EXPLANATORY MEMORANDUM TO

THE ARMED FORCES PENSIONS (REMEDIABLE SERVICE) (AMENDMENT) REGULATIONS 2025

2025 No. 188

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Alistair Carns, Minister for Veterans and People at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

2.2 Brigadier Philip Bassingham-Searle, Head of Armed Forces Remuneration at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Scott McKenzie at the Ministry of Defence, Telephone: 0300 161 2955 or email: afpension-policy@mod.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is primarily to amend a rule of the Armed Forces Pension Scheme 2005[1] (AFPS 05) to ensure that members of that scheme and the Armed Forces Pension Scheme 2015[2] (AFPS 15) will be subject to the same rules on continuity of service as members of other armed forces pension schemes in the same circumstances. This forms part of the Department's implementation of the 2015 Pension Remedy and should have been included in the Armed Forces Pensions (Remediable Service) Regulations 2023[3] (Remediable Service Regulations): it will therefore have effect from the date on which those regulations came into force (1 October 2023). Other amendments are minor and made in accordance with an undertaking given to the Joint Committee for Statutory Instruments dated 14 November 2023 (see paragraph 11.2).

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

[1] https://www.legislation.gov.uk/uksi/2005/438/contents
[2] https://www.legislation.gov.uk/uksi/2014/2336/contents/made
[3] https://www.legislation.gov.uk/uksi/2023/998/contents/made

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom, and it applies to members of the armed forces wherever they are in the world.

5. Policy Context

What is being done and why?

5.1 In 2015, under the Public Service Pensions Act 2013, new pension schemes were introduced for each of the main public service workforces, including the armed forces, and the existing schemes were closed to new members. As part of this process, transitional arrangements were put in place to protect older members of the schemes: in 2018 the Court of Appeal found that these transitional protections constituted unlawful age discrimination in the context of the judges and firefighters' schemes (*Lord Chancellor & Anor v McCloud & Ors, Secretary of State for the Home Department v Sargeant & Ors* [2018] EWCA Civ 2844). The Government accepted that the unlawful discrimination had occurred in all public service schemes with similar transitional arrangements, and undertook to provide a remedy. The Public Service Pension and Judicial Offices Act 2022 (2022 Act) provided the framework for the remedy.

5.2 The 2015 Pension Remedy implements the remedy for the armed forces. In short, the 2022 Act returned affected members to their relevant legacy scheme for the remedy period (1 April 2015 to 31 March 2022), and they are treated as though they had never been members of the reformed scheme during that period.

5.3 Continuity of Service (CoS) rules were introduced in 2015 and apply where a member has service in the AFPS 2005 which is, or should be treated as, continuous with their service in the AFPS 15. They are important because, where a member has continuity of service between the two schemes, they are treated as active members of both schemes and on leaving service may claim benefits on that basis. CoS rules ensure that members who have a break in service between the two schemes do not lose continuity as long as they meet certain criteria, one of which is that the gap cannot be longer than five years. CoS rules provide that periods during which the member was in pensionable service in another public service scheme (including another armed forces scheme) can be disregarded when assessing whether the gap in service between the AFPS 05 and the AFPS 15 exceeds five years. The policy intent, following the implementation of the remedy, remains that service in another public sector scheme after 1 April 2015 should be disregarded when calculating the length of a gap in service.

5.4 The current AFPS 05 rule on continuity of service does not use a specific date, and instead refers to the member's "transition date" which was, before 1 October 2023, defined as 1 April 2015. However, the Remediable Service Regulations amended the definition of transition date to 1 April 2022 for remedy members: the policy intent was that any gap in service after 1 April 2015 should remain covered by the CoS rules. However, due to an oversight in the drafting, the necessary amendment was not made to the relevant rule in the AFPS 05 Transitional Provision Schedule.

5.5 As a result, the rules on CoS in this scheme no longer cover a particular cohort, namely those members of the AFPS 05 who had left service and then re-joined into reserve service which was pensionable under a legacy reserve pension scheme.

What was the previous policy, how is this different?

5.6 The policy has not changed. This instrument makes a consequential amendment to ensure that the rules of the AFPS 05 are in accordance with the policy intent.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument makes a consequential amendment to the CoS rule in Schedule 2 (Transitional Provision) to the AFPS 05. The amendment replaces a reference to the member's transition date with a date, 1 April 2015. The amendment is retrospective in effect, as it was omitted from the Remediable Service Regulations due to an oversight. It therefore takes effect from 1 October 2023.

6.2 The instrument also makes corrections to cross-references and definitions inserted by the Remediable Service Regulations into the rules of various armed forces pension schemes.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 This instrument is subject to a statutory duty to consult representatives of persons likely to be affected under section 22 of the 2013 Act. The Ministry of Defence therefore ran a stakeholder consultation exercise on these measures between 2 and 20 December 2024. Although the consultation was not public, a detailed consultation document, containing a draft of the proposed instrument and explanation of the policy issue being addressed were provided to key stakeholders and members of the Armed Forces Pension Board, who were invited to comment. Two supportive responses were received, and no objections were raised. The stakeholders agreed the proposed amendment would achieve its policy aim and MOD has proceeded to finalise this instrument on this basis.

7.2 The Ministry of Defence will respond to stakeholders no later than the day before this instrument will be laid.

8. Applicable Guidance

8.1 Guidance will not be provided as the instrument makes technical changes to ensure that the rules match the existing policy. No action by members is required.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because these regulations have no, or no significant impact on the private, voluntary or public sector.

Impact on businesses, charities and voluntary bodies

9.2 There is no impact on business, charities or voluntary bodies because the instrument relates to public sector pensions.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no impact on the public sector because the amendment does not require a change of policy or practice in the administration of armed forces pensions.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the rules of the armed forces pension schemes are kept under regular review by the Ministry of Defence.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The instrument will be issued free of charge to all known recipients of the Armed Forces Pensions (Remediable Service) Regulations 2023, as it is made in part in consequence of defects in that instrument (see paragraph 6.2). In accordance with paragraph 4.7.6 of Statutory Instrument Practice, the Department has consulted with the Statutory Instrument Registrar on the use of this procedure in relation to this instrument.

11.2 This instrument makes amendments in accordance with the Department's undertaking in a Memorandum dated 14 November 2023, published in the JCSI Third Report of Session 2023-24.

12. European Convention on Human Rights

12.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").