

At the Court at Buckingham Palace, the 15th day of February 2012

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 3 of the Naval and Marine Pay and Pensions Act 1865^(a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2012 and shall come into force on 28th February 2012.

PART 2

AMENDMENT OF SCHEDULE 1 TO THE NAVAL AND MARINE PENSIONS (ARMED FORCES PENSION SCHEME 1975 AND ATTRIBUTABLE BENEFITS SCHEME) ORDER 2010

Amendment of the Armed Forces Pension Scheme 1975

2. Schedule 1 to the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010^(b) is amended as set out in this Part.

Amendment of rule A.1 (general)

3. In rule A.1(3)—

(a) in the definition of “deferred member” after “active” insert “,fixed protection”;

(b) after the definition of “final pensionable earnings” insert—

““fixed protection member” has the meaning given by rule B.4A;”;

(c) in the definition of “member” after “deferred,” insert “fixed protection,”;

(d) in the definition of “pension credit member” after “deferred” insert “,fixed protection”;
and

(e) in the definition of “pension debit member” after “deferred” insert “,fixed protection”.

Insertion of a new rule B.4A (Fixed protection membership)

4. After rule B.4 insert—

(a) 1865 c. 73.

(b) The rules of the Armed Forces Pension Scheme 1975 in relation to members and former members of the Royal Navy and Royal Marines were restated in Schedule 1 to the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010 made on the 10th February 2010. That Schedule was then revoked and replaced by a revised restatement set out in Schedule 1 to the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme)(Amendment) Order 2010 made on the 15th December 2010, which came into force on the 3rd January 2011.

“B.4A Fixed protection membership

- (1) “Fixed protection member” means a person who—
- (a) is a member of the Royal Navy or the Royal Marines; and
 - (b) has ceased to be an active member as described in rule B.4 for the reasons set out in paragraph (2).

(2) The reasons referred to in paragraph (1)(b) are that the member has given notice to an officer of Her Majesty’s Revenue and Customs of their intention to rely upon the lifetime allowance transitional protection afforded by paragraph 14 of Schedule 18 to the Finance Act 2011(a).

(3) Service as a fixed protection member is not pensionable service.

(4) Any promotion of a fixed protection member is to be disregarded for the purpose of determining pension rank under rule A.2 and for the purpose of calculating any rank addition under rule D.13.”.

Amendment of rule B.5 (membership in more than one capacity)

5. In rule B.5(1)(a) after “active member” insert “or a fixed protection member”.

Amendment of rule D.1 (entitlement to immediate pension and lump sum)

6. In rule D.1(1) after “ceases pensionable service” insert “otherwise than for the reasons set out in rule B.4A(1)(b)”.

Insertion of a new rule D.1A (Fixed protection members: entitlement to an immediate pension and lump sum)

7. After rule D.1 insert—

“D.1A Fixed protection members: entitlement to an immediate pension and lump sum

Where a fixed protection member—

- (a) leaves the Royal Navy or Royal Marines, and
- (b) had reached the immediate pension point before becoming a fixed protection member,

rule D.1(2) shall apply to the member.”.

Amendment of rule D.4 (amount of immediate pension: officers of or above OF-7 rank)

8. In rule D.4(1)(a) after “rule D.1” insert “or D.1A”.

Amendment of rule D.5 (amount of immediate pension: other officers)

9. In rule D.5(1)(a) after “rule D.1” insert “or D.1A”.

Amendment of rule D.7 (amount of pension: ill health)

10. In rule D.7(1)(a) after “rule D.1” insert “or D.1A”.

Amendment of rule D.8 (addition for reckonable service in excess of whole years)

11. In rule D.8(1)(a) after “rule D.1” insert “or D.1A”.

(a) 2011 c.11. Schedule 18 provides for the Lifetime Allowance Charge.

Amendment of rule D.10 (increase at age 60 or 65)

12.—(1) Rule D.10 is amended as follows.

- (2) In paragraph (1)(a) after “rule D.1” insert “or D.1A”.
- (3) In paragraph (2)(b) after “rule D.1” insert “or D.1A”.
- (4) In paragraph (3)(b) after “rule D.1” insert “or D.1A”.

Amendment of rule D.11 (preserved pensions and lump sums)

13. In rule D.11 for paragraph (1)(b) substitute “neither rule D.1 nor D.1A (immediate pension) applies.”.

Amendment of rule D.13 (rank addition: officers)

14.—(1) Rule D.13 is amended as follows.

- (2) In paragraph (1)(a) after “rule D.1” insert “,D.1A”.
- (3) In paragraph (1)(c) after “rule D.1” insert “or D.1A”.
- (4) In paragraph (2) after “member” insert “whilst in pensionable service”.

Amendment of rule D.15 (professional supplement)

15.—(1) Rule D.15 is amended as follows.

- (2) In paragraph (1)(a) after “rule D.1” insert “,D.1A”.
- (3) In paragraph (1)(b) after “rule D.1” insert “or D.1A”.

Amendment of rule D.23 (pension increases)

16. In rule D.23(2) after “rule D.1” insert “or D.1A”.

Amendment of rule E.1 (surviving spouse or civil partner’s pensions)

17.—(1) Rule E.1 is amended as follows.

- (2) In paragraph (2)(a) after “active” insert “or fixed protection”.
- (3) In paragraph (6) after “active” insert “,fixed protection”.
- (4) In paragraph (13)(a) after “deferred” insert “,fixed protection”.

Amendment of rule E.2 (amount of surviving spouse or civil partner’s short-term pension)

18. In rule E.2(2) after “active member” insert “or a fixed protection member”.

Amendment of the cross heading which appears before rule E.3

19. In the cross heading which appears before rule E.3 after “active” insert “or fixed protection”.

Amendment of rule E.3 (amount of surviving spouse or civil partner’s long-term pension: active member)

20.—(1) Rule E.3 is amended as follows.

- (2) In paragraph (1)(b) after “active member” insert “or a fixed protection member”.
- (3) In paragraph (2)(a) after “D.1” insert “or D1.A”.

Amendment of rule E.4 (amount of surviving spouse or civil partner's long-term pension: deferred or pensioner member)

21. In rule E.4(5)(a) after D.1 insert “or D.1A”.

Amendment of rule E.5 (amount of surviving spouse or civil partner's long-term pension: service before 1st April 1973)

22.—(1) Rule E.5 is amended as follows.

(2) In paragraph (3)(a)(i) after “D.1” insert “or D.1A”.

(3) In paragraph (4)(a)(i) after “D.1” insert “or D.1A”.

Amendment of rule E.12 (child's pensions: service on or after 31st March 1973)

23.—(1) Rule E.12 is amended as follows.

(2) In paragraph (1)(a) after “deferred” insert “,fixed protection”.

(3) In paragraph (2)(a) after “active” insert “,fixed protection”.

Amendment of rule E.13 (amount of child's short-term pension)

24.—(1) Rule E.13 is amended as follows.

(2) In paragraph (2) after “active member” insert “or a fixed protection member”.

(3) In paragraph (2)(a) after “pay” insert “on the member's last day of pensionable service”.

Amendment of rule E.14 (amount of child's longer-term pension)

25.—(1) Rule E.14 is amended as follows.

(2) After paragraph (5)(b) insert—

“(c) in relation to a fixed protection member, the annual amount of the pension (or the annual aggregate amounts of the pensions) that would have been payable to the member under rule D.1A or D.11, as the case may be, had the member left the Royal Navy or Royal Marines on the date of the death (otherwise than by reason of the death).”.

(3) In paragraph (6)(a) after “active” insert “,fixed protection”.

Amendment of the cross heading which appears before rule E.17

26. In the cross heading which appears before rule E.17 after “active” insert “and fixed protection”.

Amendment of rule E.17 (qualifying relationships: active members)

27. In rule E.17(1) after “active” insert “or fixed protection”.

Amendment of the cross heading which appears before rule E.20

28. In the cross heading which appears before rule E.20 after “active” insert “or fixed protection”.

Amendment of rule E.20 (lump sum benefit: active, deferred and pensioner members)

29. In rule E.20(1)(a) after “active” insert “or fixed protection”.

Insertion of a new rule E.21A (Amount of lump sum: fixed protection members)

30. After rule E.21 insert—

“E.21A Amount of lump sum: fixed protection members

Where a lump sum is paid under rule E.20 in respect of a fixed protection member the amount of the lump sum must be three times the member’s representative rate of pay.”.

Amendment of rule E.23 (amount of lump sum: pensioner members)

31. In rule E.23(2) for “or J.10” substitute “J.10 or under article 29 (resettlement commutation) of the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No.2) Order 2010(a)”.

Amendment of rule E.27 (membership in two or more capacities)

32.—(1) Rule E.27 is amended as follows.

- (2) In paragraph (1)(a) after “active” insert “or fixed protection”.
- (3) In paragraph (3) after “active” insert “or fixed protection”.
- (4) In paragraph (5) after “active” insert “or fixed protection”.

Amendment of rule E.30 (death attributable to service)

33. In rule E.30(1)(a) after “Part” insert “otherwise than in respect of a fixed protection member”.

Amendment of rule J.1 (claims for benefits)

34. In rule J.1(1) after “D.1” insert “or D.1A”.

PART 3

AMENDMENT OF SCHEDULE 2 TO THE NAVAL AND MARINE PENSIONS (ARMED FORCES PENSION SCHEME 1975 AND ATTRIBUTABLE BENEFITS SCHEME) ORDER 2010

Amendments to the Naval and Marines Attributable Benefits Scheme

35. Schedule 2 to the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010(b) is amended as set out in this Part.

Amendment of rule B.11 (reduction of the annual compensation payment to take account of benefits paid under other armed forces pension schemes)

36.—(1) Rule B.11 is amended as follows.

- (2) For paragraph (1) substitute—

(a) S.I. 2010/832: article 29 was amended by article 7 of S.I. 2011/3013.
(b) 10th February 2010. The rules of the Naval and Marines Attributable Benefits Scheme in relation to members and former members of the Royal Navy and Royal Marines set out in Schedule 2 to that Order were amended by the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 made on 15th December 2010.

“(1) Where a person awarded an annual compensation payment under rule B.1 receives any of the benefits specified in paragraph (2) the annual compensation payment will be reduced (if necessary to nil) as follows—

- (a) where the benefit is paid in respect of the same injury as the annual compensation payment, by the full amount of the benefit;
- (b) in all other cases by 75% of the benefit.”.

(3) In paragraph (2)(a)—

- (a) after “D.1” insert “,D.1A or D.11”; and
- (b) omit “in relation to which rule D.7 of that scheme (ill health) applies”.

Amendment of the cross heading which appears before rule D.2A

37. In the cross heading which appears before rule D.2A after “Qualifying relationships” insert “: death after leaving service”.

Amendment of rule D.2A (qualifying relationships)

38. In rule D.2A(1) after “deceased person” insert “who died after leaving service”.

Insertion of a new rule D.2AB (Qualifying relationships: death in service)

39. After rule D.2A insert—

“D.2AB Qualifying relationships: death in service

For the purposes of rule D.2 a person (“the child”) has a qualifying relationship to a member who dies in service if any of conditions A to C is met.

- (1) Condition A is that the child is a child of the member.
- (2) Condition B is that—
 - (a) the child is a child of a person who was at any time the member’s spouse or civil partner; and
 - (b) the child was financially dependent on the member at the time of the death.
- (3) Condition C is that—
 - (a) the child is a grandchild of the member, or of a person who was at any time the member’s spouse or civil partner;
 - (b) if the child has a living parent, the Defence Council consider that each such parent is unable or unwilling to take responsibility for the child; and
 - (c) the child was financially dependent on the member at the time of the death.”.

Name

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010, made on 10th February 2010 (“the 2010 Order”). The rules of the Armed Forces Pension Scheme 1975 (“AFPS 75”) in relation to members and former members of the Royal Navy and Royal Marines set out in Schedule 1 to the 2010 Order were revoked and substituted by Schedule 1 to the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 made on 15th December 2010. That Order also amended the rules of the Naval and Marines Attributable Benefits Scheme set out in Schedule 2 to the 2010 Order.

Part 2 of this Order amends Schedule 1 to the 2010 Order so that it includes provision that prescribes how members of AFPS 75 who wish to rely upon the lifetime allowance transitional protection provided for in the Finance Act 2011 are to be treated under AFPS 75. To that end, a new category of membership of AFPS 75, “fixed protection membership”, has been created.

Article 31 of this Order amends rule E.23 of Schedule 1 to the 2010 Order in order to provide for any resettlement commutation paid to a deceased pensioner member before their death under the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No.2) Order 2010 to be deducted from any lump sum payable to the member’s dependents under rule E.20.

Part 3 of this Order makes amendments to the Naval and Marines Attributable Benefits Scheme set out in Schedule 2 to the 2010 Order (as amended by the 15th December 2010 Order). Rule B.11 of Schedule 2 to the 2010 Order is amended so as to provide that annual compensation payments payable under rule B.1 are to be reduced by the amount of any pension payable under AFPS 75. Hitherto, the annual compensation payment could only be reduced by the amount of any ill-health pension payable under AFPS 75. Additionally, rule B.11 is amended to provide that where the annual compensation payment is reduced by the amount of certain specified benefits, where the specified benefit in question was paid otherwise than in respect of the injury for which the annual compensation payment is made, the reduction will be 75% of the amount of the specified benefit, and not 100% as was formerly the case.

Rule D.2A of Schedule 2 to the 2010 Order is amended and a new rule D.2AB is inserted into Schedule 2 so as to amend the criteria for determining what is a “qualifying relationship” for the purpose of determining a child’s entitlement to benefits under the Naval and Marines Attributable Benefits Scheme. What constitutes a “qualifying relationship” to a person dying in service now differs from what constitutes a “qualifying relationship” to a person who dies after leaving service. Previously, there had been no distinction drawn for this purpose between those dying in service and those dying after leaving service.