



At the Court at Buckingham Palace,

THE 10th DAY OF FEBRUARY 2010

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:

*Citation and commencement*

1. This Order may be cited as the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010 and the provisions contained in the Schedules to this Order shall come into force and have effect from 6th April 2010.

*General*

2. The rates and conditions of award of—
  - (a) pensions, deferred pensions and lump sums to officers, non-commissioned officers, ratings and marines of the Royal Navy and the Royal Marines in respect of service in the Royal Navy and the Royal Marines, and
  - (b) pensions and lump sums to surviving spouses, surviving civil partners and eligible children in respect of the service of deceased officers, non-commissioned officers, ratings and marines of the Royal Navy and the Royal Marines,

shall apply to officers, non-commissioned officers, ratings and marines who give full pay service on the Active List on or after 6th April 2010 and shall be as specified in Schedule 1 to this Order.

3. The rates and conditions of award of—
  - (a) attributable pensions and lump sums to officers, non-commissioned officers, ratings and marines of the Royal Navy and the Royal Marines in respect of service in the Royal Navy and the Royal Marines, and
  - (b) attributable pensions and lump sums to surviving spouses, surviving civil partners, surviving eligible partners and eligible children in respect of the service of deceased officers, non-commissioned officers, ratings and marines of the Royal Navy and the Royal Marines,

shall be as specified in Schedule 2 to this Order.

*Revocation*

4. The Naval and Marine Pay and Pensions (Non-Effective Benefits and Family Pensions) Order 2009(b) is hereby revoked.

*Judith Simpson*

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(a) 1865 c. 73 (28 & 29 Vict)

(b) 18th March 2009.

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*SCHEDULE 1*

THE ARMED FORCES PENSION SCHEME 1975

PART A

**INTERPRETATION ETC.**

**A.1 Interpretation: general**

In this Scheme—

“the 2004 Act” means the Finance Act 2004(a);

“the 1971 Act” means the Pensions (Increases) Act 1971(b);

“the 1993 Act” means the Pension Schemes Act 1993(c);

“the 1995 Act” means the Pensions Act 1995(d);

“the 1996 Act” means the Employment Rights Act 1996(e);

“the 1999 Act” means the Welfare Reform and Pensions Act 1999(f);

“active member” has the meaning given in section 124(1) of the 1995 Act and, except where the context requires otherwise, refers to membership of the Scheme;

“active membership period” is to be read in accordance with rule A.13;

“additional adoption leave” means leave which in the opinion of the Defence Council corresponds to additional adoption leave within the meaning of section 75B of the 1996 Act;

“additional maternity leave” means leave which in the opinion of the Defence Council corresponds to additional maternity leave within the meaning of section 73 of the 1996 Act;

“another commutation scheme” means any scheme prescribed in an order made by the Secretary of State under section 1(1) of the Armed Forces (Pension and Compensation) Act 2004(g);

“armed forces”—

(a) for the purpose of rule A.4(1)(a), has the same meaning as in section 11 of the Armed Forces (Pensions and Compensation) Act 2004; and

(b) for all other purposes of this Scheme means the Royal Navy and Royal Marines;

“the Armed Forces Pension Scheme 2005” (“AFPS 2005”) means the occupational pension scheme established by article 2 of the Armed Forces Pension Scheme Order 2005(h) and set out in Schedule 1 of that Order;

“assumed pay” has the meaning given by rule A.6(1);

“basic pay” has the meaning given by rule A.5;

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- (a) 2004 c. 12.  
(b) 1971 c. 56.  
(c) 1993 c. 48.  
(d) 1995 c. 26.  
(e) 1996 c. 18.  
(f) 1999 c. 30.  
(g) 2004 c. 32.  
(h) S.I 2005/438, as amended by S.I 2006/717, 2007/2608, 2008/229 and 2009/544.

“commitment period”, in relation to a member, means the period for which the person’s terms and conditions of service or commission commit that person to serve;

“deferred member” has the meaning given in section 124(1) of the 1995 Act and, except where the context requires otherwise, refers to membership of the Scheme;

“final pensionable earnings” has the meaning given in rule A.7;

“former provisions of the Scheme” means the rules of the Armed Forces Pension Scheme 1975 set out in previous orders made under the Naval and Marine (Pay and Pensions) Act 1865;

“guaranteed minimum” means the guaranteed minimum as defined in sections 14 and 17 of the 1993 Act (minimum pensions for earners, widows and widowers)—

- (a) as increased in accordance with the requirements of section 109 of that Act (annual increase of minimum pensions); and
- (b) in a case where a reduction has been made under section 15A of that Act (reduction of guaranteed minimum in consequence of pension debit), as reduced in accordance with that section;

“immediate pension point” has the meaning given in rule D.2;

“interest” means the rate of interest approved by the Defence Council for use in relation to this Scheme;

“member”, in relation to the Scheme, means an active member, a deferred member, a pensioner member or a pension credit member;

“occupational pension scheme” has the meaning given in section 1 of the 1993 Act;

“Official Secrets Acts” means the Official Secrets Acts of 1911(a), 1920(b), 1939(c) and 1989(d);

“ordinary adoption leave” means leave which, in the opinion of the Defence Council, corresponds to ordinary adoption leave within the meaning of the section 75A of 1996 Act;

“ordinary maternity leave” means leave which, in the opinion of the Defence Council, corresponds—

- (a) in relation to any period before 22nd August 1996, to leave under section 33 of the Employment Protection (Consolidation) Act 1978(e); and
- (b) in relation to any period after 21st August 1996, to leave under section 71 of the 1996 Act;

“parental leave” means leave which, in the opinion of the Defence Council, corresponds to parental leave within the meaning of regulation 13(1) of the Maternity and Parental Leave etc Regulations 1999(f);

“paternity leave” means leave which, in the opinion of the Defence Council, corresponds to paternity leave within the meaning of regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(g);

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- (a) 1911 c. 28.
  - (b) 1920 c 75.
  - (c) 1939 c. 121.
  - (d) 1989 c. 6.
  - (e) 1978 c. 44.
  - (f) S.I. 1999/3312.
  - (g) S.I. 2002/2788.

“pension benefit age” means—

- (a) if the pension sharing order was made before 6th April 2006, the age of 60;  
and
- (b) otherwise, the age of 65;

“pension code” means the tri-service pension codes that specify the rates of pension and rates of compensation for injury or death which are attributable to service as recommended by the Armed Forces Pay Review Body and approved annually by the Government;

“pension credit” has the meaning given in section 124(1) of the 1995 Act;

“pension credit member”, means a person who has rights under this Scheme which are attributable, directly or indirectly to a pension credit under a pension sharing order following divorce or nullity of marriage;

“pension credit rights” has the meaning given in section 101B of the 1993 Act;

“pension debit member” means a person who is a member of this Scheme whose benefits or future benefits under the Scheme have been reduced under section 31 of the 1999 Act (reduction under pension sharing order following divorce or nullity of marriage), whether before or after the person became a member of this Scheme;

“pension rank” is to be read in accordance with rule A.3;

“pension sharing order” means an order or provision which is mentioned in section 28(1) of the 1999 Act;

“pensionable earnings” has the meaning given in rule A.4;

“pensionable service” means service by virtue of which a person is eligible to be a member of the Scheme;

“pensioner member” has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the Scheme;

“personal pension scheme” means a personal pension scheme, within the meaning of section 1 of the 1993 Act, that is registered under Chapter 2 of Part 4 of the 2004 Act;

“pre-natal leave” means unpaid leave that the member has been permitted to take prior to the birth of a child;

“public sector transfer arrangements” means arrangements recognised by the Defence Council as providing reciprocal arrangements for the payment and receipt of transfer values between the Scheme and other occupational pension schemes;

“qualifying service” is to be read in accordance with rule A.10;

“rank” includes “rate” and in the case of a member of the chaplaincy services (including the Director General of the Naval Chaplaincy Services), and the reference to rank is to be taken as a reference to the member’s grade for pension purposes, and references in this Scheme to “rank” are to be read accordingly;

“reckonable service” is to be read in accordance with rule A.11;

“a reserve forces pension scheme” means any scheme set out in regulations made under the Reserve Forces Act 1996(a);

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(a) 1996 c. 14.

“representative rate of pay” means the representative rate of pay set out in the pension code in force on the last day of service for a person of the member’s rank and seniority, and representative rates of pay shall be construed accordingly;

“the Scheme” means the Armed Forces Pension Scheme 1975, the rules of which are set out in this Schedule;

“the Scheme actuary” means the actuary appointed by or on behalf of the Defence Council for the time being to provide a consulting service on actuarial matters relevant to the Scheme;

“the Scheme administrator” means the person or persons authorised by or on behalf of the Defence Council to be responsible for the day to day administration of the Scheme;

“the Scheme medical adviser” means the medical adviser appointed by or on behalf of the Defence Council for the time being to provide a consulting service on medical matters relevant to the Scheme; and

“special forces cadre” means a permanent cadre of the Special Boat Service or the Surveillance and Reconnaissance Regiment;

“Service Pensions Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(a);

“state pension age” means “pensionable age”, as defined in section 181(1) of the 1993 Act;

“weekly rate”, in relation to a guaranteed minimum pension, has the same meaning as in regulation 55(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996(b).

## **A.2 Determining membership status**

- (1) In determining whether a person who is an active member or a pensioner member of the Scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person’s rights as such are to be disregarded.
- (2) In determining whether a person who is an active member of the Scheme is also a pensioner member of it, the fact that the person is an active member and the person’s rights as such are to be disregarded.
- (3) In determining whether a person is a pensioner member of the Scheme, the fact that the person is not entitled to payment of pension because of Part H (abatement) is to be disregarded.
- (4) References in this Scheme to a person ceasing to be in service includes the case where a person ceases to be in service by reason of having been discharged.

## **A.3 Meaning of “pension rank”**

- (1) Subject to paragraph (2) a member’s pension rank is the rank that the person holds when the member’s reckonable service ceases (“leaving rank”).
- (2) Paragraph (1) is subject to the following exceptions—

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(a) S.I. 2006/606, as amended by S.I. 2006/1455, 2007/909, 2008/679, 2008/2683 and 2009/706.  
(b) S.I. 1996/1172, as amended by S.I. 1997/786 and 2005/2050..

- (a) if an officer who holds a leaving rank of rear admiral or major general or above—
  - (i) is entitled to count at least 2 years reckonable service when service ceases,
  - (ii) does not cease service due to ill-health, and
  - (iii) has not held that rank for at least 1 year at the time when reckonable service ceases,

then the pension rank is the highest substantive rank held for at least 1 year prior to ceasing reckonable service;

- (b) if an officer who holds a rank below the ranks of rear admiral or major general or is a medical or dental officer—
  - (i) is entitled to count at least two years reckonable service when service ceases,
  - (ii) does not cease service due to ill-health, and
  - (iii) has not held the leaving rank for at least 2 years at the time when reckonable service ceases,

then the officer's pension rank is the highest rank held for at least 2 years prior to ceasing reckonable service;

- (c) subject to sub-paragraph (d), in the case of a person whose leaving rank is not that of an officer, if at any time in the last five years' of reckonable service that person has held a paid acting rank higher than the leaving rank—
  - (i) if one such higher paid acting rank was held for at least 2 years or periods amounting in aggregate to at least 2 years, the pension rank is that higher paid acting rank;
  - (ii) if two such higher paid acting ranks were held for at least 2 years each or periods amounting in aggregate to at least 2 years each, the pension rank is the higher of those higher paid acting ranks;
  - (iii) if neither paragraph (i) nor (ii) applies but two or more higher paid acting ranks were held for periods which together total at least 2 years, the pension rank is the lowest of those higher paid acting ranks;
- (d) if in the case of a member who is not an officer when reckonable service ceases and that person is entitled to an ill-health pension under rule D.14 (early payment of benefits: active members' ill-health) and apart from this sub-paragraph that person's pension rank for the purposes of rule D.16(2) would be lower than the paid acting rank held on the last day of reckonable service, the pension rank for those purposes is that paid acting rank;
- (e) in the case of a person—
  - (i) whose reckonable service ceases as a result of a notification given by the Defence Council that they will be treated for the purposes of the Scheme as having become redundant, and
  - (ii) whose pension rank (apart from this sub-paragraph) for the purposes of rules D.4 and D.5(10) would be lower than the paid acting rank held on the last day of reckonable service,

the pension rank for those purposes is that paid acting rank.

#### **A.4 Meaning of “pensionable earnings”**

“Pensionable earnings” means basic pay plus any other amount if and to the extent that the Defence Council has determined that it is to be treated as pensionable earnings.

#### **A.5 Meaning of “basic pay”**

In relation to a person serving in the Royal Navy or Royal Marines “basic pay” means—

- (a) pay for the member’s rank and seniority; and
- (b) any other amount if and to the extent that the Defence Council has determined that it is to be treated as basic pay; but
- (c) subject to sub-paragraph (b) does not include—
  - (i) any allowances;
  - (ii) any additional amounts payable in respect of particular qualifications or duties, the location of service or the conditions in which service is temporarily performed;
  - (iii) without prejudice to paragraphs (i) and (ii), any additional amounts payable to medical or dental officers; or
  - (iv) any description of payment that the Defence Council has determined is not to be treated as basic pay.

#### **A.6 Meaning of “assumed pay”**

- (1) In the circumstances specified in paragraph (3) a member is treated as receiving or as having received amounts equal to the pensionable earnings that the member would have received if those circumstances had not applied, with such increase, if any, as the Defence Council considers appropriate.
- (2) In this Scheme the amounts a member is treated as receiving or as having received under this paragraph are referred to as “assumed pay”.
- (3) The circumstances are that the member is an active member who—
  - (a) is on secondment to a different employer under an arrangement providing for the member to continue to be an active member of the Scheme in respect of such service;
  - (b) is receiving statutory maternity pay;
  - (c) is receiving statutory adoption pay;
  - (d) is on ordinary maternity leave;
  - (e) is on paternity leave;
  - (f) is on ordinary adoption leave; or
  - (g) is on unpaid leave for a period which the Defence Council has agreed can count as reckonable service.



#### **A.7 Meaning of “final pensionable earnings”**

- (1) In this Scheme “final pensionable earnings”, in relation to a member, means the greatest amount that is the member’s total pensionable earnings for 365 consecutive days falling within the period of 3 years ending with the last day of his reckonable service, that does not exceed the permitted maximum as described in rule A.8(2).
- (2) If the person was not in service as a member of the armed forces during any period of 365 consecutive days falling within the period of 3 years mentioned in paragraph (1), that paragraph applies as if it referred to the person’s annualised pensionable earnings in the period of service ending with the last day of reckonable service.
- (3) The person’s annualised pensionable earnings in a period of service is the amount given by the formula—

$$\frac{PE \times 365}{N}$$

where—

PE is the person’s pensionable earnings for the period; and

N is the number of days in the period for which pensionable earnings were received.

- (4) If at any time during the period of 3 years mentioned in paragraph (1) or the period mentioned in paragraph (2) the member is treated under rule A.6(1) as receiving assumed pay, or would be if the person were a member of the Scheme throughout that period, for the purposes of that paragraph pensionable earnings for each day during that period when the member is so treated include the assumed pay for that day.

#### **A.8 Restrictions on final pensionable earnings**

- (1) If the calculation under rule A.7 produces an amount exceeding the permitted maximum, the excess is disregarded.
- (2) In this rule “permitted maximum” means—
  - (a) in relation to any tax year before the tax year 2006-07, the figure specified for that tax year in an order made under section 590C of the Income and Corporation Taxes Act 1988(a);
  - (b) in relation to the tax year 2006-07, £108,600;
  - (c) in relation to the tax year 2007-08, £112,800; or
  - (d) in relation to any later tax year, the figure found for that year under paragraphs (3) and (4).
- (3) Subject to paragraphs (4) and (5), the figure referred to in paragraph (2)(d) is £112,800.
- (4) If the retail prices index for the month of September preceding the tax year 2008-09 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—
  - (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index; and

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(a) 1998 c.1.

- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.
- (5) If the retail prices index for the month of September preceding the tax year 2008-09 or any later tax year is not higher than it was for the previous September, the figure for that year shall be the same as for the previous tax year.

#### **A.9 Inflation adjustments in determining final pensionable earnings**

- (1) For the purpose of determining which is the greater amount mentioned in rule A.7(1), the amount of pensionable earnings, as determined in accordance with rule A.4, for that part of the period of 365 days that falls 365 days or more before the last day of service is adjusted for inflation.
- (2) Any adjustment made for the purpose of determining final pensionable earnings shall be disregarded for all other purposes of the Scheme.
- (3) The reference in paragraph (1) to adjusting for inflation the amount of pensionable earnings for part of a period is a reference to increasing it by the same amount as that by which an annual pension of an amount equal to those earnings would have been increased under the 1971 Act on the day following the last day of reckonable service if the pension—
  - (a) were eligible to be so increased; and
  - (b) had come into payment on the day following the last day of that period.

#### **A.10 Qualifying service**

- (1) In this Scheme references to a member's qualifying service are references to the aggregate of the following periods—
  - (a) the period during which the member is in service in respect of which the member—
    - (i) receives earnings that are pensionable earnings for the purposes of the Scheme; or
    - (ii) is treated under rule A.6 as receiving assumed pay;
  - (b) any period for which the member is in service to which rule C.4 applies (secondment to NATO or the UN etc.);
  - (c) in the case of a member who exercises an option under rule G.3 for an earlier period of service to be aggregated, the total qualifying service the member is entitled to count as a result;
  - (d) in the case of a member who—
    - (i) before becoming an active member, was engaged to serve on terms that excluded eligibility to belong to the Scheme, but gave an entitlement to a gratuity on the cessation of that service, and
    - (ii) has surrendered the right to the gratuity in respect of that service or, if the gratuity was paid, has repaid the full amount of the gratuity, together with the appropriate interest, if the service break period exceeds one month,
 the service in respect of which the gratuity was surrendered or paid;

- (e) in the case of a member who entered service by virtue of which the member was eligible to belong to the Scheme before 1st September 1985, any period of service in the former armed forces of India or Burma or in the Commonwealth or colonial military forces that the member was allowed before that date to count as qualifying service under the Scheme;
  - (f) in the case of a person in respect of whom a transfer value in respect of rights under another occupational pension scheme has been accepted under Part F (transfers) any period during which the person was an active member in any scheme in respect of which those rights accrued counts as qualifying service for the purposes of rules D.6 and D.14 (entitlement to early pensions).
- (2) Any period during which the member is absent without leave from service shall be disregarded for the purposes of paragraph (1).
  - (3) The reference in sub-paragraph (1)(c) and rule A.11(1)(e) to a member who exercises an option under rule G.3 for an earlier period of service to be aggregated includes a reference to a member who exercised an option under the corresponding former provisions for that purpose.
  - (4) Where a member ceases service as a result of a notification by the Defence Council that the person will be treated for the purposes of the Scheme as having been called upon to retire before the end of their commitment period because of over-manning, or for reasons of redundancy, any period falling within paragraph (1)(f) is disregarded.

#### **A.11 Reckonable service**

- (1) In this Scheme references to a member's reckonable service or the period of reckonable service that a member can count are, subject to paragraphs (4) and (5) and Part G (further service), references to the aggregate of the following periods—
  - (a) the period during which the member is in service in respect of which the member—
    - (i) receives earnings that are pensionable earnings for the purposes of the Scheme; or
    - (ii) is treated under rule A.6 as receiving assumed pay;
  - (b) any additional period the member is entitled to count as reckonable service under rule C.2 (effect of making contributions);
  - (c) any additional period the member is entitled to count under rule C.4 (purchase of added years for members seconded to NATO or the UN etc.);
  - (d) in the case of a member in respect of whom a transfer value in respect of rights under another pension arrangement has been accepted under Part F (transfers), the reckonable service the member is entitled to count as a result of the transfer;
  - (e) in the case of a member who exercises an option under rule G.3 for an earlier period of service to be aggregated, the reckonable service the member is entitled to count as a result;
  - (f) in the case of member who—
    - (i) before becoming an active member, was engaged to serve on terms

that excluded eligibility to belong to the Scheme, but gave an entitlement to a gratuity on the cessation of that service, and

- (ii) has surrendered the right to the gratuity in respect of that service or, if the gratuity was paid, has repaid the full amount of the gratuity to the Defence Council, together with the appropriate interest if the service break period exceeds one month,

the service in respect of which the gratuity was surrendered or paid; and

- (g) in the case of a member who entered service by virtue of which the member was eligible to belong to the Scheme before 1st September 1985, any period of service in the former armed forces of India or Burma or in the Commonwealth or colonial military forces that the member was allowed before that date to count as qualifying service under the Scheme.
- (2) Any period during which the member is absent without leave from service shall be disregarded for the purposes of paragraph (1).
  - (3) In paragraph (1)(f)(ii)—  
“service break period” means the period—
    - (a) beginning with the day following the last day of the service in respect of which the gratuity was paid; and
    - (b) ending with the day before the service in respect of which the person is an active member of the Scheme.
  - (4) For the purposes of calculating the amount of any pension or pensions payable to or in respect of a member under the Scheme, the reckonable service of a member—
    - (a) whose pension rank is that of an officer may not exceed 34 years; or
    - (b) whose pension rank is not that of an officer may not exceed 37 years.
  - (5) If on the cessation of a person’s service—
    - (a) the person does not have at least two years’ qualifying service,
    - (b) the person is not entitled to short service benefit by virtue of section 71 of the 1993 Act (basic principles as to short service benefit) because of a transfer value payment having been accepted, and
    - (c) a contributions equivalent premium is paid in respect of the cessation of the person’s service,the person ceases to be entitled to count any period of reckonable service.

#### **A.12 Calculation of periods of membership or service etc.**

- (1) For the purposes of the Scheme, subject to paragraph (2), periods of membership and service are to be expressed in the first instance in complete years and days, and the initial aggregation of periods that require to be aggregated is done in the first instance by reference to periods so expressed.
- (2) Where membership or service is referred to as membership or service in years, the days referred to in paragraph (1) are converted into years by dividing the number of days in excess of the period of whole years by 365, and using the result to four decimal places.

- (3) If a period of membership or service is less than one year, this rule applies as if the words “complete years and” were omitted from paragraph (1) and the words “in excess of the period of whole years” were omitted from paragraph (2).
- (4) In this Scheme, in provisions relating to the calculation of any amount, references to reckonable service in years are to the number of the years in question.

#### **A.13 Active membership period**

In this Scheme, references to a person’s active membership period, in relation to the Scheme or to another occupational pension scheme, are to—

- (a) the period during which the person has been an active member of the Scheme, or as the case may be, that other scheme; or
- (b) in the case of a person whose active membership has not been continuous, the aggregate period during which the person has been such a member.

#### **A.14 Disregard of short breaks in service or membership**

- (1) If an active member—
  - (a) ceases to serve in a capacity that qualifies that person to belong to the Scheme,
  - (b) after a short break rejoined the armed forces in such a capacity, and
  - (c) rejoined before 6th April 2005,
 any qualifying service and any reckonable service for the earlier period of active membership and for the later period are treated as a single period of qualifying service and a single period of reckonable service for all purposes.
- (2) If an active member—
  - (a) opted to cease to be such a member whilst continuing to be in pensionable service,
  - (b) opted to rejoin the scheme after a short break, and
  - (c) became such a member again before 6th April 2005,
 any qualifying service and any reckonable service for the earlier period of active membership and for the later period are treated as a single period of qualifying service and a single period of reckonable service respectively for all purposes.
- (3) Paragraphs (1) and (2) do not apply if before the time when the condition in paragraph (1)(b) or, as the case may be, paragraph (2)(b) is met, a pension has come into payment for the earlier period of service.
- (4) A member who is aged 55 or over and who gives service beyond the normal retirement age for the member’s rank and type of commission or engagement may opt to have the period of service given beyond the normal retirement age treated as a separate period for the purposes of assessing qualifying and reckonable service from the period of service given immediately before.
- (5) Where a member has exercised the option under paragraph (4), rule G.7 applies.

- (6) For the purposes of this Scheme—
  - (a) a short break is a break not exceeding one month; and
  - (b) in calculating the duration of a short break, any period during which the person was a member of the Royal Naval Reserve, the Royal Marines Reserve and the Royal Fleet Reserve normally undertaking or liable for periodic training shall be disregarded.

## PART B ELIGIBILITY

### **B.1 Eligibility – general**

- (1) A person is eligible to be an active member of the Scheme if the conditions A to C are met and the person is not prevented by paragraph (6) or rule B.2 (persons with other pension arrangements).
- (2) Condition A is that the person is in service as a member of the armed forces.
- (3) Condition B is that the person—
  - (a) gave service as a member of the armed forces before 6th April 2005 and has been in such service without a break in service; and
  - (b) where such service was given before 1st April 1975, that before that date the person—
    - (i) was offered and accepted a pensionable commission which involved a commitment to complete at least 16 years' service after age 21; or
    - (ii) was offered and accepted pensionable terms of service otherwise than as an officer which involved a commitment to complete at least 22 years' service after age 18.
- (4) Condition C is that the person is not in excluded service.
- (5) For the purpose of Condition C, a person is in excluded service if—
  - (a) that person is in service in a post—
    - (i) the duties of which are performed in a place outside the United Kingdom;
    - (ii) the post is designated as a post for locally employed persons;
    - (iii) the person was engaged outside the UK; or
  - (b) the terms on which the person was engaged to serve exclude that person from belonging to the Scheme.
- (6) Where a member gives further service on or after 6th April 2005 after a break in service of more than one month, the member is not eligible to be a member of the Scheme in respect of that further service.

### **B.2 Persons with other pension arrangements**

- (1) A person is not eligible to be an active member of the Scheme in respect of service if—
  - (a) that person is an active member of the AFPS 2005, or

- (b) any other occupational pension scheme,  
in respect of that service.
- (2) For the purpose of paragraph (1)(b), a person is only taken to be an active member of another occupational pension scheme in respect of service if the person who is the employer in relation to that scheme is making contributions to it in respect of that service.

### **B.3 Date of joining the Scheme**

A person who is eligible to be an active member of the Scheme in respect of service is treated as having become such a member on the day such service began.

### **B.4 Opting to cease to be an active member of the Scheme**

- (1) An active member of the Scheme may opt to cease to be such a member.
- (2) The option may only be exercised by notice in writing to the Scheme administrator in such form as the Scheme administrator requires.
- (3) A member who exercises the option ceases to be an active member—
  - (a) at the end of the calendar month in which the option is exercised; or
  - (b) on such later date as the Defence Council considers appropriate.
- (4) For the purposes of this rule, an option is treated as having been exercised on the date on which it was received by the Scheme administrator.

### **B.5 Option to join the Scheme exercised before 6th April 2005**

- (1) A person who was eligible to be a member of the Scheme who—
  - (a) opted out of the Scheme, and
  - (b) exercised an option before 6th April 2005 in accordance with the former provisions of the Scheme to rejoin the Scheme,is treated as having become an active member on the first day of the first calendar month beginning at least 30 days after the date on which the option was exercised, or such shorter period as the Defence Council considers appropriate.
- (2) For the purposes of this rule, an option is treated as having been exercised on the date on which it was received by or on behalf of the Scheme administrator.

## **PART C**

### **ADDITIONAL VOLUNTARY CONTRIBUTIONS**

#### **C.1 Member's option to increase reckonable service by way of periodic contributions**

- (1) An active member who satisfies the conditions in paragraph (2) may opt to increase the period of reckonable service by an additional period (expressed in years and days) by making periodic contributions to the Scheme.

- (2) The conditions referred to in paragraph (1) are that—
  - (a) the member must be aged 46 or under;
  - (b) the member has not been given notice of termination of service by virtue of which the member is eligible to be an active member of the Scheme;
  - (c) there is no reason to believe that the member's health may prevent the member from continuing in service until the end of the current commission or engagement; and
  - (d) the member has signed a declaration confirming the member's belief that the condition in paragraph (c) is satisfied.
- (3) If a member exercises the option in paragraph (1)—
  - (a) contributions are payable by deductions from pensionable earnings during the option period; and
  - (b) the contributions payable are calculated by multiplying the member's current pensionable earnings by the appropriate percentage.
- (4) A member may exercise the option in paragraph (1) more than once.
- (5) An option exercised under paragraph (1) may not be cancelled, except where the Defence Council decides that exceptional circumstances exist outside the member's control.
- (6) Where a member is permitted to cancel the option contributions cease to be payable from the date of the Defence Council's decision, but no refund of contributions made in respect of the period before that decision shall be made.
- (7) The option may only be exercised by notice in writing to the Scheme administrator in such form as they require.
- (8) In this rule—

“appropriate percentage” means the percentage indicated in the table issued by the Defence Council after consultation with the Scheme actuary for a person of the member's age next birthday and rank for the additional period the member opted to purchase;

“option period” means the period from the date of the member's next birthday until the member reaches age 55; and

“pensionable earnings” includes the actual earnings received by the member, if any, during any period of ordinary maternity leave, ordinary adoption leave, paternity leave, parental leave, pre-natal leave, additional maternity leave or additional adoption leave taken during the option period.

## **C.2 Effect of making contributions under rule C.1**

- (1) Where a member has exercised an option under rule C.1 reckonable service for the purpose of calculating benefits payable to and in respect of the member under the Scheme is increased as follows—
  - (a) subject to sub-paragraph (b), if the member ceases pensionable service or dies in service on or after reaching 55, by the whole of the additional period the member opted to purchase;
  - (b) if the member ceases pensionable service or dies in service on or after reaching 55 having taken unpaid leave during the option period, by an



- additional period calculated in accordance with paragraph (2)(a);
- (c) if the member dies or ceases service due to ill-health before reaching 55 having qualified for an immediate pension—
    - (i) where the option was received before 29th November 1985, by an additional period calculated in accordance with paragraph (2)(a);
    - (ii) where the option was received on or after 29th November 1985, subject to paragraph (iii), by the whole of the additional period the member opted to purchase;
    - (iii) where unpaid leave was taken during the option period, by an additional period calculated in accordance with paragraph (2)(a);
  - (d) if the member ceases pensionable service before reaching 55 having qualified for an immediate pension but does not fall within sub-paragraph (c), by an additional period calculated in accordance with paragraph (2)(b);
  - (e) if the member ceases pensionable service having qualified for a preserved pension, by an additional period calculated in accordance with paragraph (2)(a).
- (2) The additional period is calculated by—
- (a) dividing the number of days over which contributions have been made by the number of days in the option period, then multiplying this figure by the additional period the member opted to purchase, for the purpose of paragraphs (1)(b), (1)(c)(i), (1)(c)(iii) and (1)(e); or
  - (b) dividing the number of days over which contributions have actually been made by the number of days in the option period, multiplying this figure by the additional period the member opted to purchase, and then reducing the result using the appropriate factor from the table issued by the Defence Council after consultation with the Scheme actuary to take account of the value of the payment of benefits before age 55, for the purpose of sub-paragraph (1)(d).
- (3) For the purpose of this rule any period of unpaid leave that is ordinary maternity leave, ordinary adoption leave, paternity leave, parental leave, pre-natal leave, additional maternity leave or additional adoption leave taken during the option period shall be disregarded.

### **C.3 Member's option to increase reckonable service by way of lump sum payment and effect of making payment**

- (1) An active member who satisfies the conditions in paragraph (2) may opt to increase his reckonable service by an additional period (expressed in years and days) by making a lump sum payment to the Scheme.
- (2) The conditions referred to in paragraph (1) are that—
  - (a) the member must be aged 46 or under;
  - (b) the member has not been given notice of termination of service by virtue of which the member is eligible to be an active member of the Scheme;
  - (c) there is no reason to believe that the member's health may prevent the member from continuing in service until the end of the current commission or engagement; and

- (d) the member has signed a declaration confirming the member's belief that the condition in sub-paragraph (c) is satisfied.
- (3) If a member exercises the option in paragraph (1), the amount of the lump sum payment is as indicated in tables issued by the Defence Council, after consultation with the Scheme actuary, for a person of the member's age and rank, for the additional period of reckonable service the member opted to purchase.
- (4) Where a member has exercised the option in paragraph (1) and paid the lump sum, reckonable service, for the purpose of calculating benefits payable to and in respect of the member under the Scheme, is increased by the additional period the member opted to purchase.
- (5) A member may only exercise the option in paragraph (1) within 12 months of becoming an active member of the Scheme.
- (6) A member may exercise the option in paragraph (1) more than once.
- (7) The option may only be exercised by notice in writing to the Scheme administrator in such form as they require.

**C.4 Member's option to increase reckonable service by way of lump sum payment for members seconded to NATO or the UN etc and effect of making payment**

- (1) This rule applies if an active member is seconded to the United Nations or the North Atlantic Treaty Organisation, or under arrangements with any other organisation or person under which members may be seconded into other military service.
- (2) If at the end of such period of secondment the member resumes pensionable service and is entitled to be an active member of the Scheme, the member may opt to make a single lump sum payment to increase reckonable service by an additional period equal to the length of the secondment.
- (3) The amount of the lump sum is the aggregate of—
  - (a) any contributions returned by the pension scheme to which the member was required to belong in respect of the seconded service; and
  - (b) any lump sum paid to the member on leaving the organisation or person to whom the member was seconded by that pension scheme.
- (4) Where the member has exercised the option in paragraph (2) and paid the lump sum, reckonable service, for the purpose of calculating benefits payable to and in respect of the member under the Scheme, is increased by the additional period the member opted to purchase.
- (5) Where the amount of the lump sum in paragraph (3) is less than the Scheme actuary determines to be the amount required to increase reckonable service by the period of the secondment, the Royal Navy or Royal Marines, as the case may be, shall make a contribution to the Scheme equal to the difference.
- (6) A member may only exercise the option in paragraph (2) at the time the member resumes service after the period of secondment.
- (7) The option in paragraph (2) may only be exercised by notice in writing to the Scheme administrator in such form as they require.

### **C.5 Member's option to purchase enhanced Scheme benefits**

- (1) An active member who meets the conditions in paragraph (2) may opt to make periodic contributions to the Scheme to secure that—
  - (a) benefits payable to the member under the Scheme, and
  - (b) benefits payable in respect of the member under the Scheme,are calculated by reference to the member's pensionable earnings.
- (2) The conditions are that—
  - (a) the member's pensionable earnings exceed the representative rate of pay for a person of the member's rank;
  - (b) the member has not been given notice of termination of service by virtue of which the member is eligible to be an active member of the Scheme;
  - (c) there is no reason to believe that the member's health may prevent the member from continuing in service until the end of the current commission or engagement; and
  - (d) the member has signed a declaration confirming the member's belief that the condition in sub-paragraph (c) is satisfied.
- (3) If a member exercises the option in paragraph (1)—
  - (a) contributions are payable by deductions from pensionable earnings during pensionable service;
  - (b) the contributions payable are calculated by multiplying the member's current pensionable earnings by the appropriate percentage; and
  - (c) contributions are payable from the date on which the option was received by the Scheme administrator until the member ceases to be an active member of the Scheme.
- (4) If an option has been exercised, it may not be cancelled, except where the Defence Council decides that exceptional circumstances exist which are outside the member's control.
- (5) Where a member is permitted to cancel the option contributions cease to be payable from the date of the Defence Council's decision, but no refund of contributions made in respect of the period before that decision shall be made.
- (6) The option in paragraph (1) may only be exercised by notice in writing to the Scheme administrator in such form as they require.
- (7) In this rule and rule C.6—

“appropriate percentage” means the percentage indicated in the table issued by the Defence Council after consultation with the Scheme actuary for a person of the member's age next birthday and rank; and

“representative rate of pay” means the representative rate of pay set out in the pension code in force on the last day of service for a person of the member's rank and seniority, and representative rates of pay shall be construed accordingly.

### **C.6 Effect of making contributions under rule C.5**

- (1) This rule applies where a member has exercised an option under rule C.5 and

the member's pensionable earnings exceeds the member's representative rate of pay at the date of leaving.

- (2) Where a member dies in service, ceases service due to ill-health or ceases pensionable service on or after reaching age 55, benefits payable to and in respect of the member are increased as follows—
  - (a) the proportion that the member's basic pay exceeds the member's representative pay is calculated;
  - (b) that proportion is then reduced to take account of any periods of unpaid leave taken by the member during active membership of the Scheme, not being periods of ordinary maternity leave, additional maternity leave, ordinary adoption leave, additional adoption leave, paternity leave, parental leave or pre-natal leave.
- (3) Where a member ceases pensionable service before reaching age 55 with a deferred pension, benefits payable to and in respect of the member are increased as follows—
  - (a) the proportion that the member's pensionable earnings exceeds the member's representative rate of pay is calculated;
  - (b) that proportion is then reduced to take account of—
    - (i) the fact that the member will not make contributions to age 55; and
    - (ii) any periods of unpaid leave taken by the member since the option in rule C.5 was exercised, not being periods of ordinary maternity leave, additional maternity leave, ordinary adoption leave, additional adoption leave, paternity leave, parental leave or pre-natal leave.
- (4) Where a member ceases pensionable service with an immediate pension before reaching age 55, benefits payable to and in respect of the member are increased as follows—
  - (a) the proportion that the member's pensionable earnings exceeds the member's representative rate of pay is calculated;
  - (b) that proportion is then reduced to take account of—
    - (i) the value of the payment of benefit before age 55;
    - (ii) the fact that the member will not make contributions to age 55; and
    - (iii) any periods of unpaid leave taken by the member during active membership of the Scheme, not being periods of ordinary maternity leave, additional maternity leave, ordinary adoption leave, additional adoption leave, paternity leave, parental leave or pre-natal leave.
- (5) Where a member ceases pensionable service before qualifying for a preserved pension, if that member has not requested a transfer of pension rights under Part F, the contributions that have been made are refunded with interest.

#### **C.7 Member's option to pay contributions to increase surviving adult's pensions**

- (1) An active member who meets the conditions in paragraph (2) may opt to make periodical contributions to the Scheme to increase any pension payable to a surviving spouse or surviving civil partner in respect of the member under Part E (death benefits).

- (2) The conditions are that—
  - (a) the member has not been given notice of termination of service by virtue of which the member is eligible to be an active member of the Scheme;
  - (b) there is no reason to believe that the member's health may prevent the member from continuing in service until the end of the current commitment or engagement; and
  - (c) the member has signed a declaration confirming the member's belief that the condition in sub-paragraph (b) is satisfied.
- (3) If a member exercises the option in paragraph (1)—
  - (a) contributions are payable by deductions from pensionable earnings during pensionable service;
  - (b) the contributions payable are calculated by multiplying the member's current pensionable earnings by the appropriate percentage; and
  - (c) contributions are payable from the date on which the option was received by the Scheme administrator until the member ceases to be an active member of the Scheme.
- (4) Once an option in paragraph (1) has been exercised, it cannot be cancelled, except where the Defence Council decides that exceptional circumstances exist which are outside the member's control.
- (5) Where a member is permitted to cancel the option, contributions cease to be payable from the date of the Defence Council's decision, but no refund of contributions made in respect of the period before that decision shall be made.
- (6) The option in paragraph (1) may only be exercised by notice in writing to the Scheme administrator in such form as they require.
- (7) For the purposes of this rule, "appropriate percentage" means the percentage indicated in the table issued by the Defence Council after consultation with the Scheme actuary for a person of the member's age and rank.

#### **C.8 Effect of making contributions under rule C.7**

- (1) This rule applies where a member exercises an option under rule C.7.
- (2) Where a member—
  - (a) dies after ceasing to be in pensionable service on or after reaching age 55,
  - (b) dies in service, or
  - (c) ceases service due to ill-health,
 the pension payable under Part E to a surviving spouse or civil partner is increased by an amount calculated in accordance with paragraph (3).
- (3) The amount is equal to the difference between the amount of pension payable under rule E.1 and four ninths of the member's representative rate of pay at the date of death or ceasing service, as the case may be, and this is then reduced, where applicable, to take account of any periods of unpaid leave taken after the option was exercised, not being periods of ordinary maternity leave, additional maternity leave, ordinary adoption leave, additional adoption leave, paternity leave, parental leave or pre-natal leave, that unpaid leave was taken by the member.

- (4) Where a member ceases service before reaching age 55 with an immediate pension and paragraph (2) does not apply, the pension payable to a surviving spouse or civil partner is increased by an amount calculated in accordance with paragraph (5).
- (5) The amount is equal to the difference between the amount of pension payable under rule E.1 and four ninths of the member's representative rate of pay at the date of death or ceasing service, as the case may be, and this is then reduced to take account of the fact that the member will not make contributions to age 55 and, where applicable, of any periods of unpaid leave taken after the option was exercised, not being periods of ordinary maternity leave, additional maternity leave, ordinary adoption leave, additional adoption leave, paternity leave, parental leave or pre-natal leave.
- (6) Where a member ceases service with a preserved pension, the pension payable under rule E.1 to a surviving spouse or civil partner on the death of that member is increased by an amount calculated in accordance with paragraph (7).
- (7) The amount is equal to the difference between the amount of pension payable under rule E.1 and four ninths of the member's representative rate of pay at the date of ceasing service and this is then reduced to take account of the fact that the member did not make contributions to age 55 and, where applicable, of any periods of unpaid leave taken after the option was exercised, not being periods of ordinary maternity leave, additional maternity leave, ordinary adoption leave, additional adoption leave, paternity leave, parental leave or pre-natal leave.
- (8) Where a member dies without leaving a surviving spouse or civil partner, no refund of contributions will be made.

### **C.9 Purchase of enhanced death in service lump sum**

- (1) An active member who meets the conditions set out in paragraph (2) may opt to make periodical contributions to the Scheme to increase the lump sum payable to a surviving spouse or surviving civil partner in respect of the member under Part E if the member dies in service in circumstances that are not attributable to that service.
- (2) The conditions are that—
  - (a) the member has not been given notice of termination of service by virtue of which the member is eligible to be an active member of the Scheme;
  - (b) there is no reason to believe that the member's health may prevent continuing in service until the completion of the commission or engagement (and the member has signed a declaration stating the same); and
  - (c) the member has signed a declaration confirming the member's belief that the condition in sub-paragraph (b) is satisfied.
- (3) If a member exercises the option in paragraph (1)—
  - (a) contributions are payable by deductions from pensionable earnings during pensionable service;
  - (b) the contributions payable are calculated by multiplying the member's current pensionable earnings by the appropriate percentage;

- (c) contributions are payable from the date on which the option was received by the Scheme administrator until the member ceases to be an active member of the Scheme.
- (4) The option may only be exercised by notice in writing to the Scheme administrator in such form as they require.
- (5) Where a member exercises an option under this rule, it may not be cancelled, except where the Defence Council decides that exceptional circumstances exist which are outside the member's control.
- (6) Where a member is permitted to cancel the option, contributions cease to be payable from the date of the Defence Council's decision, but no refund of contributions made in respect of the period before that decision shall be made.

#### **C.10 Effect of making contributions under rule C.9**

- (1) This rule applies where a member opted to make contributions under rule C.9.
- (2) Where an active member dies in service, the aggregate of the lump sums that would have been awarded under part E (death benefits) is increased by the enhanced amount, subject to paragraph (3).
- (3) Where there has been a period of unpaid absence, not being ordinary maternity leave, additional maternity leave, ordinary adoption leave, additional adoption leave, paternity leave, parental leave or pre-natal leave, the enhanced amount shall be reduced using the appropriate factor from the table issued by the Defence Council after consultation with the Scheme actuary, to take account of the fact that contributions were not paid over that period.
- (4) In this rule, the 'enhanced amount' means the difference between the aggregate of the lump sums that would have been awarded under Part E but for this rule and rule C.9, and the better of four times the representative rate of pay for someone of the member's rank at the date of death and four times the members pensionable earnings at the date of death.

#### **C.11 Maximum amount of contributions under this Part**

Where the member became an active member on or after 1st June 1989, total annual contributions under C.1, C.3, C.5, C.7 and C.9 together with any other direct superannuation contribution shall not exceed 15% of—

- (a) the member's pensionable earnings for the time being, or
  - (b) the permitted maximum specified in rule A.8,
- whichever is the lower.

#### **C.12 Restriction on pension debit member making contributions**

A pension debit member may not exercise the option under rule C.1 or C.3 to make contributions to the Scheme so as to replace any rights debited as a consequence of a pension sharing order having been made in respect of the member's shareable rights.

**PART D**  
**RETIREMENT BENEFITS**

*Entitlement to benefits: leaving on or after immediate pension point*

**D.1 Leaving service on or after reaching the immediate pension point**

- (1) A member is entitled to a pension for life and a lump sum if the member ceases to be in pensionable service at or after reaching the immediate pension point.
- (2) The pension and the lump sum become payable immediately on the member ceasing to be in service.
- (3) The amount of the annual pension payable under this rule is calculated in accordance with—
  - (a) rule D.3 where the member's pension rank is that of rear admiral or major general or above;
  - (b) rule D.4 where the member's pension rank is below that of rear admiral or major general; or
  - (c) rule D.5 where the member's pension rank is not that of an officer.
- (4) The amount of the lump sum payable under this rule is calculated by multiplying by 3 the amount of the annual pension so payable at the time when the member ceases to be in service.
- (5) This rule does not apply to pensions derived from pension credit rights.

**D.2 Immediate pension point**

- (1) Subject to paragraphs (2) and (5)(a) where a member whose pension rank is that of an officer, the immediate pension point is the point at which the member has 16 years' qualifying service that were served from the age of 21.
- (2) Subject to paragraph (5)(a), in the case of a member whose pension rank is that of an officer who has served otherwise than as an officer, the immediate pension point is the point at which the member—
  - (a) has at least 16 years' qualifying service—
    - (i) that were served from the age of 21; and
    - (ii) at least 5 years of which were served as an officer; or
  - (b) has at least 22 years' qualifying service that were served from the age of 18.
- (3) Subject to paragraph (5)(b) where a member whose pension rank is not that of an officer, the immediate pension point is the point at which the member has at least 22 years' qualifying service that were served from the age of 18.
- (4) A member whose pension rank is not that of an officer who ceases to be in service before reaching the immediate pension point is treated for the purpose of paragraph (3) as ceasing to be in service at the immediate pension point if—
  - (a) the member on ceasing to be in service has a least 21 years' and 274 days' qualifying service from the age of 18; and



- (b) the Scheme administrator is satisfied that the member intends immediately on ceasing to be in service to—
  - (i) enter civilian employment and that employment must start before the member reaches the immediate pension point (apart from this rule); or
  - (ii) begin full-time education or a training course at an educational establishment which starts before the member reaches the immediate pension point (apart from this rule).
- (5) In the case of a member who ceases to be in service as a result of a notification by the Defence Council that the person will be treated for the purposes of the Scheme as having been called upon to retire before the end of their commitment period because of over-manning, or for reasons of redundancy, the immediate pension point is the point at which—
  - (a) a member whose pension rank is that of an officer has—
    - (i) 16 years' qualifying service that were served from the age of 21; or
    - (ii) 18 years' qualifying service that were served from the age of 18;
  - (b) a member whose pension rank is not that of an officer has 18 years' qualifying service that were served from the age of 18.

**D.3 Amount of pension under rule D.1: officers of or above the rank of rear admiral or major general**

- (1) The amount of the annual pension payable under rule D.1 to—
  - (a) a member whose pension rank is that of an officer of or above the rank of rear admiral or major general, except an officer who is a medical or dental officer, and
  - (b) the Director General of the Naval Chaplaincy Services,
 is calculated in accordance with this rule.
- (2) Except where the member opted before 31st December 1998 to have the pension and lump sum calculated by reference to rule D.4, the amount is equal to the sum of—
  - (a) the percentage of the officer's final pensionable earnings specified in the pension code in force on the last day of service for a person of the member's pension rank and number of whole years' reckonable service; and
  - (b) the appropriate fraction of the applicable increase.
- (3) In paragraph (2)—
  - “applicable increase” means the amount that is the difference between—
    - (a) the amount given by paragraph (2)(a); and
    - (b) the amount that would be given by it if the member had one more whole year of reckonable service;

“appropriate fraction” means the fraction given by the following formula—

$$RS/Y$$

where—

“RS” is the number of days of reckonable service in excess of the number of whole years’ reckonable service that the member has; and

“Y” is 366 if the final year of service included February 29th, or 365 if not.

**D.4 Amount of pension under rule D.1: officers below the rank of rear admiral or major general and all medical and dental officers**

- (1) The amount of the annual pension payable under rule D.1 to—
  - (a) a member whose pension rank is that of an officer below the rank of rear admiral or major general, other than the Director General of the Naval Chaplaincy Services, and
  - (b) a medical or dental officer of any rank,  
is calculated in accordance with this rule.
- (2) The calculation of the amount of the annual pension depends on—
  - (a) the member’s pension rank;
  - (b) whether the member was in a special forces cadre;
  - (c) whether the member served otherwise than as an officer;
  - (d) whether the member is entitled to a rank addition (see rule D.9);
  - (e) whether the member is entitled to a professional supplement (see rule D.11);
  - (f) whether the member is entitled to a commissioned service addition (see rule D.12);
  - (g) the number of reckonable years’ service that the member has on ceasing to be in service; and
  - (h) the circumstances in which the member ceases to be in service.
- (3) In the case of a member who ceases to be in service—
  - (a) at the end of the member’s commitment,
  - (b) on or after the retirement age specified in the member’s commitment (or latest commitment if there are more than one),
  - (c) on or after the normal retirement age for service in the member’s rank and branch,
  - (d) as a result of a notification by the Defence Council that the member will be treated for the purposes of the Scheme—
    - (i) as having been called upon to retire before the end of the member’s commitment period because of over-manning, or
    - (ii) for reasons of redundancy,
  - (e) due to incapacity, unsuitability or inefficiency not within the member’s control and the member has at least 16 years’ reckonable service,subject to paragraph (4), the amount is the amount specified for a person of

the member's pension rank and number of whole years' reckonable service the member has in the table setting out rates for compulsory retirement in the pension code in force on the last day of pensionable service and the appropriate fraction of the applicable increase together with any applicable rank addition and professional supplement.

- (4) Subject to paragraph (7), in the case of a member who served in a permanent cadre of the special forces to whom paragraph (3) applies, the amount of the annual pension payable under rule D.1 is the amount specified for a person of the member's pension rank and number of whole years' reckonable service the member has in the table setting out rates for compulsory retirement in the pension code in force on the last day of pensionable service and the appropriate fraction of the applicable increase together with any applicable rank addition and professional supplement.
- (5) Subject to paragraph (6), in the case of a member who—
  - (a) is permitted to leave on request,
  - (b) is called upon to resign or retire otherwise than by reason of ill-health or as a result of such a notification as is mentioned in paragraph (3)(d),
  - (c) is removed for inefficiency or other causes within the member's control, or
  - (d) is dismissed from the service,the amount is the amount specified for a person of the member's pension rank with the number of whole years' reckonable service the member has in the table setting out rates for premature voluntary retirement in the pension code in force on the last day of pensionable service, and the appropriate fraction of the applicable increase, together with any applicable rank addition and professional supplement.
- (6) Subject to paragraph (7), in the case of a member who served in a permanent cadre of the special forces to whom paragraph (5) applies, the amount of the annual pension payable under rule D.1 is the amount specified for a person of the member's pension rank and number of whole years' reckonable service the member has in the table setting out rates for premature voluntary retirement in the pension code in force on the last day of pensionable service and the appropriate fraction of the applicable increase, together with any applicable rank addition and, professional supplement.
- (7) Where a member transferred to a permanent cadre of the special forces and served in that cadre for a period of at least 2 years' within the period of 5 years immediately prior to ceasing service and was then transferred back to the member's original unit or into another unit, the amount of the annual pension payable under rule D.1 is the greater of—
  - (a) the amount given by paragraph (4) or (6), whichever is applicable; and
  - (b) the amount given by paragraph (3) or (5), whichever is applicable.
- (8) In the case of a member who—
  - (a) has served at least 2 years' qualifying service,
  - (b) has served otherwise than as an officer,
  - (c) has not completed at least 5 years' qualifying service as an officer, and
  - (d) leaves at the member's own request,

the amount of the annual pension payable under rule D.1 is the amount specified for a person of the pension rank of Warrant Officer (Class 1) and number of whole years' reckonable service the member has in the table setting out the lower rates of service pension in the pension code in force on the last day of pensionable service and the appropriate fraction of the applicable increase, together with any applicable commissioned service addition, rank addition and professional supplement.

- (9) If a member to whom this rule applies, other than one falling within paragraph (3)(d), reaches the immediate pension point but is not entitled to count—

- (a) 16 years' reckonable service from age 21, or
- (b) 22 years from age 18,

the amount of the annual pension to which the member is entitled under this rule is reduced to such proportion of the amount otherwise payable as the length of reckonable service the member is entitled to count bears to 16 years' for members within paragraph (a) or 22 years' for members within paragraph (b).

- (10) If a member falling within paragraph (3)(d) reaches the immediate pension point but is not entitled to count—

- (a) 16 years' reckonable service from age 21, or
- (b) 18 years from age 18,

the amount of the annual pension to which the member is entitled under this rule is reduced to such proportion of the amount otherwise payable as the length of reckonable service the member is entitled to count bears to 16 years' for members within paragraph (a) or 18 years' for members within paragraph (b).

- (11) If a member whose pension falls to be calculated under this rule reaches pension benefit age and the amount of the annual pension but for this paragraph is less than that which would have been payable at that age under rule D.6 for someone of the member's pension rank had the member ceased to be in service before reaching the immediate pension point ("the preserved pension amount"), or under rule D.8 (the alternative method for calculating pension amount), then on reaching pension benefit age, the amount of the annual pension payable under rule D.1 is increased to the higher of those amounts.

- (12) For the purpose of this rule, when calculating the amount of pension for a member within paragraph (3)(d), if the member's rank on the last day of service is higher than the member's pension rank, that higher rank shall be used to calculate the amount of the annual pension.

- (13) In this rule—

"applicable increase" means the amount that is the difference between—

- (a) the annual pension specified in the relevant table in the pension code in force on the last day of pensionable service for a person of the member's pension rank and number of whole years reckonable service; and
- (b) the annual pension specified in that table for a person of the member's rank if the member had one more whole year of reckonable service;

"appropriate fraction" has the same meaning as in rule D.3(3)

#### **D.5 Amount of pension under rule D.1: other ranks**

- (1) The amount of annual pension payable under rule D.1 to a member whose pension rank is not that of an officer is calculated in accordance with this rule.
- (2) The calculation of amount of the annual pension payable under rule D.1 depends on—
  - (a) the member's pension rank;
  - (b) whether the member was in a special forces cadre;
  - (c) whether the member is entitled to a rank addition (see rule D.10),
  - (d) whether the member is entitled to a professional supplement (see rule D.11);
  - (e) whether the member is entitled to a commissioned service addition (see rule D.12);
  - (f) the number of reckonable years' service that the member has;
  - (g) the circumstances in which the member ceases to be in service; and
  - (h) whether the member continues in service in a lower rank after having reached the immediate pension point.
- (3) In the case of a member who—
  - (a) is discharged, otherwise than for a reason set out in paragraph (4),
  - (b) ceases to be in service as a result of a notification by the Defence Council that the person will be treated for the purposes of the Scheme—
    - (i) as having been called upon to retire before the end of their commitment period because of over-manning, or
    - (ii) for reasons of redundancy,subject to paragraphs (4) to (8), the amount of the annual pension payable under rule D.1 is the amount specified for a person of the member's pension rank and number of whole years' reckonable service the member has in the table setting out the standard rates of service pension in the pension code in force on the last day of pensionable service, and the appropriate fraction of the applicable increase, together with any applicable rank addition, professional supplement and commissioned service addition.
- (4) In the case of a member who is discharged—
  - (a) for misconduct (including having given a false answer in the enlistment paper made on entering or enlisting into service),
  - (b) for incapacity, unsuitability or inefficiency, that is due to causes within the member's control, or
  - (c) at the member's own request,subject to paragraphs (5) to (8), the amount of the annual pension payable under rule D.1 is the amount specified for a person of the member's pension rank and number of whole years' reckonable service the member has in the table setting out the lower rates of service pension in the pension code in force on the last day of pensionable service, and the appropriate fraction of the applicable increase, together with any applicable rank addition, professional supplement and commissioned service addition.

- (5) A member to whom paragraph (3) applies on ceasing service but who is retrospectively discharged on the ground of misconduct is treated as if paragraph (4) had applied from the date of discharge.
- (6) In the case of a member who served in the permanent cadre of the special forces immediately before discharge to whom paragraph (3) applies, the amount of the annual pension payable under rule D.1 is the amount specified for a person of the member's pension rank and number of whole years' reckonable service the member has in the table setting out the standard rates of service pension for special forces cadre in the pension code in force on the last day of pensionable service, and the appropriate fraction of the applicable increase, together with any applicable rank addition, professional supplement and commissioned service addition.
- (7) In the case of a member who served in the permanent cadre of the special forces immediately before discharge to whom paragraph (4) applies, the amount of the annual pension payable under rule D.1 is the amount specified for a person of the member's pension rank and number of whole years' reckonable service the member has in the table setting out the lower rates of service pension for special forces cadre in the pension code in force on the last day of pensionable service, and the appropriate fraction of the applicable increase, together with any applicable rank addition, professional supplement and commissioned service addition.
- (8) Where a member transferred to a permanent cadre of the special forces and served in that cadre for a period of at least 2 years' within the period of 5 years immediately prior to discharge and was then transferred back to the member's original unit or into another unit, the amount of the annual pension payable under rule D.1 is the greater of—
  - (a) the amount given by paragraph (6) or (7), whichever is applicable; and
  - (b) the amount given by paragraph (3) or (4), whichever is applicable.
- (9) In the case of a member who continues in service on or after reaching the immediate pension point in a lower rank than the rank held immediately before so continuing, in accordance with an authorisation given by the appropriate single service employing authority, and it would be to the member's advantage, the amount of the member's pension is calculated by adding—
  - (a) an amount in respect of the period of service spent in the higher rank calculated in accordance with paragraph (3), (4), (6) or (7) as the case may be, based on the pension rank the member would have had, if the member had ceased service immediately before continuing in service in the lower rank; and
  - (b) the appropriate multiple of the applicable uplift.
- (10) If a member whose pension falls to be calculated under this rule reaches pension benefit age and the amount of the annual pension but for this paragraph is less than that which would have been payable at that age under rule D.6 for someone of the member's pension rank had the member ceased to be in service before reaching immediate pension point ("the preserved pension amount"), or under rule D.8 (the alternative method for calculating pension amount), then on reaching pension benefit age, the amount of the annual pension payable under rule D.1 is increased to the higher of those amounts.

- (11) If a member, other than one falling within paragraph (3)(b)—
- (a) has reached immediate pension point, but
  - (b) the member is not entitled to count 22 years of reckonable service,  
the amount of the annual pension to which the member is entitled under this rule is reduced to such proportion of the amount otherwise payable as the length of the reckonable service the member is entitled to count bears to 22 years.
- (12) If a member falling within paragraph (3)(b)—
- (a) has reached the immediate pension point, but
  - (b) is not entitled to count 18 years of reckonable service,  
the amount of the annual pension to which the member is entitled under this rule is reduced to such proportion of the amount otherwise payable as the length of the reckonable service the member is entitled to count bears to 18 years.
- (13) For the purpose of this rule, when calculating the amount of pension for a member within paragraph (3)(b), if the member's rank on the last day of service is higher than the member's pension rank, that higher rank shall be used to calculate the amount of the annual pension.
- (14) In this rule—
- “applicable increase” has the meaning given in rule D.4(13);
  - “applicable uplift” means the amount that represents the difference between the amount specified for a person of the member's pension rank (disregarding any time spent in the higher rank) with the reckonable service given in the higher rank in the table specified in the paragraph under which the amount of the member's pension falls to be calculated;
  - “appropriate fraction” has the meaning given in rule D.3(3); and
  - “appropriate multiple” means the number of years reckonable service given in the lower rank.

*Entitlement to benefits: leaving before immediate pension point*

**D.6 Leaving service before immediate pension point**

- (1) An active member who ceases to be in pensionable service or opts to cease to be an active member of the Scheme, and who is not entitled to an immediate pension under rule D.1, is entitled to—
- (a) a pension for life on reaching the age of 60 in respect of service before 6th April 2006, or
  - (b) a further pension for life on reaching the age of 65 in respect of service on or after 6th April 2006,  
so long as the member has at least two years' qualifying service, or is entitled to short service benefit by virtue of section 71 of the 1993 Act (basic principles as to short service benefit) because of a transfer value payment having been accepted under Part F (transfers).
- (2) An active member who ceases to be in pensionable service or opts to cease to

be an active member of the Scheme who does not fall within paragraph (1) but who has more than three months' contracted-out service, is entitled to transfer value payment, calculated in accordance with rule F.5 because of a transfer value payment having been accepted under Part F (calculating amount of transfer value payments), subject to the other rules in that Part.

- (3) A member who is entitled to a further pension under paragraph (1)(b) may opt to have actuarially reduced amounts paid from age 60 instead.
- (4) A member may only exercise the option in paragraph (3) before the pension under paragraph (1)(a) comes into payment.
- (5) The amount of the annual pension payable under paragraphs (1)(a) and further annual pension payable under paragraph (1)(b) is the higher of the amounts calculated in accordance with rule D.7 and the alternative amount, calculated in accordance with rule D.8.
- (6) Where the amount of a member's annual pension payable under paragraph (1)(a) or further annual pension payable under paragraph (1)(b) is the amount calculated in accordance with rule D.7, the member is also entitled to—
  - (a) a lump sum on reaching the age of 60 in respect of service before 6th April 2006; and
  - (b) a lump sum on reaching the age of 65 in respect of service on or after 6th April 2006.
- (7) The amount of the lump sum payable under paragraph (6)(a) is calculated by multiplying by 3 the amount of the annual pension.
- (8) The amount of the further lump sum payable under paragraph (6)(b) is calculated by multiplying by 3 the amount of the further annual pension.
- (9) Any pension, further pension or lump sum becomes payable immediately on the member becoming entitled to it.

#### **D.7 Amount of pension and further pension under rule D.6: deferred members**

- (1) The amount of the annual pension and further annual pension payable under rule D.6(1) is calculated in accordance with this rule.
- (2) The amount of the annual pension payable under rule D.6(1)(a) is calculated by multiplying the amount of the gross pension by the relevant fraction, and then increasing that amount by the relevant pension increases.
- (3) The amount of the further annual pension payable under rule D.6(1)(b) is calculated by reducing the amount of the gross pension by the amount of the annual pension calculated in accordance with paragraph (2), and then increasing that amount by the relevant pension increases.
- (4) In the case of a member whose pension rank is that of an officer, other than one within paragraphs (5) or (6) the amount of the gross pension is calculated by multiplying 3% of the pension payable on the date the member ceased service to a person of the officer's pension rank who has at least 34 years' reckonable service by the member's total number of years' reckonable service, together with any applicable rank addition and professional supplement.
- (5) In the case of a member who has served as a member of the chaplaincy services (including the Director General of the Naval Chaplaincy Services) the amount of the gross pension is calculated—



- (a) if the member whose pension rank is that of an officer has served for at least 2 years in the chaplaincy service and has less than 10 years' reckonable service (excluding service credited as a result of a transfer payment being made), by multiplying 3% of the pension payable to a person with the pension rank of Royal Navy lieutenant or Royal Marines captain in the pension code in force on the last day of service who has at least 34 years' reckonable service by the member's total number of years' reckonable service,
- (b) if the member whose pension rank is that of an officer has served for at least 2 years in the chaplaincy service and has at least 10 years' reckonable service (excluding service credited as a result of a transfer payment being made), by multiplying 3% of the pension payable to a person with the pension rank of lieutenant commander or major in the pension code in force on the last day of service who has at least 34 years' reckonable service by the member's total number of years' reckonable service, or
- (c) if the member whose pension rank is not that of an officer has served for less than 2 years in the chaplaincy service, by multiplying 3% of the pension payable to a person with the pension rank of chaplain to the service 1st class who has at least 34 years' reckonable service by the member's total number of years' reckonable service,

together with any applicable rank addition and professional supplement.

- (6) In the case of a member whose pension rank is that of an officer who served otherwise than as an officer who has at least 2 years' reckonable service from age 18, but less than—
  - (a) 2 years' reckonable service as an officer, or
  - (b) 5 years' qualifying service from age 21,

the amount of the gross pension is calculated by multiplying 2.75% of the pension payable to a person with the pension rank of Warrant Officer (1st Class) in the pension code in force on the last day of service who has at least 37 years' reckonable service by the member's total number of years' reckonable service, together with any applicable rank addition and professional supplement.

- (7) In the case of a member whose pension rank is not that of an officer, the amount of the gross pension is calculated by multiplying 2.75% of the pension payable to a person of the member's pension rank in the pension code in force on the last day of service who has at least 37 years' reckonable service by the member's total number of years' reckonable service, together with any applicable rank addition and professional supplement.
- (8) In this rule, "the relevant fraction" means the fraction given by the formula—

$$\frac{rs}{RS}$$

where—

"RS" is the total number of years' reckonable service given by the member; and

"rs" is the number of years reckonable service given before 6th April 2006.

- (9) For the purpose of this rule, the number of a member's total reckonable years' service is expressed as the number of whole years, with any excess days expressed as a fraction of a year.
- (10) In this rule and rule D.8, "pension increases" means the amount an annual pension of the same amount would have been increased under the 1971 Act if—
  - (a) it was payable at an annual rate equal to the rate so specified;
  - (b) it was eligible to be increased under that Act; and
  - (c) it began to be paid on the day immediately following the last day of pensionable service.

**D.8 The alternative amount of pension**

- (1) The alternative amount of annual pension for a member, for the purposes of rule D.6(9) is calculated in accordance with this rule.
- (2) The amount is calculated by multiplying 1.25% of the member's final pensionable earnings for each year of reckonable service given from 6 April 1978 up to a maximum of 40 years and then increasing that amount by the relevant pension increases.

*Rank additions, professional supplements and commissioned service addition*

**D.9 Rank additions: officers**

- (1) This rule applies if at any time during the member's reckonable service—
  - (a) the member holds a rank higher than the member's pension rank for a period of at least one year; or
  - (b) the member holds a paid acting rank higher than the member's pension rank for a period of at least one year or periods amounting in aggregate to at least one year.
- (2) The amount of pension payable under rule D.1 is increased by the relevant rank addition.
- (3) In a case where paragraph (1)(a) applies, the rank addition is calculated as follows—

$$\frac{1}{2} \times \frac{(A-B) \times \text{number of days spent in the higher rank (up to a maximum of 2 years)}}{365}$$

where—

"A" is the amount of pension for a person with the total number of years' reckonable service the member has if the member's pension rank had been the higher rank;

"B" is the amount of pension for a person of the member's pension rank and total number of years' reckonable service.

- (4) In a case where paragraph (1)(b) applies, the rank addition is calculated as follows—

$$\frac{1}{3} \times \frac{(A-B) \times \text{number of days spent in the higher rank (up to a maximum of 3 years)}}{365}$$

where—

“**A**” is the amount of pension specified in the relevant pension code for a person with the total number of years’ reckonable service the member has if the member’s pension rank had been the higher rank;

“**B**” is the amount of pension specified in the relevant pension code for a person of the member’s pension rank and total number of years’ reckonable service.

#### **D.10 Rank additions: other ranks**

- (1) This rule applies if at any time in the 5 year period immediately preceding discharge—
  - (a) the member holds a rank higher than the member’s pension rank for a period of at least one year or periods amounting in aggregate to at least one year; or
  - (b) the member holds a paid acting rank higher than the member’s pension rank for a period of at least one year or periods amounting in aggregate to at least one year.
- (2) Subject to paragraph (4), the amount of pension payable under rule D.1 is increased by the relevant rank addition.
- (3) In a case where paragraph (1) applies, the rank addition is calculated as follows—

$$\frac{1}{2} \times (\mathbf{A-B}) \times \text{number of days spent in the higher rank (up to a maximum of 2 years)} \\ 365$$

where—

“**A**” is the amount of pension specified in the relevant pension code for a person with the total number of years’ reckonable service the member has had the member’s pension rank been the higher rank, or where there are more than one, the lower of those ranks;

“**B**” is the amount of pension specified in the relevant pension code for a person of the member’s pension rank and total number of years’ reckonable service.

- (4) In a case where the member is reduced in rank for misconduct or other disciplinary reason in the 5 year period immediately preceding discharge, the actual higher rank or paid acting rank held is disregarded and the rank addition calculated as if the higher rank or acting rank was one rank higher than the member’s pension rank.

#### **D.11 Professional supplements**

- (1) This paragraph applies to any member who before reckonable service ceases—
  - (a) is in service as a medical officer or a dental officer;
  - (b) is in service as a nurse;
  - (c) served as a professional aviator and whose pay was calculated using the professional aviators’ pay spine; or

- (d) served as non-commissioned aircrew and whose pay was calculated using the professional aviators' pay spine.
- (2) A member to whom paragraph (1) applies is entitled to a further amount as a professional supplement, in addition to the amount of pension the member would otherwise be entitled to.
- (3) The further amount is calculated by multiplying the daily supplement specified for a person of the member's pension rank and professional qualification or appointment held in the appropriate table setting out professional supplements in the pension code in force on the last day of pensionable service by the number of day's reckonable service.
- (4) For the purpose of paragraph (3), the following days do not count towards reckonable service—
  - (a) in the case of a member falling within paragraph (1)(a) whose service ceased on or after 1st April 2008, any day served before 1st April 1992;
  - (b) in the case of a member falling within paragraph (1)(a) whose service ceased before 1st April 2008, any day served before 1st April 1997;
  - (c) in the case of a member falling within paragraph (1)(b), any day served before 1st August 2009;
- (d) in the case of a member falling within paragraph (1)(c), any day unless it forms part of a period of continuous service of at least 5 years during which the member is entitled to pay as a professional aviator; and
- (e) in the case of a member falling within paragraph (1)(d), any day unless it forms part of a period of continuous service of at least 5 years during which the member is entitled to pay as a clearance diver.

#### **D.12 Commissioned Service Addition**

- (1) This rule applies if any member served otherwise than as an officer whose pension rank is not that of an officer.
- (2) The addition is calculated by multiplying the number of years' commissioned service the member has served for a period of at least one year, up to a maximum of 9 years, with the amount of the annual commissioned service addition specified in the pension code in force on the last day of pensionable service.

#### *Entitlement to benefits: pension credit members*

#### **D.13 Pension credit members' pensions**

- (1) A pension credit member is entitled to a pension for life and a lump sum derived from the member's pension credit rights, subject to the following paragraphs of this rule.
- (2) No lump sum is payable if the pension debit member is a pensioner member when the pension sharing order under which the pension credit member is entitled to the pension credit takes effect.
- (3) The pension and any lump sum become payable—
  - (a) where the pension sharing order is made before 6th April 2009—

- (i) immediately the pension credit member reaches pension benefit age; or
  - (ii) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect;
- (b) where the pension sharing order is made on or after 6th April 2009—
  - (i) immediately the pension credit member reaches age 55; or
  - (ii) if the pension credit member has already reached pension benefit age before that date, when the pension sharing order under which the member is entitled to the pension credit takes effect.
- (4) If no lump sum is payable under this rule, the pension must be of such an amount that its value is equal to the member's pension credit, as calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to the 1999 Act.
- (5) If a lump sum is payable under this rule—
  - (a) the lump sum so payable must be equal to three times the amount of the annual pension so payable; and
  - (b) the pension so payable must be of such an amount that its value, when aggregated with the lump sum so payable, is equal to the member's pension credit, as calculated in accordance with those regulations.
- (6) Where the pension sharing order was made before 6th April 2009 and that order has taken effect, the pension credit member may opt for the immediate payment of a reduced pension and lump sum on or after reaching age 55.
- (7) Where a pension credit member has exercised the option under paragraph (6), the amount of the annual pension and lump sum to which the member is entitled are first calculated in accordance with paragraphs (4) or (5) and then that amount is reduced by such amount as the Defence Council determines after consulting the Scheme actuary.
- (8) The option under paragraph (6) may only be exercised by a notice in writing to the Scheme administrator in such form as the Scheme administrator requires.

*Entitlement to benefits: ill-health*

**D.14 Early payment of benefits: active members' ill-health**

- (1) An active member who ceases to be in pensionable service because the ill-health condition is met is entitled to immediate payment of a pension and a lump sum if the member either—
  - (a) has at least two years' qualifying service; or
  - (b) is entitled to short service benefit by virtue of section 71 of the 1993 Act (basic principles as to short service benefit) because of a transfer value payment having been accepted by the Scheme under Part F (transfers).
- (2) For the purpose of this rule, the ill-health condition is met if—
  - (a) the Scheme administrator is satisfied that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment; and
  - (b) the member has in fact ceased to carry on that occupation.

- (3) The amount of the pension payable under this rule is calculated in accordance with rule D.15 if the pension rank of the member is that of an officer, or D.16 if it is not.
- (4) The amount of the lump sum payable under this rule is calculated by multiplying the amount of the annual pension so payable by 3.
- (5) If a member is entitled to the early payment of pension under paragraph (1), the member is not entitled to an immediate pension under rule D.1.

**D.15 Amount of pension under rule D.14: officers**

- (1) The amount of annual pension payable under rule D.14 to a member whose pension rank is that of an officer is calculated in accordance with this rule.
- (2) The amount of the annual pension payable under rule D.14 depends on—
  - (a) the member's pension rank;
  - (b) whether the member held another rank or paid acting rank;
  - (c) whether the member holds a professional qualification; and
  - (d) the number of qualifying years' service that the member has.
- (3) In the case of a member who has at least 5 years' qualifying service of which at least 2 years' qualifying service was served from the age of 21, subject to paragraphs (4) and (5), the amount of the pension payable under rule D.14 is the amount specified for a person of the member's pension rank and number of whole years' reckonable service the member has in the table setting out the rates of service invaliding pension in the pension code in force on the last day of pensionable service and the appropriate fraction of the applicable increase, together with any relevant professional supplement and rank addition.
- (4) In the case of a member whose pension rank is that of an officer who but for rule D.14(5) would have been entitled to an immediate pension under rule D.1, the amount of the annual pension is the higher of—
  - (a) the amount of annual pension calculated in accordance with rule D.3 or D.4, as the case may be; and
  - (b) the amount of annual pension calculated in accordance with the preceding paragraphs of this rule.
- (5) If in the opinion of the Defence Council in all the circumstances of the case the amount of the annual pension payable to any member by virtue of this rule should be a lower amount than would be payable by virtue of the previous paragraphs of this rule, that lower amount is payable instead.
- (6) In this rule—
 

“applicable increase” has the meaning given in rule D.4(13); and

“appropriate fraction” has the meaning given in rule D.3(3).

**D.16 Amount of pension under rule D.14: other ranks**

- (1) The amount of the annual pension payable under rule D.14 to a member whose pension rank is not that of an officer is calculated in accordance with this rule.

- (2) The amount of the annual pension payable under rule D.14 depends on—
  - (a) the member's pension rank and whether the member has held another rank or paid acting rank; and
  - (b) the number of qualifying years' service the member has.
- (3) If the member has at least 5 years' qualifying service after reaching the age of 18, subject to paragraphs (5) and (6), the amount of the annual pension payable is the amount specified for a person of the member's pension rank and number of whole years' reckonable service the member has in the table setting out the rates of service invaliding pension in the pension code in force on the last day of pensionable service, and the appropriate fraction of the applicable increase.
- (4) If the member has at least 2 years' qualifying service after reaching the age of 18 but less than 5 years' qualifying service after reaching that age, subject to paragraphs (5) and (6), the amount of the annual pension payable is the same as the amount to which the member would have been entitled on reaching pension benefit age.
- (5) If, had a member ceased to be in service but not by reason of ill-health, the amount of the annual pension under rule D.1 or D.6 would have exceeded the amount payable by virtue of this rule otherwise than by virtue of this paragraph, that higher amount is payable instead.
- (6) If in the opinion of the Defence Council in all the circumstances of the case the amount of the annual pension payable to any member by virtue of this rule should be a lower amount than would be payable under the previous paragraphs of this rule, that lower amount is payable instead.

**D.17 Early payment of benefits: deferred members with permanent serious ill-health**

- (1) A deferred member is entitled to immediate payment of a pension and a lump sum before reaching pension benefit age if—
  - (a) in the opinion of the Defence Council the member has suffered a permanent breakdown in health involving incapacity for any full-time employment;
  - (b) the Defence Council has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on any occupation because of physical or mental impairment; and
  - (c) the member makes a claim for immediate early payment of the pension and lump sum under this rule to the Scheme administrator.
- (2) The amount of the annual pension payable under this rule is equal to the amount to which the member would have been entitled under rule D.7.
- (3) The amount of the lump sum payable under this rule is the amount of the annual pension so payable multiplied by 3.
- (4) For the purpose of this rule and rule D.25—
  - (a) a member's breakdown in health is "permanent" if, in the opinion of the Defence Council it will continue at least until the member reaches pension benefit age; and

- (b) a member's breakdown in health involves incapacity for any full-time employment if, in the opinion of the Defence Council, as a result of the breakdown the member is, and at least until pension benefit age will be, incapable of any gainful full-time employment.

**D.18 Reduction in lump sums where members' payments to the Scheme for dependants' rights unfinished**

- (1) This rule applies to any member who—
  - (a) whilst an active member exercised the option referred to in rule E.5(1) to make payments to the Scheme to improve the benefits to which the member's widow or widower would become entitled under the Scheme in respect of service before 1st April 1973; and
  - (b) had not made all the payments the member had agreed to make for that purpose on ceasing to be an active member.
- (2) The amount of the lump sum payable under this Part is reduced by the amount of the repayments outstanding.

*General provisions about pension debit members and pension credit members*

**D.19 Reduction in pension debit member's benefits**

The benefits to which a pension debit member is entitled under this Part as a member of the Scheme are subject to the reduction to be made under section 31 of the 1999 Act(a).

**D.20 Pension credit member's rights**

- (1) Where regulation 7(5) of the Pension Sharing (Pension Credit Benefit) Regulations 2000(b) (early or deferred retirement) applies, the Defence Council must be reasonably satisfied that the requirements of that regulation have been met.
- (2) Section 68A(2)(a) of the 1993 Act (safeguarded rights) applies to the safeguarded rights of pension credit members.
- (3) Benefits that are attributable to a pension credit may not be aggregated with any other benefits to which the pension credit member is entitled under the Scheme.

*Contracting-out obligations (GMPs etc.)*

**D.21 Guaranteed minimum pensions etc.**

- (1) Paragraphs (2) to (5) apply where a member has a guaranteed minimum under section 14 of the 1993 Act in relation to benefits under the Scheme.
- (2) If apart from this rule—
  - (a) no pension would be payable to the member under the Scheme, or

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(a) Section 68A is inserted by section 36 of the Welfare Reform and Pensions Act 1999 c. 30.  
(b) S.I. 2000/1054.



- (b) the weekly rate of the pension payable would be less than the guaranteed minimum,  
 a pension, the weekly rate of which is equal to the guaranteed minimum, is payable to the member for life from the date on which the member reaches state pension age.
- (3) If on reaching state pension age the member is in employment and the member consents, paragraph (2) applies on the cessation of that employment.
- (4) If the member continues in employment for a further period of 5 years after reaching state pension age and does not then leave it, paragraph (2) applies at the end of the 5 year period, unless the member consents to a further postponement.
- (5) If paragraph (3) or (4) applies, the amount of the guaranteed minimum to which the member is entitled under this rule is increased in accordance with section 15 of the 1993 Act.
- (6) This rule does not apply if—
- (a) the pension is forfeited in a case where rule J.5(1)(a) (conviction of treason or Official Secrets Acts offences) applies, or
- (b) the pension is commuted under rule J.8 (commutation of small pensions) and the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(a)</sup> are met,
- but if any other provision of the Scheme is inconsistent with this rule, this rule prevails.

*Reduction for national insurance benefits etc*

**D.22 Modification on account of national insurance benefits**

- (1) When a member to whom this rule applies reaches state pension age, the annual pension is reduced—
- (a) by £1.70 a year for each whole year of reckonable service given before 1st April 1980; and
- (b) by the appropriate proportion of £1.70 for any part of a year of such reckonable service over the number of whole years of such service given before this date.
- (2) Subject to paragraph (3), this rule applies to members who—
- (a) joined the Scheme after 30th June 1949; or
- (b) in the case of a member who has joined the Scheme more than once, last joined the Scheme after that date.
- (3) This rule does not apply to members—
- (a) whom the Defence Council determines to be exempt from the reduction in accordance with the rules which were set out in the National Insurance (Modification of the Superannuation Acts) Regulations 1948<sup>(b)</sup>; or
- (b) who are permanently resident outside the United Kingdom and not in receipt of basic pension or any corresponding pension payable under reciprocal arrangements.

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<sup>(a)</sup> S.I. 1996/1172.

<sup>(b)</sup> S.I. 1948/498, revoked by S.I. 1972/1954.

### **D.23 Reduction in respect of graduated national insurance pensions**

- (1) When a member who was not contracted-out of the graduated pension scheme for any period of reckonable service beginning on or after 3rd April 1961 and ending on or before 5th April 1975 reaches state pension age, the member's pension under the Scheme is reduced by the amount of the pension that would be earned by graduated contributions paid at the following rates—
  - (a) from 3rd April 1961 to 31st May 1963, 4.25% of weekly earnings between £9 and £15; and
  - (b) from 1st June 1963 to 5th April 1975, 4.25% of weekly earnings between £9 and £18.
- (2) Paragraph (1) does not apply if the annual amount of that pension does not exceed £5.20.
- (3) Paragraph (1) does not apply to pension that would have been earned during reckonable service for which the member was contracted-out of the graduated pension scheme.

### **D.24 Reduction in respect of members who transferred from contracted-in service**

- (1) This rule applies to any member who on or after 6th April 1978—
  - (a) served on a gratuity-earning commission or engagement; and
  - (b) is able to count qualifying and reckonable service in respect of that commission or engagement.
- (2) When a member to whom this rule applies reaches state pension age, the amount of pension under the Scheme is reduced by so much of the guaranteed minimum pension as is payable in respect of the period of service mentioned in paragraph (1)(a) during which the national insurance contributions in respect of his service were jointly paid by the member and the Ministry of Defence at the rate appropriate for contracted-in service.

### *Pension Increases*

### **D.25 Pension Increases**

- (1) The amount of pension shall be increased by the amount of the pension increases—
  - (a) where the amount is calculated under rules D.3, D.4 and D.5, from age 55 in relation to a pension under rule D.1;
  - (b) where the amount is calculated under—
    - (i) rule D.7 in relation to a pension under rule D.6,
    - (ii) rule D.13 in relation to a pension credit member,
    - (iii) rule D.15 or D.16 in relation to a pension under D.14, and
    - (iv) rule D.17,

from the date the pension or further pension is first due to be paid.

- (2) A member is in receipt of an annual pension under rule D.1 is entitled to the

- immediate payment of pension increases before reaching age 55 if—
- (a) in the opinion of the Defence Council the member has suffered a permanent breakdown in health involving incapacity for any full-time employment;
  - (b) the Defence Council has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on any occupation because of physical or mental impairment; and
  - (c) the member makes a claim for immediate early payment of the increases under this rule to the Scheme administrator.
- (3) For the purposes of paragraph (1) and (2), “pension increases” means the amount that an annual pension of the same amount would have been increased under the 1971 Act on the day following the last day of pensionable service if it—
- (a) were eligible to be increased under that Act; and
  - (b) had come into payment on the day following the last day of pensionable service.

## PART E

### DEATH BENEFITS

*Pensions for adult dependants (service ending on or after 31st March 1973)*

#### **E.1 Pensions for surviving spouse or surviving civil partners**

- (1) If an active member, a deferred member or a pensioner member dies leaving a surviving spouse or surviving civil partner, subject to rules E.13, E.14 and E.27 and the following paragraphs of this rule, the surviving spouse or surviving civil partner is entitled to a pension for life.
- (2) Subject to rule E.33, the Defence Council may determine that the pension is to be reduced or withheld—
  - (a) where it would be payable to a surviving spouse, if the member and the surviving spouse married less than 6 months before the member’s death; and
  - (b) where it would be payable to a surviving civil partner, if the civil partnership was formed less than 6 months before the member’s death.
- (3) The widower or surviving civil partner of a deceased member is only entitled to a pension under this rule if the whole or part of the member’s reckonable service was served on or after 1st October 1987.
- (4) A surviving spouse or surviving civil partner who married or formed a civil partnership with a member after the member ceased to be in service is only entitled to a pension under this rule if the whole or part of the member’s reckonable service was served on or after 6th April 1978.
- (5) This rule does not apply if the member’s reckonable service ended before 31st March 1973.

### **E.2 Amount of pension under rule E.1: active members**

- (1) This rule applies in the case of a deceased active member who would have qualified for a pension under rule D.1 or D.6 if service had ceased on the date of death otherwise than by reason of the death.
- (2) The annual amount of the pension payable under rule E.1 is one half of the member's notional pension amount subject to rules E.5 and E.6.
- (3) For the purposes of this rule the member's notional pension amount is the amount of the annual pension to which the member would have been entitled—
  - (a) under rule D.9 (officers) or rule D.10 (other ranks) if the member had qualified for a pension under rule D.9 on the date of death; or
  - (b) under rule D.3 (officers of or above the rank of rear admiral or major general), D.4 (officers below the rank of rear admiral or major general and all medical and dental officers) or D.5 (other ranks) if the member has qualified for a pension under rule D.1 on the date of death.

### **E.3 Amount of pension under rule E.1: pensioner members**

- (1) This rule applies in the case of a deceased pensioner member who was in receipt of a pension under this Scheme.
- (2) The annual amount of the pension payable under rule E.1 is one half of the member's pension, subject to rules E.5 and E.6.
- (3) For the purpose of paragraph (2), where an option to commute under rule J.7 or J.8 has been exercised by the member in respect of the member's pension under Part D or the corresponding former provisions of this Scheme, the amount of the annual pension is the amount that would have been payable but for the commutation.
- (4) For the purpose of paragraph (3) and rules E.5 and E.6 references to an option to commute under rule J.7 or J.8 includes a reference to an option to commute under the corresponding former provisions of this Scheme or under another commutation scheme.

### **E.4 Amount of pension under rule E.1: deferred members**

- (1) This rule applies in the case of a deceased deferred member.
- (2) The annual amount of the pension payable under rule E.1 is one half of the member's notional pension amount, subject to rules E.5 and E.6.
- (3) For the purposes of this rule a member's notional pension amount is the amount of the annual pension to which the member would have been entitled under rule D.7 if the member had qualified for a pension under rule D.6 on the date of death.

### **E.5 Pre 1st April 1973 service**

- (1) This rule applies if the deceased member gave service before 1st April 1973 and did not exercise the option to purchase an entitlement in respect of such service to enhance a surviving spouse or civil partner's benefits.

(2) The annual amount of the pension payable under rule E.1 is calculated as follows—

(3) The formula is—

$$\text{£(full career pension) x .03 or .0275 x (service pre-April 1973) years}$$

(4) The annual amount of the pension payable under rule E.1 is calculated as follows—

$$\frac{1}{2} (\mathbf{Pp} - \mathbf{Ppre-1973}) + \frac{1}{3} (\mathbf{Ppre-1973})$$

(a) where—

Pp is—

- (i) in the case of a deceased pensioner member, the amount of annual pension in payment at the date of death;
- (ii) where an option to commute under rule J.7 or J.8 has been exercised, the pension that would have been payable but for the commutation is used, except in cases where the marriage took place or civil partnership was formed after the member had ceased service, in which case the lower commuted amount is used;
- (iii) in the case of a deceased pensioner member, the amount of annual pension in payment at the date of death or where an option to commute under rule J.7 or J.8 has been exercised, the pension that would have been payable but for the commutation; or
- (iv) in the case of the deceased deferred member, the amount of annual pension that the member would have been entitled under rule D.7 if the member had qualified for a pension under rule D.6 on the date of death based on the total period of reckonable service the member is able to count; and

(b) where

Ppre-1973 is—

- (i) in the case of a deceased pensioner member, the proportion of the amount of the pension first in payment that is attributable to the pre-1973 service; or
- (ii) in the case of a deceased deferred member, the proportion of the amount of the pension that the member would have been entitled to under rule D.6 based on reckonable service.

#### **E.6 Post service marriages and civil partnerships – revised pension or notional pension amount**

(1) If a pensioner member marries or forms a civil partnership after ceasing service, the member's pension for the purposes of rule E.3(2) shall be revised as follows—

- (a) the amount of the member's pension in payment (or which would have been in payment but for any commutation) is multiplied by the member's period of reckonable service given on or after 6th April 1978;
- (b) that figure is then divided by the member's total period of reckonable service.

- (2) If a deferred member marries or forms a civil partnership after ceasing service, the notional pension for the purposes of rule E.4(3) (deferred members) shall be revised as follows—
  - (a) the member's notional pension is multiplied by the member's period of reckonable service given on or after 6th April 1978;
  - (b) that figure is then divided by the member's total period of reckonable service.

**E.7 Increased pension under rule E.1 for immediate bereavement period: active or pensioner member**

- (1) In the case of a deceased active member, the annual amount of the pension payable under rule E.1 for the immediate bereavement period is equal to the annual amount of the member's basic pay.
- (2) In the case of a deceased pensioner member, the annual amount of the pension payable under rule E.1 for the immediate bereavement period is equal to the annual amount of the member's pension.
- (3) Paragraph (2) does not apply if the annual amount of pension payable under rule E.3 is greater than the amount of the member's pension.
- (4) In this rule "the immediate bereavement period" means—
  - (a) if there are one or more dependent children in the care of the person entitled to the pension under rule E.1, 182 days beginning with the day following the date of the member's death; and
  - (b) otherwise, 91 days beginning with that day.

*Pensions for widows where service ended before 31st March 1973*

**E.8 Widows' pensions where service ended before 31st March 1973**

If a male pensioner member who ceased service before 31st March 1973 and whose pension rank was that of—

- (a) an officer,
- (b) a Warrant Officer (1st class), or
- (c) another rank not falling within sub-paragraph (b) if the member gave service on or after 31st August 1950,

dies leaving a widow, subject to rules E.13 and E.28, she is entitled to a pension for life.

**E.9 Amount of pensions under rule E.8**

- (1) The annual amount of a pension payable under rule E.8 is—
  - (a) one-third of the annual amount of the member's pension, or
  - (b) the minimum rate of widow's pension,
 whichever is the greater.
- (2) In paragraph (1) "minimum rate of widow's pension" means the minimum rate specified in the pension code in force at the date of death in respect of a person of the member's pension rank.

*Pensions for widows where service ended before 1st September 1950*

**E.10 Widows' pensions where service ended before 1st September 1950**

- (1) If a male pensioner member whose pension rank was not that of an officer or of a Warrant Officer (1st class) who ceased service before 1st September 1950, dies leaving a widow, subject to paragraphs (4) and (5) and rules E.13 and E.28 she is entitled to a pension for life, unless she is entitled to a war widow's pension under the Service Pension Order.
- (2) Paragraph (1) does not apply if—
  - (a) the Defence Council considers that the member's service was not satisfactory, or
  - (b) the member and his widow were legally separated at the date of his death, unless the Defence Council considers that because of exceptional circumstances it is appropriate for the widow to receive a pension.
- (3) If the Defence Council determines under paragraph (2) that it is appropriate for the widow to receive a pension they may impose such conditions as are considered appropriate.
- (4) If—
  - (a) by virtue of the service that the deceased member gave in the armed forces any pension or allowance is awarded to his widow otherwise than under the Scheme, and
  - (b) the Defence Council considers that it is appropriate,the pension under this rule shall be suspended or reduced by such amount as is considered appropriate.
- (5) For the purposes of this rule and rule E.11, a member's pension rank is—
  - (a) the highest rank held in the 5 year period immediately before service ceased for a period of 2 years or more; or
  - (b) if it is to the member's advantage, if the member ceased service due to ill-health, the rank held immediately before service ceased.

**E.11 Amount of pensions under rule E.10**

- (1) The annual amount of a pension payable under rule E.10(1) is the minimum rate of widow's pension specified in the pension code in force at the date the member ceased service for a person of the member's pension rank.
- (2) The annual amount of a pension payable under the Defence Council considers there are exceptional circumstances, is such amount, not exceeding the amount that the widow would have been entitled under paragraph (1), as the Defence Council considers appropriate.

*Special provision for war widows, widowers and civil partners*

**E.12 Special provision where war widows etc. awarded temporary allowances**

- (1) This rule applies if a person who is entitled to a pension under rule E.1, E.8 or E.10 in respect of the death of a member ("the deceased"), is entitled to a temporary allowance under article 27 of the Service Pension Order

(allowances for surviving spouses and civil partners of war pensioners) for the period of 26 weeks after the deceased's death.

- (2) Unless paragraph (3) applies, rule E.30 applies as if the date of death is the last day of the period of 26 weeks.
- (3) If the weekly rate of the temporary allowance is less than the aggregate of the weekly rates of—
  - (a) the pension to which the person is entitled under rule E.1, E.8 or E.10,
  - (b) the increase in pension to which the person is entitled under rule E.7, if any, and
  - (c) any benefits payable to that person under the Service Pension Order except any benefits payable under article 27 of that Order,the pension to which the person is entitled to under rule E.1, E.8 or E.10 shall be the amount of the shortfall for the period of 26 weeks after the date of the deceased's death.
- (4) The amount of the shortfall is equal to the amount by which the weekly rate of the temporary allowance is less than aggregate of those weekly rates.

*Suspension and reduction of pensions*

**E.13 Suspension and reduction of pensions: widows, widowers or surviving civil partner**

- (1) This rule applies where a pension under rule E.1, E.8 or E.10 is payable to a person ("the beneficiary") who was the widow, widower or surviving civil partner of a deceased member.
- (2) Subject to rule E.33 and paragraph (3), a pension under rule E.1, E.8 or E.10 is not payable to a person ("the beneficiary") who is the widow, widower or surviving civil partner of the deceased member if the beneficiary—
  - (a) marries;
  - (b) lives with a man as his wife;
  - (c) lives with a woman as her husband;
  - (d) forms a civil partnership with another person; or
  - (e) lives with another person as their civil partner.
- (3) If a beneficiary marries or lives with another person as their husband, wife or civil partner on or after reaching state pension age, the pension shall be reduced to the amount of the widow, widower's or surviving civil partner's guaranteed minimum, as the case may be.
- (4) If a beneficiary's pension is not payable to the beneficiary under this rule because of the beneficiary's marriage or civil partnership and—
  - (a) that marriage or civil partnership is dissolved or the parties to it are legally separated, and
  - (b) the Defence Council is satisfied that the pension should become payable to the beneficiary for reasons of hardship,the pension becomes payable to the beneficiary.



- (5) If a beneficiary's pension is not payable to the beneficiary under this rule because of the beneficiary living with another person as that other person's husband, wife or civil partner, and the Defence Council is satisfied that—
- (a) the beneficiary has ceased to live with that other person as that other person's husband, wife or civil partner, and
  - (b) the Defence Council is satisfied that the pension should become payable to the beneficiary for reasons of hardship,
- the pension becomes payable to the beneficiary.
- (6) This paragraph applies if, apart from this paragraph and paragraphs (7) and (8), on the death of a second or subsequent spouse or civil partner—
- (a) a pension would be payable to the beneficiary under the Scheme in respect of two or more deceased members; or
  - (b) a pension would become payable to the beneficiary under the Scheme in respect of a member and a pension would be payable to the beneficiary under the rules of a relevant scheme in respect of another person.
- (7) If paragraph (6)(a) applies and it appears to the Defence Council that—
- (a) the pension payable in respect of one of the members is less beneficial than that payable in respect of the other member, or
  - (b) they are equally beneficial,
- then, the less beneficial pension does not become payable or, in a case where they are equally beneficial, the pension in respect of the second or subsequent spouse or civil partner does not become payable.
- (8) If paragraph (6)(b) applies and it appears to the Defence Council that—
- (a) the pension payable to the beneficiary under the Scheme is less beneficial than the pension payable to the beneficiary under a relevant scheme, or
  - (b) they are equally beneficial,
- then the pension under the Scheme does not become payable.
- (9) In paragraphs (6)(b) and (8)(a) "relevant scheme" means—
- (a) the AFPS 2005; or
  - (b) a reserve forces pension scheme.

#### **E.14 Suspension and reduction of pensions: civil partners**

If on or after reaching state pension age the beneficiary—

- (a) lives with a person as if the beneficiary were that person's civil partner,
- (b) in the case of a beneficiary who is a man, lives with a woman as if the beneficiary were her husband, or
- (c) in the case of a beneficiary who is a woman, lives with a man as if the beneficiary were his wife,

the amount of the pension under rule E.1(1) is reduced to the amount of a surviving civil partner's guaranteed minimum in respect of the service of the deceased member.

*Pensions for eligible children (service ending after 30th March 1973)*

**E.15 Pension for a surviving child**

- (1) If a member who gave service on or after 31st March 1973 dies leaving an eligible child, a pension is payable in respect of the child.
- (2) If the child ceases to be an eligible child after the date of death, the pension ceases to be payable unless and until the child becomes an eligible child again.
- (3) This rule does not apply if the member's service ended before 31st March 1973.
- (4) No pension is payable under this rule in respect of any period before an eligible child's birth.

**E.16 Meaning of "eligible child"**

- (1) In this Scheme "eligible child", in relation to a deceased member, means a child of the member who meets any of conditions A to C.
- (2) In this rule "child of the member" means—
  - (a) a legitimate child of the member born before or within 12 months of the date of the member's death where the member was married to, or was in a civil partnership with, the child's other parent before the member ceased to be in pensionable service;
  - (b) an illegitimate child of the member born before or within 9 months of the member ceasing to be in pensionable service who was mainly dependent on the member at the date of death or would have been but for the death;
  - (c) an illegitimate child of—
    - (i) the member's spouse, where the member and spouse were married before the member ceased to be in pensionable service, or
    - (ii) the member's civil partner, where the civil partnership was formed before the member ceased to be in pensionable service,  
who was born before or within 9 months of the member ceasing to be in pensionable service who was mainly dependent on the member at the date of death or would have been but for the death who meets the condition in paragraph (3);
  - (d) an adopted child of the member where—
    - (i) the adoption occurred before pensionable service ceased; and
    - (ii) the member was married to or had formed a civil partnership with the child's other adoptive parent before pensionable service ceased;
  - (e) an adopted child of the member where—
    - (i) the child was mainly dependent on the member during pensionable service,
    - (ii) the adoption took place after pensionable service had ceased, and
    - (iii) the Scheme administrator is satisfied that the member had formed an intention to adopt before pensionable service ceased,  
who meets the condition in paragraph (3);

- (f) a step-child of the member where the natural or adoptive parent of the child was married to the member or was the member's civil partner before pensionable service ceased and where the child was mainly dependent on the member at the date of death and meets the condition in paragraph (3);
  - (g) a grandchild of the member where the Defence Council considers that the child has been abandoned by its parents or the parents have died, where the child was mainly dependent on the member at the date of death and meets the condition in paragraph (3).
- (3) The condition referred to in paragraph (2)(c), (e), (f) and (g) is that the child was financially dependent on the member at the date of the member's death or would have been had birth occurred before the member's death.
- (4) Condition A is that—
- (a) the person is aged under 17; or
  - (b) the person is aged under 18 if—
    - (i) the deceased member ceased to be an active member before 31st March 1973; and
    - (ii) the deceased member's pension rank was that of an officer or Warrant Officer (1st class).
- (5) Condition B is that—
- (a) the person is aged under 23 and is—
    - (i) in full-time secondary education;
    - (ii) in full-time further education that started immediately after ceasing full-time secondary education;
    - (iii) undertaking full-time vocational training which in the opinion of the Scheme administrator is unpaid or substantially unpaid; or
  - (b) the person is aged 23 or over and meets the condition in paragraph (a)(i), (a)(ii) or (a)(iii) and—
    - (i) that person was in receipt of a pension under the Scheme before 6th April 2006;
    - (ii) the member had died before 6th April 2006 and a pension was due to come into payment in respect of the child; or
    - (iii) the member was a pensioner member before 6th April 2006 and the child was born before 6th April 2007.
- (6) Condition C is that the person is dependent on the member at the date of the member's death because of physical or mental impairment and in the opinion of the Scheme administrator is incapable of earning a living.
- (7) For the purposes of condition B, a person who takes a break not exceeding 15 months between concluding secondary education and beginning further full-time education or vocational training is treated as being in such education or training during the break.
- (8) Paragraph (7) does not apply at any time when the person's health is such that it is reasonable to assume that they will not be capable of undertaking any further education or training.

- (9) Nothing in paragraph (7) requires a pension to be paid in respect of a person during the break.

#### **E.17 Amount of child's pension under rule E.15**

- (1) This rule applies for determining the annual amount of a pension payable under rule E.15(1), subject to rule E.27.
- (2) If a pension is payable under rule E.1 or any of the children entitled to a pension under rule E.15(1) is in the care of a parent or step-parent, and one or two pensions are payable at that time under rule E.15(1), the annual amount of the pension payable under rule E.15(1) is equal to one quarter of the member's notional pension amount.
- (3) If a pension is payable under rule E.1 or any of the children entitled to a pension under rule E.15(1) is in the care of a parent or step-parent, and three or more pensions are payable at that time under rule E.15(1), the annual amount of each pension payable under rule E.15(1) is equal to half of the member's notional pension amount divided by the number of pensions payable under that rule.
- (4) If no pension is payable under rule E.1 and none of the children entitled to a pension under rule E.15(1) is in the care of a parent or step-parent, and one, two or three pensions are payable at that time under rule E.15(1), the annual amount of each pension payable under rule E.15(1) is equal to one third of the member's notional pension amount.
- (5) If no pension is payable under rule E.1 and none of the children entitled to a pension under rule E.15(1) is in the care of a parent or step-parent, and four or more pensions are payable at that time under rule E.15(1), the annual amount of each pension payable under rule E.15(1) is equal to the member's notional pension amount divided by the number of pensions payable under that rule.
- (6) For the purposes of this rule—
- “the member's notional pension amount” in relation to an active or a deferred member has the meaning given in rule E.2(3) or E.4(3), as the case may be, but for the purpose of this rule—
- (a) if the member had less than 5 years' reckonable service, the notional pension is calculated as if 5 years reckonable service had been given; and
- (b) if at the time of death more than one period of service had been given, the notional pension amount is calculated as if all the periods of reckonable service had been served as one continuous period ending with the date of death, unless this is to the disadvantage of the child;
- “the member's notional pension amount” in relation to a pensioner member means—
- (a) the amount of the annual pension in payment; or
- (b) the amount of the annual pension that would have been in payment but for any reduction or suspension, unless paragraph (7) applies.
- (7) Where the right to commute was exercised before the child first became an eligible child, the member's notional pension amount is calculated disregarding the commutation and that amount is then reduced by the same proportion as the commuted pension bears to the amount of the member's pension payable apart from the commutation.

- (8) If—
- (a) a pension is payable under rule E.15(1) in respect of a child,
  - (b) the annual amount of the pension is calculated under this rule on the basis that a pension is payable under rule E.1 or that at least one of the children entitled to a pension under rule E.15(1) is in the care of a parent or step-parent, and
  - (c) that basis ceases to apply,
- the annual amount of the pension payable under rule E.15(1) in respect of the child shall be re-calculated and replaced by the new amount from the date the basis ceased to apply.

#### **E.18 Increased pension under rule E.15 for bereavement period**

- (1) An eligible child not in the care of an eligible surviving spouse or civil partner is entitled to an increase in the pension payable under rule E.15 if the member was an active member or a pensioner member at the date of death, unless paragraph (2) applies.
- (2) Where there are two or more eligible children living together, only the two eldest children are entitled to an increase under paragraph (1).
- (3) The pension of the only or eldest eligible child shall be increased to an amount equal to the annual amount of the deceased member's basic pay or pension (ignoring commutation) as the case may be on the date of death for a period of 91 days starting on the day after the date of death.
- (4) The pension of the second eldest eligible child shall be increased to an amount equal to the annual amount of the deceased member's basic pay or pension (ignoring abatement and commutation) as the case may be on the date of death for a period of 91 days starting the day after the last day that the eldest child received an increased pension.

*Pensions for eligible children where service ended before 31st March 1973*

#### **E.19 Surviving child pensions where service ended before 31st March 1973**

- (1) If a pensioner member whose service ended before 31st March 1973, but not before 1st September 1950, dies leaving an eligible child, a pension is payable in respect of the child.
- (2) If the child ceases to be an eligible child after the date of death, the pension ceases to be payable unless and until the child becomes an eligible child again.

#### **E.20 Amount of child's pension under rule E.19**

- (1) If—
  - (a) a pension is payable under rule E.8, or
  - (b) any of the eligible children is in the care of a parent or step-parent,the annual amount of the pension payable under rule E.19 in respect of each eligible child is equal to one-third of the amount payable under rule E.9 or, as the case may be, of the amount that would be so payable if such a pension were payable, subject to rule E.27.

- (2) If—
- (a) no pension is payable under rule E.8, and
  - (b) none of the eligible children is in the care of a parent or step-parent,
- the annual amount of the pension payable under rule E.19 in respect of each eligible child is equal to two-thirds of the amount that would be payable under rule E.8 if such a pension were payable, subject to rule E.27.

*Lump sum death benefits*

**E.21 Death of a member: lump sum benefit**

- (1) On the death of a member who gave service on or after 31st March 1973 who dies before state benefit age the Defence Council may pay a lump sum to—
  - (a) any person who is entitled to a pension under rule E.1;
  - (b) if there is no person within sub-paragraph (a), subject to paragraph (5), any person who is entitled to a pension under rule E.15; or
  - (c) if there is no person within sub-paragraph (a) or (b), subject to paragraph (5), the member's personal representative.
- (2) If two or more persons fall within paragraph (1)(b) and the Defence Council decides to pay the lump sum specified in paragraph (1) to them, each child shall receive an equal share.
- (3) In the case of a pensioner member who ceased service with an entitlement to a pension under rule D.1, paragraph (1) only applies if the period beginning on the day following the day on which the member's reckonable service ceased and ending with the date of death is less than one year.
- (4) Paragraph (1) does not apply in the case of a member who ceased service with an entitlement to a pension under rule D.13 which has come into payment before the date of death.
- (5) Where a person is entitled to a lump sum payment under rule C.11 of the Naval and Marines Attributable Benefits Scheme set out in Schedule 2, no lump sum shall be payable under this rule.
- (6) On the death of a pension credit member who dies before state benefit age, the Defence Council may pay a lump sum to the member's personal representative if—
  - (a) the member dies before claiming any pension under rule D.13 and a lump sum would have been due to the member under that rule if the pension under that rule had become payable on the date of death,
  - (b) having claimed such a pension, the member dies before it has been put into payment,
  - (c) the member dies after claiming a pension under rule D.13 and was not entitled to a lump sum under that rule,
  - (d) a pension has been paid to the member under rule D.13 for a period of less than 3 years.
- (7) The amount of lump sum payable shall be equal to the amount of annual pension payable or that would have been payable under rule D.13, multiplied by 3.

**E.22 Amount of lump sum benefit under rule E.21: active members**

- (1) In the case of an active member, the amount of the lump sum payable under rule E.21 (death of a member: lump sum benefit) is equal to the appropriate amount for the member, multiplied by three, subject to rule E.26.
- (2) In paragraph (1) “the appropriate amount” means the amount specified in the pension code in force on the date of death for a person of the member’s pension rank at the date of death who ceased service due to ill-health.
- (3) If the active member is also a deferred member or a pensioner member, the amount of the lump sum payable under this rule is reduced by the amount of any lump sum payable under rule E.23 or, as the case may be, rule E.24.

**E.23 Amount of lump sum benefit under rule E.21: deferred members**

In the case of a deceased deferred member, the amount of the lump sum payable under rule E.21 (death of a member: lump sum benefit) is equal to the amount of the lump sum to which the member would have been entitled under rule D.6 had the member ceased service due to ill-health, subject to rule E.26.

**E.24 Amount of lump sum benefit under rule E.21: pensioner members**

- (1) In the case of a deceased pensioner member, the amount of the lump sum payable under rule E.21 (death of a member: lump sum benefit), is equal to the amount of the shortfall, subject to rule E.26.
- (2) The amount of the shortfall is equal to—

**A - B**

where—

“**A**” is the amount of the lump sum that would have been payable in respect of the member under rule E.21 had the member died on the day the member’s service ceased; and

“**B**” is the amount of any lump sum paid to the member under Part D on becoming entitled to a pension under that Part, including any amount paid by way of commutation of pension under rule J.7 or J.8.

**E.25 Amount of lump sum benefit under rule E.21: pension credit members**

- (1) In the case of a pension credit member who—
  - (a) dies before any benefits derived from the pension credit have become payable, and
  - (b) had the member not died, would have been entitled to a pension and a lump sum under rule D.13,

the amount of the lump sum payable under rule E.21 is the amount of the annual pension that would have been payable under that rule if that pension had become payable to the member on the date of death, multiplied by 3.

- (2) In the case of a pension credit member who—
  - (a) dies after the pension under rule D.13 has become payable, and

- (b) did not receive a lump sum under rule D.13,  
the amount of the lump sum payable under rule E.21 is the amount of the annual pension on the date it was put into payment, multiplied by 3, less any amount already paid to the member as pension.

#### **E.26 Reduced lump sums where members' payments to the Scheme unfinished**

- (1) This rule applies if a lump sum is payable under rule E.21 and (apart from this rule) the amount payable falls to be determined under rule E.22, E.23 or E.24.
- (2) If the member —
  - (a) had agreed to repay the amount of any benefit paid under the Scheme on the cessation of the member's service for any of the purposes specified in paragraph (3), and
  - (b) had not made all the repayments he had agreed to make for that purpose,  
the amount determined under rule E.22, E.23 or E.24 is reduced by the amount of the repayments outstanding at that time.
- (3) The purposes are—
  - (a) obtaining entitlement to count as reckonable service a period of the member's service in respect of which the member was not entitled to benefits by way of pension under the Scheme; and
  - (b) improving the benefits to which the member's widow or widower would become entitled under this Part in respect of service before 1st April 1973.

#### **E.27 Pension debit members**

- (1) This rule applies where the deceased member was a pension debit member.
- (2) If the member was an active member—
  - (a) the amount of pension payable under rule E.1—
    - (i) is first calculated as if the member were not a pension debit member;  
and
    - (ii) is then reduced in the same proportion as the member's notional pension amount would have been reduced under section 31 of the 1999 Act if the member had been entitled to it on the date of death;
  - (b) the amount of pension payable under rule E.15—
    - (i) is first calculated as if the member were not a pension debit member (in particular, in determining the member's notional pension amount); and
    - (ii) is then subject to any reduction required under section 31 of the 1999 Act; and
  - (c) the lump sum payable under rule E.21 is calculated by multiplying the amount of the annual pension payable under this rule by 3.
- (3) If the member was a deferred member or a pensioner member—



- (a) the amount of the pension payable under rule E.1 is calculated by reference to the amount of the pension to which the member would have been entitled after any reduction under section 31 of the 1999 Act; and
- (b) the amount payable under rule E.15—
  - (i) is first calculated as if the member were not a pension debit member (in particular, in determining the member's notional pension amount); and
  - (ii) is then subject to any reduction required under section 31 of the 1999 Act.

**E.28 Dependant's pensions: suspension and recovery**

- (1) This rule applies where—
  - (a) on a member's death a pension has been awarded and paid under this Part; and
  - (b) subsequently it appears to the Defence Council that the member or the person to whom the pension has been paid made a false declaration or deliberately suppressed a material fact in connection with the award.
- (2) The Defence Council may—
  - (a) cease paying the pension; and
  - (b) recover any payment made under the award.
- (3) Paragraph (2) does not affect the Defence Council's right to recover a payment or overpayment in any case where he considers it appropriate to do so.

**E.29 Awards of child pensions: adjustment to the amount of pension**

- (1) This rule applies where after the death of an active member, a deferred member or a pensioner member—
  - (a) a pension is paid in respect of one or more persons under this Part on the basis that they were eligible children at the date of the member's death and that there were then no other eligible children; and
  - (b) subsequently it appears—
    - (i) that a person in respect of whom such a pension has been paid was not then an eligible child;
    - (ii) that a further person was then an eligible child; or
    - (iii) that a child who was born after the member's death is an eligible child.
- (2) The Defence Council may make such adjustment in the amount of the pension payable in respect of the child in question as are required in view of the facts as they subsequently appear.
- (3) Paragraph (2) does not affect the Defence Council's right to recover a payment or overpayment in any case where he considers it appropriate to do so.

### **E.30 Payments under this Part**

- (1) A pension under this Part is payable from the day after the date of the death of the member, unless paragraph (2) applies.
- (2) Where more than two eligible children live together (children living in the same household) and an increased pension is payable under rule E.18, payment of the pension under E.15 to an eligible child living in the same household who is not eligible for an increased pension under rule E.18 shall start on the day after the last day of the bereavement period.
- (3) Payment of a lump sum payable under this Part must be made before the expiry of the period of two years beginning with that date after the date of the death of the member.
- (4) Where a beneficiary is entitled to both a pension and a lump sum under this Part and payment of the lump sum is not made before the expiry of the period of two years beginning with day after the date of the death of the member, the amount of pension due to the beneficiary under rule E.1, E.8 or E.10 shall be increased by such amount as the Defence Council determines, after consulting the Scheme actuary.
- (5) A pension payable under this Part in respect of an eligible child aged under 18 must be paid—
  - (a) if the child is in the care of the member's surviving spouse or civil partner, to the surviving spouse or civil partner, and
  - (b) in any other case, to the appropriate person, unless the Defence Council directs otherwise.
- (6) For the purposes of this rule, "appropriate person", in relation to a child, means a person with parental responsibility with the meaning of—
  - (a) the Children Act 1989<sup>(a)</sup>;
  - (b) the Children (Northern Ireland) Order 1995<sup>(b)</sup>; or
  - (c) section 1(3) of the Children (Scotland) Act 1995<sup>(c)</sup>.

### **E.31 Dual capacity membership**

- (1) This rule applies where the deceased member was—
  - (a) a member of the Scheme of two or more of the kinds specified in paragraph (2); or
  - (b) a member of the Scheme and a member of the AFPS 2005; or
  - (c) a member of the Scheme and a member of a reserve forces pension scheme.
- (2) The kinds of member are—
  - (a) an active member;
  - (b) a deferred member;
  - (c) a pensioner member; and

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<sup>(a)</sup> 1989 c. 41.  
<sup>(b)</sup> S.I. 1995/755  
<sup>(c)</sup> 1995 c. 36.

- (d) a pension credit member.
- (3) Where paragraph (1)(a) applies—
  - (a) benefits are payable in respect of the member under this Part as if two or more members of the kinds in question had died (so that two or more pensions or lump sums are payable in respect of the one deceased member); and
  - (b) the amounts payable are determined accordingly.
- (4) The general rule in paragraph (3) is subject to—
  - (a) rule E.22(3), and
  - (b) Part G.
- (5) Where paragraphs (1)(b) or (1)(c) apply, benefits are payable in respect of the member under this Part regardless of the member's membership of the AFPS 2005 or a reserve forces pension scheme.

### **E.32 Child entitled to three or more pensions**

- (1) This rule applies if, apart from this rule, pensions would be payable in respect of the same child under this Part as a result of the death of more than two members.
- (2) Only the pensions payable as a result of the death of two of the members are payable and those pensions are the two which together result in the payment of the greatest annual amount in respect of the child.
- (3) Rule E.31(3) does not apply for the purpose of determining for this rule the number of members as a result of whose deaths pensions are payable.
- (4) But the amount of the pensions payable as the result of the death of any member to whom rule E.31(3) applies are calculated in accordance with rule E.33 before applying paragraph (2).

### **E.33 Guaranteed minimum pensions for surviving spouse or civil partners**

- (1) This rule applies where the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum under section 17 of the 1993 Act in relation to benefits in respect of the deceased member under the Scheme.
- (2) If apart from this rule—
  - (a) no pension would be payable to the surviving spouse or civil partner under this Part—
    - (i) for any period for which that section provides that the scheme must provide for such a pension to be payable, or
    - (ii) in any circumstances in which it must so provide by virtue of that section, or
  - (b) the weekly rate of the pension payable would be less than the guaranteed minimum,
 a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving spouse or civil partner.

## PART F TRANSFERS

### *Transfers out*

#### **F.1 Right to transfer value payment**

- (1) This Part supplements the rights conferred by or under Chapter 4 of Part 4 of the 1993 Act.
- (2) This Part is without prejudice to that Chapter or Chapter 5 of that Part (early leavers: cash transfer sums and contribution refunds).
- (3) Accordingly—
  - (a) a member to whom Chapter 4 of that Part applies (see section 93(1)(a) of that Act) is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of the member under the Scheme; and
  - (b) a member to whom Chapter 5 of that Part applies (see section 101AA(1) of that Act) is entitled to a cash transfer sum in accordance with that Chapter.
- (4) Paragraph (3) does not apply to rights that are directly attributable to a pension credit.

#### **F.2 Applications for statements of entitlement**

- (1) A member who requires a transfer value payment to be made must apply in writing to the Scheme administrator for a statement of the amount of the cash equivalent of the member's accrued benefits under the Scheme at the guarantee date (a "statement of entitlement").
- (2) In this Scheme, "the guarantee date" means any date that—
  - (a) falls within the required period;
  - (b) is chosen by the Scheme administrator;
  - (c) is specified in the statement of entitlement; and
  - (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.
- (3) In counting the period of 10 days referred to in paragraph (2)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.
- (4) In paragraph (2) "the required period" means—
  - (a) the period of 3 months beginning with the date of the member's application for a statement of entitlement; or
  - (b) such longer period beginning with that date (but not exceeding six months) as may reasonably be required if, for reasons beyond the control of the Scheme administrator, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

- (6) A member who—
- (a) has made an application for a statement of entitlement under this rule, and
  - (b) has not withdrawn it,
- may make only one other such application in the period of twelve months beginning with the date of the first application.

### **F.3 Applications for transfer value payments**

- (1) A member who has applied for and received a statement of entitlement under rule F.2 may apply in writing to the Scheme administrator for a transfer value payment to be made.
- (2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of paragraph (10)), and in this Scheme such a payment is referred to as “the guaranteed cash equivalent transfer value payment”.
- (3) An application under paragraph (1) must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than—
  - (a) 6 months after that date; or
  - (b) if it is earlier, the date on which the member reaches pension benefit age.
- (4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.
- (5) The application must meet such other conditions as the Defence Council may require.
- (6) An application for a transfer value payment to be made under the public sector transfer arrangements may only be made before the first anniversary of the day on which the member becomes eligible to be an active member of the scheme to which the transfer is to be made.
- (7) In the case of a person who is not within rule D.6 (deferred pensions), an application under paragraph (1) may only be made on or before the date that is 3 months after the date on which the Scheme administrator gives the person written notice of the options in accordance with section 101AC of the 1993 Act.
- (8) The Scheme administrator may direct that any time limit applying to an application under paragraph (1) should be extended if it is considered to be reasonable to do so in the circumstances.
- (9) An application under this rule may be withdrawn by notice in writing, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before such notice is given.
- (10) If the payment is made later than 6 months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—
  - (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or

- (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement.

#### **F.4 Ways in which transfer value payments may be applied**

- (1) A member may only require the Scheme administrator to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 95 of the 1993 Act.
- (2) Paragraph (1) applies whether or not the member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 4 of Part 4 of that Act.
- (3) The whole of the guaranteed cash equivalent transfer value payment must be applied.
- (4) A transfer payment may only be made to—
  - (a) a pension scheme that is registered under Chapter 2 of Part 4 of the 2004 Act; or
  - (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that Act).

#### **F.5 Calculating amounts of transfer value payments**

- (1) This rule applies for the purpose of calculating the amount of a guaranteed cash equivalent transfer value payment.
- (2) Subject to paragraphs (4) and (7), the amount of the guaranteed cash equivalent transfer value payment is to be calculated in accordance with guidance and tables determined by the Defence Council for use at the guarantee date after consultation with the Scheme actuary.
- (3) In preparing those tables the Defence Council, after consultation with the Scheme actuary, must use such factors as are considered appropriate, having regard to section 97 of the 1993 Act and regulations made under that Act (whether or not the payment is in respect of a person entitled to a guaranteed cash equivalent transfer value payment under that Act).
- (4) Subject to paragraph (7), if the amount calculated in accordance with paragraph (1) is less than the member's minimum transfer value (if any), the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value instead.
- (5) In paragraph (4), "the minimum transfer value", in relation to any person, means the sum of any of such payments as are mentioned in paragraph (6) as a result of which the member is entitled to count any reckonable service under the Scheme by reference to which the accrued rights subject to the transfer are calculated.
- (6) The payments are—
  - (a) any transfer value payments that have been made to the Scheme in respect of the member; and
  - (b) any contributions paid by the member under Part C.
- (7) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is calculated—

- (a) in accordance with those arrangements rather than paragraphs (2) and (4); and
- (b) by reference to the guidance and tables provided by the Government Actuary for the purposes of this paragraph that are in use on the date used for the calculation.

#### **F.6 Effect of transfers-out**

If a transfer value payment is made under this Part in respect of a person's rights under this Scheme, those rights are extinguished.

#### *Transfers in*

#### **F.7 Right to apply for acceptance of transfer value payment from another scheme etc**

- (1) Subject to the provisions of this Part, an active member may apply for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of that person under any scheme or arrangements to which a transfer value payment may be made under Chapter 4 of Part 4 of the 1993 Act (transfer values) to be accepted by the Scheme.
- (2) Paragraph (1) does not apply to rights that are directly attributable to a pension credit.

#### **F.8 procedure for applications under rule F.7**

- (1) An application under rule F.7—
  - (a) must be made in writing;
  - (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment; and
  - (c) subject to paragraph (2), must be made before the member reaches pension benefit age.
- (2) In the case of a transfer value payment to be made under the public sector transfer arrangements or to which paragraph (3) applies, the application under rule F.7—
  - (a) in the case of a transfer value payment to be made under the public sector transfer arrangements, must be made during the period of one year beginning with the day on which the member becomes eligible to be an active member;
  - (b) in the case of a transfer value payment to which paragraph (3) applies, must be made during the period of one year beginning with the relevant day, unless paragraph (4) applies; and
  - (c) must be received by the Scheme administrator before the applicant reaches the age which is the normal pension age under the scheme by which the transfer value payment is to be made.
- (3) This paragraph applies to—
  - (a) a transfer value payment from a personal pension scheme; or

- (b) a transfer value payment relating only to voluntary contribution rights.
- (4) This paragraph applies in the case of a transfer value payment within paragraph (3)(b) (“the relevant payment”) if—
  - (a) the applicant is also applying for the Scheme to accept a transfer value payment from a different occupational pension scheme from that by which the relevant payment is payable (“the second scheme”);
  - (b) the second scheme relates to the same employment as that to which the scheme by which the relevant payment is payable relates; and
  - (c) the transfer value payment payable by the second scheme relates to rights that are or include rights that are not voluntary contribution rights.
- (5) In this rule—
  - “occupational pension scheme” has the meaning given in section 1 of the 1993 Act;
  - “relevant date” means the day on which the applicant becomes eligible to be an active member of the scheme or 6th April 2006, whichever is the later; and
  - “voluntary contribution rights” means rights under an occupational pension scheme that derive from voluntary contributions made by the applicant.

#### **F.9 Acceptance of transfer value payments**

- (1) This rule applies where a member applies under rule F.7 for acceptance of a transfer value payment from another scheme.
- (2) Subject to paragraph (4), where an application is made by a member under rule F.7, the Scheme administrator shall accept the transfer value payment if such conditions as the Defence Council may require are met.
- (3) If the Scheme administrator accepts the payment, the member is entitled to count the appropriate period of reckonable service for the purposes of the Scheme.
- (4) The Scheme administrator may not accept a transfer value payment if—
  - (a) it would be applied in whole or in part in respect of the member’s or the member’s spouse’s or civil partner’s entitlement to a guaranteed minimum pension; and
  - (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the Scheme actuary for the purposes of this paragraph.
- (5) In Paragraph (3) “the appropriate period” means the period calculated in accordance with rule F.10.

#### **F.10 Calculation of transferred-in reckonable service**

- (1) Subject to paragraph (3), the period of reckonable service that a member is entitled to count under rule F.9(3) is calculated as at the date on which the transfer payment is received by the Scheme and in accordance with guidance and tables provided by the Scheme actuary for the purpose.
- (2) For the purposes of that calculation the member’s pensionable earnings are to



- be taken to be the amount of those earnings as at—
- (a) two months after the application under rule F.7 is received, or
  - (b) the date on which the transfer value payment is received,
- whichever is the later, and, in a case where the transfer value payment is received earlier than two months after that application is received, any necessary adjustment is to be made to that calculation to reflect any change in the amount of those earnings.
- (3) If the transfer value payment is accepted under the public sector transfer arrangements, the period the member is entitled to count is calculated—
    - (a) in accordance with those arrangements; and
    - (b) by reference to the guidance and tables provided by the Government Actuary for the purposes of this paragraph, that are in use on the date that is used by the transferring scheme for calculating the transfer value payment.

#### **F.11 Public sector transfer arrangements**

This Part applies in the case of a transfer to which the public sector transfer arrangements apply as it applies in other cases, except to the extent that—

- (a) any provision in this Part provides otherwise; or
- (b) the arrangements themselves make different provision.

## **PART G FURTHER SERVICE**

### **G.1 Application of Part G**

- (1) This Part applies to persons who—
  - (a) have been active members of the Scheme in pensionable service,
  - (b) have ceased to be in that service, and
  - (c) become active members of the Scheme again by giving further pensionable service,
 where such further service started before 6th April 2005.
- (2) This Part also applies to persons who—
  - (a) were active members of the Scheme in pensionable service,
  - (b) opted to cease to be such members whilst continuing to be in pensionable service,
  - (c) whilst still continuing in such service, opted to rejoin the Scheme,
 where such option to rejoin was exercised before 6th April 2005.
- (3) This Part also applies to persons who give service as officers beyond the age

of 55 who have reached the retirement age specified for a person of the member's rank and branch.

- (4) In this Part, in relation to any member to whom this Part applies—
  - (a) the service referred to in paragraph (1)(a) or (2)(a) is referred to as the 'earlier service'; and
  - (b) the service referred to in paragraph (1)(c) or (2)(c) is referred to as the 'current service'.

### **G.2 General rule: periods of service treated separately**

- (1) The general rule is that—
  - (a) reckonable and qualifying service that a member is entitled to count immediately before becoming an active member in the current service are disregarded in determining rights in respect of the current service; and
  - (b) reckonable and qualifying service that a member is entitled to count as an active member in respect of the current service are disregarded in determining rights in respect of the earlier service.
- (2) Paragraph (1) does not apply where the member is a pensioner member in respect of the earlier service and ceased service due to ill-health, in which case—
  - (a) the qualifying and reckonable service in respect of the earlier service shall be aggregated with the qualifying and reckonable service in respect of the current service;
  - (b) the circumstances relating to the pension to which the member is entitled on the cessation of the current service are determined on that cessation without reference to any determination made in respect of the member's condition at the end of the earlier service; and
  - (c) rules G.4 and G.5 shall apply.

### **G.3 Option to aggregate service**

- (1) This rule applies in the case of an active member who immediately before becoming an active member in the current service was entitled under this Scheme to count reckonable service and qualifying service in respect of earlier service (whether as a pensioner member or a deferred member).
- (2) The member may opt for that reckonable service and qualifying service—
  - (a) to be aggregated with the reckonable service and qualifying service that the member is entitled to count as a result of membership of the Scheme in the current service for the purpose of determining rights under the Scheme in respect of that membership; and
  - (b) to be disregarded for all other purposes of the Scheme.
- (3) The option may only be exercised—
  - (a) if the pension in respect of the earlier service is in payment, immediately on taking up the current service; or
  - (b) if the pension in respect of the earlier service is not in payment on taking

up the current service, on ceasing the current service, or immediately before the pension comes into payment if that is earlier.

- (4) In the case of a member who dies whilst an active member in respect of the current service, who is also a deferred member in respect of earlier service, if the failure of the member to exercise the option under paragraph (2) would result in any person being entitled under Part E to benefits in respect of the current service and one or more periods of earlier service, then the member is treated as having exercised the option if the pension and lump sum payable to that person would be higher than the aggregate of the pensions and lump sums that would otherwise be payable but for this paragraph.
- (5) The option may only be exercised by notice in writing to the Scheme administrator in such form as they require.

*Effect on rights to pensions and lump sums where option to aggregate has been exercised*

#### **G.4 Pension rights in respect of the current service where service has been aggregated under rule G.3**

- (1) The annual amount of the pension to which the active member is entitled in respect of the current service (including the aggregated service)—
  - (a) is first determined, at the time of the cessation of the current service (“the current cessation time”) as whichever of the following is the most beneficial—
    - (i) the amount payable in accordance with the provisions of Part D, as they have effect at the current cessation time in relation to the member, and on the basis of the pension rank at that time;
    - (ii) the amount payable in accordance with those provisions as they have effect at the current cessation time in relation to the member, but taking references to the rates prescribed for a person of the member’s pension rank and with the number of years’ reckonable service at the current cessation time as references to the rates applicable for a person of the member’s pension rank at the time of the cessation of the earlier service and, if the member has reached the age of 55, with the appropriate pension increases; or
    - (iii) in the case of a person who has reached the age of 55 before the current cessation time, the amount payable in accordance with those provisions as they have effect at the current cessation time in relation to the member, but taking references to the rates prescribed for a person of the member’s pension rank and number of years’ reckonable service at the current cessation time as references to the rates applicable for a person of the member’s pension rank on the member’s 55th birthday or, if it is later, the date on which the member reaches normal pension age for the member’s rank and service and with the member’s reckonable service at that age, increased by the appropriate pension increases; and
  - (b) is re-determined at—
    - (i) age 55, where the member had not reached that age at the current cessation time and is entitled to the payment of an immediate pension, in accordance with whichever of paragraph (1)(a)(i), or (ii)

is the most beneficial on the member's 55th birthday with the appropriate pension increases; or

- (ii) at pension benefit age where the member was a deferred member in respect of the current service, in accordance with whichever of paragraph (1)(a)(i), or (ii) is the most beneficial with the appropriate pension increases.
- (2) If a member—
- (a) was a pensioner member immediately before giving further service,
  - (b) held a pension rank other than that of an officer when that earlier service ceased,
  - (c) holds a lower rank in the current service, and
  - (d) is subject during the current service to the abatement of the member's pension in respect of the earlier service under Part H,
- paragraph (1) applies with the modifications in paragraph (3).
- (3) The modifications are—
- (a) the addition at the end of paragraph (1)(a)(iii) of the following paragraph—
    - “(iv) the amount specified in paragraph (4) or in paragraph (5)” and;
  - (b) the substitution in paragraph (1)(b)(i) for the words “paragraph (1)(a)(i), or (ii)” of the words “paragraph (1)(a)(i), (ii) or (iv)”.
- (4) The amount specified in this paragraph is the sum of—
- (a) the amount that would be payable in accordance with the provisions of Part D as they have effect at the current cessation time if the member's pension rank were the pension rank at the earlier cessation time and the member was only entitled to count the reckonable service at the earlier cessation time; and
  - (b) the difference between the amount that would be payable in accordance with those provisions as they have effect at the current cessation time if the member's pension rank were the pension rank at the current cessation time with the number of years' reckonable service in respect of the earlier service, and the amount that would be given if the member had one more whole year of reckonable service, multiplied by the number of years' reckonable service the member were entitled to count in respect of the current service (excluding the earlier service).
- (5) The amount specified in this paragraph is the sum of—
- (a) the amount that would have been payable in accordance with the provisions of Part D as they have effect at the current cessation time if the member's pension rank were the pension rank at the earlier cessation time and the member was only entitled to count the reckonable service at the earlier cessation time, but taking references to the pension code in force at the current cessation time as references to the pension code in force at the time of the cessation of the earlier service; and
  - (b) the difference between the amount that would be payable in accordance with those provisions as they have effect at the current cessation time, if the member's pension rank were the pension rank at the current cessation

time with the number of years' reckonable service in respect of the earlier service, and the amount that would be given if the member had one more whole year of reckonable service, multiplied by the number of years' reckonable service the member was entitled to count in respect of the current service (excluding the earlier service), but taking references to the pension code in force at the current cessation time as references to the pension code in force at the time of the cessation of the earlier service.

**G.5 Rights to lump sums in respect of the current service where service has been aggregated under rule G.3**

- (1) If the member has exercised the option under rule G.3 in respect of the current service and no lump sum had been paid in respect of the earlier service, the amount of the lump sum payable under Part D in respect of the current service (including the aggregated earlier service) at the time when the pension becomes payable is calculated by multiplying the amount of the annual pension so payable by virtue of this Part by 3.
- (2) If, in a case where paragraph (1) applies, at the time when the pension becomes payable the member has not reached the age of 55, and in accordance with rule G.4(1)(b) the amount of the annual pension payable under Part D in respect of the current service (including the aggregated earlier service) is increased when the member reaches that age, a further pension lump sum is payable under Part D which is calculated by multiplying the amount of that increase by 3.
- (3) If the member has exercised the option under rule G.3 in respect of the current service and a lump sum has been paid in respect of the earlier service, then the amount of the lump sum payable under Part D in respect of the current service (including the aggregated earlier service) is the difference between the amount specified in paragraph (1) multiplied by 3 and the amount of the pension lump sum paid in respect of the earlier service.

*Application to members who opted to leave Scheme*

**G.6 Application of this Part to members who opted to leave Scheme**

- (1) This Part applies to a member who, having been an active member of the Scheme, opted to cease to be such a member whilst continuing to be in pensionable service, as it applies to a member who ceases to be in such service.
- (2) In relation to such a person this Part applies as if the member—
  - (a) had ceased to be in such service when the member ceased to be an active member by virtue of the option, and
  - (b) had begun to be in such service again at the time when the member became an active member again,and references to the earlier service and the current service are to be read accordingly.
- (3) This rule applies subject to rule A.14(2) (disregard of short breaks in service).

*Application to members who give continued service beyond age 55*

### **G.7 Application of this Part to members who opt to disaggregate service**

- (1) This Part applies to a member who is an officer who having reached the age of 55—
  - (a) continues to give service;
  - (b) has reached the retirement age specified for a person of their rank and branch; and
  - (c) who opts to disaggregate the service given up to the age of 55 from service given after reaching that age.
- (2) In relation to such a person, this Part applies as if the member—
  - (a) had ceased to be in pensionable service at the age of 55 by virtue of the option, and
  - (b) had begun to be in such service again on the day immediately following the 55th birthday,and references to the earlier service and the current service are to be read accordingly.
- (3) The option to disaggregate must be exercised before the member reaches their 55th birthday, by notice in writing to the Scheme administrators in such form as they require.

## **PART H ABATEMENT**

### *Abatement of pension: further service*

#### **H.1 Pensioner members - abatement of pensions: further service**

- (1) This rule applies where a pensioner member of the Scheme gives further pensionable service in the armed forces.
- (2) This rule does not apply where the member—
  - (a) gives further service for training or for any authorised military duty; and
  - (b) such service—
    - (i) does not exceed 6 consecutive months (disregarding unpaid leave); or
    - (ii) where there are two or more periods of further service, the total period of service in any period of twelve months (disregarding unpaid leave), does not exceed 6 months.
- (3) Subject to rule H.2, the pension of a member in respect of the earlier service shall be abated in full on taking up further pensionable service for the duration of that further service.
- (4) Where the duration of the further pensionable service falling within paragraph (2)(a) is uncertain, paragraph (3) applies until the duration of such service is

certain at which point, if the requirement of paragraph (2)(a) and (b) are met, the pension shall cease to be abated.

- (5) For the purposes of this rule and rule H.2, H.3 and H.4 references to ‘earlier service’ are references to the period of service given in respect of which the pension is in payment.

### **H.2 Pensioner members - abatement of pension: further service in a lower rank or on lower pay**

- (1) This rule applies where a pensioner member of the Scheme gives further pensionable service and—
  - (a) that further service is in a lower rank than the rank held when the earlier service ceased; or
  - (b) the rate of basic pay in the further service is lower than that on ceasing the earlier service.
- (2) In this case, rule H.1(3) does not apply, and the pension of the member in respect of the earlier service is instead abated for the duration of the further pensionable service by the relevant amount.
- (3) The relevant amount is the amount by which the annual amount of the pension (ignoring any commutation), increased in accordance with paragraph (4) where appropriate, and the annual rate of basic pay in the further pensionable service exceeds the annual rate of basic pay on the last day of service in respect of the earlier service, increased in accordance with paragraph (4) where appropriate.
- (4) For the purposes of paragraph (3), where the member does not give further pensionable service immediately after ceasing the earlier service, the pension or basic pay in respect of that earlier service shall be increased by the same amount as a pension would have been increased under the 1971 Act by the relevant day if it had come into payment on the day after the earlier service ceased and it was eligible to be increased under that Act; and ‘the relevant day’ means the first day of the further pensionable service.
- (5) The relevant amount shall only be recalculated (in accordance with paragraphs (3) and (4)) if the rank held in the further service changes.

### **H.3 Pensioner members - abatement of pension: reserve service**

- (1) This rule applies where a pensioner member of the Scheme gives service in the reserve forces (‘the reserve service’) as a result of a commitment under section 24 or 25 of the Reserve Forces Act 1996(a) or a short term volunteer commission or a special s-type engagement.
- (2) The pension of the member in respect of the earlier service shall be abated for the duration of the reserve service by the relevant amount.
- (3) The relevant amount is the amount by which the annual amount of the pension (ignoring any commutation), increased in accordance with paragraph (4) where appropriate, and the annual rate of basic pay in the reserve service exceeds the annual rate of basic pay on the last day of service in respect of the earlier service, increased in accordance with paragraph (4) where appropriate.

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(a) 1996 c. 14.

- (4) For the purposes of paragraph (3), where the member does not give reserve service immediately after ceasing the earlier service, the pension or basic pay in respect of that earlier service shall be increased by the same amount as a pension would have been increased under 1971 Act by the first day of the reserve service if—
  - (a) it had come into payment on the day after the earlier service ceased; and
  - (b) it was eligible to be increased under that Act.
- (5) The relevant amount shall only be recalculated (in accordance with paragraphs (3) and (4)) if the rank held in the reserve service or the post or commitment changes.

**H.4 Pensioner members - abatement of pension on employment in reserved civil service post**

- (1) This rule applies if the pensioner member is employed in a civil service post reserved for former members of the armed forces (“reserved employment”).
- (2) The pension of the member in respect of the earlier service shall be abated for the duration of the reserved employment by the relevant amount.
- (3) The relevant amount is the amount by which the annual amount of the pension (ignoring any commutation), increased in accordance with paragraph (4) where appropriate, and the annual rate of basic pay in the reserved employment exceeds the annual rate of basic pay on the last day of service in respect of the earlier service, increased in accordance with paragraph (4) where appropriate.
- (4) For the purposes of paragraph (3), where the member does not give reserved employment immediately after ceasing the earlier service, the pension or basic pay in respect of that earlier service shall be increased by the same amount as a pension would have been increased under the 1971 Act by the relevant day if it had come into payment on the day after the earlier service ceased and it was eligible to be increased under that Act.
- (5) The relevant amount shall only be recalculated (in accordance with paragraphs (3) and (4)) if the grade held in the reserved employment changes or the person’s conditioned hours change.
- (6) In this rule the “relevant day” means the first day of the reserved employment.

**H.5 General disregard of effect of abatement for Part E**

- (1) Subject to paragraphs (2) and (3), references in Part E to the amount of pension payable to a person are references to the amount so payable apart from any abatement falling to be made under rules H.1 to H.4.
- (2) The reference in rule E.7(2) (increased pension under rule E.1 for immediate bereavement period: pensioner members) to the annual amount of the pension is a reference to the abated amount.
- (3) The reference in rule E.18(3) (increased pension under rule E.15 for immediate bereavement period) to the annual amount of the pension is a reference to the abated amount.



*Abatement in relation to contracted-in service*

**H.6 Abatement in relation to contracted-in service**

- (1) This rule applies if a member gave a period of contracted-in service which is treated as qualifying and reckonable service for the purpose of the Scheme.
- (2) From state pension age, the member's pension is abated by the equivalent to the notional guaranteed minimum pension attributable to the period spent in that contracted-in service during which the contracted-in rate of contributions were paid.

*Pensioner members recalled for a period of permanent service*

**H.7 Pensioner members recalled for a period of permanent service under the Reserve Forces Act 1980 or 1996**

- (1) A pensioner member who is recalled for a period of permanent service under the Reserve Forces Act 1980<sup>(a)</sup> or the Reserve Forces Act 1996<sup>(b)</sup> on or after 6th April 2005 may opt to have that service count towards a further pension under the provisions of the Scheme.
- (2) Where a pensioner member exercises the option in paragraph (1) there shall be no abatement of pension in respect of the earlier service.
- (3) If at the end of the period of recalled service the member has given satisfactory service, the member is entitled to a further annual pension, the amount of which is calculated in accordance with paragraph (4).
- (4) The amount of the annual pension is half the difference between the pension in respect of the earlier service, and the pension that would have been paid had the member's pension been calculated if the period of recalled service counted as reckonable service as well as the earlier service.

PART J

MISCELLANEOUS AND SUPPLEMENTARY

**J.1 Claims for and payment of benefits**

- (1) Notwithstanding any rule of the Scheme according to which any benefit becomes payable at any specified time, no benefit becomes payable under the Scheme unless the person to whom it would be payable has declared—
  - (a) that the person is entitled to it; or
  - (b) in the case of a benefit under rule E.15, that the person on whose behalf it is payable is so entitled.
- (2) A declaration under paragraph (1)—
  - (a) must be made in writing in such form as the Scheme administrator requires; and
  - (b) must be submitted to the Scheme administrator.

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<sup>(a)</sup> 1980 c. 9.  
<sup>(b)</sup> 1996 c. 14.

- (3) If a declaration under paragraph (1) in respect of a pension is made after the time when the pension becomes payable to any person in accordance with this Scheme, the person is only entitled to payment of the pension in respect of the period beginning with that time and ending with the date on which the declaration is made if—
  - (a) in a case where that period does not exceed one year, the Scheme administrator consents;
  - (b) in a case where that period exceeds one year but not six years, the Defence Council consents; and
  - (c) in a case where that period exceeds six years, the Treasury consents.
- (4) If a person who is entitled to a pension under rule E.1, E.7, E.8 or E.10 dies before making a declaration, no amount is payable to that person's estate in respect of that pension unless, in the opinion of the Scheme administrator, payment is justified by circumstances which are exceptional.
- (5) Pensions payable under the Scheme are payable by monthly instalments in arrears unless paragraph (6) applies.
- (6) If it appears to the Scheme administrator that payment of a pension in accordance with paragraph (5) would cause hardship, the pension may be paid instead by weekly instalments in arrears.
- (7) Where paragraph (5) applies the monthly instalments must equal one twelfth of the annual pension.
- (8) Where payment falls to be made because of paragraph (6) or for any other reason in respect of a period of less than one month ("the pension period"), the amount of each payment is the appropriate fraction of the amount that would be due as a monthly instalment if the person were paid such an instalment for period of one month ending on the date of payment.
- (9) In paragraph (8) "the appropriate fraction" means the fraction given by the following formula—
 
$$\frac{PP}{M}$$
 where—
 

"PP" is the number of days in the pension period; and

"M" is the number of days in the calendar month in which the payment is made.
- (10) This rule is to be disregarded in determining for the purposes of any other provision of this Scheme whether a person is entitled to a pension at any time or whether a pension becomes payable immediately.

## **J.2 Non-assignability**

- (1) Subject to rule E.30(5), every benefit to which a person is entitled under the Scheme is payable to or for that person's benefit.
- (2) No such benefit is assignable or chargeable with that person's own or any other person's debts.

- (3) This rule is without prejudice to anything that has effect by virtue of any enactment or may be done under or for the purpose of the Chelsea and Kilmainham Hospitals Act 1826<sup>(a)</sup>.

### **J.3 Beneficiaries who are incapable of looking after their affairs**

- (1) In the case of a beneficiary who, in the opinion of the Defence Council, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the Defence Council may—
  - (a) use any amount due to the beneficiary under the Scheme for the beneficiary's benefit; or
  - (b) pay it to some other person to do so.
- (2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Defence Council from any obligation under the Scheme in respect of the amount.

### **J.4 Forfeiture of benefits**

- (1) Subject to paragraphs (2) to (3), the Defence Council may withhold benefits payable to a person under the Scheme to such extent as the Defence Council considers appropriate.
- (2) In the case of a pension payable under Part D, paragraph (1) only applies if rule J.5(1) applies.
- (3) In the case of a pension payable under Part E, paragraph (1) only applies if in the opinion of the Defence Council the person entitled under Part E aided or abetted an offence mentioned in rule J.5(1)(a) or (b), or rule J.5(2) applies.
- (4) If the member has a guaranteed minimum under section 14 of the 1993 Act in relation to service by reference to which the member is entitled to benefits under the Scheme, paragraph (1) only applies to so much of the member's pension as exceeds that guaranteed minimum, unless rule J.5(1)(a) applies.
- (5) Where rule J.5(1)(c) (monetary obligations) applies—
  - (a) if the amount of the obligation is in dispute, paragraph (1) only applies if the obligation has become enforceable—
    - (i) under an order of a competent court; or
    - (ii) in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement by the parties) by the sheriff; and
  - (b) the benefits withheld must not exceed the amount of the monetary obligation or, if less, the value of the person's entitlement or the accrued right in question (as determined under section 93(2) of the 1995 Act).

### **J.5 Events enabling forfeiture**

- (1) This paragraph applies to a member who is an active member, a deferred member or a pensioner member if the member—
  - (a) is convicted of treason or one or more offences under the Official Secrets

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<sup>(a)</sup> 1826 (7 Geo 4 c. 16)

- Acts for which the member has been sentenced on the same occasion—
- (i) to a term of imprisonment of at least 10 years; or
  - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years;
- (b) is convicted of an offence in connection with the service that qualifies the member to belong to the Scheme which the Defence Council considers to have been gravely injurious to the defence, security or other interests of the State; or
  - (c) has after becoming a member of the Scheme incurred a monetary obligation to the Crown which—
    - (i) arises out of a criminal, negligent or fraudulent act or omission by the member; or
    - (ii) arises out of or in connection with the member’s service in the armed forces.
- (2) This paragraph applies to a person who is convicted of the murder or manslaughter of the member or any other offence which involves the unlawful killing of the member.
  - (3) In paragraph (2) “unlawful killing” includes unlawfully aiding, abetting, counselling or procuring the death.

**J.6 Procedure, references etc.**

- (1) If the Defence Council proposes to withhold a person’s benefits under rule J.4, they must notify the person in writing of this proposal.
- (2) Such a notification must give the person information about rights under—
  - (a) the arrangements established by the Defence Council for the resolution of disputes relating to the Scheme that are in force at the time the notification is given, and
  - (b) Part 10 of the 1993 Act (investigations: the Pensions Ombudsman), in respect of any decision made under rule J.4.
- (3) If the Defence Council withholds benefits under rule J.4 in a case where rule J.5(1)(c) (monetary obligations) applies, the member must be given a certificate showing any amount withheld and the effect of its being withheld on the member’s benefits under the Scheme.

**J.7 Commutation of pensions (life commutation)**

- (1) Subject to paragraphs (3) to (6), the Defence Council may permit a member who meets the conditions specified in paragraph (2) to opt under this rule to exchange for a lump sum part of the pension that is payable to the member under this Scheme as a result of reckonable service given before 6 April 1980.
- (2) The conditions are that—
  - (a) the member entered pensionable service before 1st April 1978;
  - (b) the member ceases service with an entitlement to an immediate pension under rule D.1 or D.14;

- (c) in the opinion of the Scheme medical adviser—
  - (i) the member is in good health; or
  - (ii) the member's health is such that life expectancy is not reduced by more than 5 years on account of the member's health; and
- (d) in the case of a member who is not an officer, the member has shown to the satisfaction of the Defence Council that the exchange would be of distinct and permanent advantage to the member.
- (3) Where a member who is not an officer wishes to opt to exchange no more than 25% of their pension for a lump sum, the Defence Council shall permit it under paragraph (1).
- (4) An option under paragraph (1) must be exercised—
  - (i) before the member's benefits are due to come into payment;
  - (ii) in any event before 6th April 2020; and
  - (iii) by notice in writing to the Scheme administrator in such form as the Defence Council requires.
- (5) The option may not be exercised so that more than 50% of the amount of the pension referred to in paragraph (1) is exchanged for a lump sum.
- (6) The option may only realise a maximum lump sum that is equal to the difference between the lump sum the member would have been entitled to under Part D and the maximum lump sum payable to a person of the member's pension rank.
- (7) In the case of a person who has made contributions under Part C, the part of the pension attributable to those contributions is ignored for the purposes of this rule.
- (8) Subject to paragraph (5), the total of the annual amounts of pension exchanged for any particular lump sum is determined by the Defence Council, after consultation with the Scheme actuary.
- (9) This rule does not apply to pensions derived from pension credit rights.

#### **J.8 Commutation of small pensions**

- (1) Where the annual rate of any of the pensions specified in paragraph (2) does not exceed the small pensions commutation maximum, the Scheme administrator may pay the person entitled to the pension a lump sum of such an amount as the Scheme actuary advises represents the capital value of the pension if—
  - (a) that person consents; and
  - (b) in a case where that person is a member and the pension is one which may not be less than the guaranteed minimum, the member has reached state pension age.
- (2) The pensions are—
  - (a) a pension to which a member is entitled under Part D;
  - (b) a pension payable to any person under Part E (death benefits) in respect of a particular member.

- (3) If—
- (a) a member is entitled to more than one pension in respect of the service by virtue of which he is eligible for membership of the Scheme,
  - (b) a person is entitled to more than one pension in respect of the same member and the same service of the member, or
  - (c) a pension credit member is entitled—
    - (i) to more than one pension under rule D.13, or
    - (ii) to one or more pensions within sub-paragraph (a) in addition to one or more pensions under rule D.13,
 those pensions may only be commuted under this rule if they do not in aggregate exceed the amount that is permitted to be commuted under all the commutation requirements that apply in the circumstances in question.
- (4) The payment of a lump sum under this rule in respect of a pension discharges all liabilities under these Rules in respect of that pension.
- (5) In this rule—
- “the small pensions commutation maximum” means the amount that is permitted to be commuted, having regard to all the commutation requirements that apply in the circumstances in question; and
- “the commutation requirements” means requirements permitting the commutation of small pensions that are imposed—
- (a) by regulation 19, 20 or 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(a);
  - (b) by regulation 2 of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(b);
  - (c) by regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000(c); or
  - (d) by paragraph 7 of Schedule 29 to the 2004 Act (which defines trivial commutation lump sums for the purposes of Part 1 of that Schedule).

### **J.9 Determination of questions**

Except as otherwise provided by this Scheme, any question arising under the Scheme is to be determined by the Defence Council, whose decision on it shall be final.

### **J.10 Information and evidence**

- (1) The Defence Council may require any person who is receiving a pension under this Part of the Scheme to provide evidence to establish—
- (a) the person’s identity; and
  - (b) their continuing entitlement to payment of any amount.

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(a) S.I. 1996/1172. Regulation 20 was amended by regulation 2(3) of S.I. 2000/2975. Regulation 60 was amended by regulation 4(12) of S.I. 1997/786.

(b) S.I. 1997/785

(c) S.I. 2000/1054.

- (2) If such evidence is not provided, the Defence Council may withhold the whole or any part of any benefits payable under the Scheme in respect of the person.

#### **J.11 Modification of pension entitlements: false statements etc. about ill-health**

- (1) This rule applies where—
  - (a) an ill-health pension has been awarded to a member, or
  - (b) the Defence Council has accepted an application by the member for a transfer value payment from another scheme,and subsequently it appears to the Defence Council that the member made a false declaration about their health or deliberately suppressed a material fact.
- (2) The Defence Council may—
  - (a) cease paying the pension;
  - (b) withhold the whole or part of the pension; and
  - (c) recover any payment made.

#### *Payment and deduction of tax*

#### **J.12 Reduction of benefits and transfer values where lifetime allowance charge payable**

- (1) This rule applies if—
  - (a) an event that is a benefit crystallisation event listed in the table in section 216(1) of the 2004 Act (“the table”) occurs in relation to a member; and
  - (b) the member and the person who is the scheme administrator for the purposes of section 217 of that Act (“the administrator”) are jointly and severally liable to the charge in respect of the event.
- (2) Where this rule applies—
  - (a) the administrator must pay the tax payable on the event;
  - (b) if the event is benefit crystallisation event 8 in the table (transfer to qualifying recognised overseas pension scheme), the amount or value of the sums or assets transferred must be reduced; and
  - (c) in the case of any other event, the amount or value of the benefits payable to or in respect of the member must be reduced.
- (3) The amount or value of the reduction must be such that, in the opinion of the Scheme actuary, it fully reflects the amount of the tax so paid.

#### **J.13 Deduction of special lump sum death benefits charge**

Before a payment is made that is a pension protection lump sum death benefit for the purposes of Part 4 of the 2004 Act (see paragraph 14 of Schedule 29 to that Act), the person who is the scheme administrator for the purposes of section 217 of that Act may deduct from it any tax due in respect of the payment under section 206 of that Act (the special lump sum death benefits charge).

*SCHEDULE 2*  
THE NAVAL AND MARINES ATTRIBUTABLE BENEFITS  
SCHEME

PART A  
INTERPRETATION

**A.1 Interpretation**

In the rules of the benefits Scheme, unless the context otherwise requires, the following expressions have the following meanings—

“the 1993 Act” means the Pension Schemes Act 1993(a);

“the 1995 Act” means the Pensions Act 1995(b);

“AFPS 1975” means the occupational pension scheme arrangements, other than the benefit Scheme, that were open to members of the armed forces entering service on or before 5th April 2005 and set out in schedule 1 to this Order;

“AFPS 2005” means the Armed Forces Pension Scheme 2005 established by article 2 of the Armed Forces Pension Scheme Order 2005(c);

“the AFRGES” means the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (AFPS 1975) Order 2010 to be made under the Armed Forces (Pension and Compensation) Act 2004(d);

“annual compensation payment” means the compensation scheme payment referred to in rule B.5 of the Scheme;

“armed forces” means the naval, military or air forces of the Crown but not the reserve forces;

“attributable lump sum ” means the lump sum payment referred to rule B.6 of the Scheme;

“basic pay” has the meaning given by rule A.2;

“the benefits Scheme” means the Naval and Marine Attributable Benefits Scheme set out in this Schedule and “the rules” of the benefits Scheme are to be read accordingly;

“commencement date” means 6th April 2010;

“Early Departure Point Order” means the Armed Forces Early Departure Payments Scheme Order 2005(e);

“eligible child” has the meaning given in rule D.2 of the Scheme;

“excluded service” in relation to a person, means service in respect of which the person is not eligible for membership of the AFPS 1975 but does not include service where an officer is on a short service commission;

“immediate bereavement period” means the period of 182 days beginning with the day following the date of a person’s death;

“injury” includes a medical condition, disease or illness, whether mental or physical;

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- (a) 1993 c. 48.  
(b) 1995 c. 26.  
(c) S.I. 2005/438  
(d) 2004 c. 32.  
(e) S.I. 2005/437



“long term compensation” means the compensation payable at the end of the immediate bereavement period referred to in rule C.6 of the benefits Scheme;

“occupational pension scheme” has the meaning given in section 1 of the 1993 Act;

“pension code” means the tri-service pension codes that specify the rate of pension and rates of compensation for injury or death which are attributable to service as recommended by the Armed Forces Pay Review Body and approved annually by the Government;

“pension rank” is to be read in accordance with rule A.3 of AFPS 1975;

“personal pension scheme” means a personal pension scheme within the meaning of section 1 of the 1993 Act;

“qualifying service”—

- (a) in the case of a person who is a member of the AFPS 1975 is to be read in accordance with rule A.10 of AFPS 1975; and
- (b) in the case of any other person, has the meaning that it would have if the person were such a member throughout the person’s service in the Royal Navy and Royal Marines;

“reckonable service”—

- (a) in the case of a person who is a member of AFPS 1975 is to be read in accordance with rule A.11 of AFPS 1975; and
- (b) in the case of any other person has the meaning that it would have if the person were such a member throughout the person’s service in the Royal Navy and Royal Marines;

“rank” includes “rate” and in the case of a member of the chaplaincy services (including the Director General of the Naval Chaplaincy Services) the reference to rank is to be taken as a reference to the person’s grade for pension purposes;

“relevant degree of disablement” has the meaning given in rule B.4 of the benefits Scheme;

“relevant disabling condition” has the meaning given in rule B.2 of the benefits Scheme;

“RFPS 2005” means the occupational pension scheme for the reserve forces established by regulations made by the Defence Council, in exercise of the powers conferred on them by sections 4 and 8 of the Reserve Forces Act 1996(a);

“the Royal Navy and the Royal Marines” shall not include the Royal Fleet Reserve, the Royal Naval Reserve or the Royal Marines Reserve;

“Scheme administrator”, in relation to a member or a function, means the person responsible for the day to day administration of the benefits Scheme in relation to the person or in respect of the function;

“Service Pensions Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(b);

“short term compensation” means the amount of compensation payable for the immediate bereavement period after a person’s death and referred to in rule C.5 of the benefits Scheme;

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(a) 1996 c. 14. The Reserve Forces Pension Scheme Regulations 2005 are not made pursuant to Parliamentary procedure.

(b) S.I. 2006/606; as amended by S.I. 2006/1455, 2007/909, 2008/2683 and 2009/706.

“surviving adult dependant” means a surviving spouse, surviving civil partner or surviving eligible partner;

“surviving adult dependant’s attributable lump sum” means the attributable lump sum referred to in rule C.7 of the benefits Scheme;

“surviving eligible partner” has the meaning set out in rule C.3 of the Scheme.

#### **A.2 Meaning of “basic pay”**

In relation to a person serving in the Royal Navy or Royal Marines, “basic pay” means—

- (a) pay for the member’s rank and seniority; and
- (b) any other amount if and to the extent that the Defence Council has determined that it is to be treated as basic pay; but
- (c) subject to sub-paragraph (b) does not include—
  - (i) any allowances;
  - (ii) any additional amounts payable in respect of particular qualifications or duties, the location of service or the conditions in which service is temporarily performed;
  - (iii) without prejudice to paragraphs (i) and (ii), any additional amounts payable to medical or dental officers; or;
  - (iv) any description of payment that the Defence Council has determined is not to be treated as basic pay.

## **PART B**

### **BENEFITS PAYABLE TO PERSONS WHO HAVE SERVED IN THE ROYAL NAVY AND ROYAL MARINES**

#### **B.1 Entitlement to annual compensation payment and attributable lump sum**

- (1) Subject to paragraph (2), a person is entitled to an annual compensation payment and a lump sum as compensation for an injury in accordance with these provisions if—
  - (a) the person was discharged from the Royal Navy or Royal Marines on medical grounds;
  - (b) the injury was caused by service in the Royal Navy or Royal Marines in the period beginning with 31st March 1973 and ending with 5th April 2005;
  - (c) an award has been made to the person under the Service Pensions Order, in respect of disablement which is due to a relevant disabling condition, that takes effect from the day following the date of the person’s discharge;
  - (d) the person’s degree of disablement due to a relevant disabling condition is not less than 20%; and

- (e) the service in which the injury was sustained is not excluded service.
- (2) The amount of compensation payable may be reduced or extinguished in accordance with the following rules—
  - (a) rule B.11 (reduction of annual compensation payments to take account of benefits paid under other armed forces pensions schemes);
  - (b) rule B.12 (reduction to take account of other compensation payments);
  - (c) rule B.13 (reduction to take account of misconduct or negligence);
  - (d) rule B.14 (persons giving further service within AFPS 1975, the AFPS 2005 or RFPS 2005).

### **B.2 Relevant disabling condition**

- (1) An injury is a relevant disabling condition if—
  - (a) it is the principal invaliding condition;
  - (b) in the case of a discharge from the Royal Navy or Royal Marines in the period 1st January 2000 and ending on 5th April 2005 it would alone have resulted in the person being unfit for service if another injury had not done so; or
  - (c) in the case of a discharge from the Royal Navy or Royal Marines in the period 1st January 2000 and ending on 5th April 2005 the injury was a result of another injury within sub-paragraph (a) or (b) and which was present at the date of discharge.
- (2) In this part “principal invaliding condition” means the injury identified as the main reason for the person’s permanent unfitness for service in the Royal Navy or Royal Marines which is stated on the person’s medical discharge certificate.

### **B.3 Date of medical discharge**

- (1) In the case of a disablement for which a person was discharged from service on or before 31st March 1999 entitlement to benefits is subject only to the person satisfying the conditions in rule B.1(1).
- (2) In the case of a disablement which is due to an injury for which a person was discharged from service in the period beginning with 1st April 1999 and ending on 5th April 2005 entitlement to benefits is subject not only to the person satisfying the conditions in rule B.1(1) but the Defence Council must also accept on the balance of probabilities that the relevant disabling condition was attributable to, or significantly aggravated by the person’s service in the Royal Navy or Royal Marines.

### **B.4 Relevant degree of disablement**

- (1) For the purposes of rule B.1, the person’s relevant degree of disablement is the degree determined in the case of the case of the person on an assessment under rule 42 of the Service Pensions Order for the purposes of awards made under that Order (subject, in any case where a revision of an assessment has taken place under article 44 of that Order, to that revision) expressed as a percentage.

- (2) That part of the percentage so determined (if any) as relates to disablement in respect of injuries that are not relevant disabling conditions (as defined in rule B.2) is to be disregarded for the purposes of this benefits Scheme.
- (3) In a case where two or more injuries together cause the disablement leading to the person's discharge on medical grounds they are together treated as a relevant disabling condition for the purposes of this rule.

#### **B.5 Amount of annual compensation payment**

Subject to rule B.7, B.8 and B.9 the amount of the annual compensation payment is—

- (a) in the case of an officer whose pension rank is that of rear admiral or major general or above or is the Director General of the Naval Chaplaincy Service, the amount specified in the relevant table in the pension code of annual compensation payments for a person of that rank with that person's relevant degree of disablement;
- (b) in a case of a person whose pension rank is commodore or brigadier or below and who is not within paragraph (c), (d) or (e) the amount specified in the relevant table in the pension code for a person of that rank with that person's relevant degree of disablement;
- (c) in the case of a person who is in a cadre of the special forces, and is an officer, the amount specified in the relevant table in the pension code for the special forces for a person of that rank with that person's relevant degree of disablement;
- (d) in the case of a deputy chaplain or a principal chaplain the amount specified in the relevant table in the pension code for a person of that rank with the person's relevant degree of disablement and in the case of a chaplain, with the number of full years reckonable service that the person has;
- (e) in the case of a person whose pension rank is not that of an officer and who is not within sub-paragraph (f) the amount specified in the relevant table in the pension code for a person of that rank with that person's relevant degree of disablement;
- (f) in the case of a person whose pension rank is not that of an officer and who is in a cadre of the special forces the amount specified in the relevant table in the pension code for a person of that rank with that person's relevant degree of disablement.

#### **B.6 Amount of attributable lump sum**

Subject to rules B.7, B.8 and B.9 the amount of the attributable lump sum is—

- (a) in the case of a person whose pension rank is that of a rear admiral or major general or above or is the Director General of the Naval Chaplaincy Service the amount specified in the relevant table in the pension code of attributable lump sums for a person of that rank with that person's relevant degree of disablement;
- (b) in the case of a officer whose pension rank is that of a commodore or brigadier or below and who is not within paragraph (c), (d) or (e) the amount specified in the relevant table in the pension code of attributable lump sums payments for a person of that rank with that person's relevant degree of disablement;

- (c) in the case of a person who is in a cadre of the special forces and is an officer the amount specified in the relevant table in the pension code of attributable lump sums for the special forces for a person of that rank with that person's relevant degree of disablement;
- (d) in the case of a deputy chaplain or a principal chaplain the amount specified in the relevant table in the pension code of attributable lump sums for a person of that rank with that person's relevant degree of disablement and in the case of a chaplain with the number of full years reckonable service that the person has;
- (e) in the case of a person whose pension rank is not that of an officer and is not within sub-paragraph (f) the amount specified in the relevant table in the pension code of attributable lump sums for a person of that rank with that person's relevant degree of disablement;
- (f) in the case of a person whose pension rank is not that of an officer and who is in a cadre of the special forces the amount specified in the relevant table in the pension code of attributable lump sums for a person of that rank with that person's relevant degree of disablement.

**B.7 Rank additions: officers**

- (1) If at any time during the person's service the person holds a paid acting rank higher than the person's pension rank for a period of at least one year or periods amounting in aggregate to at least one year the amount of the annual compensation payment payable under rule B.5 and the amount of the attributable lump sum payable under rule B.6 is increased by the relevant rank addition.
- (2) The rank addition is calculated as follows—
 
$$\frac{1}{3} \times (A-B) \times \text{number of days spent in the higher rank (up to a maximum of 2 years)} \div 365$$
 Where—
 

“A” is the amount of the annual compensation payment or attributable lump sum specified in the relevant table in the pension code for a person had the person's pension rank been the higher rank; and

“B” is the amount of annual compensation payment or attributable lump sum specified in the relevant table in the pension codes for a person of the person's pension rank.

**B.8 Rank additions: other ratings or ranks**

- (1) If at any time in the five year period immediately preceding a person's discharge the person holds a paid acting rank higher than the person's pension rank for a period of at least one year or periods amounting in aggregate to at least one year the amount of annual compensation payable under rule B.5 or attributable lump sum payable under rule B.6 is increased by the relevant rank addition.
- (2) The rank addition is calculated as follows—
 
$$\frac{1}{2} \times (A-B) \times \text{number of days spent in the higher rank (up to a maximum of 2 years)} \div 365$$
 Where—
 

“A” is the amount of annual compensation or attributable lump sum specified

in the relevant table in the pension code for a person of the person's pension rank had the person's pension rank been the higher rank, or where there are more than one the lower of those ranks; and

“B” is the amount of annual compensation or attributable lump sum specified in the relevant table in the pension code for a person of the person's pension rank.

#### **B.9 Amount of annual compensation and attributable lump sums: Supplemental**

References in rules B.5 to B.8 to an amount specified in the relevant table for a person are to the amount so specified at the date the person is discharged on medical grounds and reference to the relevant table in the pension code means reference to the tables of the rates of annual compensation payments and attributable lump sums for former members of the Royal Navy and Royal Marines set out in the pension code.

#### **B.10 Changes in the degree of disablement: annual compensation payment and attributable lump sums**

- (1) This rule applies if a person's relevant degree of disablement changes after the time when it is first determined on an assessment under article 42 of the Service Pensions Order or as a result of a revision under article 44 of that Order.
- (2) Where a person's relevant degree of disablement increases, then—
  - (a) the level of the annual compensation payment shall be adjusted in accordance with the revised assessment of the relevant degree of disablement; and
  - (b) if the degree of disablement increases from less than 20% to 20% or above the person will be entitled to an annual compensation payment.
- (3) Where there is a decrease in the person's relevant degree of disablement after the date of the person's discharge such that the degree of disablement is less than 20% the person shall not be entitled to an annual compensation payment in respect of the period beginning with the day following the making of the revised assessment.
- (4) Where there is a decrease in the person's relevant degree of disablement within 12 months after the date of the persons' discharge to not less than 20% the level of the annual compensation payment shall be adjusted in accordance with the revised assessment of the relevant degree of disablement.
- (5) Where there is a decrease in the person's relevant degree of disablement more than 12 months after the date of the person's discharge and the revised relevant degree of disablement is not less than or is equal to 20% the decrease in the relevant degree of disablement shall be disregarded.
- (6) Where after a decrease in a person's relevant degree of disablement to less than 20% there is subsequently an increase in that person's relevant degree of disablement such that it equals or exceeds 20% that person shall be entitled to an annual compensation payment.
- (7) Where as a result of this rule a person's annual compensation payment is to be adjusted as from a date after that on which the person first became entitled to an annual compensation payment then the amount of annual compensation

payment which a person becomes entitled to following the adjustment is determined by reference to amount of annual compensation which would have been applicable in the person's case if the person's relevant degree of disablement at the time the person originally became entitled to an annual compensation payment had been the degree following the revision.

- (8) Where a person has been awarded a lump sum in respect of a disablement and that person's relevant degree of disablement is increased then the amount of lump sum payable may be increased where it has been determined that the relevant degree of disablement determined at the date of reassessment should have been the relevant degree of disablement at the date of discharge.
- (9) Where as a result of this rule the level of a person's annual compensation payment or attributable lump sum is to be adjusted it shall also be increased in accordance with rule E.9 and the increases under rule E.9 shall be determined as if the increased compensation payment or increased lump sum had been payable at the time the person originally became entitled to that payment or lump sum and any increases that would have been applicable under rule E.9 before the time of adjustment had been calculated accordingly.
- (10) Where as a result of this rule a person's annual compensation payment is to be adjusted or a person becomes entitled to an annual compensation payment the revised level of annual compensation payment shall be payable from the period beginning with the day following the making of the revised assessment.
- (11) Where a person's lump sum is increased any amount already paid by way of lump sum will be deducted from any additional lump sum which is payable.

#### **B.11 Reduction of the annual compensation payment to take account of benefits paid under other armed forces pensions schemes**

- (1) Where a person awarded an annual compensation payment under rule B.1 is also in receipt of any of the benefits specified in paragraph (2) the amount of the annual compensation payment will be reduced (if necessary to nil) by the annual amount of those benefits.
- (2) The benefits referred to in paragraph (1) are—
  - (a) an ill health pension under AFPS 1975 but disregarding any reductions made by virtue of rules D.22 and D.23 of that scheme (reduction for national insurance benefits);
  - (b) the annual value of the lump sum payable by virtue of article 16 of the Early Departure Point Order;
  - (c) any early departure payments payable by virtue of articles 8 to 13 of the Early Departure Point Order;
  - (d) a pension under rule D.1 of AFPS 2005 (retirement after reaching scheme pension age);
  - (e) a pension under rule D.2 of AFPS 2005 (retirement before reaching pension age);
  - (f) a pension under rules D.4 of AFPS 2005 (early payment of pension with actuarial reduction);
  - (g) a pension under rule D.5 of AFPS 2005 (early payments of benefits; active members with permanent serious ill health);

- (h) a pension under rule D.6 of AFPS 2005 (early payment of benefits: active members with significant impairment of capacity for gainful employment);
- (i) an award of unemployability supplement under article 12 of the Service Pensions Order made within the period of 12 months after—
  - (i) the date on which the relevant disabling condition is sustained; or
  - (ii) if later, the date on which the relevant disabling condition has been found as attributable to service under that order.
- (3) If a person is entitled to more than one of the benefits referred to in paragraph (2)(a) to (i) the reduction in respect of each is aggregated.
- (4) In paragraph (2)(b) the “annual value” in relation to a lump sum of any amount means such amount as is determined in accordance with tables prepared by the Government Actuary to be the annual value of a lump sum of that amount.

**B.12 Reduction of amount of compensation payment to take account other compensation payments**

- (1) Where the Defence Council is satisfied that damages have been or will be recovered by a person in respect of a relevant disabling condition for which an annual compensation payment is payable the Defence Council may take those damages into account against that person’s annual compensation payment which might otherwise be payable and may withhold or reduce any such payment.
- (2) For the purposes of this rule damages may include any payments received as a result of a claim in respect of the injury for which an annual compensation payment is payable whether or not the payment is made in pursuance of a judgement or order of the court of any jurisdiction by way of settlement or compromise of the claim and whether or not proceedings are instituted to enforce the claim.
- (3) Where any compensation is paid—
  - (a) under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995(a),
  - (b) under the Criminal Injuries Compensation Scheme established the Criminal Injuries (Compensation) (Northern Ireland) Order 2002(b),
  - (c) under the scheme established by the Ministry of Defence for the purposes of paying compensation to members of the armed forces who suffer injury as a result of a crime committed outside the United Kingdom,
 this compensation shall also be taken into account when the Defence Council determines what level a person’s annual compensation payment should be reduced by under paragraph (1).

**B.13 Reduction of the annual amount of compensation payment in cases of misconduct or negligence**

Where a relevant disabling condition was caused wholly or partially as a result of that

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(a) 1995 c. 53.  
 (b) S.I. 2002/796 N.I.



person's misconduct, negligence or any other matter within their control the amount of the annual compensation payment may be reduced to such level as the Defence Council considers appropriate.

#### **B.14 Persons giving further service who are members of AFPS 2005 or RFPS 2005**

Where a person who is eligible for an annual compensation payment under the provisions of this benefits Scheme enters into further service as a result of which the person is eligible to be an active member of the AFPS 1975, AFPS 2005 or the RFPS 2005 any annual compensation payment which the person becomes entitled to under these rules ceases to be payable for the duration of that service.

### **PART C**

#### **BENEFITS PAYABLE TO SURVIVING ADULT DEPENDANTS**

##### **C.1 Entitlement to compensation payments and lump sum in case of a person's death**

- (1) Subject to paragraphs (2) and (4) a surviving adult dependant is entitled to short term and long term compensation and a survivor's attributable lump sum as compensation for a person's death in accordance with the provisions set out in this part where—
  - (a) it has been accepted for the purpose of articles 23 and 24 of the Service Pensions Order that the death was attributable to or hastened by—
    - (i) an injury which was attributable to the person's service in the Royal Marines or Royal Navy; or
    - (ii) the aggravation by such service of an injury which existed or arose during such service;
  - (b) the service referred to in sub-paragraph (a) was service in the Royal Marines or Royal Navy in the period in the period beginning with 31st March 1973 and ending with 5th April 2005;
  - (c) the service referred to in sub-paragraph (a) was not excluded service; and
  - (d) the Defence Council accepts on the balance of probabilities that the death was attributable to or hastened by the person's service.
- (2) A survivor's attributable lump sum shall only be payable where the person's death occurred during service or where the death was caused by service in the period set out in paragraph (1)(b).
- (3) Where a person dies leaving a surviving eligible partner but the condition in paragraph (1)(a) is not met the Defence Council may award a surviving eligible partner the benefits referred to in paragraph (1) where the other conditions in paragraph (1) are fulfilled.
- (4) A surviving eligible partner is also entitled to the additional payments referred to in rule C.11.
- (5) Short term or long term compensation may be reduced or extinguished under the following rules—

- (a) rule C.12 (level of compensation for post service marriages and civil partnerships);
- (b) rule C.13 (temporary allowance under the Service Pensions Order);
- (c) rule C.14 (reduction of compensation payments to take into account benefits payable under armed forces pension schemes);
- (d) rule C.15 (reduction of compensation to take account of benefits payable under other occupational pension schemes);
- (e) rule C.16 (reduction of compensation to take account of other compensation payments);
- (f) rule C.17 (reduction of long term compensation in other circumstances); and
- (g) rule C.18 (reductions for negligence, diversion of compensation payments).

## **C.2 Conditions relating to the deceased**

This Part will only apply where—

- (a) the deceased person was male and was in service on or after 31st March 1973, and died leaving a widow;
- (b) the deceased person was male who married after discharge, died leaving a widow and was in service on or after 6th April 1978;
- (c) the deceased person died leaving a widow or widower or a surviving civil partner and was in service on or after 1st October 1987;
- (d) the deceased person died leaving a surviving eligible partner and was in service on or after 5th December 2005.

## **C.3 Meaning of “surviving eligible partner”**

In this Part a person is a surviving eligible partner of a deceased person if at the time of the deceased’s death that person satisfies the Defence Council that—

- (a) the person and the deceased were in an exclusive, committed long term relationship,
- (b) the person and the deceased were living together as husband and wife and they were not prevented from marrying, or
- (c) the person and the deceased were living together as civil partners and they were not prevented from forming a civil partnership, and  
either the person was financially dependent on the deceased or the person and the deceased were financially interdependent.

## **C.4 Persons regarded as living together as husband and wife or as civil partners**

- (1) For the purposes of this Part two persons are to be regarded as living together as husband and wife or as civil partners if in the opinion of the Defence Council they have a substantial relationship.

- (2) In determining whether there is a substantial relationship under paragraph (1) of the Defence Council must have regard to whether the two persons are members of the same household, whether they have a relationship which is established and publicly acknowledged and whether they are financially interdependent.

#### **C.5 Short term compensation for the immediate bereavement period**

- (1) If the person's death occurred during service the annual rate of short term compensation payable to a surviving adult dependant for the immediate bereavement period will—
  - (a) in a case where the deceased person was an active member of the AFPS 1975 on the date of death, be an amount equal to the annual amount of the person's basic pay before death;
  - (b) in a case where the person had opted out of AFPS 1975, be an amount equal to the annual amount of the deceased person's pension under AFPS 1975 to which that person would otherwise have become entitled to at the date of death if he had remained an active member of AFPS 1975.
- (2) If the person's death occurred after the person had been discharged from service and that person was in receipt of a pension under AFPS 1975 or AFPS 2005, or would have been so entitled if the person had not opted out of AFPS 1975 or (as the case may be) AFPS 2005, the annual rate of short term compensation payable to a surviving adult dependant for the immediate bereavement period will be—
  - (a) an amount equal to the annual amount of the deceased person's pension immediately before death;
  - (b) in a case where the deceased person was not entitled to any such pension as a result of having opted out of AFPS 1975 or AFPS 2005, an amount equivalent to the annual amount of the deceased person's pension under that scheme at the date of death had that person remained an active member of the scheme; or
  - (c) where a deceased person was entitled to two or more pensions, the aggregate amount of those pensions.
- (3) Where there is no surviving adult dependant the Defence Council may award the short term compensation to any eligible children.

#### **C.6 Amount of long term compensation**

- (1) Subject to rules C.8, C.9 and C.10 the long term compensation payable after the end of the immediate bereavement period in respect of a person whose death occurred during service shall—
  - (a) in the case of an officer who held the rank of a rear admiral or major general or above or was a Director General of the Naval Chaplaincy Service (and is not within sub-paragraph (d)), be the amount specified for a person of that person's pension rank at the date of death in the relevant table in the pension code applicable to surviving adult dependants and children of officers of the rank of rear admiral or major general or above;
  - (b) in the case of a person who held the rank of commodore or brigadier or

- below (and is not within paragraphs (c) or (e)) be the amount specified for a person of that person's pension rank at the date of death in the relevant table in the pension code applicable to surviving adult dependants and children of persons or the rank of commodore or brigadier or below;
- (c) in the case of a person who was a deputy chaplain or a principal chaplain the amount specified in the relevant table in the pension code for a person of that person's pension rank at the date of death and in the case of a chaplain with the number of full years reckonable service that the person had completed at the date of death;
  - (d) in the case of an officer who was in a cadre of the special forces and was a rear admiral or major general or above be the amount specified for a person of that person's pension rank as at the date of death in the relevant table in the pension code for the special forces applicable to surviving adult dependants and children of the rank of rear admiral or major general or above;
  - (e) in the case of a person who was in a cadre of the special forces and was of a rank of commodore or brigadier or below be the amount specified for a person of that person's pension rank as at the date of death in the relevant table in the pension code applicable to surviving adult dependants and children of persons of the rank of commodore or brigadier or below.
- (2) The long term compensation payable in respect of a person whose death occurred after discharge will—
- (a) in the case of a person (other than a chaplain), be the amount specified in the relevant table in the pension code for a person of that person's pension rank (and where applicable regiment) contained in the relevant table as at the date when the person was discharged but with the addition of such increases as would have been made under rule E.9 during the period beginning with the date of discharge and ending with the date of death had the long term compensation come into payment at the date of discharge; and
  - (b) in the case of a chaplain, be the amount specified in the relevant table in the pension code for a chaplain with the number of full years reckonable service that the person had as at the date of discharge but with the addition of such increases as would have been made under rule E.9 during the period beginning with the date of discharge and ending with the date of death.
- (3) The Defence Council may provide for the long term compensation to be paid at the start of the immediate bereavement period where—
- (a) a deceased person dies leaving a surviving adult dependant but no short term compensation is payable; or
  - (b) the Defence Council considers there are circumstances justifying special consideration for doing so.

#### **C.7 Amount of surviving adult dependants attributable lump sum**

- (1) Subject to paragraph (2) and rules C.8, C.9 and C.10 the amount of the survivor's attributable lump payable to a surviving adult dependant in respect of a person who died during service shall—
- (a) in the case of an officer who held the rank of rear admiral or major general

- or above or was a Director General of the Naval Chaplaincy Service (and is not within sub-paragraph (d)) be the amount specified for a person of that person's pension rank at the date of death in the relevant table in the pension code applicable to surviving adult dependants and children of officers of the rank of rear admiral or major general or above;
- (b) in the case of a person who held a rank of commodore or brigadier or below (and is not within paragraphs (c) or (e)) be the amount specified for a person of that person's pension rank at the date of death in the relevant table in the pension code applicable to surviving adult dependants and children of persons of the rank of commodore or brigadier or below;
  - (c) in the case of a person who was a deputy chaplain general or a principal chaplain the amount specified in the relevant table in the pension code for a person of that person's pension rank at the date of death and in the case of a chaplain with the number of full years reckonable service that the person had completed at the date of death;
  - (d) for an officer who held the rank of rear admiral or major general or above who was in a cadre of special forces be the amount specified for a person of that person's pension rank at the date of death in the relevant table in the pension code applicable to surviving adult dependants and children of officers of the rank of rear admiral or major general or above in the special forces;
  - (e) for a person who held a rank of commodore or brigadier or below who was in a cadre of the special forces be the amount specified for a person of that person's pension rank at the date of death in the relevant table in the pension code applicable to surviving adult dependants and children of officers of the rank of commodore or brigadier or below in the special forces.
- (2) The amount of lump sum payable to a surviving adult dependant in respect of a person who has died within one year of service shall be the amount which would have been paid under paragraph (1) in respect of a person of that person's pension rank and where applicable had that person died in service reduced by the amount of the attributable lump sum already paid to the deceased person upon that person's discharge from service in accordance with rule B.6.
  - (3) Where there is no surviving adult dependant the Defence Council may award a survivor's lump sum to any eligible children.

### **C.8 Rank additions: Officers**

- (1) If at any time during the person's service the person holds a paid acting rank higher than the person's pension rank for a period of at least one year or periods amounting in aggregate to at least one year the amount of the long term compensation payment payable under rule C.6. and the amount of the attributable lump sum payable under rule C.7 to a surviving adult dependant is increased by the relevant rank addition.

- (2) The rank addition is calculated as follows—

$$\frac{1}{3} \times (\mathbf{A}-\mathbf{B}) \times \text{number of days spent in the higher rank (up to a maximum of 2 years)} \div 365$$

Where—

“**A**” is the amount of the annual compensation payment or attributable lump

sum specified in the relevant table in the pension code for a person had the person's pension rank been the higher rank; and

“B” is the amount of annual compensation payment or attributable lump sum specified in the relevant table in the pension code for a person of the person's pension rank.

#### **C.9 Rank additions: other ranks**

- (1) If at any time in the five year period immediately preceding discharge the person holds a paid acting rank higher than the person's pension rank for a period of at least one year or periods amounting in aggregate to at least one year the amount of long term compensation payable under rule C.6 and the amount of the survivor's attributable lump sum payable under rule C.7 to a surviving adult dependant is increased by the relevant rank addition.

- (2) The rank addition is calculated as follows—

$\frac{1}{2} \times (\text{A}-\text{B}) \times \text{number of days spent in the higher rank (up to a maximum of 2 years)} \div 365$

Where—

“A” is the amount of long term compensation or attributable lump sum for a person of the person's pension rank had the person's pension rank been the higher rank, or where there are more than one the lower of those ranks; and

“B” is the amount of long term compensation or attributable lump sum for a person of the person's pension rank.

#### **C.10 Long term compensation and attributable lump sum: supplemental**

References in rules C.6 to C.8 to the relevant tables means reference to the relevant table in the pension code of annual compensation payments and attributable lump sums for the surviving adult dependants and eligible children of former members of the Royal Navy and Royal Marines.

#### **C.11 Additional lump sum payments to surviving eligible partners**

- (1) Subject to paragraph (2), where a person dies in service on or after 5th December 2005 from an injury which was attributable to service before the 6th April 2005, leaving an eligible surviving partner the Defence Council may pay that partner an amount equivalent to what would have been paid under rule E.22 of AFPS 1975 in respect of a person if that eligible surviving partner had been a surviving spouse or a surviving civil partner. Where there is no eligible surviving partner the lump sum shall be paid to the eligible children of that eligible surviving partner and where there is more than one eligible child that sum shall be divided equally between them.
- (2) Where the eligible surviving partner referred to in paragraph (1) has also been paid a death in service gratuity in respect of the same death under the AFRGES 2010 the surviving eligible partner shall not be entitled to the sum payable under paragraph (1).
- (3) Where a person dies within one year of discharge leaving an eligible surviving partner the Defence Council may pay that partner an amount equivalent to the difference between the terminal grant payable on retirement to that person

under rule D.1(4) of AFPS 1975 added to any additional lump sum payable if that person had commuted the pension to which they were entitled to under AFPS 1975 and the amount of the death in service lump sum which would otherwise be paid to a surviving spouse or surviving civil partner under rule E.22 AFPS 1975.

- (4) Where there is no eligible surviving partner under paragraph (3) the sum shall be paid to the eligible children of that surviving eligible partner and where there is more than one eligible child that sum shall be divided equally between them.

#### **C.12 Level of compensation for post service marriages and civil partnerships**

Where a person's death occurs after leaving service and after the last day of that service that person marries, forms a civil partnership or was regarded as living together with another person as husband and wife or as civil partners, the level of long term compensation payable shall be determined in accordance with the calculation in rule E.6 of AFPS 1975.

#### **C.13 Temporary allowance under the Service Pensions Order**

- (1) Where a surviving adult dependant is in receipt of a temporary allowance payable under article 27 of the Service Pensions Order no short term compensation for the immediate bereavement period shall be payable.
- (2) Where the amount of temporary allowances payable to a surviving adult dependant is less than the aggregate level of benefits the Defence Council shall pay an additional supplement to the dependant in receipt of the temporary allowance so that the level of benefits equals the aggregate level of benefits.
- (3) The temporary allowance and any additional supplement payable under paragraph (2) shall be payable for the immediate period.
- (4) In paragraph (2) the "aggregate level of benefits" is the amount of benefits payable to a person under the Service Pensions Order (other than from benefits payable under article 27 of that order) and the value of any short term compensation, long term compensation or child's compensation which would otherwise have been payable.

#### **C.14 Reduction of compensation to take into account benefits payable under armed forces pension schemes**

- (1) Where a surviving adult dependant is entitled to short term compensation this shall be reduced by the annual amount of any increased pension payable in respect of the same deceased person under rule C.7 of AFPS 1975 or any death in service short term pension payable under the AFRGES 2010.
- (2) Where a surviving adult dependant is entitled to long term compensation this shall be reduced by the annual amount of any pension payable in respect of the same deceased person under any armed forces pension scheme.

#### **C.15 Reduction of compensation to take into account benefits payable under other occupational pension schemes**

- (1) Where a surviving adult dependant is entitled to long term compensation and

is also entitled to benefits payable in respect of the same deceased person under an occupational pension scheme, the long term compensation will be reduced by the annual amount of pension which would be payable under the occupational pension scheme as if the lump sum payable under that occupational pension scheme was equal to three times the amount of long term compensation.

- (2) In paragraph (1) “occupational pension scheme” means an occupational pension scheme other than an armed forces pension scheme.

#### **C.16 Reduction of long term compensation to take account of other compensation payments**

- (1) Where the Defence Council is satisfied that damages have been or will be recovered by a surviving adult dependant in respect of the death of a person for which long term compensation is payable the Defence Council may take those damages into account against any long term compensation which might otherwise be payable, and may withhold or reduce any such payment.
- (2) For the purpose of this rule damages may include any payments received as a result of a claim in respect of the death of a person for which long term compensation is payable whether or not the payment is made in pursuance of a judgement or order of the court of any jurisdiction by way of settlement or compromise of the claim and whether or not proceedings are instituted to enforce the claim.
- (3) Where any compensation is paid—
  - (a) under the Criminal Injuries (Compensation) Scheme established under the Criminal Injuries Compensation Act 1995,
  - (b) under the Criminal Injuries (Compensation)(Northern Ireland) Order 2002,
  - (c) under the scheme established by the Ministry of Defence for the purpose of paying compensation to members of the armed forces who suffer injury as a result of a crime committed outside the United Kingdom,

this compensation shall also be taken into account when the Defence Council determines what level the surviving adult dependent’s long term compensation should be reduced by under paragraph (1).

#### **C.17 Reduction of long term compensation in other circumstances**

- (1) Subject to paragraph (2) if a surviving adult dependant qualifies for more than one long term compensation payment under the benefits Scheme that person shall only be paid the two most beneficial long term compensation payments.
- (2) In a case where the long term compensation payments are equally beneficial only the long term compensation specified by the Defence Council shall be payable.
- (3) Where a surviving adult dependant entitled to long term compensation is in receipt of a pension (other than an armed forces pension) from public funds payable by virtue of the person’s service then the Defence Council may withhold or reduce the amount of long term compensation payable.



- (4) The Defence Council may reduce or withhold long term compensation where—
- (a) in the case of a surviving spouse the death of his or her spouse occurred on or before 5th April 2005 and the surviving spouse and the deceased were married less than 12 months before the deceased's death;
  - (b) in the case of a surviving spouse the death of his or her spouse occurred on or after 6th April 2005 and the surviving spouse and the deceased were married less than 6 months before the deceased's death;
  - (c) in the case of a surviving civil partner the deceased's death occurred on or after 6th April 2005 and the civil partnership was formed less than 6 months before the deceased's death;
  - (d) in the case of a surviving eligible partner, in the opinion of the Defence Council the relationship began less than 6 months before the deceased person's death.

#### **C.18 Reductions for negligence etc diversion of compensation payments**

The Defence Council may withhold all or part of the long term compensation from a surviving adult dependant where the deceased person's death was due wholly or in part to the negligence, misconduct or any other cause within that person's control.

#### **C.19 Restoration of long term compensation to surviving adult dependent**

- (1) No long term compensation is payable to a person who is the surviving spouse of the deceased person if before 31st October 2000—
- (a) the beneficiary remarries;
  - (b) in a case where the beneficiary is the widower of a deceased person whose service in the Royal Navy or Royal Marines ceased before 6th April 1989, the beneficiary lives with a woman as her husband;
  - (c) in a case where the beneficiary is the widower of a deceased person whose service in the Royal Navy or Royal Marines ceased on or after 6th April 1989, the beneficiary lives with a woman as her husband before the beneficiary reaches state pension age;
  - (d) in a case where the beneficiary is the widow of a deceased person whose service in the Royal Navy or Royal Marines ceased before 6th April 1978, the beneficiary lives with a man as his wife; or
  - (e) in a case where the beneficiary is the widow of a deceased person whose service in the Royal Navy or Royal Marines ceased after 6th April 1978, the beneficiary lives with a man as his wife before the beneficiary reaches state pension age.
- (2) Where no long term compensation has been payable to a surviving widow or widower by virtue of the operation of paragraph (1)(a) and after 31st October 2000 the marriage is terminated or the parties to the marriage are judicially separated the surviving widow or widower may make a claim for the long term compensation to be restored.
- (3) Where a person makes a claim under paragraph (2) for long term compensation to be restored and the Defence Council determines that those benefits should be restored long term compensation will be payable from the appropriate date.

- (4) Subject to paragraph (5), where the claim is made within three months of the date of termination of the marriage or judicial separation the appropriate date referred to in paragraph (3) shall be the date of such termination, separation or dissolution.
- (5) In any other case the appropriate date referred to in paragraph (3) shall be the date on which the claim is made.
- (6) For the purposes of paragraphs (2) and (4) references to the termination of marriage, and judicial separation shall be construed in accordance with section 168 of the 1995 Act.
- (7) Where no long term compensation has been payable to a surviving widow or widower by virtue of the operation of paragraph (1)(b) to (e) because of that widow or widower having lived with another person as if they were husband and wife the long term compensation will be restored where the Defence Council is satisfied that the surviving widow or widower has ceased to live with that other person as if they were husband and wife.
- (8) Where long term compensation is restored by virtue of paragraph (7) it will be restored from the date on which the claim is made.

#### **C. 20 Restoration of long term compensation in other circumstances**

Where long term compensation has otherwise ceased to be payable by the operation of the provisions of this benefits Scheme the Defence Council may restore any long term compensation having determined on compassionate grounds that it should be restored.

### **PART D**

#### **BENEFITS PAYABLE IN RESPECT OF ELIGIBLE CHILDREN**

##### **D.1 Entitlement to a child's compensation**

- (1) Subject to paragraphs (2) and (3) an eligible child is entitled to a child's compensation payment for a person's death in accordance with the provisions set out in this part where—
  - (a) it has been accepted for the purposes of articles 23 and 24 of the Service Pensions Order that the death was attributable to or hastened by—
    - (i) an injury which was attributable to the person's service in the Royal Navy or Royal Marines; or
    - (ii) the aggravation by such service of an injury which existed or arose during such service;
  - (b) the service referred to in sub-paragraph (a) was service in the Royal Navy or Royal Marines in the period beginning with 31st March 1973 and ending on 5th April 2005;
  - (c) the service referred to in sub-paragraph (a) was not excluded service;
  - (d) the Defence Council accepts that on the balance of probabilities that the death was attributable to or hastened by the person's service.

- (2) The level of a child's compensation may be reduced or extinguished under the following articles in Part C modified by rules D.5 and D.6 so as to apply to eligible children—
  - (a) rule C.14 (reduction of long term compensation to take into account benefits payable under armed forces pension schemes);
  - (b) rule C.15 (reduction of long term compensation to take into account benefits payable under other occupational pension schemes);
  - (c) rule C.16 (reduction of long term compensation to take account of other compensation payments).
- (3) This Part will only apply when—
  - (a) the deceased person was a man if he was in service on or after 31st March 1973;
  - (b) the deceased person was a woman if she was in service on or after 1st October 1987;
  - (c) the deceased person was in a civil partnership and was in service on or after 1st October 1987;
  - (d) the deceased person was an eligible partner and was in service on or after 5th December 2005.

#### **D.2 Definition of “eligible child”**

- (1) In this Part eligible child in relation to a deceased person means a child of the deceased person who meets any of conditions A to C.
- (2) In this rule a “child of the deceased person means”—
  - (a) a legitimate child of the deceased born before or within 12 months of the date of the deceased's death where the deceased was married to or was in a civil partnership with the child's other parent before the deceased ceased to be in service;
  - (b) an illegitimate child of the deceased born before or within 9 months of the deceased's service ceasing who was mainly dependent on the deceased at the death of the deceased's death or would have been but for the deceased's death;
  - (c) an illegitimate child of—
    - (i) the deceased's spouse, where the deceased and spouse were married before the deceased ceased to be in service, or
    - (ii) the deceased's civil partner, where the civil partnership was formed before the deceased ceased to be in service,
 who was born before or within 9 months of the deceased ceasing to be in service who was mainly dependent on the deceased at the date of death or would have been but for the death and who meets the condition in paragraph (3);
  - (d) an adopted child of the deceased where—
    - (i) the adoption occurred before the deceased's service ceased; and

- (ii) the deceased was married to or had formed a civil partnership with the child's other adoptive parent before the deceased's service ceased;
- (e) an adopted child of the deceased where—
  - (i) the child was mainly dependent on the deceased during the deceased's service,
  - (ii) the adoption took place after the deceased ceased to be in service, or
  - (iii) the Scheme administrator is satisfied that the deceased had previously formed an intention to adopt before the deceased's service ceased,

who meets the condition in paragraph (3);

- (f) a step-child of the deceased where the natural or adoptive parent of the child was married to the deceased or was the deceased's civil partner before the deceased's service ceased and where the child was mainly dependent on the deceased at the date of death and meets the condition in paragraph (3);
- (g) a grandchild of a person where the Defence Council considers that the child has been abandoned by its parents or the parents have died, where the child was mainly dependent on the deceased at the date of death and meets the condition in paragraph (3);
- (h) a—
  - (i) child of the natural or adoptive parent, or
  - (ii) a step child,

of a person who was the deceased's eligible partner before the deceased's service ceased and where the child was mainly dependent on the deceased at the date of death and meets the conditions in paragraph (3).

- (3) The condition referred to in paragraph (2)(c), (e), (f), (g) and (h) is that the child was financially dependent on the deceased at the date of the deceased's death or would have been had his birth occurred before the person's death.
- (4) Condition A is that the child is aged under 17.
- (5) Condition B is that—
  - (a) the child is aged under 23 and is—
    - (i) in full-time secondary education;
    - (ii) in full-time further education that started immediately after ceasing full-time secondary education; or
    - (iii) undertaking full-time vocational training which in the opinion of the Scheme administrator is unpaid or substantially unpaid; or
  - (b) the child is aged 23 or over and meets a condition in sub-paragraph (a)(i), (a)(ii) or (a)(iii) and—
    - (i) the child's compensation was in payment before 6th April 2006;
    - (ii) the deceased had died before 6th April 2006 and a child's compensation was due to be paid to the child; or

- (iii) the deceased was in receipt of a pension under AFPS 1975 before 6th April 2006 and the child was born before 6th April 2007.
- (6) Condition C is that the person (who may be over the age of 18) was dependent on the deceased at the date of the deceased's death because of physical or mental impairment and in the opinion of the Scheme administrator is incapable of earning a living.
- (7) For the purposes of Condition B, a child who takes a break not exceeding 15 months between concluding secondary education and beginning full-time further education or vocational training is assumed to be continuing in such education or training during the break.
- (8) Paragraph (7) does not apply at any time when the child's health is such that it is reasonable to assume that the child will not be capable of undertaking any further education or training.
- (9) Nothing in paragraph (7) requires a child's compensation to be paid in respect of a person during the break

### **D.3 Suspension of a child's compensation during a gap year**

- (1) A child's compensation shall be suspended where a child has—
  - (a) finished full-time education at school;
  - (b) not started further full-time education or vocational training;
  - (c) informed the Scheme administrator that he or she is taking a break not exceeding 15 months before that full time education or training starts.
- (2) A child's compensation shall cease to be payable under paragraph (1)(a) from the date at which full-time education at school was completed.
- (3) A child's compensation shall be restored from the date of the start of the child's full-time education or vocational training subject to the receipt by the Scheme administrator of satisfactory evidence that the child has started such for the full-time education and training.

### **D.4 Authority to receive child's compensation**

- (1) A child's compensation shall be paid in accordance with paragraph (2).
- (2) Where the Defence Council determines that a child's compensation should not be paid directly to the child it shall be paid to—
  - (a) an appropriate person who in relation to the child is a person with—
    - (i) parental responsibility (within the meaning of the Children Act 1989<sup>(a)</sup>);
    - (ii) the Children (Northern Ireland) Order 1995<sup>(b)</sup>; or
    - (iii) parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995<sup>(c)</sup>); or
  - (b) a person (who is a natural person over the age of 18) appointed by the

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(a) 1989 c. 41  
 (b) S.I. 1995/755  
 (c) 1995 c. 36

Defence Council in writing where the Defence Council considers that it is in the interests of the child that a person other than the parent or person having legal responsibility for the child should be paid the child's guaranteed income payment.

- (3) Where a person has been appointed by the Defence Council under paragraph (2)(b) the person receiving the child's compensation shall apply the income for the benefit of the child.
- (4) Where the Defence Council has made an appointment under paragraph (2)(b) the Defence Council may revoke it and either make another appointment under paragraph (2)(b) or pay the child's payment to the parent or the person having legal responsibility for the child.
- (5) The person appointed under paragraph (2)(b) may resign office after having given one month's notice in writing to the Scheme administrator of the intention to do so.
- (6) The Defence Council may before appointing a person under paragraph (2)(b) require that person to give such undertaking as the Defence Council considers necessary as to the use of the child's compensation.

#### **D.5 Application of certain Part C rules relating to the calculation of a child's compensation**

- (1) Rule C.5 shall apply for the purposes of this part as if any references in that rule to a surviving adult dependant were a reference to an eligible child subject to the following modifications—
  - (a) where there is one eligible child in the care of a person other than a surviving adult dependant the short term compensation determined under rule C.5 paragraphs (1) and (2) and payable in respect of that child shall be paid for a period of 91 days starting on the date after the date of the person's death;
  - (b) where there are two or more eligible children in the care of a person other than a surviving adult dependant the short term compensation determined under C.5 paragraphs (1) and (2) and payable in respect of those children shall be paid for the immediate bereavement period.
- (2) Rules C.6, C.7, C.8 and C.9 shall apply for the purposes of this part as if any reference in those rules to a surviving adult dependant were a reference to an eligible child or an eligible child who is parentless and the amount payable to an eligible child or an eligible child who is parentless shall be the amount set out and payable in accordance with the relevant tables.
- (3) In this rule "parentless child" means a child who is not in the care of a surviving adult dependant and no long term compensation is payable in respect of that surviving adult dependant.
- (4) In this rule the "relevant tables" means the tables applicable to surviving adult dependants and children.

#### **D.6 Application of certain Part C articles relating to reductions of a child's compensation**

- (1) The rules specified in paragraph (2) apply for the purpose of this Part as if any reference in those rules to a surviving adult dependant were a reference to an eligible child.

- (2) The rules referred to in paragraph (1) are—
  - (a) rule C.14 (reduction of long term compensation to take into account benefits payable under armed forces pension scheme);
  - (b) rule C.15 (reduction of long term compensation to take into account benefits payable under other occupational pension schemes);
  - (c) rule C.16 (reduction of long term compensation to take account of compensation payments).

#### **D.7 Eligible child qualifies for two or more child's compensation payments**

Where an eligible child qualifies for two or more child's compensation payments only the two most beneficial child's compensation payments shall be payable.

## **PART E MISCELLANEOUS AND SUPPLEMENTARY**

#### **E.1 Claims for and payment of benefits**

- (1) Notwithstanding any rule of this benefits Scheme according to which any benefit becomes payable at any specified time, no compensation becomes payable under the benefits Scheme unless the person to whom it would be payable has declared that he or she is entitled to it.
- (2) A declaration under paragraph (1)—
  - (a) must be made in writing in such form as the Scheme administrator requires; and
  - (b) must be submitted to the Scheme administrator.
- (3) Subject to paragraphs (4) and (5), compensation payable under the Scheme is payable by monthly instalments in arrears.
- (4) Subject to paragraph (5), if it appears to the Defence Council that payment of compensation in accordance with paragraph (3) would cause hardship, the compensation may be paid instead by weekly instalments in arrears, but only in respect of a person who was in service before 6th June 1980.
- (5) Compensation may be paid by weekly instalments in arrears to persons other than the persons mentioned in paragraph (4) where it appears to the Scheme administrator that payment of compensation in accordance with paragraph (3) would cause hardship.
- (6) Where compensation is payable in monthly instalments each monthly instalment must equal one twelfth of the annual compensation.
- (7) Where payment falls to be made because of paragraphs (4) or (5) in respect of a period of less than one month ("the compensation period"), the amount of each payment is the appropriate fraction of the amount that would be due as a monthly instalment if the person were paid such an instalment for the period of one month ending on the date of payment.

- (8) In paragraph (7) “the appropriate fraction” means the fraction of which—
  - (a) the numerator is the number of days in the compensation period; and
  - (b) the denominator is the number of days in the calendar month in which the payment is made.
- (9) If a surviving adult dependant dies before establishing a claim to a compensation payment no compensation will be payable to the deceased’s personal representative except where the Defence Council considers there are exceptional circumstances.

### **E.2 Non-assignability**

- (1) Subject to rule E.3 every benefit to which a person is entitled under the benefits Scheme is payable to or for his benefit.
- (2) No such benefit is assignable or chargeable with that person’s or any other person’s debts.

### **E.3 Persons who are incapable of looking after their affairs**

- (1) In the case of a person who, in the opinion of the Defence Council, is by reason of illness, mental disorder, minority or otherwise unable to look after his or her affairs, the Defence Council may—
  - (a) use any amount due to the person under the benefits Scheme for that person’s benefit;
  - (b) pay it to some other person to do so; or
  - (c) apply such sums to the benefit of the person’s dependants.
- (2) Payment of an amount to a person other than the person entitled to it under paragraph (1) discharges the Defence Council from any obligation under the benefits Scheme in respect of the amount.

### **E.4 Forfeiture of benefits**

- (1) The Defence Council may withhold benefits payable under the Scheme to or in respect of a person to whom rule E.5(1) applies to such extent as the Defence Council considers appropriate.
- (2) The Defence Council may, to such extent as it considers appropriate, withhold compensation benefits payable under Parts B and C to a person who is convicted of the murder or manslaughter of the person or any other offence which involves the unlawful killing of that person and if the whole of a person’s benefits are so withheld those Part’s apply as if that person had predeceased the deceased person.
- (3) In paragraph (2) “unlawful killing” includes unlawfully aiding, abetting, counselling or procuring the death of a person.
- (4) Where rule E.5(1)(c) (monetary obligations) applies—
  - (a) if the amount of the obligation is in dispute, paragraph (1) only applies if the obligation has become enforceable—
    - (i) under an order of a competent court; or



- (ii) in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement by the parties) by the sheriff;
  - (b) only benefits to which the person is entitled may be withheld; and
  - (c) the benefits withheld must not exceed the amount of the monetary obligation or, if less, the value of the person's entitlement as if it were an entitlement to be determined under section 93(2) of the 1995 Act.
- (5) In the case of a compensation payment payable under Parts B and C paragraph (1) only applies if in the opinion of the Defence Council the person to or for whose benefit the pension is payable aided or abetted the offence mentioned in rule E.5(1)(a) and (b).

### **E.5 Events enabling forfeiture**

This paragraph applies to a person if he—

- (a) is convicted of treason or one or more offences under the Official Secrets Acts 1911 to 1989<sup>(a)</sup> for which the member has been sentenced on the same occasion—
  - (i) to a term of imprisonment of at least 10 years; or
  - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years;
- (b) is convicted of an offence in connection with the person's service which the Defence Council considers to have been gravely injurious to the defence, security or other interests of the State; or
- (c) has after becoming a beneficiary of the Scheme incurred a monetary obligation to the Crown which—
  - (i) arises out of a criminal, negligent or fraudulent act or omission by the member; or
  - (ii) arises out of or in connection with the member's service.

### **E.6 Procedure, references etc**

- (1) If the Defence Council proposes to withhold a person's compensation payment under rule E.4 they must notify the person in writing of this proposal.
- (2) Such a notification must give the person information about rights under—
  - (a) the arrangements established by the Defence Council for the resolution of disputes relating to the benefits Scheme that are in force at the time the notification is given; and
  - (b) Part 10 of the 1993 Act (investigations: the Pensions Ombudsman), in respect of any decision made under rule E.4.
- (3) If the Defence Council withholds compensation benefits under rule E.4 in a case where rule E.5(1)(c) (monetary obligations) applies, the person must be given a certificate showing any amount withheld and the effect of its being withheld on the member's benefits under the benefits Scheme.

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<sup>(a)</sup> 1911 c. 28; 1920 c. 75; 1939 c. 12; 1989 c.6.

### **E.7 Determination of questions**

Except as otherwise provided by this benefits Scheme any question arising under the Scheme is to be determined by the Defence Council, whose decision shall be final.

### **E.8 Information and evidence**

- (1) The Defence Council may require any person who is receiving a compensation payment under this benefits Scheme to provide evidence to establish—
  - (a) the person's identity; and
  - (b) their continuing entitlement to payment of any amount.
- (2) If such evidence is not provided, the Defence Council may withhold the whole or any part of any benefits payable under the benefits Scheme in respect of the person.

### **E.9 Compensation payment increases**

- (1) Where for the purposes of calculating compensation payments or attributable lump sums payable under this benefits Scheme it is provided that an amount shall be increased in accordance with this article then—
  - (a) in respect of any period on or before 11th April 2005 it shall be increased in accordance with the pension increase measures provisions set out in the previous navy orders;
  - (b) in respect of any period after 11th April 2005 it shall be increased as if the amount were a pension eligible to be increased under the Pensions Increases Act 1971(a).
- (2) For the purposes of this rule "the previous navy orders" means the Orders in Council made under section 3 of the Naval and Marine Pay and Pensions Act 1865(b).

## **PART F TRANSITIONALS**

### **F.1 Continuity of previous entitlements**

- (1) If—
  - (a) immediately before the commencement date any person was entitled under a provision of a previous navy order to the payment of any benefit in respect of a disablement to that person, and
  - (b) but for the commencement of this benefits Scheme, would continue to be entitled to such payments under provisions of a previous navy order,that person is to be treated as if the entitlement had arisen under the corresponding provisions of this benefits Scheme.

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(a) 1971 c. 56

(b) 1865 (28 & 29 Vict c. 65).

- (2) If—
- (a) immediately before the commencement date any person was entitled under a provision of a previous navy order to the payment of any benefit in respect of a deceased person, and
  - (b) but for the commencement of this benefits Scheme, would continue to be entitled to such payments under provisions of a previous navy order,
- that person is to be treated as if the entitlement had arisen under the corresponding provisions of this benefits Scheme.
- (3) In this rule “previous navy order” means the Orders in Council made under section 3 of the Naval and Marines Pay and Pension Act 1865(a) and other prerogative powers.

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(a) 1865 c. 73 (28 & 29 Vict)

