STATUTORY INSTRUMENTS

# 2016 No. 310

# PENSIONS

## The Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) (Amendment) Order 2016

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| *Made - - - -* | *7th March 2016* |
| *Laid before Parliament* | *10th March 2016* |
| *Coming into force - -* | *1st April 2016* |

The Secretary of State, in exercise of the powers conferred by sections 1(1) and 1(3) of the Armed Forces (Pensions and Compensation) Act 2004(**1**), makes the following Order:

## PART 1

## PRELIMINARY

### Citation and commencement

**1.** This Order may be cited as the Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) (Amendment) Order 2016 and comes into force on 1st April 2016.

### Interpretation

**2.** In this Order "the 2012 Order" means the Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012(**2**).

(**1**) 2004 c.32; section 1 was amended by the Public Service Pensions Act 2013 (c.25), Schedule 8, paragraph 28.
(**2**) S.I. 2012/1796, amended by S.I. 2014/3255 and 2015/497.

# PART 2

## AMENDMENT OF PART 1 OF THE 2012 ORDER (PRELIMINARY)

### Amendment of article 2 (interpretation)

**3.** Article 2 of the 2012 Order is amended as follows—

(a) omit the following definitions—

(i) "the Armed Forces Pension Scheme 1975"; and

(ii) "the Armed Forces Pension Scheme 2005";

(b) insert the following definitions in the appropriate place—

"aggregated lower tier payment" is a payment in accordance with article 9B(1);

"disablement pension" means retired pay or pension awarded under article 6 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(**3**);

"guaranteed income payment" means a guaranteed income payment paid under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**4**); and

"in-service payment" is a payment made under the enhanced learning credit scheme established by the Secretary of State and set out in Defence Direction and Guidance on Training, Education and Skills(**5**) during qualifying service and on or after 1st April 2016;

(c) in the definition of "higher tier payment" for "has the meaning given by article 9(4)" substitute "is a payment in accordance with article 9C(1)"; and

(d) in the definition of "lower tier payment" for "has the meaning given by article 9(3)" substitute "is a payment in accordance with article 9A(1)".

### Amendment of article 3 (definition of "eligible adult dependant")

**4.** For article 3(2) and (3) of the 2012 Order substitute—

"(2) A person is an eligible partner of a member of the armed forces if the Secretary of State is satisfied that—

(a) the person and the member are cohabiting as partners in an exclusive and substantial relationship;

(b) the person and the member are not prevented from marrying or entering into a civil partnership; and

(c) either the person is financially dependent on the member or the person and the member are financially interdependent.

(3) A person is a surviving eligible partner of a member of the armed forces if the Secretary of State is satisfied that at the date of the member's death—

(a) the person and the member were cohabiting as partners in an exclusive and substantial relationship;

(b) the person and the member were not prevented from marrying or entering into a civil partnership; and

(c) either the person was financially dependent on the member or the person and the member were financially interdependent.".

(**3**) S.I. 2006/606, to which there are amendments not relevant to this Order.
(**4**) S.I. 2011/517, to which there are amendments not relevant to this Order.
(**5**) See Joint Service Publication 898, available from the website: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433761/20141126-JS_898_Part1_Direction_v1_1.pdf

# PART 3

## AMENDMENT OF PART 3 OF THE 2012 ORDER (THE ENHANCED LEARNING CREDIT SCHEME)

**Revocation of article 5 (registration as a member of the ELC Scheme)**

**5.** Article 5 of the 2012 Order is revoked.

**Insertion of article 5A (membership of the ELC Scheme)**

**6.** After article 4 of the 2012 Order insert—

"**Membership of the ELC Scheme**

**5A.**—(1) A person is a member of the ELC Scheme if the person was registered as a member before 1st April 2016(**6**).

(2) A person who is not within paragraph (1) becomes a member of the ELC Scheme if the person—

(a) is in service in the armed forces at any time on or after 1st April 2016; and

(b) completes or has completed Phase 1 training.".

**Amendment of article 6 (eligibility conditions for payments under the ELC Scheme)**

**7.**—(1) Article 6 of the 2012 Order is amended as follows.

(2) For article 6(2) substitute—

"(2) Condition A is that the service leaver's course of higher level learning commences before the entitlement time limit.".

(3) After article 6(5) insert—

"(5A) In this article "the entitlement time limit" means—

(a) for a service leaver who ceased to be a member of the armed forces before 1st April 2011, the tenth anniversary of their ceasing to be a member of the armed forces;

(b) subject to sub-paragraph (d), for a service leaver who ceased to be a member of the armed forces on or after 1st April 2011 and not later than 31st March 2016, 31st March 2021;

(c) subject to sub-paragraph (d), for a service leaver who ceases to be a member of the armed forces on or after 1st April 2016, the fifth anniversary of their ceasing to be a member of the armed forces; and

(d) for a service leaver discharged on attributable medical grounds on or after 1stApril 2011 who receives a disablement pension or a guaranteed income payment, the tenth anniversary of their ceasing to be a member of the armed forces.".

(4) For article 6(6), (7) and (8) substitute—

"(6) In this article "eligible service" means—

(a) in relation to a lower tier payment—

(**6**) Article 5, revoked by this Order, enabled a person to register as a member of the ELC Scheme.

(i) for a service leaver who has completed before 1st April 2016, or who completes before 1st April 2017, 4 years qualifying service, at least 4 years but less than 8 years qualifying service;

(ii) for a service leaver who has completed less than 4 years qualifying service before 1st April 2017, at least 6 years but less than 8 years qualifying service;

(iii) for a service leaver who becomes a member of the ELC Scheme on or after 1st April 2016, at least 6 years but less than 8 years qualifying service;

(b) in relation to an aggregated lower tier payment, at least 6 years qualifying service completed on or after 1st April 2016; or

(c) in relation to a higher tier payment, at least 8 years qualifying service.

(7) The period of eligible service is to be calculated in accordance with paragraphs (8) to (10).

(8) Subject to paragraph (9) and (10), the period of eligible service commences on—

(a) for a person who registered as a member of the ELC Scheme, the date of enlistment or commission into the armed forces, unless sub-paragraph (b) applies;

(b) for a person who was registered as a member of the ELC Scheme within the six month window and—

(i) ceased to be a member of the armed forces before 1st April 2016, the first day of the six month window; or

(ii) is a member of the armed forces on 1st April 2016, whichever is the later of 1st April 2000 and the date of enlistment or commission into the armed forces; or

(c) for a person to whom article 5A(2) applies, whichever is the later of 1st April 2000 and the date of enlistment or commission.".

(5) For article 6(10) substitute—

"(10) Where before 1st April 2016 a service leaver had registered as a member of the ELC Scheme having satisfied the senior responsible officer that the member might register outside the time limits in force at the time—

(a) if the service leaver's service in the armed forces commenced before 1st April 2003, eligible service commences from whichever is the later of 1st April 2000 and the date of his or her enlistment or commission into the armed forces;

(b) if the service leaver's service in the armed forces commenced on or after 1st April 2003, eligible service commences from the date of enlistment or commission into the armed forces.".

**Amendment of article 7 (eligibility conditions in certain cases of attributable medical discharge)**

**8.**—(1) Article 7 of the 2012 Order is amended as follows.

(2) For article 7(4) substitute—

"(4) Condition B is that the service leaver's course of higher level learning commences before the entitlement time limit.".

(3) After article 7(7) insert—

"(8) In this article "the entitlement time limit" means—

(a) for a service leaver who ceased to be a member of the armed forces before 1st April 2011, the tenth anniversary of their ceasing to be a member of the armed forces;

(b) subject to sub-paragraph (d), for a service leaver who ceased to be a member of the armed forces on or after 1st April 2011 and not later than 31st March 2016, 31st March 2021;

(c) subject to sub-paragraph (d), for a service leaver who ceases to be a member of the armed forces on or after 1st April 2016, the fifth anniversary of their ceasing to be a member of the armed forces; and

(d) for a service leaver discharged on attributable medical grounds on or after 1stApril 2011 who receives a disablement pension or a guaranteed income payment, the tenth anniversary of their ceasing to be a member of the armed forces.".

**Amendment of article 8 (entitlement of eligible adult dependants in certain cases of death or attributable medical discharge)**

**9.**—(1) Article 8 of the 2012 Order is amended as follows.

(2) In article 8(2)(b) for "either article 6(6)(a) or article 6(6)(b)" substitute "article 6(6)(a), 6(6)(b) or 6(6)(c)".

(3) In article 8(4)—

(a) in sub-paragraph (a) omit "or";

(b) after sub-paragraph (a) insert—

"(ab) an aggregated lower tier payment if, on the date of A's death, A had completed the eligible service specified in article 6(6)(b), or"; and

(c) in sub-paragraph (b) for "article 6(6)(b)" substitute "article 6(6)(c)".

(4) After article 8(5) insert—

"(5A) In this article the period of eligible service is to be calculated in accordance with article 6(8) to (10).".

(5) In article 8(7)—

(a) in sub-paragraph (a) after "1st April 2004" insert "and (if the discharge occurred on or after 1stApril 2017) B receives a disablement pension or a guaranteed income payment".

(b) in sub-paragraph (b) for "either article 6(6)(a) or article 6(6)(b)" substitute "article 6(6)(a), 6(6)(b) or 6(6)(c)".

(6) In article 8(8)(a) after "1st November 2010" insert "and (if the discharge occurred on or after 1st April 2017) B receives a disablement pension or a guaranteed income payment".

(7) In article 8(9)—

(a) in sub-paragraph (a) omit "or";

(b) after sub-paragraph (a) insert—

"(ab) an aggregated lower tier payment if, on the date of B's attributable medical discharge, B had completed the eligible service specified in article 6(6)(b), or"; and

(c) in sub-paragraph (b) for "article 6(6)(b)" substitute "article 6(6)(c)".

(8) In article 8(10) after "lower tier payment" insert "or aggregated lower tier payment".