



House of Commons  
Defence Committee

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# **Armed Forces Pensions and Compensation**

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**First Report of Session 2003–04**

*Volume I: Report*





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Defence Committee

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First Report of Session 2003–04

*Volume I*

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## The Defence Committee

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[www.parliament.uk/parliamentary\\_committees/defence\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/defence_committee.cfm)

A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are Mark Hutton (Clerk), Steven Mark (Second Clerk), Ian Rogers (Audit Adviser), Dr John Gearson (Committee Specialist), Fiona Channon (Committee Assistant), Sheryl Dinsdale (Secretary) and James McQuade (Senior Office Clerk).

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# Contents

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<b>Report</b>	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>1 Introduction</b>	<b>5</b>
Background to the inquiry	5
Lack of progress	5
<b>2 Cost basis for schemes</b>	<b>8</b>
Cost neutrality	8
Interpretation: mortality assumptions	8
Interpretation: change in the preserved pension age	14
<b>3 Differences from consultation proposals</b>	<b>16</b>
Welcome improvements	16
Dependants' benefits	16
Unmarried partners' benefits	16
How these improvements will be funded	18
Early Departure Scheme	18
Treatment of officers and other ranks	23
Compensation proposals	24
Standard and burden of proof	24
Focus on the severely disabled	26
Tariff bands for compensation payments	26
Methodology for assessing awards	28
<b>4 Transition</b>	<b>30</b>
Communications with personnel	30
Shortcomings needing to be addressed	30
Choice for serving personnel on pensions	31
No choice for serving personnel on compensation	32
Preserved pension age: a change for existing personnel?	33
Timescale to implementation	35
<b>5 Legislation</b>	<b>36</b>
Primary and secondary legislation: an enabling bill?	36
Parliamentary oversight of secondary legislation	36
Future amendments and replacement schemes	37
Super-affirmative procedure: legislating for consultation and scrutiny	38
Preparation for the passage of a bill	38
<b>6 Legacy issues</b>	<b>39</b>
Treatment of former personnel and their dependants	39
Possible remedies	40
Future 'legacy' issues?	40
Compensating personnel whose pensions were improperly taxed	41

<b>7 Conclusion</b>	<b>43</b>
A special case	43
Opportunity to work	43
A few winners, but many losers	43
Parliament's role	44
<b>Conclusions and recommendations</b>	<b>45</b>
<b>Glossary</b>	<b>52</b>
<b>Formal minutes</b>	<b>54</b>
<b>Witnesses</b>	<b>55</b>
<b>List of written evidence</b>	<b>55</b>
<b>List of unprinted written evidence</b>	<b>55</b>
<b>Reports from the Defence Committee since 2001</b>	<b>56</b>

## Summary

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An Armed Forces Pension and Compensation Bill has begun its passage through Parliament. This bill will enable the Government to implement new pension and compensation schemes for the Armed Forces. When we considered the Government's original proposals for these schemes in 2002, we were unimpressed by the basis on which they had been drawn up, with an emphasis on managing cost rather than achieving best practice; and we were critical of the standard of the consultation that the Government had carried out. The fact that Armed Forces personnel lack representation as employees should not disadvantage them.

The Government's most recent proposals address some, but by no means all of our concerns. On the plus side, entitlements for widow(er)s have been improved, and new rights for unmarried partners have been included. An independent appeals mechanism has been formulated for dealing with unsuccessful claims under the compensation scheme; and the period in which claims will be eligible has been extended.

On the negative side, however, the Ministry of Defence's interpretation of 'cost neutrality' in fact means that the value of benefits to Armed Forces personnel are to be reduced on the basis that they will live for longer; and most personnel will have to wait an extra five years before receiving their pension. For the compensation proposals, the appropriate standard and burden of proof remain a bone of contention. We also have concerns about various benefits intended to compensate former personnel for loss of earnings: early departure benefits will no longer be index-linked, and so are likely to lose value over time; while the income stream under the compensation arrangements is based on tariffs which seem to be insufficiently flexible.

We are not persuaded that the quality of communications with personnel has improved sufficiently to ensure that all personnel are able to make an informed choice between the existing and the new pension schemes. We have serious doubts about whether the MoD will be able to implement the schemes as soon as April 2005. We will continue to monitor their progress.

The Government has still not finalised a number of its proposals despite the extended timescale to which it has been operating. It is unreasonable to expect Parliament to agree to enabling primary legislation without these details being available. More detail should be on the face of the bill; and secondary legislation to introduce or amend the schemes should be subject to parliamentary approval and to proper consultation.

Our Armed Forces provide an essential service to their country which merits proper recognition when they are injured or killed, and in retirement. The bill now before Parliament is an opportunity to ensure that they and their families receive the provision they deserve.



# 1 Introduction

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## Background to the inquiry

1. On 15 September 2003, the Minister for Veterans, Ivor Caplin MP, announced to Parliament that the Ministry of Defence (MoD) had completed its reviews of the current Armed Forces pension and compensation arrangements, and published outline details of the new schemes that the Ministry intends to introduce. The Minister further announced that the Government intended “to introduce the primary and secondary legislation required to implement these new schemes as soon as Parliamentary time allows”.<sup>1</sup> A bill was announced in the Queen’s Speech on 26 November 2003, “to give enabling powers to bring in new pension and compensation arrangements for the Armed Forces”.<sup>2</sup> The Armed Forces (Pensions and Compensation) Bill was given its first reading in the House of Commons on 4 December 2003.<sup>3</sup> We are publishing this Report now with some urgency, so that the House can be aware of our views before it considers this legislation.

2. We heard from the Minister for Veterans on 5 November,<sup>4</sup> and have received written evidence from the MoD,<sup>5</sup> as well as from the Forces’ Pension Society and Royal British Legion, two organisations representing ex-service personnel.<sup>6</sup>

3. We are also taking this opportunity to make our views known on some of the grievances to which previous pension and compensation arrangements have given rise, and on which we took evidence from the Minister’s predecessor, Dr Lewis Moonie MP, on 18 December 2001.<sup>7</sup>

4. Full-time reservists will be covered by a separate Reservists Pension Scheme, which will be implemented “in the next few months”.<sup>8</sup> The review process did not include this scheme, and we have not looked at reservists’ pension arrangements as part of this inquiry.

5. We are grateful to the specialist advisers who have assisted us in our inquiries in these areas of some complexity: Mr Andrew McDonald, senior solicitor, Thompsons Solicitors; Professor Mark Mildred, Professor of Advanced Litigation, Nottingham Law School; Mr John Robbs, former Head of Service Personnel Pensions Policy, Ministry of Defence; and Sue Ward, freelance pensions expert.

## Lack of progress

6. After the 1997 election, the new Government announced, during the Strategic Defence Review, that there would be a fresh review of the Armed Forces Pension Scheme. The

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1 HC Deb 15 September 2003, col 39WS

2 Votes and Proceedings, 26 November 2003

3 Bill 10, Session 2003–04

4 Ev 1

5 Ev 18

6 Ev pp 28, 30

7 HC (2002–03) 188–i

8 MoD website, online at [http://www.mod.uk/issues/pensions/new\\_afps/news/emails.htm](http://www.mod.uk/issues/pensions/new_afps/news/emails.htm)

process started in the autumn of 1998. Although the intention was that it would take about a year, it was not until March 2001 that the MoD finally published consultation documents on its reviews of Armed Forces pension and compensation arrangements. We decided at our first meeting of this Parliament in July 2001 to look at the review findings, but, because of delays in the MoD's consultation process, we were only able to publish our Report on these reviews in May 2002.<sup>9</sup> The MoD responded to our Report in July of that year.<sup>10</sup>

7. We examined at length the general merits of the MoD's proposals, and much of their detail, during our inquiry in 2002. Many of the issues and concerns that we raised then remain valid today, but we do not intend to cover this ground again. This report concentrates rather on the changes that the MoD has made to its proposals since the consultation, and examines how far these changes go towards meeting the concerns expressed about the original proposals by us and by others.

8. While it took five years from start to finish to finalise plans and introduce a new pension scheme for the Civil Service, the Armed Forces review will have taken seven years at least. In our previous report, we noted that the comparison was "stark" between the review processes for the Armed Forces and for the Principal Civil Service Pension Scheme (PCSPS).<sup>11</sup> In response, the Government has acknowledged that "less progress has been made in finalising its proposals than forecast following the review of Armed Forces pension and compensation arrangements", but does "not consider that the recent delay will affect the timetable for introduction", scheduled for 2004–05.<sup>12</sup> The current proposals envisage implementation of the new schemes on 6 April 2005.<sup>13</sup>

9. We were surprised to find when taking evidence from the Minister in November 2003 how little flesh there still seems to be on the bones of the schemes, despite the extended timescale to which the MoD has been operating. Work on an Early Departure Scheme<sup>14</sup> is "not complete at the present time",<sup>15</sup> and the MoD has not yet "come to a conclusion" on the form of the scheme.<sup>16</sup> The MoD has apparently "not yet done" work on illustrative models.<sup>17</sup> This work will not be available until "next year".<sup>18</sup> On unmarried partners, the Minister attempted to "reassure" us that "probably we do not have a clear definition" of which partners would qualify for benefits under the scheme,<sup>19</sup> and that "we are still at the planning stage in some respects".<sup>20</sup> On preserved pensions, the Minister could not "place figures" on the amount of money that would be saved by raising the preserved pension

9 Third Report from the Defence Committee, Session 2001–02, on The Ministry of Defence Reviews of Armed Forces' Pension and Compensation Arrangements, HC 666.

10 Fifth Special Report from the Defence Committee, Session 2001–02, HC 1115

11 HC (2001–02) 666, para 15

12 HC (2001–02) 1115, Appendix, paras 5, 7

13 HC Deb, 15 September 2003, col 39WS

14 See paras 45–60 below

15 Q 20

16 Q 79

17 Q 58

18 Q 60

19 Q 28

20 Q 30

age.<sup>21</sup> The Minister could not provide us with a “detailed analysis of how the relationship will work” between the different forms of compensation for loss of earnings available under the pensions and the compensation schemes, while work on compensation tariffs was “also not yet finalised”.<sup>22</sup> Discussions with the Department of Work and Pensions on compensation payments are still ongoing.<sup>23</sup>

10. We were very concerned to hear that the Minister did not intend to resolve “many” of the issues raised by us until during consideration of primary legislation,<sup>24</sup> and that he considered the planned implementation date of April 2005 to be “quite a long way away”.<sup>25</sup> Communication with Armed Forces personnel on the new schemes has apparently not started yet, and, according to the Minister, the Government is not yet “in the process of developing the final stages of both the pensions and compensation schemes”.<sup>26</sup>

11. We have been somewhat reassured by written information received from the Minister since the evidence session, which shows that in fact the Government’s thinking on some of these issues is significantly more advanced than we had previously understood. On the Early Departure Scheme, while “work to define” its “precise shape” is still “being taken forward with the single Services”, this work “is expected to be concluded as soon as possible in the New Year”. On unmarried partners, a “provisional set of criteria was agreed for implementation of the change in March” which “have since been refined” with “an agreed set of guidelines ... sent to be promulgated as a Defence Council Instruction (DCI)”. On preserved pensions, the “latest costing” for the new scheme is “1% of the Service pay bill” with savings from the existing scheme “likely to be low”. Further information on the compensation proposals and on communication with personnel has also been provided.<sup>27</sup> **Nonetheless, it seems from the evidence we have received that several crucial elements of the schemes have still not been finalised despite an unusually long period of review and consultation. It is vital that these elements are clarified by the time primary legislation is brought before Parliament, so that an informed debate is possible on the issues at stake. It would be wholly unacceptable if Parliament were asked to approve enabling legislation without a clear understanding of its implications for Armed Forces personnel and their dependants.**

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21 See paras 28–31 and 101–104 below

22 Q 85

23 Q 91

24 Q 34

25 Q 59

26 Qq 82, 88

27 Ev 39–42

## 2 Cost basis for schemes

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### Cost neutrality

12. One of our central criticisms of the reviews has been the Government's insistence that any new proposals should cost no more than the schemes currently in place. As a result, the reviews have been, in the Government's own words, no more than "reshuffling the pack".<sup>28</sup> In our report last year, we concluded that "the pension review was hamstrung almost from the outset by the decision that the new proposals should be cost-neutral",<sup>29</sup> and that "the MoD needs to do a great deal more work on its proposals ... taking best practice as its starting point, rather than cost-neutrality".<sup>30</sup> As the MoD's written evidence makes clear, however, and much to our disappointment, the Ministry's "prime objective" has remained "to produce a new scheme broadly equal in value to the current one".<sup>31</sup>

### *Interpretation: mortality assumptions*

13. Moreover, the MoD's definition of 'cost neutrality' has changed, to the disadvantage of personnel.

14. In a memorandum in 2002, the MoD explained, in answer to our questions about cost-neutrality, that

the same actuarial assumptions have been used to calculate the costs of the existing and proposed schemes, except that, under the proposed arrangements allowance was made for the expected changes to exit rates close to the Immediate Pension point.<sup>32</sup>

The memorandum also explained what those assumptions were, stating that the allowances for pensioner mortality were "derived from standard tables", with the mortality of officers assumed to be lighter than that for other ranks.<sup>33</sup>

15. The Ministerial Statement of September 2003, however, states that "Overall, the changes will be broadly cost-neutral, taking account of the steps taken to cover increasing longevity costs."<sup>34</sup> The MoD has provided tables from the Government Actuary's Department (GAD), showing the demographic assumptions used, and the revised costs. The table below shows the GAD's estimate of how much the scheme, and elements of the scheme, will cost the MoD as an average notional percentage of pensionable salary for each member of the scheme:

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28 HC (2001–02) 666, Q 154

29 HC (2001–02) 666, para 149

30 HC (2001–02) 666, para 149

31 Ev 39, para 1

32 HC (2001–02) 666, Ev 39

33 HC (2001–02) 666, Ev 53

34 Ev 19

AFPS—Final Scheme Design**Cost of scheme expressed as a level per cent of pensionable salary**

Benefit	Existing Scheme	Existing Scheme with Revised Actuarial Assumptions <sup>(4)</sup>	New Scheme
<b>Retirement:</b>			
Pension	12.8	15.2	14.3 (see note 2)
Lump Sum	2.4	2.4	
<b>Preserved Benefits:</b>			
Pension	2.5	3.7	2.7
Lump Sum	0.7	0.7	0.7
<b>Ill-health Benefits</b>	1.2	1.2	1.6
<b>Spouse's Benefits</b>	2.3	1.2	2.3
<b>Death in service (lump sum)</b>	0.1	0.1	0.4
<b>Total</b>	<b>22.0</b>	<b>24.5</b>	<b>22.0</b>

Source: Ev 45

## NOTES:

- (1) In calculating the above figures it has been assumed that Officers account for 25 per cent of total pensionable pay and Other Ranks comprise the remaining 75 per cent.
- (2) Early retirement packages are still to be finalised. Cost shown is the amount provided for retirement pensions and lump sums and early retirement packages.
- (3) A cost of 1 per cent of pensionable pay (as at 31<sup>st</sup> March 2003) is roughly equivalent to a cost of £50 million.
- (4) The effect of revised actuarial assumptions is an increase in the cost of the scheme due to the allowance for increased longevity. This increased longevity allowance reduces the value of spouse's benefits as it delays the point at which the member is assumed to die and the payment to their spouse commences.

16. The very important actuarial assumption on pensioner mortality has been changed in the course of the consultation process, to allow for “the cost of pensioners living longer”.<sup>35</sup> From the table above, it can be seen that the expected cost of the existing scheme to the MoD in 30–40 years from now has been recalculated from 22 per cent to 24.5 per cent of pensionable salary, because of the changed demographic assumptions. The new scheme, however, will return the estimated cost to 22 per cent, over the same timescale, by when the Government will be starting to make payments under the new scheme to substantial numbers of personnel. Using the *original* actuarial assumptions, the cost of the new scheme has been calculated at 20.3 per cent—that is to say, the total value of the new scheme *today* is 1.7 per cent of pensionable salary *less* than the total value of the existing scheme.<sup>36</sup> In other words, **the Government intends to use savings that it is making within the pension scheme not only to improve other benefits to personnel, but also to cover the estimated cost of personnel and their dependants living longer.** This conflicts with what the Minister told us in evidence, that “all of any money that is saved ... from one part of the scheme will be used in benefits on other parts of the scheme”.<sup>37</sup>

17. We requested, and have received, further written information from the MoD on the revised mortality assumptions:

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35 Ev 19

36 Ev 43

37 Q 48

**Comparison of the costs for existing and new schemes under revised and 1997 valuation mortality assumptions**

	Cost of scheme expressed as a level % of pensionable salary	
	1997 Valuation Mortality assumptions	Revised mortality assumptions
<b>a)</b> Existing scheme	22.0%	24.5%
<b>b)</b> Scheme proposed in original consultation exercise	22.0%	24.1%
<b>c)</b> Saving from deferral of pre IP preserved pension age from 60 to 65	0.9%	1.0%
<b>d)</b> Additional costs beyond <i>b)</i> for the following improvements: <i>see Note (2)</i>		
- 4 times death benefit	0.1%	0.1%
- Partners pensions	0.4%	0.2%
- Spouses' benefits increased by 25% <i>see Note (3)</i>	1.0%	0.6%
Continued accrual over 35 years <i>see Note (4)</i>	<0.1%	<0.1%
<b>e)</b> Additional savings if benefits for exits between IP point and age 55 restructured	Assumed 2.0%	Assumed 2.0%
<b>f)</b> Total cost of revised scheme including restructured benefits below age 55.	20.3%	22.0%

Source: Ev 44

Notes:

- (1) In calculating the figures it has been assumed that Officers account for 25% of total pensionable pay and Other Ranks comprise the remaining 75%
- (2) The effects of these improvements are cumulative in the order shown i.e. as an example, spouses' benefits are increased by 25% after allowing for partners pensions. Totals are affected by rounding errors.
- (3) Partners' benefits are also increased to 62.5% of member's pension.
- (4) For members who continue in service, continued accrual up to 37 1/3 years will apply to spouses' benefits and partners' pension and up to 40 years for the member's normal pension and lump sum. Any enhancement formulae for death in service and ill-health will be limited to 35 years' prospective total service, so members who have completed 35 years service or more will not receive an enhancement.
- (5) A cost of 1% of pensionable pay (as at 31<sup>st</sup> March 2003) is roughly equivalent to a cost of £50 M.

18. This information reveals that the assumptions are based not on mortality rates now, but on projected mortality rates in the future, taking into account assumed further improvements in life expectancy up to 40 years ahead. The MoD has stated that

the recosting is based on looking at the expectation of life of new entrants currently coming into the scheme. In terms of the overall cost of the scheme, taking account of the full spectrum of ages of current scheme members, it therefore most accurately reflects a scheme cost some years away, after the retirement of existing, more mature Service personnel who cannot expect to benefit to the same extent from improving life expectancy.<sup>38</sup>

The GAD has indicated to the MoD that it should account to the Treasury for an increased sum of employer contribution<sup>39</sup> as soon as this can be factored into budget plans, as a result of these changed mortality assumptions.<sup>40</sup> The MoD is currently negotiating with the Treasury and the GAD how this should be reflected in the cost the MoD will pay for the accruing scheme liabilities.<sup>41</sup>

19. The MoD tells us that it is “reasonable that members should bear some of the burden of the increased costs given that they will benefit through longer enjoyment of a pension in retirement”.<sup>42</sup> Since there is no direct contribution from members of the AFPS to the costs of the pension scheme (although the level of their pay is reduced, currently by 7 per cent, to take account of the value of the scheme), the MoD has not been able to take the route of increasing members’ contributions that has been adopted in a number of cases. Other ways of passing on this cost are to reduce the benefits available under the scheme, or to make personnel work to a higher retirement age. One of the corollaries of people living for longer is that in the public services more widely they will be expected to work for longer. The Government has proposed that the retirement age for many public servants should be increased from 60 to 65. The option of working for longer in the Armed Forces, however, is rarely available to personnel. This is a circumstance particular to the manning needs of the Armed Forces. Thus **the Government is proposing to reduce benefits to Armed Forces personnel on the basis that they will live for longer, without also giving them a real opportunity to work for longer within the public service. This is not reasonable.**

20. Furthermore, only a minority of personnel can actually expect to “benefit through longer enjoyment of a pension in retirement”, those personnel, mostly senior officers, who retire at or after the age of 55. This is because for the vast majority of personnel who leave the forces before 55, the age at which they will receive their pension is to be raised from 60 to 65,<sup>43</sup> matching, more or less, their increased life expectancy.

21. The MoD’s budget is under pressure, and the costs of the revised mortality assumptions appear to have come as an unexpected extra pressure on this budget. To provide context, each percentage point of pensionable pay that the MoD pays annually

38 Ev 39

39 The Accrued Superannuation Liability Charge

40 Ev 43

41 Ev 39, para 1

42 Ev 39, para 2

43 See paras 28–31 below

under the pension scheme costs about £50 million. The full 2.5 per cent, if it had to be paid now, would cost about £125 million each year.

22. What the actuarial assumptions disguise, however, is that the MoD's gross pensions bill is actually expected to decrease in 30 to 40 years' time, as a result of the reduction in Service numbers from around 330,000 in 1975 to about 200,000 now.<sup>44</sup> What this means is that the MoD is currently making payments to pensioners drawn from a workforce much larger than that to which the Ministry is currently paying salaries. However, by the time the actuarial assumptions on life expectancy are realised, the MoD will be making payments to pensioners drawn from a workforce of roughly today's strength. **The Government is basing its decision to reduce the cost of the pension scheme on the expectation that each individual member of the pension scheme will cost the MoD more in future because of increased longevity. However, because of the reduction in Service numbers over the last two decades, we would expect the MoD's total pensions bill to decrease just as the financial effects of increased life expectancy kick in. In terms of the total cost to the public purse, there is no need to adjust the pension scheme to reflect increased longevity in order to achieve 'cost neutrality'. It is only fair to point out that any cost increases as a result of pensioners living for longer are likely to be more than compensated for by the reduction in the total number of pensioners.**

23. The MoD claims that "members should bear *some* of the burden of the increased costs" (our italics). However, the value of benefits available under the new pension scheme has been adjusted downwards to the *full* value (2.5 per cent of pensionable pay) of the expected cost of the new mortality assumptions. The MoD expects the cost to its budget of the new assumptions to be "somewhat less than" 2.5 per cent, with the rest of this cost likely to be borne by the Treasury.<sup>45</sup> **As a matter of principle, we are not convinced that it is right that the financial cost of increased life expectancy should be borne by service personnel, particularly not through reduced benefits. But even if the MoD can justify its claim that personnel should bear *some* of the burden of the increased costs brought about by improved longevity, it should not have devised the new scheme as it has, on the basis that personnel in the scheme will bear the *entirety* of costs, particularly where it appears that these costs are almost certainly in excess of what the MoD itself will have to bear.**

24. Mortality assumptions change over time. Presumably, the Government actuary has from time to time recalculated the cost of the existing pension scheme, and, on various occasions since 1973, when the last major changes were made to the scheme, the MoD's superannuation liability costs have increased as a result. But the benefits available under the scheme have not previously been altered to keep the cost of the scheme down.

25. Substantial numbers of claims under the new scheme will not be made for several decades. This makes it possible for the MoD to start afresh. Mortality assumptions are different for personnel of different ages, and cannot easily be applied to a scheme which is already in operation. This will be much less of a problem with the introduction of a new scheme. **With the introduction of the new pension scheme, the MoD has changed its definition of 'cost neutrality' to seek to ensure that the future cost of an average**

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44 HC (2001-02) 666, Ev 40

45 Ev 39, para 1

**member of the new scheme should not exceed the current cost of an average member of the existing scheme.**

26. The new mortality assumptions will only marginally affect benefit entitlements under the existing scheme.<sup>46</sup> What this means is that the existing scheme will be substantially more valuable than the new scheme.<sup>47</sup> The MoD justifies this because those personnel in the existing scheme “cannot expect to benefit to the same extent from improving life expectancy” as future service personnel.<sup>48</sup> This has a certain logic, but in broad terms is likely to operate for many personnel as an incentive to remain in the existing scheme. We note, however, that the structure of benefits in the new scheme is quite different from the existing scheme, and that a comparison of the value of the schemes in broad terms will often not reflect how they would impact on individual personnel. A serving member of the forces may face a choice, for example, between a scheme which provides more valuable personal benefits in terms of Immediate Pension and preserved pension, and one which provides more valuable benefits to his spouse or partner in the event of his or her death. Nonetheless, **personnel transferring to the new pension scheme will receive benefits of a lesser overall value than those remaining on the existing scheme. This would in many circumstances seem to be a fairly obvious disincentive to transfer.**

27. **We have always been unhappy that the Government in its review of Armed Forces pensions has imposed on itself the constraint of how much current benefits cost, rather than looking more generally at what Armed Forces personnel deserve. We are even less happy now that it emerges that the Government proposes to reduce the overall value of benefits under the new scheme, compared with the existing scheme. The goalposts of ‘cost neutrality’ have been shifted—to the disadvantage of future personnel.**

### ***Interpretation: change in the preserved pension age***

28. The more general context within which the MoD has been working has changed since the initial stages of the review and consultation, with the publication of the Government’s Green Paper, *Simplicity, Security and Choice; Working and Saving for Retirement*, published in December 2002,<sup>49</sup> and the later document, *Simplicity, Security and Choice; Action on Occupational Pensions*, published in June 2003.<sup>50</sup> The more general impact of these wider public pension policy changes is discussed below. But the proposal to raise the preserved pension age from 60 to 65 has implications for cost neutrality, which need to be addressed.

29. Preserved pensions are pensions payable to personnel who leave service before the age of 55. These personnel do not receive a pension as soon as they leave service (except where this is for reasons of ill-health), whereas personnel who stay on until age 55 do receive a pension on retirement. The consultation proposals envisaged the payment of preserved

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46 As discussed below, the preserved pension age for members of the existing scheme is to be raised to 65, but only for future service.

47 The value of the existing scheme is set at 24.5 per cent, the value of the new scheme at 22 per cent of pensionable pay, making the existing scheme 11.36 per cent more valuable.

48 Ev 39, para 1

49 Cm 5677

50 Cm 5835

pensions at age 60. In line with more general Government policy, however, the new scheme envisages payment of these pensions at age 65, both for those who opt into the new scheme and for those who stay in the existing one (for future service).

30. We discuss below the implications of this change for Armed Forces personnel.<sup>51</sup> From the Government's point of view, however, it will generate cost savings. In about 30–40 years' time, a man of 60 who is a member of a public service pension scheme will, according to the Government actuary, live on average for about a further 26 years<sup>52</sup>—by not paying preserved pensions until age 65, the Government will save about one fifth of its total bill on preserved pensions. Although it will also mean making early departure payments for longer to personnel who leave service after the age of 40 (or 18 years' service), these payments are to be reduced (as we discuss below), and are already (in the form of the Immediate Pension) of lesser value year on year than the preserved pension.

31. These changes have not been factored into the Government's calculations of how much the existing pension scheme will cost, as there has been “no final decision by Government on how such a change might be applied to current public service pensions schemes and from what date any such change might be effective”. However, savings are, according to the MoD, likely to be “low”.<sup>53</sup> We note that this, however, will depend on how many personnel choose to transfer to the new scheme; the MoD's expectation seems to be that relatively few will. **The Government should ensure that any money which would have been paid to pensioners in the existing scheme were it not for the rise in the preserved pension age is used to improve other pension benefits.**

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51 See paras 101–106 below

52 Ev 43

53 Ev 41, para 11

## 3 Differences from consultation proposals

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### Welcome improvements

32. As we have seen, the Government has continued to insist that the new schemes should cost no more than the existing schemes. Nonetheless, within these confines, the Government has taken on board a number of the criticisms made of its original proposals, and the changes that it has made are largely welcome.

### *Dependants' benefits*

33. Dependants' (widow(er)s' and partners') pension benefits have been increased from 25 per cent, as originally proposed, to a maximum of one third of pensionable pay; while death-in-service lump sum benefits to dependants have been increased from three times pensionable pay, as originally proposed, to four times pensionable pay, an enormous improvement on the current scheme which pays only 1.5 times salary.<sup>54</sup> Although this is generous, it is a little less so than it may appear, as the short-term pension (3 to 9 months' continuing pay at full rate) will no longer be paid. The Forces' Pension Society regards the changes to death-in-service lump-sum benefits as taking "this aspect close to the top of the Public Sector league table which, given the service person's unique commitment, is exactly where it should be", and the first change as "a significant improvement". The Society is "generally pleased to see that improvements to the scheme have been focused on the benefits earned by long servers and on dependants".<sup>55</sup> **We too welcome the MoD's decision to improve provision for dependants, particularly where personnel have died in service, given the unique commitment that these personnel make to the service of their country.**

### *Unmarried partners' benefits*

34. The original scheme proposals made no provision for unmarried partners, although the MoD acknowledged as early as November 2001 that it would "need to look again" at its position on the matter.<sup>56</sup> In our previous report, we described the issue as "one which the Armed Forces can no longer ignore" and we said that we expected "to see appropriate provision" in the MoD's final proposals.<sup>57</sup>

35. The recent war in Iraq has forced the Government's hand on the issue. On 20 March 2003, the Government announced that from that date benefits would be paid to unmarried partners where death related to conflict. On 15 September, the Government broadened the scope of these benefits to unmarried partners where death is attributable to service, with immediate effect.

36. The schemes as announced include "an extension of dependants' benefits to unmarried partners where there is a substantial relationship", including where death is not attributable

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<sup>54</sup> Ev 21

<sup>55</sup> Ev 30

<sup>56</sup> HC (2001-02) 666, Ev 111

<sup>57</sup> HC (2001-02) 666, para 140

to service, with effect from April 2005.<sup>58</sup> As the Minister explained, this extension fits with the Government's commitment to an equality agenda.<sup>59</sup> For personnel in the existing scheme, unmarried partners will only be entitled to benefits where death is attributable to service.

37. As we noted in 2002,

Government policy on public sector pensions in relation to unmarried partners is that changes in pension rules will be considered if the members of the scheme want this, but that such changes would have to be cost neutral. This would mean that such an extension of benefits would either have to be funded from employee contributions or by reductions in other benefits available under the scheme.<sup>60</sup>

The extension of benefits to unmarried partners, unlike other improvements, has not required any reduction in other benefits available under the scheme. Even though the majority of Armed Forces personnel are male, and the majority of spouses are female, the gap between male and female life expectancy is expected to shrink.<sup>61</sup> The cost of traditional spouses' benefits will therefore decrease, as they will generally be claimed later and for less time.

38. The range of unmarried partners who will qualify for benefits needs to be clearly defined. According to the framework document for the pension scheme "registered unmarried partners are ... eligible to receive a widow/widower's pension subject to the relationship being substantial at the time of death",<sup>62</sup> while according to a question and answer brief on the MoD's website, "benefits will be extended to registered unmarried partners (both heterosexual and same sex partners) who can demonstrate they are in a substantial relationship including financial inter-dependency".<sup>63</sup>

39. We sought further clarification on this from the Minister. His evidence, however, left us in some confusion. We were told that "probably we do not have a clear definition", and that "I am including everyone in that category".<sup>64</sup> Given that benefits have been payable to some unmarried partners since March 2003, and that the cost of extending benefits has been provisionally assessed at £16 million,<sup>65</sup> the Minister's answers surprised us.

40. A written submission from the MoD has clarified matters. A provisional set of criteria was indeed agreed in March 2003, closely reflecting the guidelines for the Civil Service scheme. These have since been refined and promulgated. They do not require a set list of criteria to be met, but set out a range of indicative criteria, with a broad judgement to be

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58 Ev 18

59 Qq 24–26

60 HC (2001–02) 666, para 134

61 Ev 43

62 Framework document for the New Armed Forces Pension Scheme, para 6.1

63 [http://www.mod.uk/issues/pensions/new\\_afps/news/questions.htm](http://www.mod.uk/issues/pensions/new_afps/news/questions.htm)

64 Qq 28, 32

65 Q 26

made against the evidence submitted. The two basic criteria are that a relationship must be substantial and established, and that it must be exclusive.<sup>66</sup>

**41. It is essential that the schemes should be as clear as possible about when unmarried partners will qualify for benefits, both to avoid bad feeling among non-qualifying partners, and to avoid potentially expensive legal action. We welcome the fact that criteria have been developed against which to assess whether a substantial and exclusive relationship exists between unmarried partners, which would entitle them to benefits.**

42. The Queen's Speech on 26 November 2003 announced impending "legislation on the registration of civil partnerships between same sex couples", although not of partnerships outside marriage between heterosexual couples.<sup>67</sup> It is unclear whether this has been factored into the MoD's proposals for unmarried partners' benefits, and also whether this might have an effect on the provision of other benefits (outside the scope of this inquiry), such as service families' accommodation.

43. The Forces' Pension Society notes that "the announcement that unmarried partners under the new scheme will in future receive the same benefits as married couples has provoked a backlash amongst the victims of the traditional legacy issues. They feel alienated, neglected and discriminated against with every justification."<sup>68</sup> One of the necessary but unfortunate side-effects of improving benefits for the future is that those who remain entitled to the lower level of benefits available under past and existing arrangements will see themselves as having lost out. We consider legacy issues later in this Report.<sup>69</sup>

## How these improvements will be funded

44. As already noted, because of its commitment to 'cost neutrality', the MoD is only able to improve aspects of the schemes by removing value from other benefits. The benefit which seems likely to bear the brunt of these cuts is the Immediate Pension, which under the proposals is to be replaced by an Early Departure Scheme.

### Early Departure Scheme

45. As we noted in our previous report, the Armed Forces are unique in the way in which they use Immediate Pensions as a man management tool, to encourage trained personnel to remain in the Services. Immediate Pensions are currently paid to officers who delay leaving the Services until age 38 (or after 16 years' service, whichever is later) and to other ranks at age 40 (or after 22 years' service). Under the proposed new scheme, Early Departure payments will be made to all personnel who delay leaving the Services until age 40 (or after 18 years' service).

46. In practice, service manning patterns are complex and, of those leaving the Services each year, fewer than 20 per cent do so at their Immediate Pension Point. Of all personnel

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66 Ev 40, para 10

67 Votes and Proceedings, 26 November 2003

68 Ev 30

69 See paras 121–134 below

leaving the Armed Forces in 2001, 72 per cent (13,483) left before the immediate pension point. Of officers leaving the Army in 2001, 56 per cent (513) left before the immediate pension point; of other ranks leaving the Army in 2001, 82 per cent (8,002) left before the immediate pension point. The RAF, with its different manning requirements present rather a different picture: of officers leaving the RAF in 2001, 34 per cent (217) left before the immediate pension point; of other ranks leaving the RAF in 2001, 59 per cent (1,969) left before the immediate pension point.

47. Immediate Pension payments constitute about one third of the total cost of all payments under the existing pension scheme.<sup>70</sup> The MoD told us in March 2002 that while Immediate Pensions were being re-examined as part of the review, “no detailed descriptions of options, costings or estimates of the different impact on retention” were available.<sup>71</sup> It is striking that in November 2003, more than 18 months later, the Minister told us that work on illustrative models for the Early Departure Scheme were still “not yet done”,<sup>72</sup> and was not expected to be available until 2004.<sup>73</sup> Watson Wyatt, a firm of actuaries and consultants commissioned by the Government to produce a report on the proposed pension scheme, confirm that “details of this Early Departure package have not yet been finalised”.<sup>74</sup>

48. The Government’s pension policy more generally has had an impact on the MoD’s plans, as explained by Watson Wyatt:

As a result of the changes proposed to the Inland Revenue regime (consultation document “Simplifying the taxation of pensions: increasing choice and flexibility for all” issued in December 2002) which are expected to be introduced from 6 April 2005, it is not possible for pensions to be paid from pension schemes to members who leave before age 55 (other than due to incapacity).<sup>75</sup>

49. But the solution to this problem seems to be relatively straightforward: the Immediate Pension is to be abolished, and will be replaced by an Early Departure package “providing an immediate lump sum and a stream of income ... payable from outside the pension arrangement”.<sup>76</sup> The flexibility of payments made outside the pension arrangement seems to have encouraged the MoD to explore with the single services more imaginative options for how Early Departure payments might be structured. While this is to be welcomed, **we are disappointed that details of the new Early Departure scheme are not yet available to inform Parliament in its consideration of the primary legislation now before it.**

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70 HC (2001–02) 666, para 59

71 HC (2001–02) 666, Ev 41

72 Q 58

73 Q 61

74 Armed Forces Pension Scheme: Addendum to the report on the proposals for new Armed Forces Pension Scheme, prepared by Watson Wyatt LLP (Actuaries & Consultants), para 2.10

75 Armed Forces Pension Scheme: Addendum to the report on the proposals for new Armed Forces Pension Scheme, prepared by Watson Wyatt LLP (Actuaries & Consultants), para 2.9

76 Armed Forces Pension Scheme: Addendum to the report on the proposals for new Armed Forces Pension Scheme, prepared by Watson Wyatt LLP (Actuaries & Consultants), para 2.10

50. Watson Wyatt reveals that the Early Departure scheme “will be designed to provide a benefit which is overall lower in value than the Immediate Pension”.<sup>77</sup> We sought to discover in evidence how much value the Early Departure scheme would lose, compared to the current Immediate Pension. One complicating factor is that the change to the preserved pension age means that Early Departure payments will be payable until age 65, as opposed to age 60.<sup>78</sup> While we had no clear answer during our evidence session, once again, subsequent written clarification has been useful and informative:

While the precise size and phasing of the EDP payments is still being worked up with the single Services, the aim is to deliver a broadly similar structure of payments to the IP, with a (tax free) lump sum at the point of departure and income stream payable until age 65 when the preserved pension and pension lump sum are paid. Under this approach, therefore, individuals will receive two lump sums.<sup>79</sup>

In cash terms, it is intended that the Early Departure scheme will cost about £100 million (or two percentage points of pensionable pay) less annually than Immediate Pensions currently cost.<sup>80</sup>

51. The Pensions Review document of March 2001 concluded that to alter the Immediate Pension substantially “would place manpower planning at risk”.<sup>81</sup> Evidently, the MoD has rethought its position. It believes that today’s personnel have less need for this benefit than their predecessors, with “longer expectation of life ... accompanied by an improved fitness to work for longer” along with “much better transferable skills for achieving a successful second career than their counterparts in 1973, when the current scheme was designed”.<sup>82</sup> On the face of it this seems to be a sound argument; but we have not seen any evidence which specifically supports it.

52. The Immediate Pension also no longer seems to be fulfilling its role as a manning tool. We heard in evidence that

One of the problems we have is the immediate pension as it currently is is so attractive for people in that interim period that more people than we would like are leaving, which is why we see an interest in making it slightly less attractive.<sup>83</sup>

This is a difficult balance to strike. **If the MoD removes too much value from the Immediate Pension, its ability to retain expert personnel will be adversely affected, to the detriment of the Armed Forces as a whole.**

53. We noted in 2002 that the Immediate Pension is “an expensive element of the pension scheme”, accounting for 30 per cent of the total scheme costs,<sup>84</sup> and that it has a “distorting

77 Armed Forces Pension Scheme: Addendum to the report on the proposals for new Armed Forces Pension Scheme, prepared by Watson Wyatt LLP (Actuaries & Consultants), para 2.10

78 Q 64

79 Ev 40, para 5

80 Q 65, Ev 43

81 Armed Forces Pension Scheme Review Consultation Document, para 4.9

82 Ev 39, para 3

83 Q 20

84 HC (2001–02) 666, para 59

effect”.<sup>85</sup> We noted also that only a limited number of personnel enjoy the benefits of the Immediate Pension,<sup>86</sup> but that all contribute towards it through the abatement of 7 per cent which the Armed Forces Pay Review Body includes in its calculations of appropriate levels of service pay. **Given that the MoD is operating within the self-imposed constraint of ‘cost neutrality’, we agree that the Immediate Pension was the appropriate benefit to cut in order to fund improvements to benefits elsewhere in the pension scheme.**

### *Removal of early departure payments from the pension scheme*

54. We have no problem with the decision, forced on the MoD, to take early departure payments outside the pension scheme. Indeed, in 2002 we recommended that the MoD should “examine options for removing Immediate Pensions from the Armed Forces Pension Scheme and operating them as a separate component of Service pay”,<sup>87</sup> noting that this would “give the three Services greater flexibility to vary the timing and structure of payments to allow each Service to tailor its terms and conditions to its needs and to adapt to changing circumstances”.<sup>88</sup>

55. The MoD seems to be taking such ideas on board. We heard in evidence of a proposal for a “discrete group” of Armed Forces personnel to be paid “bonuses to the same value as the Early Departure payment ... to draw them on through their career”.<sup>89</sup> For employees whose job prospects outside the armed services are likely to be good, this sort of approach seems sensible. But it is important not merely to regard Early Departure payments as a manning tool, but also to recognise that for some personnel, employment prospects on leaving the armed services are less rosy. One of the purposes of the Immediate Pension has been to compensate service personnel for their reduced employment prospects outside the Armed Forces. The Minister told us that approximately ten per cent of former service personnel do not go on to well-paid employment when they leave the Armed Forces.<sup>90</sup> As we noted in 2002,

Their career prospects may be less good than those of civilians of a similar age, as their Service career may not have prepared them for the types of civilian employment which are available. If they are embarking on a new career, they may be doing so later in their working lives than civilian counterparts, and at a time when they are already likely to have families for whom they need to provide.<sup>91</sup>

**Taking early departure payments out of the pension scheme could be a blessing in disguise for the MoD, by allowing it to use the money more flexibly. The Government, however, needs to ensure that Early Departure payments are targeted not only to help the Armed Forces retain skilled personnel who would otherwise leave, but also to support former personnel who are in most need of such payments.**

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85 HC (2001–02) 666, para 70

86 Only 25 per cent, according to the MoD. (Ev 40)

87 HC (2001–02) 666, para 70

88 HC (2001–02) 666, para 69

89 Q 77

90 Q 57

91 HC (2001–02) 666, para 64

56. The current Immediate Pension is not uprated for inflation until age 55, but at this point and thereafter it is index-linked. The Government does not propose to protect Early Departure payments from inflationary price rises at all—a step that it would not be able to take if these payments were to remain within the pension scheme. On its website, the MoD remarks that

while the precise shape of the new EDP is still to be worked through with the three Services, we do not propose to uprate payments in line with the Retail Price Index (RPI) from age 55, as now. However, there is a possibility that income payments would be increased later in life when second careers are less likely.<sup>92</sup>

This is a crucial change, of which we have not been directly informed and which has not been included in the more prominent announcements relating to the consultation. It is a potential source of substantial cost savings to the MoD. It is a hidden cut in benefits, because it allows the MoD to reduce the value of early departure payments over time without actually reducing the headline figure they pay. **The Government should be more explicit about its intention not to protect early departure payments from inflation, the savings that they expect to make from this, and the likely effect on payments to personnel.**

57. It is also an unpredictable step, because the exact outcome, both for the MoD and for personnel, depends on the rate of inflation. But even with a relatively low annual rate of inflation of 3 per cent, the real value of a level of payment at age 40 will have halved by the time a preserved pension can be drawn at 65. **If not protected from inflation, the real value of a fixed rate early departure payment is likely to decrease substantially over time.**

58. The Government has taken welcome steps to limit the recurrence of the ‘pension trough’ phenomenon, whereby the pensions of personnel were devalued by pay restraint in times of high inflation. However, the proposals for early departure payments are likely to have a similar ‘trough’ effect. A member of the Armed Forces leaving just before a period of high inflation will see the real value of his early departure payments substantially devalued over a short period of time, whereas another person leaving at the top of an inflation curve will receive a higher real value of early departure payment over a longer period of time. **If early departure payments are not protected from inflation, the real value of these payments over time to personnel leaving at different points is likely to differ substantially, as the rate of inflation varies. This may well lead to future grievances.**

59. A very real objection to the Government’s proposal is that it is likely (barring a period of *deflation*) that the value of early departure payments will decrease in real terms as former personnel grow older and become less able to pursue a second career. The MoD has told us that it wants to “focus” early departure payments “on the periods of greatest vulnerability after leaving the Services”,<sup>93</sup> and that the lack of indexation in the current scheme between the ages of 40 and 55 is “counter-intuitive because somebody who gets to 55 is likely to be more in need of a pension than they are at 40”.<sup>94</sup> The total lack of

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92 [http://www.mod.uk/issues/pensions/new\\_afps/news/emails.htm](http://www.mod.uk/issues/pensions/new_afps/news/emails.htm)

indexation of the early departure payment would seem to be more counter-intuitive still, using the MoD's own rationale.

60. We understand that the MoD does in fact propose to raise the level of early departure payment later in life, but not by as much as if the payment were index-linked. In other words, the payment is likely to decline in value between the ages of 40 and, say, 55, and then to increase slightly at 55, but not to the same level as at age 40. **The proposal would almost certainly result in former service personnel being paid more in real terms at the age of 41 than at the age of 64. This would seem to be in conflict with the likely needs of former personnel at those ages. It would be most unfortunate if those former personnel who rely on Early Departure payments for a basic standard of living were to see the value of those payments decrease in real terms as they grow older and become less able to pursue a second career.**

### Treatment of officers and other ranks

61. One of the positive aspects of the proposed changes is that benefit entitlements for officers and other ranks are to be calculated on the same basis. On the existing scheme, officers accrue a full pension on 34 years' service, other ranks on 37 years' service. This is to be evened out to 35 years' service for all ranks. Officers have also been entitled to receive Immediate Pensions earlier than other ranks, after 16 rather than 22 years' service for other ranks. Early Departure payments will be made after 18 years' service for all ranks.

62. Officers will continue to benefit from higher salaries, and therefore higher pensions, than other ranks, and also from the fact that officers on average serve for longer than other ranks, and therefore accrue higher pensions in this way as well. All ranks will benefit from the fact that under the new pension scheme, they will begin to accrue their pension entitlement from the actual date of enlistment, rather than, as at present, from age 21 for officers, and age 18 for other ranks. **We welcome the fact that the MoD has taken the opportunity to ensure that all ranks are treated equally under the new schemes.**

63. Many of the improved benefits within the schemes will also principally benefit other ranks. As was explained to us in evidence,

We have taken ... money and given it to widows who, in large number, will come from the other ranks. Death in service benefit, ditto. If you look at the recent war, the majority of those who have been killed have been other ranks. We are taking money ... and giving it much more widely, particularly to widows and their dependants but also to unmarried partners. A lot of the unmarried partners are among other ranks as well.<sup>95</sup>

Similarly, compensation payments for serious injuries are to be increased under the new scheme, and other ranks are likely to benefit from this change more than officers.

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93 Ev 39, para 3

94 Q 67

95 Q 13

64. We note, however, that all of these examples will only benefit other ranks, or more often their dependants, where they die or are seriously injured. The increase in the preserved pension age, on the other hand, will have a negative affect on surviving members of other ranks (the vast majority, we trust) to a greater extent than on officers, because by far the majority of those who serve to the retirement age of 55 are officers.

## Compensation proposals

65. While changes to the proposed pension scheme since 2002 are relatively far-reaching, the new compensation scheme continues to look much as it did in 2002. **We welcome the fact that some of the safeguards within the compensation scheme have been strengthened:** proposals for an independent appeals process have been set out; and the time limits for claims have been extended from 3 to 5 years, with exceptions for late onset conditions.<sup>96</sup> Some of the bones of the scheme have been fleshed out: it will be delivered by the Veterans' Agency; and tariff bands for various forms of injury have been suggested.<sup>97</sup> **But our essential concerns about the structure of the compensation scheme have not been addressed.**

### *Standard and burden of proof*

66. One of the main objections to the proposals continues to be the change in the standard and burden of proof for claims under the scheme. Under the existing scheme, it is for the Secretary of State to show beyond reasonable doubt that service has *not* played a part in causing or worsening the condition for which a claim is made. Under the proposals, the standard of proof is changed to a 'balance of probabilities', with the onus on the claimant to make his case. The Royal British Legion claims that this is a cost-saving exercise, which will make it harder for claims to succeed, and which at least initially will not even save any costs (as most claims will continue to be under the old scheme):

To introduce a burden of proof based upon the balance of probabilities is likely to be very divisive as the majority of acceptable claims will be from the pre 2005 ex service population under the rules for the War Pension Scheme with the conditions post 2005 being far more restrictive.<sup>98</sup>

67. The aim of the change, according to the Government, is to bring the compensation scheme into line with "civil law and common practice", and "reflects modern practice".<sup>99</sup>

68. We argued in 2002 that trying "to emulate the civil claims system for calculating awards" amounted to "forcing the compensation arrangements into a format which clearly does not work" in order to "reduce the number of civil negligence cases brought against [the MoD] by Service personnel".<sup>100</sup> The MoD told us in reply that "the adoption of balance

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96 Ev 20

97 Ev 20

98 Ev 28

99 Ev 18

100 HC (2001–02) 666, para 150

of probabilities standard of proof ... will not be obstacles to those entitled to compensation".<sup>101</sup>

69. The essential difference between the armed services and almost all other employment is that Armed Forces personnel can be asked to put themselves in harm's way, indeed to die for their country. This makes compensation for injury a rather different issue for the Armed Forces than for civilians. Armed Forces personnel can be required to submit in circumstances of some urgency to unusual medical precautions—combinations of vaccines, for example—and to experience unusual situations both on the battlefield and off. It may not be entirely clear either during or after the event what those precautions and situations involved, let alone what their consequences might be for the health of personnel, even given the ever-advancing state of modern medical knowledge. Veterans who attribute their illnesses to service during the first Gulf War would have been less likely to succeed in their claims for compensation using a balance of probabilities standard of proof for precisely these reasons. **Because of the special risks that Armed Forces personnel are required to run, and because they are likely to be involved in situations of great uncertainty, with uncertain effects on their health, we continue to believe that the onus should remain on the Government to prove that service was not responsible for causing or worsening a condition for which a compensation claim is made.**

70. The issue is as much about the *burden* of proof as the *standard* of proof. Personnel might be discouraged from making compensation claims by the hurdle of having to present their own case. There are also concerns, which we discuss below, about the records on which they would have to base this case. If the Government continues to insist on applying a 'balance of probabilities' standard of proof, **a possible solution might be to apply a double test to compensation cases to ensure that the *burden* of proof does not unfairly discriminate against service personnel. Under such a system, a claim for compensation would only fail where both: (a) the claimant is unable to prove on the balance of probabilities that a condition is due to service, and (b) the MoD is able to prove on the same standard of proof that the condition is *not* due to service. We have not assessed how this proposal would be implemented in practice, but believe that the MoD should seriously consider it in the light of the special circumstances of Armed Forces personnel.**

### *Military records*

71. Armed Forces personnel are also put in an unusual position by the fact that their medical records are in the hands of the employer against whom any claim for compensation will be made. There is no doubt about military doctors' honesty, but it is wrong in principle that they should be put in the position of creating the documents on which compensation claims will be based while at the same time relying for employment on the very employer against whom those compensation claims will be made.

72. Moreover, as the Minister himself has acknowledged, the MoD's history of medical record-keeping is less than perfect.<sup>102</sup> We explored in 2002 issues regarding the accuracy

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101 HC (2001–02) 1115, para 37

102 Q 83

and completeness of military medical records,<sup>103</sup> and we raised these issues again with the Minister during this inquiry.<sup>104</sup> The MoD has provided us with information on the “fundamental improvements” to medical record keeping in the forces that have occurred since the Gulf War of 1991, improvements which we welcome.<sup>105</sup> However, it would clearly be unfair to refuse a claim because the medical records needed to support that claim were inadequate or incomplete. We therefore welcome the Minister’s undertaking that “if for some reason medical records are not available but otherwise it appears likely that a claim is reasonable and fair, then an award would be made”.<sup>106</sup> **The Government should ensure that the compensation scheme rules set out clearly how a claim will be handled where medical records are inadequate or incomplete. It would be unfair, as the Government has acknowledged, if claimants were unable to make a successful claim because of the inadequacy of the records held by their employer.**

### *Focus on the severely disabled*

73. The written Ministerial statement of 15 September 2003 noted that the new compensation scheme would have “more focus on the more severely disabled”, and that it would provide new lump-sum payments for pain and suffering, including to those who remain in service, with a Guaranteed Income Stream (GIS) for those who suffer significant loss of earnings capacity.<sup>107</sup> **We welcome these basic aims, which seem both sensible and just.**

### *Tariff bands for compensation payments*

74. In practice, however, the way in which payments will be determined risks being unhelpfully mechanistic.

75. The framework document for the compensation scheme proposes a tariff-based lump sum payment to compensate for pain and suffering, along the lines of the Criminal Injuries Compensation Scheme, with awards banded at 15 levels. Levels of payments in the exemplary tariff set out as an annex to the framework document range from £287,500 for conditions such as “extremely severe brain/spinal cord injury”, down to £1,050 for “minor permanent scarring of the face” and rib fractures.<sup>108</sup>

76. The MoD has said that the aim of the new system was simplicity for claimants; and that the Judicial Studies Board (JSB) Guidelines for the assessment of general damages in personal injury cases were used in drawing up the tariff.<sup>109</sup> The JSB Guidelines classify injuries within broad brackets of awards; judges and parties to claims may also draw on awards made in previous cases, in deciding on final amounts in specific cases. They are explicitly only guidelines, and not intended to be prescriptive.

103 HC (2001–02) 666, paras 96–97

104 Qq 80–84

105 Ev 41, para 14

106 Q 83

107 Ev 18

108 Framework Document for the Armed Forces Compensation Scheme for Injury, Illness and Death due to Service, Annex A

109 Ev 20

77. Service personnel who fall within levels 1–11 of the proposed tariff will receive a sum to cover potential loss of earnings, in addition to the lump sum for pain and suffering which they will receive under the tariff system. This will also be calculated as a lump sum but will be paid in instalments for life, as a Guaranteed Income Stream (GIS). The rationale behind this was explained to us in evidence:

The basic premise is that people below tariff 11 are people whose injuries will not affect their earnings capacity afterwards, in many cases they will recover immediately and in those cases where they do not recover immediately the level of residual disability will be extremely low and might affect their employment in the service but will not affect their employment generally and for them a lump sum is an appropriate way of compensating them rather than a pension for life.<sup>110</sup>

It is by no means clear that the system as proposed matches this “basic premise”.

78. Personnel suffering injuries at tariff levels 1 to 11 will receive from 100 per cent down to 30 per cent of their salary in basic GIS. Personnel with an injury assessed at tariff level 12 will receive no GIS at all. The cut-offs between the tariff levels seem designed more for the sake of administrative simplicity than logic.

79. The upper tariffs are relatively straightforward: it is obvious that someone suffering from serious brain or spinal cord injury, or who has lost both legs or arms, will deserve a high level of compensation for loss of earnings. However, the middle and lower tariffs are more problematic.

80. Personnel suffering injuries at tariff level 8 will receive a basic GIS of 50 per cent of their salary. But this tariff band includes injuries such as “severe burns to face”, which will by no means necessarily have a major affect on future earnings, and “loss of sight of one eye”, which might have a serious effect on the employment prospects of many personnel, but by no means on all. Tariff level 11 includes injuries such as “serious scarring face” and fractured ankles with full recovery—while deserving of some form of compensation, this kind of injury need not lead to loss of earnings. Tariff level 12 includes injuries such as “two frozen shoulders—continuing significant disability”. It is unlikely that personnel suffering such an injury would be able to remain in the Armed Forces, or would be able to find manual labour elsewhere. Likewise “disabling mental illness lasting 2 to 5 years”, also in tariff 12, might be thought to have a significant effect on someone’s job prospects. **As they are currently drawn, the boundaries in the new compensation scheme between injuries leading to compensation for loss of earnings, and injuries leading to no such compensation, seem illogical.**

81. We have been told by the MoD that the tariff boundaries as currently set out are not final, and that certain injuries and disabilities may be moved from one tariff band to another.<sup>111</sup> But a system of assigning tariffs to injuries, while it may be a useful guide, cannot be fair if it is applied mechanistically. Employment in the Armed Forces covers a wide range of occupational groups and the impact of any one type of disablement on

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110 Q 87

111 Q 88

civilian employment prospects will vary widely from one individual to another. This was implicitly acknowledged in the evidence we heard:

There are some people who leave the services with a very slight injury but are not employable within the service—perhaps because they are a pilot and a sight injury means they cannot fly.<sup>112</sup>

However, the conclusion reached by the MoD, that such a person is nonetheless “perfectly capable of going outside and getting a job outside which pays a full salary” is rather surprising.

82. If someone is trained as a pilot, and has served for ten years as a pilot, it surely follows that his most obvious employment prospect outside service would be as a pilot; it might be rather more difficult for him to obtain employment in another field. In such a case a relatively minor sight injury might be thought deserving of compensation over and above a lump sum for pain and suffering. An injury impairing physical strength or the ability to lift heavy objects might impair the employment prospects of many Armed Forces personnel, but perhaps not those of a telecommunications engineer, for example. The Judicial Studies Board tariff guidelines are precisely that—guidelines. They were never intended for mechanistic application, as the publication in which they are contained makes clear.<sup>113</sup> **The system of tariffs as proposed fails to take account of the fact that similar injuries will affect the employment prospects of different personnel in different ways (and indeed, may cause radically different levels of pain and suffering to different people). This will continue to be the case, no matter how tariff boundaries are drawn and redrawn.**

### ***Methodology for assessing awards***

83. The proposals for a new pension scheme include a three-tier ill-health retirement system based on an assessment of an individual’s earning capacity in civilian life, irrespective of whether an injury is caused by service or not. This system will be administered by the Armed Forces Personnel Administration Agency. However, the proposals for the Guaranteed Income Stream (which is only available to those personnel whose injuries are caused by service) under the compensation scheme describe a three-tier system based, as described, on the degree of disablement, rather than on an assessment of earning capacity. This system will be administered by the Veterans’ Agency. It is odd enough to have two different benefits in two different schemes to achieve essentially the same end—compensating disabled service personnel for loss of earnings. It is frankly bizarre that entitlement to the two benefits should be assessed in two entirely different ways by two different organisations.

84. We raised this point with the MoD, who explain that the non-attributable ill-health benefits under the pension scheme are “not primarily derived from loss of earnings, but rather are based on accrued pension rights”.<sup>114</sup> However, the tier of invaliding pension to which someone is entitled will depend on an assessment of their earning capacity in

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112 Q 85

113 Judicial Studies Board Guidelines for the Assessment of General Damages in Personal Injury Cases, 6th Edition, pp vii and ix.

114 Ev 42, para 16

civilian life, not on the type of injury they have suffered. Our point is that the *purpose* of these benefits is similar to that of the Guaranteed Income Stream under the compensation scheme: namely, to compensate former personnel for loss of earnings. The Government acknowledges the link between these benefits by abating the Guaranteed Income Stream where an ill-health pension is also received.

**85. Guaranteed Income Stream payments should be based on a proper assessment of earning capacity in civilian life for each individual, on the same lines as ill-health benefits under the pension scheme, rather than on the basis of tariffs for types of injury which may affect different individuals' earning capacity in very different ways. The Government should also reconsider whether it is appropriate to have two such similar benefits administered by different organisations under different schemes.**

### *Court decision relating to the existing scheme*

86. The existence of two different but very similar benefits has caused the MoD enough trouble as it is. As revealed in a written Ministerial statement on 19 November, the MoD has decided to accept a decision by the Court of Appeal which means that personnel and their dependants who have been awarded invaliding and death-in-service benefits under the War Pension Scheme (which the new compensation scheme will replace), but not under the Armed Forces Pension Scheme, will become entitled to backdated payments under the AFPS. The MoD states that it does “not know how many pensioners are likely to have been affected or the likely cost”, and that it will be around a year before it does know.<sup>115</sup>

87. In 2002, we sought to assess the MoD's contention that compensation claims are sometimes successful where conditions are only tenuously linked to service, and were told that records are not kept of cases in which a war pension has been granted but an invaliding pension has been refused.<sup>116</sup> As a result of this legal case, these records will have to be recreated. **We would welcome an undertaking that, whatever the cost to the Government of extending backdated ill-health and death benefits under the pension scheme to those in receipt of equivalent benefits under the War Pension Scheme, it will not have a negative effect on the future entitlement of service personnel to benefits under the pension and compensation schemes.**

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115 HC Deb, 19 November 2003, col 40WS

116 HC (2001–02) 666, para 94

## 4 Transition

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### Communications with personnel

88. The original consultation on the reviews of the two schemes had admitted shortcomings. The two consultation documents were published in March 2001. Responses were required by the end of July of that year. However, in September 2001, the MoD told us that certain groups were being given extra time to comment, and that officials would wish to go back to organisations and individuals for further discussions.<sup>117</sup> Despite this extended timescale, the consultation documents still failed to reach all levels of all units, which has prompted the MoD “to review how best to target people in the future”.<sup>118</sup>

89. The response rate to the consultations was disappointing, to say the least. The pension review consultation received only 153 responses, 143 of these from serving personnel. The compensation review consultation fared even worse, with only 69 responses, of which a mere 22 were from serving personnel. Moreover, according to the report on the pension consultation

the consultation process revealed a lack of knowledge among currently serving personnel on pension issues. We recognise that it is crucial for individuals to understand the current scheme, before they can make an informed judgement about whether to join the new pension scheme.<sup>119</sup>

The poor response to the consultations, in terms of quantity, and in the case of the pensions review, in terms of quality as well, suggests that serving personnel are ill-informed about their pension and compensation entitlements and options. Now that serving personnel are being asked to choose between the existing and the new pension schemes, lack of information may lead to ill-informed decision making, which may in turn give rise to grievances in the future. Perhaps more worryingly for the MoD, it may lead to potentially costly dispute. The MoD has a responsibility to do all it can to ensure that all serving personnel are briefed on their pension and compensation entitlements.

### *Shortcomings needing to be addressed*

90. The reports on the consultation describe the measures that were taken to ensure that interested parties were aware of the reviews. For each scheme,

1500 copies of the consultation document were issued to all units of the three Services and copies were also sent to ex-Service organisations such as the Forces Pension Society and the Royal British Legion. The document was also made available on the MoD Intranet and Internet sites. Some 20,000 summary leaflets were also distributed to serving members of the Armed Forces.<sup>120</sup>

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117 HC (2001–02) 666, para 9

118 New Armed Forces Pension Scheme, Report on Consultation Process, p 2, available online at [http://www.mod.uk/linked\\_files/issues/afps/afps\\_rpt.pdf](http://www.mod.uk/linked_files/issues/afps/afps_rpt.pdf)

119 New Armed Forces Pension Scheme, Report on Consultation Process, p 7.

120 New Armed Forces Pension Scheme, Report on Consultation Process, p 2.

91. 20,000 summary leaflets are scarcely going to be sufficient for more than 200,000 personnel—for this reason alone, it can hardly be surprising that the consultation documents failed to reach all levels of all units. Failures in transmission down the line of command are likely to have been a further inhibiting factor. **The MoD should identify lessons from the shortcomings of the consultation process to ensure that information about the new schemes reaches all levels of all units.**

92. Another failure to inform personnel about their pension entitlements has also recently come to light. On 31 October, the Minister for Veterans revealed in response to a written question on information provision to service personnel, that

a problem has been identified affecting some former service personnel with less than two years service, who may not have received their entitlements to an Armed Forces Pension Scheme attributable gratuity, or pension.<sup>121</sup>

**There have been various failures in information provision to service personnel on pensions and compensation, including in the very recent past. It is crucial that the MoD learns from these experiences in designing and implementing its communication strategy on the new pension and compensation schemes, if the transition to these schemes is to be a success.**

### ***Choice for serving personnel on pensions***

93. According to the Minister for Veterans, “We are on the starting point of communications but there is obviously a lot to do still”.<sup>122</sup> At an equivalent stage in the development of the new civil service pension scheme, all staff were issued with a leaflet announcing the changes, outlining the key features of the new scheme, and indicating a target date for implementation.<sup>123</sup>

94. The report on the consultation on the new Armed Forces pension scheme recognises that “it is crucial for individuals to understand the current scheme, before they can make an informed judgement about whether to join the new pension scheme”; and states that “a communications strategy is being developed to ensure clear and effective communication on Armed Forces pension and compensation arrangements to all interested parties”.<sup>124</sup> Intriguingly, the report on the consultation on the compensation proposals, published at the same time, states that “a communications strategy *has been* developed” (our italics).<sup>125</sup>

95. Written evidence from the MoD gives further information on their communications strategy:

The initial announcement on 15 September 2003 informed Service personnel of the broad details of the new schemes and the longer-term communication plan.

121 HC Deb, 30 October 2003, col 317W

122 Q 93

123 HC (2001–02) 666, Ev 112

124 New Armed Forces Pension Scheme, Report on Consultation Process, p 7.

125 New Armed Forces Compensation Scheme, Report on Consultation Process, p 9.

Information has been placed on internet and intranet sites, articles have appeared in the various Service magazines and leaflets have been issued on an individual basis.

Communication with Service personnel will continue. Over an extended period in the run up to the introduction of the new schemes in April 2005, this will focus on serving personnel and their families to ensure that they have the necessary information and understanding to make an informed decision on whether to move to the new pension scheme or to remain with the current scheme. This will include more explanatory material on the current and new schemes, pension benefit statements, briefing sessions and electronic information.<sup>126</sup>

96. We agree with the Minister that a successful communication strategy to all personnel who may be affected by the changes is “absolutely crucial during the course of next year”.<sup>127</sup> **The new schemes are scheduled for implementation in less than 18 months’ time. The MoD needs to ensure that its communications with personnel are well underway as soon as possible.**

97. There is a fairly substantial amount of information available on the MoD’s website. This is useful in a general way, although it is clearly no substitute for more personal information. As discussed above, some elements of the schemes are still not finalised—early departure payments in particular. **It is essential that communication with personnel on those aspects of the new schemes which are yet to be finalised (such as early departure payments) are both complete and timely enough to allow for the information to be properly considered before any choice is made. The MoD should issue information to all serving personnel to enable them to make an informed choice, including pensions forecasts for both the existing and the new schemes tailored to individual personnel.** It would be useful if the information on the new schemes on the MoD’s website were drawn to the attention of all personnel, with, in addition, paper copies of this information kept where all personnel can access it.

### ***No choice for serving personnel on compensation***

98. While personnel will have the choice whether or not to transfer to the new pension scheme, the new compensation scheme will apply automatically to all personnel. As the MoD states on its website,

All those who are attributably injured or suffer ill-health due to Service after the new Compensation Scheme is implemented will automatically be covered by the new scheme, even if they have chosen to remain in the current pension scheme.<sup>128</sup>

99. The Royal British Legion claims that “this important distinction has not been clearly presented to Armed Forces personnel”,<sup>129</sup> a point that we raised in our evidence with the

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126 Ev 42, paras 19–20

127 Q 96

128 [http://www.mod.uk/issues/pensions/new\\_afps/news/questions.htm](http://www.mod.uk/issues/pensions/new_afps/news/questions.htm)

129 Ev 28

Minister for Veterans.<sup>130</sup> **The MoD needs to ensure that the impact of the new compensation arrangements on existing personnel is clearly communicated.**

100. We are also unclear how an injury will be treated where there is dispute whether it occurred before or after the implementation date of the new scheme. This is particularly likely to be an issue in cases where the different standards of proof operated by the two schemes may produce different outcomes. The framework document for the scheme recognises that “there may be less clear cut cases and [we] will be developing mechanisms to ensure that no claims will fall between the gaps of the new and old schemes”. **It is vital that the rules for determining whether injuries and illnesses should be treated under the old or the new compensation scheme are not only clearly defined, but also clearly communicated.**

### ***Preserved pension age: a change for existing personnel?***

101. The age at which serving personnel will receive any preserved pension is to be raised to 65, from a date yet to be determined, regardless of whether they transfer to the new scheme or not. This is another fact which will need to be communicated to personnel, the majority of whom will receive a preserved pension, rather than a retirement pension at 55. The date of a change will also need to be clearly communicated, as it may affect how personnel plan for the future.

102. The rise in the preserved pension age is not limited to the MoD, but is being looked at across the whole public sector. However, the Government as a whole has undertaken to consult on how and when it should be extended to existing employees:

while it is envisaged that the new arrangements would be introduced for all new employees, the Government will also consult on how and to what timescale the higher pension age and any associated enhancement to benefits could be extended to existing employees, while protecting rights already accrued.<sup>131</sup>

103. The effect on Armed Forces personnel of raising the preserved pension age will be different from the effect on most other public servants of raising their retirement age. For teachers and civil servants, raising the pension age from 60 to 65 means working for a further five years. This has its disadvantages for those who would rather retire early, but these people are unlikely to be seriously disadvantaged financially. Indeed, as the Government indicates, raising the pension age may bring “enhancement to benefits” to those who are able to work to age 65.

104. In the Armed Forces, on the other, hand, the majority of personnel do not serve even to the official retirement age of 55. This majority will be financially disadvantaged by raising the preserved pension age. Even of the minority who serve to age 55, very few indeed are allowed to serve on beyond this point. It is hard to see what enhancement to benefits the higher preserved pension age could bring to Armed Forces personnel, unless they are allowed to serve to age 65. The Forces’ Pension Society makes this point strongly:

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130 Q 96

131 Cm 5677, Chapter 6, para 69

The unusually low normal retirement age (NRA) of 55, will seriously inhibit the opportunities for actually earning the full career pension through service. Very few Service people join young enough or serve long enough to earn full career benefits and extending service length within a low NRA will exacerbate this. It is disingenuous at best, to structure a scheme in which well over 90% of the members are debarred from earning a full career pension without buying AVCs.<sup>132</sup>

**Consultation with Armed Forces personnel on raising the preserved pension age to 65 is particularly important, because this change will affect the Armed Forces very differently from the rest of the public sector. A majority of Armed Forces personnel will be financially disadvantaged by this change. Moreover, even of those personnel who do serve to the retirement age of 55, very few are likely to be able to take advantage of any enhancement to benefits which the opportunity to serve to age 65 might bring.**

### *The need to consult*

105. However, the Government seems to have decided how the change in the preserved pension age will be applied to serving personnel—again without consultation. A question and answer brief on the MoD website answers the question “How will the transitional arrangements work for the change in preserved pension age from 60 to 65?” as follows:

Those who do not serve a full career and leave before the Immediate Pension Point are entitled to a preserved pension. Currently this is payable at age 60. From a date yet to be decided, preserved pensions based on future service will be payable at age 65. For example, if the date of change is from 1 Apr 2010, and an individual has already served 7 years by that date and then further serves another 6 years to 2016 they would receive the following: at age 60 they would receive their preserved pension based on 7 years service and at age 65 they would receive the pension based on the total reckonable service served (13 years).<sup>133</sup>

Presumably this individual would receive at age 60 a preserved pension based on their final salary (after 13 years’ service) rather than based on their salary at 1 April 2010. But **further details need to be published clarifying how an increase in the preserved pension age for existing personnel will impact on the benefits they receive and when they receive them.**

106. We have asked the Government why they have failed to consult with serving personnel on the change to the preserved pension age, and have been told:

The Department considers that, in the event that this policy is introduced, there is no specific requirement to consult current members of the Armed Forces regarding the change to preserved pensions, as accrued rights are not affected. However, members of the Armed Forces have been told of the change through the internal communications process.<sup>134</sup>

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132 Ev 52

133 [http://www.mod.uk/issues/pensions/new\\_afps/news/emails.htm](http://www.mod.uk/issues/pensions/new_afps/news/emails.htm)

134 Ev 41, para 13

But the Government's undertaking to consult makes clear that accrued rights will be protected, and that the promised consultation will concern the effect of an increase in the pension age on future service. Merely telling members of the Armed Forces of the change does not amount to consultation. **The MoD has failed to consult with serving personnel on the timescale for changing the preserved pension age, and it has already begun to define how the change to the preserved pension age will be introduced for serving personnel, again without consultation. This is unacceptable, given the Government's public undertaking to "consult on how and to what timescale the higher pension age and any associated enhancement to benefits could be extended to existing employees, while protecting rights already accrued". Proper consultation, as promised, should be carried out as soon as possible, to establish what measures might be appropriate to mitigate the special impact of the higher preserved pension age on Armed Forces personnel, both those who serve to the early departure point and those (the majority) who do not.**

### **Timescale to implementation**

107. The MoD intends to have the new schemes in place on 6 April 2005. The new compensation scheme will apply to all personnel from that date. For existing personnel, the timescale for choosing between the schemes is a little more lenient: any choice will have to be made by 2007 at the very latest. But this is still a rather shorter timetable to introduction than the Minister seems to have taken on board: he told us in November 2003 that the planned implementation date of April 2005 was "quite a long way away".<sup>135</sup> **We are concerned by how much work still needs to be done in relatively little time, both in terms of finalising the schemes, and in terms of communicating to personnel what they mean.**

## 5 Legislation

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### Primary and secondary legislation: an enabling bill?

108. The Minister for Veterans has made clear that the detail of the schemes will not be in the primary legislation put before Parliament, but will be contained in secondary legislation.<sup>136</sup> The bill introduced on 4 December will merely give the Secretary of State powers to establish the new schemes, as well as providing for a new independent appeals system for the compensation scheme and, on a matter unrelated to this report, enabling the Royal Patriotic Fund Corporation to reorganise itself.

109. It is standard practice that the detail of such schemes is set out in secondary legislation. The legal basis for the current pension scheme rests in three prerogative instruments made and amended under three rather ancient Acts of Parliament, the most recent dating from 1917. Pension schemes under the Superannuation Act 1972, which apply to civil servants and teachers among others, are also made by way of secondary legislation, but crucially, Ministers are required to conduct relevant consultations before these schemes are made.

### Parliamentary oversight of secondary legislation

110. The Government envisages the regulations implementing or amending the new schemes being subject to negative resolution by Parliament. This procedure in theory allows either House of Parliament to reject a scheme outright if it votes specifically to do so within 40 sitting days of the scheme being laid before Parliament. It does not allow Parliament to amend a scheme.

111. However, in practice there is no guarantee that Parliament will either debate or vote on the schemes themselves. A debate on secondary legislation subject to negative resolution procedure occurs only rarely in the House of Commons, even a debate in Standing Committee, and a vote on the floor of the House takes place more rarely still. Whether a debate or vote takes place in the House of Commons is entirely in the hands of the Government.

112. In session 2001–02, of the 1,468 pieces of secondary legislation subject to negative resolution procedure, 41 were considered by a Standing Committee, only 3 were considered on the floor of the House, and only one was actually voted on. In session 2002–03, there were 32 debates in Standing Committee on secondary legislation subject to negative resolution procedure, and no debates at all on the floor of the House.

113. The Minister told us in evidence that

There will be Parliamentary protections. We are going to have to produce enabling legislation to bring in this scheme in April 2005 and there will be, I anticipate, in the

Bill, if it is in the Queen's Speech, protective measures to allow Parliament to consider those matters.<sup>137</sup>

In fact, where the negative resolution procedure is used for secondary legislation, there are only the weakest of parliamentary protections. There is no guarantee that the House of Commons will be allowed to consider the secondary legislation, still less vote upon it.

114. While it is true that most public pension schemes are made by way of secondary legislation subject to the negative resolution procedure, there are three reasons why this procedure would be inappropriate for the Armed Forces schemes. First, the consultation process was, as we said in our last Report, woefully lacking in detail, with those who wished to respond to the consultation disadvantaged by the lack of detailed information.<sup>138</sup> Moreover, since then the schemes have been changed in important ways without further consultation taking place. Second, the Minister's evidence to us reinforced our concern that some important elements of the schemes have still not been finalised, and may not be finalised until after primary legislation is already under consideration. The Minister told us that he did not intend to deal with "many" of the issues raised by us until during consideration of the primary legislation.<sup>139</sup> Third, the Armed Forces, unlike other public servants, have no representative body to argue on their behalf as employees. Other public service pensions legislation provides for consultation with relevant bodies, including trades union, before any scheme can be introduced. **Because of inadequate consultation, because of the evidence we have heard that the elements of the schemes will not be fleshed out until consideration of primary legislation is already under way, and because Armed Forces personnel have no body representing their interests as employees, it is essential that the Government should seek explicit parliamentary approval for the schemes themselves, as well as for primary legislation.**

### *Future amendments and replacement schemes*

115. Further, the legislation will enable the Government not merely to introduce one set of new schemes, but also to amend the schemes or replace them entirely. Although the Government theoretically have similar powers in respect of the schemes for other public service employees, as we have seen, these powers are accompanied by a requirement to consult. We are concerned that this safeguard will not be present for the Armed Forces schemes. Parliament is an alternative safeguard, but only if it has a role in approving future changes to the schemes.

116. For all these reasons, **any amendments to the schemes which could negatively affect the benefits of personnel and their dependants under the schemes should also be approved by Parliament.** Technical amendments which do not affect the substance of the schemes might reasonably be subject to negative resolution.

117. **We also believe that there is a strong case for setting out the basic principles of the schemes in primary legislation, for example as a schedule to the bill.** These principles might include, for example, the final salary basis of the pension scheme; its non-

137 Q 68

138 HC (2001–02) 666, para 14

139 Q 34

contributory nature; and the accrual rate of 1/70 of pensionable pay for each full year of service; the standard and burden of proof for claims under the compensation scheme; and the basis of entitlement to compensation.

### ***Super-affirmative procedure: legislating for consultation and scrutiny***

118. As already noted, one of the disadvantages of secondary legislation is that Parliament cannot normally amend it, but only accept or reject it outright. One of the notable advantages of the super-affirmative procedure, which resembles the procedure under the Regulatory Reform Act 2001 and has been used, for example, in section 9 of the Local Government Act 2000, is that it allows for changes to be made during parliamentary scrutiny and in response to this:

The ability to make changes (minor or otherwise) to the draft order while it is being scrutinised and in response to the scrutiny is a key feature of the order-making power, which is not available to statutory instruments dealt with in the usual way.<sup>140</sup>

Another of the advantages of this procedure is that it allows for in-built consultation of precisely the sort that we believe to be essential for any major changes to the schemes. **In order to ensure that future major changes to the schemes involve proper consultation, and to ensure that Parliament is able to suggest changes to the schemes themselves, we recommend that major changes to the schemes in the future should be by statutory instrument subject to super-affirmative procedure, allowing for consultation both with interested groups and with Parliament, before final secondary legislation is presented to Parliament for approval.**

### **Preparation for the passage of a bill**

119. We have seen framework documents for the new pension and compensation schemes, but not for the proposed early departure scheme. **We regard it as essential that a framework document for the new Armed Forces Early Departure Scheme should be available to Members before second reading of the bill, as well as the framework documents already provided to us.**

120. In any case, these framework documents do not provide the level of detail that will be necessary for the scheme rules, and for any secondary legislation. As the Forces' Pension Society explains, "until the rules of the new scheme have been written and promulgated it is not possible to define the inconsistencies and future stumbling blocks".<sup>141</sup> **If the detail of the scheme rules is not available before second reading of the bill, this makes it all the more important that Parliament should have the chance to examine and question Ministers on the detail of these rules when secondary legislation is made.**

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<sup>140</sup> Regulatory Reform Act 2001, Explanatory Notes, paragraph 15.

<sup>141</sup> Ev 30

## 6 Legacy issues

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### Treatment of former personnel and their dependants

121. Changes, many of them improvements, have been made to the schemes over time. A number of former personnel and their dependants feel aggrieved, either because of the level of benefits that they are entitled to in itself, or because they see that other personnel have received more generous benefits. The Forces' Pension Society (FPS) and Royal British Legion, organisations representing these veterans and their dependants, have raised these issues with us on several occasions. As the FPS has put it to us, "victims of previous injustices ... see themselves ignored whilst improvements are lavished on current and future generations".<sup>142</sup>

122. The FPS identifies four "principal issues that require immediate resolution":<sup>143</sup>

- pre 1973 retirees whose widow(er)s will only receive one third pensions,
- pre 1978 retirees who contracted post retirement marriages, whose widow(er)s receive no pension,
- widow(er)s who have remarried, and therefore lost their pensions,
- pensioners affected by 'pension troughs', where short-term pay restraint has adversely affected the real value of their pensions.

123. When we took evidence from the previous Minister for Veterans in December 2001, he was insistent that retrospective changes could not be made to pension benefits:

Retrospection is a rule which all governments have looked at very, very severely indeed. I try to maintain very good relationships with my pension societies, war widows and other groups ... I have every sympathy with them, but the government has decided that a line will be held and the line is held.<sup>144</sup>

His main line of argument was that such changes would be unaffordable, and that they could not be introduced for Armed Forces pensioners without also extending them to other public service pensioners who are in a similar position in terms of their pension entitlements.<sup>145</sup> His position has been reiterated by the current Minister.<sup>146</sup>

124. We have a great deal of sympathy for pensioners who see themselves as having lost out. But it would hardly be reasonable of the Government to avoid making better provision for future pensioners so that previous pensioners do not feel aggrieved. Under the new pension scheme, for example, the Government proposes to use a mechanism which should

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<sup>142</sup> Ev 30

<sup>143</sup> Ev 30

<sup>144</sup> HC (2002–03) 188–i, Q 38

<sup>145</sup> HC (2002–03) 188–i, Qq 36, 29

<sup>146</sup> Q 40

avoid ‘pension troughs’ arising in the future. This can only be a good thing, even if it does make victims of previous ‘pension troughs’ more upset.<sup>147</sup>

125. Nonetheless, certain categories of pensioners have real grievances, which should not be lightly dismissed. We are particularly struck by the position of certain classes of widow(er) who, if they remarry or cohabit, lose their pension. It must be the case, as the FPS suggests, that some of these people will be faced with a choice “between financial well being and happiness in a future relationship”. The FPS states that this is “morally indefensible”.<sup>148</sup> We are inclined to agree.

### **Possible remedies**

126. The position of the FPS on most of these issues has shifted since December 2002. The Society now accepts that full retrospection is unlikely to be affordable, and proposes a number of alternative solutions, at least one of which it claims would be “cost neutral”. It claims that

The MoD’s dogmatic interpretation of the policy of ‘no retrospection’ has consistently denied any possibility of finding pragmatic and affordable solutions to these long standing, bitterly resented problems despite this Society proposing many ‘no cost’ or ‘low cost’ possibilities.<sup>149</sup>

**127. The MoD should look carefully and with a fresh eye at the suggestions put forward by the Forces’ Pension Society as possible solutions to a number of ‘legacy issues’, and should establish whether any of them can be implemented, and at what cost. Former Armed Forces personnel and their dependants deserve no less. The Government risks giving the impression that it has forgotten or is ignoring these people, and that it fails to appreciate the fundamental validity of many of their concerns.**

### **Future ‘legacy’ issues?**

128. The Government should also take care that its new schemes do not give rise unnecessarily to future ‘legacy’ issues. We have already mentioned the potential for ‘troughs’ in early departure payments.<sup>150</sup> The FPS points out the complexities surrounding widow(er)s’ and partners’ pensions, particularly where death is not attributable to service.<sup>151</sup> Unmarried partners of personnel remaining in the existing pension scheme will only be entitled to benefits where the death of their partner is attributable to service. Although in the long run, this will be a matter of choice, in the shorter term it is possible, after introduction of the new scheme on 6 April 2005, that someone in the Armed Forces may not have been given the chance to join the new scheme before death, and that their partner will lose out as a result. Similarly, widow(er)s of personnel who remain in the existing pension scheme will not retain their pension on remarriage or cohabitation. **The Government needs to ensure that the important effects of these kinds of choice are**

147 Ev 53

148 Ev 35

149 Ev 30

150 See para 58 above

151 Ev 35

properly conveyed to personnel, and that the transition to the new schemes is smoothly handled, if future ‘legacy’ grievances are not to arise. The Government should examine, for example, whether it would be possible to ensure that dependants of existing personnel do not lose out if their partner in the Armed Forces should die between the new pension scheme coming into effect for new entrants, and their partner being given the opportunity to choose between the schemes.

### *Compensating personnel whose pensions were improperly taxed*

129. In our evidence in December 2002, we questioned the then Minister about the situation which had led to the pensions of well over 1,000 veterans being improperly taxed, often over the course of many years. The FPS tells us that “these men have suffered severe financial pain over many years”.<sup>152</sup>

130. We welcome the expression of regret by the then Minister for what had happened:

Let there be no mistake about it, this is something the Department is taking very seriously indeed and something which we are determined to put right. That is no compensation and no consolation for those who lost out over the years when the money would have been of most value to them.<sup>153</sup>

131. The FPS suggests that these men or their dependants should be compensated “at a rate which ensures they are no worse off than they would have been if they had lent their money to Government through National Savings plus an element for damages”.<sup>154</sup> **We agree. This was the Government’s mistake, and veterans and their families have already suffered enough for it. They deserve proper recompense.**

132. We heard from the then Minister that many of the victims had already received some compensation, but that not all had been identified, and that a final package of compensation, including, for example, the level of compound interest to be paid, had not yet been finalised. This package has still not been finalised.

133. The Minister told us in December 2002:

I would certainly expect this to be done within the timescale of the other cases we are reviewing which we hope to have completed by the summer, and I would hope I would get it done much more quickly than that.<sup>155</sup>

Yet, when the current Minister for Veterans came before us, nearly a year later, and well beyond this deadline, he told us that the Government was “still considering whether to pay compensation in addition to the repayment supplement that has already been provided under the Inland Revenue’s legislation”, promising us a decision “no later than 18 December”.<sup>156</sup> The FPS regards the delay in finalising this package as “extremely shabby

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152 Ev 30

153 HC (2002–03) 188–i, Q 74

154 Ev 30

155 HC (2001–02) 188–i, Q 69

156 Q 100

treatment” of the former personnel involved, many of whom are very old, and some of whom have died over the last year.<sup>157</sup>

134. The MoD has repeatedly set itself and then missed deadlines for finalising compensation payments to former personnel whose pensions were improperly taxed. The delays so far are unacceptable. **We expect a package of compensation to be announced by 18 December, as promised, to be implemented promptly and to include compensation along the lines of that recommended by the Forces’ Pension Society.**

## 7 Conclusion

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135. An Armed Forces (Pensions and Compensation) Bill has begun its passage through Parliament. There seem to be two basic assumptions behind the new pension and compensation schemes which the Government intends to implement under this legislation.

### A special case

136. The first assumption is that Armed Forces personnel are like other public servants, and should be treated like other public servants. This would explain why the Government considers that a balance of probabilities standard of proof is appropriate for Armed Forces compensation claims, and why the Government thinks it reasonable to raise the preserved pension age to 65, before being pushed to do so by the Treasury. We regard this first assumption as unsound.

### Opportunity to work

137. The second assumption is that personnel do not usually serve a full-length career in the Armed Forces, and that it is therefore reasonable to expect them to continue to work to the normal retirement age once they leave the forces. There is of course much truth in this assumption, and many former Armed Forces personnel do go on to rewarding careers elsewhere. But the belief in the MoD that personnel leave the Armed Forces today better equipped for other employment than in the past may be true for many personnel, but it is not true for all. The cushion of the new early departure scheme will be much less soft than that of the current immediate pension. The most vulnerable personnel will feel the impact. Also, we do not think it unreasonable, given the intense commitment and sheer energy of work that the Armed Forces devote to protecting their country, that they should expect to be able to retire on a full pension a little earlier than those who work elsewhere, often for much more money. The police and fire service, the nearest comparable occupations, have far more generous benefit entitlements than the Armed Forces. The Armed Forces perform tasks often more dangerous than, but otherwise similar (and occasionally identical) to those performed by the police and fire services, yet only a small minority will receive their pension at 55, the majority at 65.

### A few winners, but many losers

138. For personnel who die or are injured in the service of their country, for personnel who choose not to marry, but have a registered unmarried partnership, and for personnel whose actual salaries are greater than the representative salaries for their rank, there are undoubted advantages to the new schemes over those currently in operation. There are also advantages to the dependants of personnel, to those personnel who enlist before the age of 21, and to the few who are allowed to serve to the age of 55. But there are also those who will lose out under the new scheme: those who leave the forces unharmed before the age of 55 (the vast majority), and those who are unable to prove on a balance of probabilities that an illness or injury was caused by service, perhaps because it cannot be determined how it was caused.

## Parliament's role

139. The overall annual value of the new schemes has been diminished to account for new estimates of increased longevity, in a way which seems to us to be arbitrary and unfair. The MoD refuses to increase the value of the schemes because it is supposedly committed to cost neutrality. This decrease in the cost of the schemes should also have been resisted on the same grounds.

140. In 2002, we stated our belief that the proposed pension scheme needed to take best practice as its starting point, rather than 'cost neutrality'; and our conviction that the proposed compensation scheme sacrificed fairness and justice for simplicity. At the same time neither scheme did justice to Armed Forces personnel.

141. The schemes remain hamstrung by 'cost neutrality', and therefore fail to recognise the unique commitment that the Armed Forces make to their country. There have been some welcome changes to elements of the schemes, but these are, and can be, little more than tinkering in the absence of a broader outlook. We are also unhappy that important aspects of the schemes have yet to be finalised.

142. When it comes to negotiating pension and compensation entitlements, it seems to us that the Armed Forces are disadvantaged, because they have no-one to negotiate on their behalf as employees. Parliament therefore has a vital role to play in ensuring that the Armed Forces get the pension and compensation schemes that they deserve.

# Conclusions and recommendations

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## Lack of progress

1. It seems from the evidence we have received that several crucial elements of the schemes have still not been finalised despite an unusually long period of review and consultation. It is vital that these elements are clarified by the time primary legislation is brought before Parliament, so that an informed debate is possible on the issues at stake. It would be wholly unacceptable if Parliament were asked to approve enabling legislation without a clear understanding of its implications for Armed Forces personnel and their dependants. (Paragraph 11)

## Cost basis for schemes

2. The Government intends to use savings that it is making within the pension scheme not only to improve other benefits to personnel, but also to cover the estimated cost of personnel and their dependants living longer. (Paragraph 16)
3. The Government is proposing to reduce benefits to Armed Forces personnel on the basis that they will live for longer, without also giving them a real opportunity to work for longer within the public service. This is not reasonable. (Paragraph 19)
4. The Government is basing its decision to reduce the cost of the pension scheme on the expectation that each individual member of the pension scheme will cost the MoD more in future because of increased longevity. However, because of the reduction in Service numbers over the last two decades, we would expect the MoD's *total* pensions bill to decrease just as the financial effects of increased life expectancy kick in. In terms of the total cost to the public purse, there is no need to adjust the pension scheme to reflect increased longevity in order to achieve 'cost neutrality'. It is only fair to point out that any cost increases as a result of pensioners living for longer are likely to be more than compensated for by the reduction in the total number of pensioners. (Paragraph 22)
5. As a matter of principle, we are not convinced that it is right that the financial cost of increased life expectancy should be borne by service personnel, particularly not through reduced benefits. But even if the MoD can justify its claim that personnel should bear *some* of the burden of the increased costs brought about by improved longevity, it should not have devised the new scheme as it has, on the basis that personnel in the scheme will bear the *entirety* of costs, particularly where it appears that these costs are almost certainly in excess of what the MoD itself will have to bear. (Paragraph 23)
6. With the introduction of the new pension scheme, the MoD has changed its definition of 'cost neutrality' to seek to ensure that the future cost of an average member of the new scheme should not exceed the current cost of an average member of the existing scheme. (Paragraph 25)

7. Personnel transferring to the new pension scheme will receive benefits of a lesser overall value than those remaining on the existing scheme. This would in many circumstances seem to be a fairly obvious disincentive to transfer. (Paragraph 26)
8. We have always been unhappy that the Government in its review of Armed Forces pensions has imposed on itself the constraint of how much current benefits cost, rather than looking more generally at what Armed Forces personnel deserve. We are even less happy now that it emerges that the Government proposes to reduce the overall value of benefits under the new scheme, compared with the existing scheme. The goalposts of 'cost neutrality' have been shifted—to the disadvantage of future personnel. (Paragraph 27)

### Welcome improvements

9. The Government should ensure that any money which would have been paid to pensioners in the existing scheme were it not for the rise in the preserved pension age is used to improve other pension benefits. (Paragraph 31)
10. We welcome the MoD's decision to improve provision for dependants, particularly where personnel have died in service, given the unique commitment that these personnel make to the service of their country. (Paragraph 33)
11. It is essential that the schemes should be as clear as possible about when unmarried partners will qualify for benefits, both to avoid bad feeling among non-qualifying partners, and to avoid potentially expensive legal action. We welcome the fact that criteria have been developed against which to assess whether a substantial and exclusive relationship exists between unmarried partners, which would entitle them to benefits. (Paragraph 41)

### Early Departure Scheme

12. We are disappointed that details of the new Early Departure scheme are not yet available to inform Parliament in its consideration of the primary legislation now before it. (Paragraph 49)
13. If the MoD removes too much value from the Immediate Pension, its ability to retain expert personnel will be adversely affected, to the detriment of the Armed Forces as a whole. (Paragraph 52)
14. Given that the MoD is operating within the self-imposed constraint of 'cost neutrality', we agree that the Immediate Pension was the appropriate benefit to cut in order to fund improvements to benefits elsewhere in the pension scheme. (Paragraph 53)
15. Taking early departure payments out of the pension scheme could be a blessing in disguise for the MoD, by allowing it to use the money more flexibly. The Government, however, needs to ensure that Early Departure payments are targeted not only to help the Armed Forces retain skilled personnel who would otherwise leave, but also to support former personnel who are in most need of such payments. (Paragraph 55)

16. The Government should be more explicit about its intention not to protect early departure payments from inflation, the savings that they expect to make from this, and the likely effect on payments to personnel. (Paragraph 56)
17. If not protected from inflation, the real value of a fixed rate early departure payment is likely to decrease substantially over time. (Paragraph 57)
18. If early departure payments are not protected from inflation, the real value of these payments over time to personnel leaving at different points is likely to differ substantially, as the rate of inflation varies. This may well lead to future grievances. (Paragraph 58)
19. The proposal would almost certainly result in former service personnel being paid more in real terms at the age of 41 than at the age of 64. This would seem to be in conflict with the likely needs of former personnel at those ages. It would be most unfortunate if those former personnel who rely on Early Departure payments for a basic standard of living were to see the value of those payments decrease in real terms as they grow older and become less able to pursue a second career. (Paragraph 60)

### Treatment of officers and other ranks

20. We welcome the fact that the MoD has taken the opportunity to ensure that all ranks are treated equally under the new schemes. (Paragraph 62)

### Compensation proposals

21. We welcome the fact that some of the safeguards within the compensation scheme have been strengthened. But our essential concerns about the structure of the compensation scheme have not been addressed. (Paragraph 65)
22. Because of the special risks that Armed Forces personnel are required to run, and because they are likely to be involved in situations of great uncertainty, with uncertain effects on their health, we continue to believe that the onus should remain on the Government to prove that service was not responsible for causing or worsening a condition for which a compensation claim is made. (Paragraph 69)
23. A possible solution might be to apply a double test to compensation cases to ensure that the *burden* of proof does not unfairly discriminate against service personnel. Under such a system, a claim for compensation would only fail where both: (a) the claimant is unable to prove on the balance of probabilities that a condition is due to service, and (b) the MoD is able to prove on the same standard of proof that the condition is *not* due to service. We have not assessed how this proposal would be implemented in practice, but believe that the MoD should seriously consider it in the light of the special circumstances of Armed Forces personnel. (Paragraph 70)
24. The Government should ensure that the compensation scheme rules set out clearly how a claim will be handled where medical records are inadequate or incomplete. It would be unfair, as the Government has acknowledged, if claimants were unable to make a successful claim because of the inadequacy of the records held by their employer. (Paragraph 72)

25. We welcome the focus of the compensation scheme on the severely disabled, and the new lump-sum payments for pain and suffering. These basic aims seem both sensible and just. (Paragraph 73)
26. As they are currently drawn, the boundaries in the new compensation scheme between injuries leading to compensation for loss of earnings, and injuries leading to no such compensation, seem illogical. (Paragraph 80)
27. The system of tariffs as proposed fails to take account of the fact that similar injuries will affect the employment prospects of different personnel in different ways (and indeed, may cause radically different levels of pain and suffering to different people). This will continue to be the case, no matter how tariff boundaries are drawn and redrawn. (Paragraph 82)
28. Guaranteed Income Stream payments should be based on a proper assessment of earning capacity in civilian life for each individual, on the same lines as ill-health benefits under the pension scheme, rather than on the basis of tariffs for types of injury which may affect different individuals' earning capacity in very different ways. The Government should also reconsider whether it is appropriate to have two such similar benefits administered by different organisations under different schemes. (Paragraph 85)
29. We would welcome an undertaking that, whatever the cost to the Government of extending backdated ill-health and death benefits under the pension scheme to those in receipt of equivalent benefits under the War Pension Scheme, it will not have a negative effect on the future entitlement of service personnel to benefits under the pension and compensation schemes. (Paragraph 87)

### **Communications with personnel**

30. The MoD should identify lessons from the shortcomings of the consultation process to ensure that information about the new schemes reaches all levels of all units. (Paragraph 91)
31. There have been various failures in information provision to service personnel on pensions and compensation, including in the very recent past. It is crucial that the MoD learns from these experiences in designing and implementing its communication strategy on the new pension and compensation schemes, if the transition to these schemes is to be a success. (Paragraph 92)
32. The new schemes are scheduled for implementation in less than 18 months' time. The MoD needs to ensure that its communications with personnel are well underway as soon as possible. (Paragraph 96)
33. It is essential that communication with personnel on those aspects of the new schemes which are yet to be finalised (such as early departure payments) are both complete and timely enough to allow for the information to be properly considered before any choice is made. The MoD should issue information to all serving personnel to enable them to make an informed choice, including pensions forecasts

for both the existing and the new schemes tailored to individual personnel. (Paragraph 97)

34. The MoD needs to ensure that the impact of the new compensation arrangements on existing personnel is clearly communicated. (Paragraph 99)
35. It is vital that the rules for determining whether injuries and illnesses should be treated under the old or the new compensation scheme are not only clearly defined, but also clearly communicated. (Paragraph 100)
36. Consultation with Armed Forces personnel on raising the preserved pension age to 65 is particularly important, because this change will affect the Armed Forces very differently from the rest of the public sector. A majority of Armed Forces personnel will be financially disadvantaged by this change. Moreover, even of those personnel who do serve to the retirement age of 55, very few are likely to be able to take advantage of any enhancement to benefits which the opportunity to serve to age 65 might bring. (Paragraph 104)
37. Further details need to be published clarifying how an increase in the preserved pension age for existing personnel will impact on the benefits they receive and when they receive them. (Paragraph 105)
38. The MoD has failed to consult with serving personnel on the timescale for changing the preserved pension age, and it has already begun to define how the change to the preserved pension age will be introduced for serving personnel, again without consultation. This is unacceptable, given the Government's public undertaking to "consult on how and to what timescale the higher pension age and any associated enhancement to benefits could be extended to existing employees, while protecting rights already accrued". Proper consultation, as promised, should be carried out as soon as possible, to establish what measures might be appropriate to mitigate the special impact of the higher preserved pension age on Armed Forces personnel, both those who serve to the early departure point and those (the majority) who do not. (Paragraph 106)

### Timescale to implementation

39. We are concerned by how much work still needs to be done in relatively little time, both in terms of finalising the schemes, and in terms of communicating to personnel what they mean. (Paragraph 107)

### Legislation

40. Because of inadequate consultation, because of the evidence we have heard that the elements of the schemes will not be fleshed out until consideration of primary legislation is already under way, and because Armed Forces personnel have no body representing their interests as employees, it is essential that the Government should seek explicit parliamentary approval for the schemes themselves, as well as for primary legislation. (Paragraph 114)

41. Any amendments to the schemes which could negatively affect the benefits of personnel and their dependants under the schemes should also be approved by Parliament. (Paragraph 116)
42. We also believe that there is a strong case for setting out the basic principles of the schemes in primary legislation, for example as a schedule to the bill. (Paragraph 117)
43. In order to ensure that future major changes to the schemes involve proper consultation, and to ensure that Parliament is able to suggest changes to the schemes themselves, we recommend that major changes to the schemes in the future should be by statutory instrument subject to super-affirmative procedure, allowing for consultation both with interested groups and with Parliament, before final secondary legislation is presented to Parliament for approval. (Paragraph 118)
44. We regard it as essential that a framework document for the new Armed Forces Early Departure Scheme should be available to Members before second reading of the bill, as well as the framework documents already provided to us. (Paragraph 119)
45. If the detail of the scheme rules is not available before second reading of the bill, this makes it all the more important that Parliament should have the chance to examine and question Ministers on the detail of these rules when secondary legislation is made. (Paragraph 120)

### Legacy issues

46. The MoD should look carefully and with a fresh eye at the suggestions put forward by the Forces' Pension Society as possible solutions to a number of 'legacy issues', and should establish whether any of them can be implemented, and at what cost. Former Armed Forces personnel and their dependants deserve no less. The Government risks giving the impression that it has forgotten or is ignoring these people, and that it fails to appreciate the fundamental validity of many of their concerns. (Paragraph 127)
47. The Government needs to ensure that the important effects of these kinds of choice are properly conveyed to personnel, and that the transition to the new schemes is smoothly handled, if future 'legacy' grievances are not to arise. The Government should examine, for example, whether it would be possible to ensure that dependants of existing personnel do not lose out if their partner in the Armed Forces should die between the new pension scheme coming into effect for new entrants, and their partner being given the opportunity to choose between the schemes. (Paragraph 128)
48. We agree that former personnel whose pensions have been improperly taxed, and their dependants, should be compensated at a rate which ensures they are no worse off than they would have been if they had lent their money to Government through National Savings plus an element for damages. This was the Government's mistake, and veterans and their families have already suffered enough for it. They deserve proper recompense. (Paragraph 131)

49. We expect a package of compensation to be announced by 18 December, as promised, to be implemented promptly and to include compensation along the lines of that recommended by the Forces' Pension Society. (Paragraph 134)

### Conclusion: Parliament's role

50. The overall annual value of the new schemes has been diminished to account for new estimates of increased longevity, in a way which seems to us to be arbitrary and unfair. The MoD refuses to increase the value of the schemes because it is supposedly committed to cost neutrality. This decrease in the cost of the schemes should also have been resisted on the same grounds. (Paragraph 139)
51. In 2002, we stated our belief that the proposed pension scheme needed to take best practice as its starting point, rather than 'cost neutrality'; and our conviction that the proposed compensation scheme sacrificed fairness and justice for simplicity. At the same time neither scheme did justice to Armed Forces personnel. (Paragraph 140)
52. The schemes remain hamstrung by 'cost neutrality', and therefore fail to recognise the unique commitment that the Armed Forces make to their country. There have been some welcome changes to elements of the schemes, but these are, and can be, little more than tinkering in the absence of a broader outlook. We are also unhappy that important aspects of the schemes have yet to be finalised. (Paragraph 141)
53. When it comes to negotiating pension and compensation entitlements, it seems to us that the Armed Forces are disadvantaged, because they have no-one to negotiate on their behalf as employees. Parliament therefore has a vital role to play in ensuring that the Armed Forces get the pension and compensation schemes that they deserve. (Paragraph 142)

## Glossary

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**Abatement** is a reduction. The high level of the Armed Forces Pension Scheme as compared to Armed Forces Pay Review Body (AFPRB) comparators is currently reflected in the 7% abatement of pay.

**Accrual Rate** is the rate at which pension benefits are built up over time.

**Accrued benefits/pension rights** are the pension benefits or rights a member has built up at a particular date.

**Actuarial assumptions** are estimates made in order to calculate the cost of providing benefits. Possible variables include life expectancy, interest rates, and compensation claims.

**Armed Forces Pension Scheme (AFPS)** is the pension scheme currently in place for armed forces personnel.

**Attributable benefits** are those payable where a Service person's medical condition, injury or death is caused or aggravated by service in the Armed Forces.

**Death-in-Service Lump Sum** is part of the occupational benefits of the pension scheme payable where a Service man or woman dies in service. It will be four times pensionable salary if the Service person is a member of the new AFPS. It is approximately 1½ times pensionable salary for those personnel in the current scheme.

**Defined Benefits Scheme** is a pension scheme providing pre-defined benefits, which are worked out in accordance with a pre-defined formula, usually in relation to earnings. The AFPS is a defined benefits scheme.

**Demographic assumptions or mortality assumptions** are *actuarial assumptions* based on how long pensioners are likely to live.

**Early Departure Payments** under the new proposals are the replacement arrangements for the Immediate Pension (IP). The Government's proposals for new taxation rules for pensions would in the future not allow pensions to be paid before the age of 55 from tax-approved pension schemes. In response, an alternative to the IP is being developed which will allow payment of a lump sum and a stream of income along similar lines to the IP, but from a new **Early Departure Scheme** outside the pension arrangements.

**Early Departure Point** is the point at which personnel will become entitled to Early Departure Payments under the new proposals. This is after 18 years service or age 40, whichever is the later, for both officers and other ranks. On reaching this point the member will be able to leave the Armed Forces in receipt of an Early Departure lump sum and an income stream until payment of the preserved pension at age 65.

**Guaranteed Income Stream (GIS)** is a benefit intended to compensate the individual for loss of earnings due to the fact that ability to work has been impaired or lost through *attributable* injury or illness. It is calculated as a lump sum but paid as a steady annual income for life updated in line with inflation, comparable to an index-linked annuity.

**Immediate Pension (IP)** is a benefit under the current AFPS paid immediately on leaving the Armed Forces after 16 years' reckonable service as an officer or after 22 years' reckonable service in the ranks. Under the new pension scheme, it will be replaced by *Early Departure Payments*.

**Index Linking** is an annual increase in pension, once in payment, in line with movements in the Retail Prices Index, to make sure that it retains its purchasing power. Increases are made in April, using the previous September's annual headline rate of inflation.

**Member** is a currently serving or retired member of the Armed Forces who has joined the AFPS and is earning/has earned benefits under the scheme.

**Non-Attributable Benefits** are ill-health retirement benefits paid where injury, illness or death is not due to service.

**Pensionable Pay** is the total amount of annual basic pay, including X-factor (a percentage increase to basic pay which reflects the difference between the conditions of service experienced by members of the Armed Forces and conditions in civilian life) but not including allowances or additional pay.

**Pension Troughs** are lower levels of pension which occur at times when price increases have been greater than salary increases, particularly where the Government fails to increase salaries in line with inflation as a matter of policy.

**Preserved Pension** is awarded to a member leaving the AFPS after a minimum of 2 years' service, before the normal pension age (55). It is currently payable at the age of 60, but the Government proposes that in the future it should be payable from age 65.

**Retrospection** means making changes to accrued benefits.

**Short-term Pension** is payable under the current pension scheme to the spouse of a scheme member who has died, normally for between 3 and 6 months. It is set at the full rate of the member's salary or pension. Under new Inland Revenue rules, this type of arrangement will not be allowed in tax-approved pension schemes. There will therefore be no short-term pension under the new pension scheme.

**Superannuation liability** is the share of the cost of pension cover met by the Ministry of Defence as an employer. The contribution rates are assessed on essentially the same basis as employers in the private sector who operate funded pension schemes offering benefits based on the member's final salary and length of service. The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme.

**Veterans Agency** is an agency of the Ministry of Defence which administers the current War Pension Scheme, and which will administer the new compensation scheme.

**War Pension** is a benefit payable under the existing compensation scheme, the **War Pension Scheme**.

## Formal minutes

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**Wednesday 10 December 2003**

Members present:  
Mr Bruce George, in the Chair

Mr James Cran  
Mr David Crausby  
Mike Gapes

Mr Dai Havarad  
Mr Kevan Jones  
Mr Peter Viggers

The Committee deliberated.

Draft Report (Armed Forces Pensions and Compensation), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 142 read and agreed to.

Annexes [Summary and Glossary] agreed to.

*Resolved*, That the Report be the First Report of the Committee to the House.

*Ordered*, That the provisions of Standing Order No. 134 (select committees (reports)) be applied to the Report.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

*Ordered*, That several memoranda be reported to the House.

[Adjourned till Tuesday 16 December at 2.45pm]

## Witnesses

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**Wednesday 5 November 2003**

*Page*

**Mr Ivor Caplin**, a Member of the House, Under-Secretary of State and Minister for Veterans, and **Mr Jonathan Iremonger**, Director, Service Personnel Policy (Pensions), Ministry of Defence

Ev 1

## List of written evidence

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Ministry of Defence	Ev 18, Ev 28, Ev 39
Royal British Legion	Ev 28
The Forces Pension Society	Ev 30, Ev 51
Pension Trough Group	Ev 53

## List of unprinted written evidence

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Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons Library where they may be inspected by Members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1. (Tel 020 7219 3074) hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

### COMBAT STRESS

Forces Pension Society

### FORWARD

Mr K N J Hawes

Mr Tony Wilson-Ing

Royal British Legion

Veteran Support UK

War Widows Association of Great Britain

## Reports from the Defence Committee since 2001

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### Session 2002–03

First Report	Missile Defence	HC 290 ( <i>HC 411</i> )
Second Report	Annual Report for 2002	HC 378
Third Report	Arms Control and Disarmament (Inspections) Bill	HC 321 ( <i>HC 754</i> )
Fourth Report	The Government's Proposals for Secondary Legislation under the Export Control Act	HC 620 ( <i>Cm 5988</i> )
Fifth Report	Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny	HC 474( <i>5943</i> )
Sixth Report	A New Chapter to the Strategic Defence Review	HC 93–I & II ( <i>HC 975</i> )
Seventh Report	Draft Civil Contingencies Bill	HC 557
Eighth Report	Defence Procurement	HC 694 ( <i>1194</i> )

### Session 2001–02

First Report	Ministry of Defence Police: Changes in jurisdiction proposed under the Anti-terrorism Crime and Security Bill 2001	HC 382 ( <i>HC 621</i> )
Second Report	The Threat from Terrorism	HC 348 ( <i>HC 667</i> )
Third Report	The Ministry of Defence Reviews of Armed Forces' Pension and Compensation Arrangements	HC 666 ( <i>HC 115</i> )
Fourth Report	Major Procurement Projects	HC 779 ( <i>HC 1229</i> )
Fifth Report	The Government's Annual Report on Strategic Export Controls for 2000, Licensing Policy and Prior Parliamentary Scrutiny (Joint with Foreign Affairs Committee, International Development Committee and Trade and Industry Committee)	HC 718 ( <i>Cm 5629</i> )
Sixth Report	Defence and Security in the UK	HC 518 ( <i>HC 1230</i> )
Seventh Report	The Future of NATO	HC 914 ( <i>HC 1231</i> )

Government Responses to Defence Committee reports are published as Special Reports from the Committee (or as Command papers). They are listed here in brackets by the HC (or Cm) No. after the report they relate to.