

# SUMMARY OF RESPONSES TO CONSULTATION DOCUMENT DATED 30 DECEMBER 2008 ON AWOL RULES ACROSS SCHEMES AND ELIGIBILITY RULES FOR THE RESERVED FORCES PENSION SCHEME

## 1. INTRODUCTION

1.1 There are three pension schemes available to members of the Regular Armed Forces, called-out/recalled Reservists and members of the Full Time Reserve Service (FTRS). The Armed Forces Pension Scheme 1975 (AFPS 75) was available to all, although Reservist who did not have a deferred or immediate pension prior to mobilisation tended not to serve long enough to vest and the FTRS section of the pension scheme was ruled to be in ultra vires as it should have been made under the Reserve Forces Act 1996 (RFA 96). AFPS 75 closed to new entrants on 6 April 2005. The Armed Forces Pension Scheme 2005 (AFPS 05) and the Reserve Forces Pension Scheme (RFPS) were introduced for new entrants to the Regular Armed Forces and FTRS respectively on 6 April 2005. Those called-out under Parts 4, 5 and 6 of RFA 96 (or corresponding provisions of RFA 80) are eligible to be members of RFPS and those recalled under Part 7 are eligible to be members of AFPS 05.

1.2 The rules for AFPS 75 are contained in three prerogative instruments: one for each of the Armed Forces. An exercise is underway to harmonise the contents of these prerogative instruments and, where anomalies are found, to negotiate an agreed approach. Proposal 2 is an example of this. The Army's provision on the pensionability of periods of Absence Without Leave (AWOL) of 5 days or less was different to those of the Royal Navy (RN) and Royal Air Force (RAF). Internal consideration resulted in the view that the Army's provisions should be brought in line with those of the other two Services and it is this proposal which has been put out to consultation.

1.3 The rules for AFPS 05 and RFPS are relatively new and real-life scenarios are highlighting areas which need attention. Proposals 3 and 4 are examples of this. An actual case of someone who had been absent for a prolonged period and had no pay within a three year period concentrated our minds on how accrued benefits might be protected. The proposals were put out for internal consideration at the same time that they were put out to consultation.

1.4 Since the introduction of RFPS the pension tax legislation has changed and, following a request from a called-out Reservist, we decided to consider whether RFPS eligibility rules should be relaxed to allow multi pension scheme membership. The proposals were put out for internal consideration at the same time that they were put out to consultation.

1.5 A consultation exercise was undertaken in December 2008 seeing comments and suggestions on the proposals for changes to RFPS eligibility rules and to AWOL rules of all schemes. Consultation was principally with the members of the Central Advisory Committee on Pensions and Compensation, a statutory advisory body established to advise ministers on matters relation to Armed Forces pensions and compensation. Members include representatives of the ex-Service organisation such as the Royal British Legion (RBL), British Limbless Ex-Service Men's Association

(BLESMA) and the War Widows Association (WWA). Comments were also invited via our website.

1.6 The consultation exercise ended in February 2009. The breakdown of respondents is as follows:

War Pensions Committees	1
BLESMA	1
Forces Pensions Society	1
RN personnel	1
Army personnel	2
RAF personnel	1
Ex-Service personnel	1

## **2. CONSULTATION PROPOSAL AND SUMMARY OF RESPONSES**

**2.1 Proposal 1: that the eligibility rules for RFPS membership should be amended to allow mobilised reservists to be members of RFPS and members of their civilian occupational pension scheme if their civilian employer continued paying employers' contributions for them.**

2.2 The proposal was supported by all who responded.

**2.3 Proposal 2: that all AFPS 75 members should be treated the same for pension purposes for short periods of AWOL.**

2.4 The proposal was supported by all who responded.

**2.5 Proposal 3: that eligibility for the death-in-service lump sum for persons who are AWOL should be limited to those whose period of AWOL is not prolonged. Respondent were invited to consider either three or six months as a prolonged period.**

and

**Proposal 4: that the accrued benefits of AFPS 05 and RFPS members who have been AWOL for a prolonged period should be protected by the making of a preserved award. Respondents were invited to consider either three or six months as a prolonged period.**

2.6 Responses in relation to Proposals 3 and 4 were combined responses as responded tended to think that the period to trigger deferred status should be the same for both proposals. All but one respondent was supportive of the proposals although views differed on the trigger point.

2.6.1 One respondent stated that they had no preference as to whether the period in respect to both proposals was three or six months. One respondent stated that six months from the point of absence was a reasonable trigger for 'deferred' status in respect of both of the proposals. Two respondents welcomed the proposals but

suggested that the period should be two years to prevent any pay of higher rank feeding through into preserved benefits.

*Comment:* A two year period would produce a large window during which those AWOL would be entitled to the death-in-service lump sum. As the reason for proposing two years was linked with limiting the beneficial effect of any pay of higher rank in terms of the calculation of final pensionable pay, a two year window was rejected. Six months was the stated preference of one respondent and, on reflection, it was felt that this was more reasonable than three months, as most of those who go AWOL are back with their Service within six months. Three months could place an unduly heavy administrative burden on the Services.

2.6.2 One respondent suggested that the proposals were tantamount to constructive dismissal as there could be reasons for an individual going AWOL.

*Comment:* Not valid. We accept that there are many reasons why an individual may go AWOL and confirm that both schemes contain discretions which would allow old service to be aggregated with new service, and for discretion to be applied to periods of unpaid absence. The change in pension status does not precipitate a discharge from the Armed Forces. Discharge is a matter for the Services not for the pension scheme.

## **CONCLUSION**

3.1 We are grateful to all respondents for their constructive comments. As a result of the consultation the eligibility rules for RFPS will be relaxed and the rules for counting of AWOL for pension purposes will be aligned for all three Services. Work will proceed on the basis of the six month trigger point for deferred status for those who are AWOL for a prolonged period.

3.2 Details of AFPS 05 and RFPS can be found on the MOD website: [www.armedforcespensions.mod.uk](http://www.armedforcespensions.mod.uk). Copies of the prerogative instruments are available from The Stationery Office.