005 (early payment of benefits: active members with permanent serious ill-health), or
- (b) rule D.6 of that Scheme (early payment of benefits: active members with significant impairment of capacity for gainful employment).

(5) In the case of a person to whom paragraph (1)(c) or (d) applies—

- (a) the new service is disregarded for the purposes of articles 8 to 10 (whatever his age when the new service ceases); and
- (b) accordingly—

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(7) 1996 c. 14.

(8) 1980 c. 9.

- (i) no fresh entitlement under article 9 may arise by virtue of the cessation of the new service, but
- (ii) his former entitlement, by virtue of the cessation of the former service, to periodical payments due in respect of any period after the new service ceases revives.

(6) If the period beginning with the date when the person became entitled to the payments under article 9 and ending immediately before the date on which the new service begins (“the service break”) is less than the relevant period, the person must repay the relevant fraction of any lump sum payment made to him under article 9, unless he is a person to whom paragraph (1)(a) applies as a result of his being recalled for service under Part 7 of the Reserve Forces Act 1996 or under the Reserve Forces Act 1980 or to whom paragraph (1)(b) applies.

(7) For the purposes of paragraph (6), “the relevant period” in relation to any person to whom a lump sum payment has been made under article 9 is—

$$\frac{LP \times 365 \text{ days}}{FRE}$$

where—

**LP** is the amount of the lump sum, and

**FRE** is the amount of the person’s final relevant earnings by reference to which the lump sum was calculated under article 10.

- (8) In paragraph (7) “the relevant fraction” means—

$$\frac{D}{RP}$$

where—

**D** is the number of days by which the number of days in the service break falls short of the relevant period, and

**RP** is the number of days in the relevant period.

### **Effect of emergencies etc.**

**13.**—(1) This article applies where a person who would be entitled to payments under article 9 if he had ceased to be in service as mentioned in article 8(3) on the relevant date does not cease to be in such service on that date by reason only of—

- (a) circumstances which in the opinion of the Secretary of State amount to an emergency, or
- (b) his being a prisoner of war on that date.

(2) The person is treated for the purposes of articles 8 to 12 as having ceased to be in service on the relevant date.

- (3) In this article “the relevant date” means—

- (a) in the case of a person who was to have ceased to be in service on the date his commitment ended, that date,
- (b) in the case of a person who agreed to continue in service after his commitment ended until the age of 55, the day before that on which he reached that age, and
- (c) in the case of a person not within sub-paragraph (a) or (b) who was notified that a particular date was to be the last day of his service, that date.



## Resettlement grants

### Entitlement to resettlement grants

**14.**—(1) A person who ceases to be in service as a member of the armed forces is entitled to a lump sum payment if the person—

- (a) has at least 12 years' relevant service,
- (b) is not entitled to payments under article 9 or the immediate payment of a pension under—
  - (i) rule D.1 of the AFPS 2005 (retirement after reaching pension age),
  - (ii) rule D.5 of that Scheme (early payment of benefits: active members with permanent serious ill-health), or
  - (iii) rule D.6 of that Scheme (early payment of benefits: active members with significant impairment of capacity for gainful employment),
- (c) either—
  - (i) has not previously received a payment under this article or the corresponding provisions, or
  - (ii) has made a repayment in respect of any payment previously so received in accordance with article 15 or the corresponding provisions, and
- (d) is not a member of the AFPS 1975.

(2) The amount of the lump sum is—

- (a) except in a case where paragraph (1)(c)(ii) applies, £9,000 or such greater amount as the Secretary of State may for the time being determine, and
- (b) in that case, the same proportion of £9,000, or the sum the Secretary of State has for the time being determined for the purposes of sub-paragraph (a), as the amount repaid by him bore to the amount paid to him.

(3) The lump sum is payable before the expiry of the period of 3 months beginning with the day on which the person ceases to be in service as mentioned in paragraph (1).

(4) In paragraph (1) “the corresponding provisions” means—

- (a) paragraphs 13 to 18 of Schedule XIII to the Naval and Marine Pay and Pensions (Non-Effective Benefits and Family Provisions) Order 2004<sup>(9)</sup>,
- (b) Articles 67 to 70 or 167A and 167B of the Army Pensions Warrant 1977,
- (c) Article 3063 of the Queen’s Regulations for the Royal Air Force<sup>(10)</sup>, and
- (d) any earlier or later provisions corresponding to those mentioned in sub-paragraph (a), (b) or (c).

### Obligation to repay resettlement grant on rejoining armed forces or entering certain reserve forces service

**15.**—(1) This article applies where—

- (a) a person receives a payment under article 14 as a result of ceasing to be in service, and
- (b) before the expiry of the period of 31 days beginning with the date on which his service ceases, he—

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<sup>(9)</sup> which is available from Service Personnel Policy (Pensions), Ministry of Defence, Main Building, Whitehall, London, SW1A 2HB.

<sup>(10)</sup> which is available from Her Majesty’s Stationery Office.

- (i) enters service as a member of the armed forces again, otherwise than as a result of being recalled for service under Part 7 of the Reserve Forces Act 1996 or under the Reserve Forces Act 1980,
  - (ii) enters full-time service as a result of a commitment under section 24 of the Reserve Forces Act 1996 (commitment to a period of full-time service), or
  - (iii) enters service as a result of a commitment under section 25 of that Act (commitment to additional duties).
- (2) The person must repay the full amount of the payment made to him under article 14.

*Lump sums on incapacity*

**Lump sum awards: incapacity for armed forces service**

**16.—**(1) A person who ceases to be in service as a member of the armed forces is entitled to immediate payment of a lump sum if—

- (a) in the opinion of the Secretary of State, after consultation with the Scheme medical adviser, the person is unfit for service as such a member,
- (b) the person has at least two years' relevant service,
- (c) immediately before the service ceases the person is an active member of the AFPS 2005, and
- (d) the person is not entitled to payments under article 9 of the Scheme or the immediate payment of a pension or lump sum under—
  - (i) rule D.1 of the AFPS 2005 (retirement after reaching pension age),
  - (ii) rule D.5 of that Scheme (early payment of benefits: active members with permanent serious ill-health),
  - (iii) rule D.6 of that Scheme (early payment of benefits: active members with significant impairment of capacity for gainful employment), or
  - (iv) rule D.11 of that Scheme (option for members in serious ill-health to exchange whole pension for lump sum).

(2) The amount of the lump sum payable under this article is calculated by multiplying one eighth of the person's final relevant earnings by his calculation service (expressed in years and fractions of a year), except where paragraph (3) or (4) applies.

(3) If the amount calculated under paragraph (2) would be less than one-half of the person's final relevant earnings, that amount is payable instead.

(4) If the amount calculated under paragraph (2) would be more than twice the person's final relevant earnings, that amount is payable instead.

(5) This article is subject to rule D.8 of the AFPS 2005 (under which a person may ask for a review of his entitlement under rule D.6 of that Scheme and in some circumstances some of the amount paid under this article must be repaid).

Signed by authority of the Secretary of State for Defence

8th March 2005

*Ivor Caplin*  
Under Secretary of State Ministry of Defence

*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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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under the Armed Forces (Pensions and Compensation) Act 2004 (c. 32) and establishes the Armed Forces Early Departure Payments Scheme (“the Scheme”). This is a new scheme for making payments to members of the armed forces leaving service before they are entitled to retirement pensions or other benefits from the Armed Forces Pension Scheme 2005 (“the pension scheme”). The Scheme replaces existing arrangements for such payments for persons joining the armed forces on or after 6th April 2005 or in service immediately before that date and transferring to the Armed Forces Pension Scheme 2005 (which also only applies on or after that date).

Article 1 provides that the Order comes into force on 6th April 2005.

Article 2 provides for the establishment of the Scheme and provides that it is to be known as “the Armed Forces Early Departure Payments Scheme”.

Article 3 sets out general definitions.

Articles 4 and 5 explain the meaning of “relevant service” and “calculation service” respectively. Relevant service is the service as a member of the armed forces that a person must be in to qualify for benefits under the Scheme. Calculation service is the service used for calculating the amount of benefits under the Scheme. It includes all relevant service and also other periods that count in calculating pensions under the pension Scheme, like added years bought by voluntary contributions and periods credited from other pension schemes.

Article 6 explains the meaning of “final relevant earnings”, which are the earnings used in calculating benefits under the Scheme, and article 7 provides for adjustments for inflation in determining their amount.

Articles 8 to 13 deal with early departure payments.

Article 8 provides that a person is eligible to become entitled to such payments if when he leaves service he is at least 40 but under 55 and has completed at least 18 years' relevant service.

Article 9 provides for entitlement to arise on leaving service to an immediate lump sum payment and periodical payments payable until the person is 65.

Article 10 makes provision about how the amounts of the payments are to be calculated. It provides for the rate of the periodical payments to rise by up to 50% when the person reaches 55.

Article 11 secures that increases for inflation are made.

Article 12 deals with the case where a person who is entitled to early departure payments rejoins the armed forces or enters certain reserve forces service. It provides for the payments to cease during the new service. After short breaks part of the lump sum may be repayable.

Article 13 provides that where a person has to continue in service because of an emergency he is treated for the purposes of the early departure payments provisions as if he had left when he would otherwise have done so.

Articles 14 and 15 make provision for the payment of resettlement grants, which are lump sums payable immediately where a person leaving the armed forces with at least 12 years' relevant service is not entitled to early departure payments under article 9 or pension scheme benefits. Under article 15 there is an obligation to repay a resettlement grant on rejoining the armed forces or entering certain reserve forces service less than 30 days after leaving the former service.

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Article 16 provides for the payment of lump sums to persons who when they leave the armed forces after at least 2 years' service are unfit for service and not entitled to any other benefits under the Scheme or the pension scheme.

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.