
STATUTORY INSTRUMENTS

2016 No. 310

PENSIONS

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

<i>Made</i>	- - - -	<i>7th March 2016</i>
<i>Laid before Parliament</i>		<i>10th March 2016</i>
<i>Coming into force</i>	- -	<i>1st April 2016</i>

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 1st April 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 1st April 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 1st April 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”.

Amendment of article 9 (payments under the ELC Scheme)

10. For Article 9 of the 2012 Order substitute—

“Payments under the ELC Scheme

9.—(1) A payment under the ELC Scheme must be made to an approved learning provider.

(2) A payment referred to in paragraph (1) may be—

- (a) a lower tier payment;
- (b) an aggregated lower tier payment; or
- (c) a higher tier payment.

Lower tier payments

9A.—(1) A lower tier payment—

- (a) may be up to 80% of the total cost of the tuition fees for higher level learning; but
- (b) must not exceed £1,000 per financial year.

(2) Only one lower tier payment may be made in any financial year in respect of the qualifying service of any one person.

(3) A maximum of three lower tier payments may be made in respect of the qualifying service of any one person.

(4) The number of lower tier payments that may be made in respect of that qualifying service must be reduced by the number of any in-service payments made in respect of that qualifying service.

(5) Where a lower tier payment has already been made, an application for a lower tier payment must be supported by written evidence from the previous approved learning provider that the applicant satisfactorily completed the study to which the previous payment related.

(6) No lower tier payment may be made in respect of the qualifying service of any one person if an aggregated lower tier payment has been made in respect of that service.

Aggregated lower tier payments

9B.—(1) An aggregated lower tier payment—

- (a) may be up to 80% of the total cost of the tuition fees for higher level learning; and
- (b) must exceed £1,000 but not exceed £3,000.

(2) Only one aggregated lower tier payment may be made in respect of the qualifying service of any one person.

(3) An aggregated lower tier payment may be made if—

- (a) a person is eligible for an aggregated lower tier payment under article 6, 7 or 8 (as the case may be);
- (b) no lower tier payment has been made in respect of that service; and
- (c) no in-service payment has been made in respect of that service.

Higher tier payments

9C.—(1) A higher tier payment—

- (a) may be up to 80% of the total cost of tuition fees for higher level learning; but
 - (b) must not exceed £2,000 per financial year.
- (2) Only one higher tier payment may be made in any financial year in respect of the qualifying service of any one person.
- (3) A maximum of three higher tier payments may be made in respect of the qualifying service of any one person.
- (4) The number of higher tier payments that may be made in respect of that qualifying service must be reduced by the number of in-service payments made in respect of that qualifying service.
- (5) Where a higher tier payment has already been made, an application for a higher tier payment must be supported by written evidence from the previous approved learning provider that the applicant satisfactorily completed the study to which the previous payment related.
- (6) No higher tier payment may be made in respect of the qualifying service of any one person if an aggregated lower tier payment has been made in respect of that service.”

PART 4

AMENDMENT OF PART 4 OF THE 2012 ORDER (THE FURTHER AND HIGHER EDUCATION SCHEME)

Amendment of article 10 (eligibility conditions for payments to service leavers under the FHEC Scheme)

- 11.**—(1) Article 10 of the 2012 Order is amended as follows.
- (2) In the heading to article 10 for “leaders” substitute “leavers”.
- (3) For article 10(3) substitute—
- “(3) Condition B is that the service leaver’s course of qualification level learning commences before the entitlement time limit.”.
- (4) After article 10(10) insert—
- “(10A) 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 1st April 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.”.
- (5) For article 10(11) to (13) substitute—
- “(11) Subject to paragraph (12), in this article “eligible service” means—

- (a) 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;
- (b) 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; and
- (c) 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.

(12) Where a service leaver is discharged on attributable medical grounds “eligible service” means the completion of Phase 1 and Phase 2 training.

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

(14) For the purposes of paragraph (9) any period during which the service leaver served outside the United Kingdom as a member of the armed forces is to be treated as a period of ordinary residence in the United Kingdom.”.

Amendment of article 11 (entitlement of eligible adult dependants under the FHEC Scheme in certain cases of death or attributable medical discharge)

12.—(1) Article 11 of the 2012 Order is amended as follows.

(2) For article 11(1), (2) and (3) substitute—

“(1) Where a member of the armed forces dies on or after 17th July 2008 and such death is caused either wholly or predominantly by service, his or her eligible adult dependant is eligible for payment under the FHEC Scheme if conditions A to G are met.

(2) Where a member of the armed forces is discharged on attributable medical grounds on or after 17th July 2008, his or her eligible adult dependant is eligible for payment under the FHEC Scheme if—

- (a) the member is unable, due to the injury or illness which caused the attributable medical discharge, to undertake qualification level learning;
- (b) if the discharge occurred on or after 1st April 2017 the member receives a disablement pension or a guaranteed income payment; and
- (c) conditions A to G are met.”.

(3) For article 11(5) substitute—

“(5) Condition B is that the member of the armed forces has or had completed Phase 1 and Phase 2 training before the date of death or attributable medical discharge.”.

Amendment of article 12 (payments under the FHEC Scheme)

13.—(1) Article 12 of the 2012 Order is amended as follows.

(2) In article 12(2) for “(5)” substitute “(6)”.

(3) For article 12(3)(b) substitute—

“(b) where that approved learning provider is not a publicly funded educational establishment, those fees do not exceed £6,000.”.

(4) For article 12(4) substitute—

“**4.**—(1) Where an approved learning provider is located in Wales, “capped fees” means

- (a) where the applicant is a qualifying person undertaking a qualifying course provided by an approved learning provider in relation to which there is an approved plan, the applicable fee limit; or
- (b) in all other cases, £6,000.

(2) In this paragraph “applicable fee limit”, “approved plan”, “qualifying person” and “qualifying course” have the meanings given in section 57(1) of the Higher Education (Wales) Act 2015(7) (interpretation).”.

14. In article 12(5) for the words from “the highest amount” to the end, substitute “£6,000”.

7th March 2016

Mark Lancaster
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012 (“the 2012 Order”), which established the Enhanced Learning Credit Scheme (“ELC Scheme”) and the Further and Higher Education Commitment Scheme (“FHEC Scheme”). The ELC and FHEC Schemes provide payments towards the cost of different defined levels of post-service learning qualifications.

Under the 2012 Order, eligible adult dependants may be eligible for payments under the ELC Scheme and the FHEC Scheme. Article 4 of the Order sets out the definition of “eligible adult dependant”.

Part 3 of the Order amends Part 3 of the 2012 Order, which provides for the ELC Scheme. Article 5 of the Order removes the requirement for members of the armed forces to become members of the ELC Scheme by registration. Article 6 of the Order inserts a new article 5A in the 2012 Order. Under new article 5A, members of the armed forces will automatically be members of the ELC Scheme once they have completed Phase 1 training.

Articles 7, 8 and 9 of the Order amend eligibility conditions for ELC Scheme payments in respect of: the length of the period during which a person who is eligible under the Scheme must commence their course of higher level learning, and the length of the period of service the member must have completed. Article 7 increases from 4 to 6 years the period of service required before a person will be eligible for lower tier payments under the ELC Scheme. This change does not apply to any member who has completed 4 years service before 1st April 2017.

The 2012 Order provides for two types of ELC Scheme payments: lower tier payments and higher tier payments. The Order introduces a new type of payment called an aggregated lower tier payment. A single aggregated lower tier payment can be paid instead of lower tier payments. Article 10 of the Order amends the 2012 Order so that payments made on or after 1st April 2016 while a member was in service under the Defence Direction and Guidance on Training, Education and Skills (Joint Service Publication 898) count toward the maximum number of payments under the ELC Scheme.

Part 4 of the Order amends Part 4 of the 2012 Order, which provides for the FHEC Scheme. Articles 11 and 12 of the Order amend the eligibility conditions for payments under the FHEC Scheme in respect of: the length of the period during which a person who is eligible under the Scheme must commence their course of qualification level learning, and the length of the period of service the member must have completed. Article 11 increases from 4 to 6 years the period of service required before a service leaver will be eligible for payments under the FHEC Scheme. This change does not apply to any member who has completed 4 years service before 1st April 2017.

Article 13 of the Order amends the definitions of “capped fees”. These are the maximum amount of a FHEC Scheme payment.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.