

Submitted to Your Majesty with Humble Duty-

That Your Majesty may be graciously pleased to approve the new Royal Warrant that makes provision for Army Pensions.

An explanatory memorandum is attached.

Ministry of Defence

ROYAL WARRANT 2010

ARMY PENSIONS (ARMED FORCES PENSION SCHEME 1975 AND ATTRIBUTABLE BENEFITS SCHEME) (AMENDMENT) WARRANT 2010

ELIZABETH R

WHEREAS WE deemed it expedient, pursuant to section 2 of the Pensions and Yeomanry Pay Act 1884 (47 & 48 Vict c. 55) and all Our other powers, by Our Warrant of 10th February 2010(a) to make provision for pensions and compensation for Our Army;

AND WHEREAS WE FURTHER deem it expedient to amend those provisions;

OUR WILL AND PLEASURE is that the Schedule set out in Schedule 1 to this Our Warrant shall be substituted for Schedule 1 to Our said Warrant of 10th February 2010;

OUR FURTHER WILL AND PLEASURE is that Schedule 2 to Our said Warrant of 10th February 2010 shall be amended in accordance with Schedule 2 to this Our Warrant;

OUR FURTHER WILL AND PLEASURE is that this Our Warrant shall have effect from 3rd January 2011;

OUR FURTHER WILL AND PLEASURE is that this Our Warrant may be cited as the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Warrant 2010.

> Given at Our Court at St James's This day of In the year of Our Reign In the year of Our Lord Two Thousand and Ten By Her Majesty's Command

⁽a) The Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant 2010.

EXPLANATORY MEMORANDUM

The Royal Warrant is made under section 2 of the Pensions and Yeomanry Pay Act 1884 (47 & 48 Vict c.55) in respect of soldiers, and under prerogative powers in respect of officers. It substitutes a new Schedule for Schedule 1 to the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant 2010, which sets out the rules of the Armed Forces Pension Scheme 1975 in relation to members and former members of the regular army.

It also makes consequential amendments to the Army Attributable Benefits Scheme set out in Schedule 2 to the earlier Warrant, and aligns the rules governing the eligibility of a child for compensation with the corresponding rules of the Armed Forces Pension Scheme 1975 (as substituted by this Warrant).

SCHEDULE 1 Article 3 THE ARMED FORCES PENSION SCHEME 1975

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THE ARMED FORCES PENSION SCHEME 1975

PART A

INTERPRETATION

A.1 General

(1) The rules of the Scheme are to be construed without reference to any other scheme applicable to Her Majesty's forces (except where they refer to the application of another such scheme).

(2) Without prejudice to section 23 of the Interpretation Act $1978(\mathbf{a})$, that Act applies for the interpretation of the rules of the Scheme as it applies to an Act of Parliament.

(3) In the rules of the Scheme, unless the context otherwise requires—

"the 1993 Act" means the Pension Schemes Act 1993(b);

"AFAB" means the Army Attributable Benefits Scheme, set out in Schedule 2;

"AFCS 2005" means the Armed Forces and Reserve Forces Compensation Scheme 2005, set out in the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(c);

"AFRS" means the Armed Forces Redundancy Scheme 2010, set out in Part 2 of the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No. 2) Order 2010(d), or any scheme replacing it;

"acting rank" means a rank held by virtue of temporary or conditional promotion;

"active member" means a person who-

- (a) is in pensionable service; and
- (b) (unless otherwise stated) is a member of the regular army;

"assumed pay" has the meaning given by rule A.6(2);

"basic pay" has the meaning given by rule A.4;

"deferred member" means a person (other than an active or pensioner member) who-

- (a) has accrued rights under the Scheme; and
- (b) (unless otherwise stated) was, on the person's last day of pensionable service, a member of the regular army;

"final pensionable earnings" has the meaning given by rule A.7;

"former provisions of the Scheme" means the rules of the Scheme set out in-

⁽a) 1978 c. 30.

⁽**b**) 1993 c. 48.

⁽c) S.I. 2005/439, as amended by S.I. 2006/1438, 2008/39, 2008/2160, 2008/2942, 2009/3236 and 2010/1723.

⁽d) S.I. 2010/832.

- (a) previous Royal Warrants made under section 2 of the Pensions and Yeomanry Pay Act 1884(a) and prerogative powers;
- (b) Orders made under section 3 of the Naval and Marine (Pay and Pensions) Act 1865(b), and in force before 3rd January 2011; and
- (c) Orders made under section 2(1) of the Air Force (Constitution) Act 1917(c), and in force before 3rd January 2011;

"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);
- (b) as increased under section 15 of that Act (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed), where that section applies; and
- (c) as reduced under section 15A of that Act (reduction of guaranteed minimum in consequence of pension debit), where that section applies;

"Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006(d);

"the ill-health condition" has the meaning given by paragraph 1 of Schedule 28 to the Finance Act 2004(e);

"the immediate pension point" has the meaning given by rules D.2 and D.3;

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

"normal retirement age", in relation to a member, means the normal retirement age for the member's rank and type of commission or engagement;

"occupational pension scheme" has the meaning given by section 1 of the 1993 Act;

"the Official Secrets Acts" means the Official Secrets Acts of 1911(f), 1920(g), 1939(h) and 1989(i);

"paid acting rank" means an acting rank which entitles its holder to a rate of pay in excess of that applicable to the holder's substantive rank;

"pension code" means a code specifying rates of pension, recommended by the Armed Forces Pay Review Body and approved by the Secretary of State;

"pension credit" means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999(**j**) or Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(**k**);

"pension credit member" means a person who has pension credit rights in relation to an active, deferred or pensioner member;

"pension credit rights" means rights to future benefits under the Scheme which are attributable (directly or indirectly) to a pension credit;

"pension debit member" means an active, deferred or pensioner member whose benefits or future benefits under the Scheme are subject to a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999 or Article 26(1)(a) of the Welfare Reform and Pensions

⁽a) 1884 c. 55.

⁽b) 1865 c. 73.
(c) 1917 c. 51.

⁽d) 2006 c. 52.

⁽e) 2004 c. 12.

⁽**f**) 1911 c. 28.

⁽g) 1920 c. 75.

⁽h) 1939 c. 121.
(i) 1989 c. 6.

⁽j) 1989 c. 0. (j) 1999 c. 30.

⁽**k**) S.I. 1999/3147.

(Northern Ireland) Order 1999, whether the pension sharing order took effect before or after the member became a member;

"pension rank" has the meaning given by rule A.2;

"the pension sharing order", in relation to a pension credit or pension debit member, means the order or provision, within section 28(1) of the Welfare Reform and Pensions Act 1999 or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, by virtue of which section 29 of that Act or Article 26 of that Order (as the case may be) applies;

"pensionable earnings" has the meaning given by rule A.3;

"pensionable service"-

- (a) has the meaning given by section 70 of the 1993 Act; and
- (b) in relation to a member of the Scheme, includes pensionable service in any of the regular forces;

"pensioner member" means a person who-

- (a) in respect of the person's pensionable service or by reason of transfer credits, is entitled to the present payment of pension (whether or not the pension is abated under Part H); and
- (b) (unless otherwise stated) was, on the person's last day of pensionable service, a member of the regular army;

"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 Finance Act 2004(a);

"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" has the meaning given by rule A.10;

"rank" includes rate;

"reckonable service" has the meaning given by rule A.11;

"the regular army" and "the regular forces" have the same meanings as in the Armed Forces Act 2006;

"representative rate of pay" has the meaning given by rule A.5;

"the Scheme" means the Armed Forces Pension Scheme 1975, the rules of which are set out—

- (a) in relation to members and former members of the regular army, in this Schedule;
- (b) in relation to members and former members of the Royal Navy and Royal Marines, in Schedule 1 to the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010; and
- (c) in relation to members and former members of the Royal Air Force, in Schedule 1 to the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant 2010;

"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;

"the special forces" means the Special Air Service, the Special Boat Service and the Special Reconnaissance Regiment;

⁽a) 2004 c. 12.

"state pension age" means "pensionable age", as defined by section 181(1) of the 1993 Act; "substantive rank" means a rank other than an acting rank;

"transfer credits" has the meaning given by section 124(1) of the Pensions Act 1995(a).

(4) Where the context so permits, and unless otherwise stated-

- (a) any reference to a particular provision of the Scheme includes any corresponding former provision of the Scheme;
- (b) any reference to a case in which a particular provision of the Scheme applies includes a case in which any corresponding former provision of the Scheme applied; and
- (c) any reference to a case in which a particular provision of the Scheme does not apply is to be read as a reference to a case in which that provision does not apply and any corresponding former provision of the Scheme did not apply.

(5) Any reference to a particular classification of rank is to the ranks falling within that classification under the North Atlantic Treaty Organization's standard rank scale.

(6) Any reference to a person's being treated for the purposes of AFRS as having become redundant includes the person's selection for redundancy as part of a programme for the planned reduction of the armed forces.

A.2 Pension rank

(1) Unless paragraph (4) applies, a member's pension rank is the highest substantive rank or paid acting rank that the member has held for the qualifying period.

(2) The qualifying period is—

- (a) in the case of a substantive rank of OF-7 or above, one year;
- (b) in the case of a substantive rank between OF-1 and OF-6, two years;
- (c) in the case of a paid acting rank of OF-1 or above, three years (or periods amounting in total to three years);
- (d) in the case of a rank of OR-9 or below, two years (or periods amounting in total to two years) within the member's last five years of pensionable service.

(3) If—

- (a) a member has held two ranks,
- (b) the member held neither of those ranks for the qualifying period, and
- (c) the aggregate of the periods for which the member held those ranks is at least equal to the qualifying period for the lower rank,

the member is to be treated for the purposes of paragraph (1) as having held the lower rank for the qualifying period.

(4) If—

- (a) the member's last substantive rank is higher than that given by paragraph (1), and
- (b) any of conditions A to C is met,

the member's pension rank is that higher rank.

(5) Condition A is that the member dies in service.

(6) Condition B is that rule D.7 (ill-health pension) applies.

(7) Condition C is that the member is notified by the Defence Council that the member is to be treated for the purposes of AFRS as having become redundant.

⁽a) 1995 c. 26.

A.3 Pensionable earnings

References to a member's pensionable earnings are to-

- (a) basic pay received by the member while in pensionable service;
- (b) assumed pay; and
- (c) any other amount which the Defence Council has determined is to be treated as part of the member's pensionable earnings.

A.4 Basic pay

(1) References to a member's basic pay are to-

- (a) the rate of pay to which a person of the member's rank and at the member's increment level is entitled; and
- (b) any other amount which the Defence Council has determined is to be treated as basic pay.
- (2) But such references do not include—
 - (a) allowances; or
 - (b) additional amounts payable in respect of particular qualifications or duties, the location of service or the conditions in which service is temporarily performed.

A.5 Representative rate of pay

(1) References to a member's representative rate of pay are to the representative rate of pay set out in the pension code in force on the last day of the member's pensionable service for a person of the member's pension rank with the amount of reckonable service that the member has.

(2) If the member—

- (a) was serving in a permanent cadre of the special forces immediately before ceasing service, or
- (b) served in such a cadre for a period of at least two years, or two or more periods amounting in total to at least two years, within the period of five years ending with the member's last day of pensionable service,

in paragraph (1) "the pension code" means the pension code for the special forces.

A.6 Assumed pay

(1) During any period to which this rule applies, a member is to be treated as receiving, or as having received, amounts equal to the pensionable earnings that, but for the circumstances mentioned in paragraph (3)(b), the member would have received, with such increase (if any) as the Defence Council considers appropriate.

(2) References to "assumed pay" are to amounts that a member is treated as receiving or as having received under this rule.

(3) This rule applies to any period during which the member—

- (a) is or was in pensionable service; and
- (b) is or was—
 - (i) receiving statutory maternity pay, statutory paternity pay or statutory adoption pay; or
 - (ii) on unpaid leave in relation to which the Defence Council has directed that this rule is to apply.

A.7 Final pensionable earnings

(1) References to a member's final pensionable earnings are to the greatest amount that is the member's total pensionable earnings for 365 consecutive days within the period of three years ending with the last day of the member's pensionable service.

(2) Paragraph (1) is subject to—

- (a) the following provisions of this rule;
- (b) rule A.8 (restrictions on final pensionable earnings); and
- (c) rule A.9 (inflation adjustments).

(3) If the member was not in pensionable service for any 365 consecutive days within the period of three years ending with the last day of the member's pensionable service, references to the member's final pensionable earnings are to the amount given by the formula

where----

PE is the member's pensionable earnings for the period of service ending with the last day of pensionable service; and

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

A.8 Restrictions on final pensionable earnings

(1) If a member's pensionable earnings for any tax year, or for any period falling within it, exceed the permitted maximum for that tax year, for the purposes of rule A.7 they are to be treated as being equal to that permitted maximum.

(2) In this rule "the permitted maximum" means-

- (a) in relation to the tax year 2007-08, £112,800;
- (b) in relation to the tax year 2008–09, \pounds 117,600;
- (c) in relation to either of the tax years 2009-10 and 2010-11, £123,600;
- (d) in relation to the tax year 2011–12, \pounds 127,800;
- (e) in relation to any later tax year, the figure found for that year under paragraphs (3) and (4).

(3) If the consumer prices index for the month of September preceding the tax year 2012–13 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 consumer prices index; and
- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

(4) If the consumer prices index for the month of September preceding the tax year 2012–13 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.

(5) In this rule "the consumer prices index" means—

- (a) the general index of consumer prices (for all items) published by the Office for National Statistics; or
- (b) where that index is not published for a month, any substituted index or figures published by that Office.

A.9 Inflation adjustments in determining final pensionable earnings

(1) For the purpose of determining the amount mentioned in rule A.7(1), the amount of a member's pensionable earnings for any period of service falling 365 days or more before the last day of pensionable service is increased by the amount by which an official pension would be increased during the period beginning with the day after the last day of pensionable service, if—

- (a) it were payable—
 - (i) in respect of that period of service; and

- (ii) at a rate (in respect of that period) equal to the amount of those earnings; and
- (b) a qualifying condition were satisfied.

(2) In this rule, "official pension" and "qualifying condition" have the same meanings as in the Pensions (Increase) Act 1971(a).

A.10 Qualifying service

References to a member's qualifying service are to the aggregate of-

- (a) every period in respect of which the member received pensionable earnings (other than a period during which the member was absent without leave) or is treated as having receiving assumed pay;
- (b) any period during which the member was on unpaid leave;
- (c) any period during which the member was on loan to an organisation and was required to be an active member of a pension scheme open to members of that organisation; and
- (d) any other period which, immediately before 3rd January 2011, the member was entitled to count as qualifying service under any former provision of the Scheme.

A.11 Reckonable service

(1) Subject to the following provisions of this rule, references to a member's reckonable service are to the aggregate of—

- (a) every period served by the member—
 - (i) as an officer after the age of 21, or
 - (ii) otherwise than as an officer after the age of 18,

in respect of which the member received pensionable earnings (other than a period during which the member was absent without leave) or is treated as having receiving assumed pay;

- (b) any period by which the member's reckonable service is increased under-
 - (i) rule C.2 (purchase of additional reckonable service);
 - (ii) rule C.3 (loan to another organisation); or
 - (iii) rule F.3 (transferred-in service); and
- (c) any other period which, immediately before 3rd January 2011, the member was entitled to count as reckonable service under any former provision of the Scheme.

(2) A member's reckonable service may not exceed-

- (a) if the member's pension rank is that of OF-1 or above, 34 years;
- (b) otherwise, 37 years.

(3) Paragraph (1)(a) does not include a period during which the member was eligible to be an active member by virtue of rule B.2 (pensioner members recalled under the Reserve Forces Acts); but see rule D.9.

A.12 Calculation of periods of membership or service etc

(1) Where any provision of the Scheme refers to the aggregate of two or more periods of membership or service, for the purpose of the aggregation each period is to be expressed—

- (a) if it is a period of one year or more, in complete years and (if any) days;
- (b) otherwise, in days.

(2) Where any provision of the Scheme refers to a period of membership or service (or the aggregate of two or more such periods), and does not refer only to the number of whole years within that period, for the purpose of that provision—

- (a) the period is to be treated as a number of years; and
- (b) for that purpose, the number of days (if any) in excess of the number of whole years (or, if the period is less than one year, the number of days) is to be divided by 365.25, to four decimal places, and the quotient added to the number of whole years.

A.13 Chaplains

(1) In relation to a chaplain—

- (a) references to a member's rank are to the member's pay grade;
- (b) references to a member's substantive rank are to the member's substantive pay grade;
- (c) references to any paid acting rank held by a member include any acting pay grade held by the member; and
- (d) rule A.2(1) (pension rank) has effect as if for "a member's pension rank is the highest substantive rank or paid acting rank" there were substituted "a member's grade for pension purposes is the highest pay grade".

(2) References to-

- (a) a member whose pension rank is that of OF-1 or above, or
- (b) a member whose pension rank is that of OR-9 or above,

include a member whose grade for pension purposes is that of a chaplain.

(3) References to a member whose pension rank is that of OF-7 or above include a member whose grade for pension purposes is that of Chaplain of the Fleet, Chaplain General or Chaplain-in-Chief.

(4) References to a member whose pension rank is between OF-1 and OF-6 include a member whose grade for pension purposes is that of any other chaplain.

(5) For the purposes of rule A.2(2) (qualifying periods for determining pension rank)—

- (a) the pay grade of Chaplain of the Fleet, Chaplain General or Chaplain-in-Chief is to be treated as the rank of OF-7; and
- (b) the pay grade of any other chaplain is to be treated as a rank between OF-1 and OF-6.
- (6) References to service as an officer include service as a naval chaplain.

PART B

MEMBERSHIP

B.1 Eligibility: general

- (1) A person is eligible to be an active member if conditions A to F are met.
- (2) Condition A is that the person is a member of the regular army.
- (3) Condition B is that the person—
 - (a) was on 5th April 2005, and
 - (b) has been continuously since that date,

a member of the regular forces.

- (4) For the purposes of paragraph (3)—
 - (a) a break of one month or less in the person's membership of the regular forces does not prevent that membership from being continuous; and

- (b) in determining whether any break in that membership exceeded one month, any period during which the person was undertaking training as a member of a reserve force is to be disregarded.
- (5) Condition C is that—
 - (a) the person has not opted to cease to be in pensionable service; or
 - (b) having so opted, the person opted (before 6th April 2005) to resume pensionable service, and has not again opted to cease to be in such service.

(6) Condition D is that the person did not opt to join the Armed Forces Pension Scheme 2005, set out in Schedule 1 to the Armed Forces Pension Scheme Order $2005(\mathbf{a})$.

(7) Condition E is that the person is not in pensionable service under any other occupational pension scheme.

(8) Condition F is that, if the person is a member of the Brigade of Gurkhas, the person opted to join the Scheme under the former provisions of the Scheme.

B.2 Eligibility: pensioner members recalled under the Reserve Forces Acts

(1) A pensioner member who has been-

- (a) recalled for service under section 31 of the Reserve Forces Act 1980(b), or
- (b) recalled for permanent service under section 70 of the Reserve Forces Act 1996(c),

is eligible to be an active member during the period of recall.

(2) This rule does not apply to a person who is in pensionable service under any other occupational pension scheme.

(3) A person who under this rule is eligible to be an active member becomes such a member at the beginning of the period of recall, unless the person has previously opted not to become such a member.

(4) That option may only be exercised by notice in writing to the Scheme administrator, in such form as the Scheme administrator may require.

(5) An exercise of that option may not be revoked.

B.3 Active membership

An active member continues to be such a member for as long as he or she is eligible to be such a member.

B.4 Option to cease to be an active member

(6) An active member may opt to cease to be such a member.

(7) The option may only be exercised by notice in writing to the Scheme administrator, in such form as the Scheme administrator may require.

(8) 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 may direct.

B.5 Membership in more than one capacity

(1) A person may at the same time be both—

(a) an active member; and

⁽a) S.I. 2005/438, as amended by S.I 2006/717, 2007/2608, 2008/229 and 2009/544.

⁽**b**) 1980 c. 9.

⁽c) 1996 c. 14

- (b) a deferred or pensioner member in respect of an earlier period of service (in any of the regular forces).
- (2) A person may at the same time be both—
 - (a) a deferred member; and
 - (b) a pensioner member in respect of a period of service (in any of the regular forces) earlier than that in respect of which the person is a deferred member.
- (3) A person may at the same time be both—
 - (a) a pensioner member; and
 - (b) a deferred member in respect of a period of service (in any of the regular forces) earlier than that in respect of which the person is a pensioner member.
- (4) A person may at the same time be both—
 - (a) an active, deferred or pensioner member; and
 - (b) a pension credit member.

PART C

ADDITIONAL VOLUNTARY CONTRIBUTIONS

C.1 Purchase of additional reckonable service by periodic contributions

(1) An active member may opt to purchase an additional period of reckonable service by making periodic contributions.

(2) But a member may exercise the option only if-

- (a) the member's current period of pensionable service, or an earlier period which by virtue of rule G.3 or G.6 is aggregated with that period, began on or before the member's 46th birthday;
- (b) the member has not been given notice of termination of the member's pensionable service;
- (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 that the member believes the condition in subparagraph (c) to be met.
- (3) A member may exercise the option more than once.

(4) If a member exercises the option, contributions are payable by deduction of the appropriate percentage from the member's pensionable earnings in respect of the option period.

(5) In paragraph (4)—

"the appropriate percentage" means the percentage shown, in a table issued by the Defence Council for the purpose of that paragraph, for a person of the member's age and rank and the additional period that the member opts to purchase;

"the option period" means the period beginning with the member's next birthday after the exercise of the option and ending with the day before the member's 55th birthday.

C.2 Effect of purchase under rule C.1

(1) If a member exercises the option under rule C.1, the member's reckonable service is increased by the additional period.

(2) If neither of conditions A and B is met, the additional period is the period that the member opted to purchase.

(3) Condition A is that, in respect of any period during the option period, the member received no pensionable earnings.

(4) Condition B is that—

- (a) the member ceases pensionable service, otherwise than by death—
 - (i) before reaching the age of 55; and
 - (ii) without reaching the immediate pension point; and
- (b) rule D.7 (ill-health pension) does not apply.

(5) If condition A or B is met, the additional period is the appropriate fraction of the period that the member opted to purchase.

(6) In paragraph (5) "the appropriate fraction" means the fraction obtained by dividing the number of days in respect of which contributions were made by the number of days in the option period.

(7) If—

(a) the member ceases pensionable service before reaching the age of 55, and

(b) rule D.1 (immediate pension) applies,

the period given by paragraph (6) is reduced in accordance with a table issued by the Defence Council for the purpose of this paragraph.

(8) In this rule "the option period" has the same meaning as in rule C.1(4).

C.3 Purchase of additional reckonable service in respect of period on loan

(1) Following a period which is qualifying service by virtue of rule A.10(c) (loan to another organisation), an active member may opt to pay a lump sum so as to secure that the period counts as reckonable service.

(2) The option may not be exercised more than 12 months after the end of the period, unless the Scheme administrator so permits.

(3) The amount of the lump sum is the aggregate of—

- (a) any contributions paid by the member to, and returned by, the pension scheme to which the member was required to belong during the period; and
- (b) any lump sum paid by that scheme to the member after the end of the period.

(4) If the member exercises the option, the member's reckonable service is increased by the period.

(5) If the Scheme actuary determines that the amount required to increase the member's reckonable service by the period is greater than that given by paragraph (3), the Service or body funding the arrangement with the other organisation shall make a contribution to the Scheme equal to the difference.

C.4 Purchase of right to have benefits calculated on enhanced basis

(1) An active member may opt to make periodic contributions so as to secure that benefits payable to or in respect of the member are calculated by reference to the member's pensionable earnings.

(2) But a member may exercise the option only if—

- (a) the member's current 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 the member's pensionable service;
- (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 that the member believes the condition in subparagraph (c) to be met.

(3) If a member exercises the option, contributions are payable by deduction of the appropriate percentage from the member's pensionable earnings in respect of the option period.

(4) In paragraph (3)—

"the appropriate percentage" means the percentage shown, in a table issued by the Defence Council for the purpose of that paragraph, for a person of the member's age and rank;

"the option period" means the period beginning with the day on which the option is exercised and ending with the member's last day of pensionable service.

C.5 Calculation of benefits on enhanced basis

(1) This rule applies where—

- (a) a member has exercised the option under rule C.4; and
- (b) the member's pensionable earnings on the member's last day of pensionable service exceed the member's representative rate of pay.

(2) The amount of any benefit payable to or in respect of the member is increased by the appropriate proportion of that amount.

(3) If—

- (a) the member's pension rank is that of OF-1 or above, and
- (b) the member has reached the immediate pension point,

the appropriate proportion is that given by the formula

$$\frac{PE - RP}{RP} \xrightarrow{x} \frac{k}{n} \xrightarrow{x} \frac{1}{1 - \frac{n - k}{3652.5 + t}}$$

(4) If—

(a) the member's pension rank is that of OF-1 or above, and

(b) the member has not reached the immediate pension point,

the appropriate proportion is that given by the formula

$$\frac{PE-RP}{RP} \xrightarrow{x} \frac{k}{n} \xrightarrow{x} \frac{3652.5+t}{t+k-n}$$

(5) If—

(a) the member's pension rank is that of OR-9 or below, and

(b) the member has reached the immediate pension point,

the appropriate proportion is that given by the formula

$$\frac{PE - RP}{RP} \xrightarrow{x} \frac{k}{n} \xrightarrow{x} \frac{1}{1 - \frac{n - k}{2435 + t}}$$

(6) If—

(a) the member's pension rank is that of OR-9 or below, and

(b) the member has not reached the immediate pension point,

the appropriate proportion is that given by the formula

$$\frac{PE-RP}{RP} \xrightarrow{k} x \xrightarrow{2435+t} t+k-n$$

(7) In the formulae in paragraphs (3) to (6)—

PE is the member's pensionable earnings on the member's last day of pensionable service;

RP is the member's representative rate of pay;

k is the number of days in respect of which contributions are made;

n is the number of days in the period beginning with the day on which the option is exercised and ending with the day before the member's 55th birthday; and

- t is the number of days' reckonable service that the member would have if-
- (a) the member's last day of pensionable service were the day before the member's 55th birthday; and
- (b) any increase in the member's reckonable service under this Part or Part F were disregarded.

(8) If—

- (a) the member ceases pensionable service (otherwise than by death) before reaching the age of 55,
- (b) the member has reached the immediate pension point, and
- (c) the ill-health condition is not met,

for the figure given by paragraph (3) or (5) there is substituted the appropriate fraction of that figure.

(9) For the purposes of paragraph (8) the appropriate fraction is that shown, in a table issued by the Defence Council for that purpose, for a person of the member's age and rank.

C.6 Purchase of increased pension for surviving spouse or civil partner

(1) An active member may opt to make periodic contributions so as to secure an increase in any pension payable to the member's surviving spouse or civil partner under rule E.1(7).

(2) But a member may exercise the option only if-

- (a) the member has not been given notice of termination of the member's pensionable service;
- (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 that the member believes the condition in subparagraph (b) to be met.

(3) If a member exercises the option, contributions are payable by deduction of the appropriate percentage from the member's pensionable earnings in respect of the option period.

(4) In paragraph (3)—

"the appropriate percentage" means the percentage shown, in a table issued by the Defence Council for the purpose of that paragraph, for a person of the member's age and rank;

"the option period" means the period beginning with the day on which the option is exercised and ending on the member's last day of pensionable service.

C.7 Effect of purchase under rule C.6

(1) This rule applies on the death of a member who exercised the option under rule C.6.

(2) The annual amount of any pension payable to the member's surviving spouse or civil partner under rule E.1(7) is the aggregate of—

- (a) the amount that would, but for this rule, be payable; and
- (b) the appropriate increase.

(3) In paragraph (2) "the appropriate increase" means the difference between the amount that would, but for this rule, be payable and four ninths of the member's representative rate of pay.

(4) But if, in respect of any period during the option period, the member received no pensionable earnings, the appropriate increase is the appropriate fraction of the figure given by paragraph (3).

(5) In paragraph (4) "the appropriate fraction" means the fraction obtained by dividing the number of days in respect of which contributions were made by the number of days in the option period.

(6) In this rule "the option period" has the same meaning as in rule C.6(3).

(7) If no pension is payable to a surviving spouse or civil partner of the member, no refund of contributions is to be made.

C.8 Purchase of enhanced death in service lump sum

(1) An active member may opt to make periodic contributions so as to secure an increase in any lump sum payable in respect of the member under rule E.20 (lump sum death benefit), other than one payable to a person entitled to a pension by virtue of rule E.1(13) (surviving eligible partner or adult dependant), in the event of the member's death in service.

(2) But a member may exercise the option only if-

- (a) the member has not been given notice of termination of the member's pensionable service;
- (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 commission or engagement; and
- (c) the member has signed a declaration that the member believes the condition in subparagraph (b) to be met.

(3) If a member exercises the option, contributions are payable by deduction of the appropriate percentage from the member's pensionable earnings in respect of the option period.

(4) In paragraph (3)—

"the appropriate percentage" means the percentage shown, in a table issued by the Defence Council for the purpose of that paragraph, for a person of the member's age and rank;

"the option period" means the period beginning with the day on which the option is exercised and ending with the member's last day of pensionable service.

C.9 Effect of purchase under rule C.8

(1) This rule applies on the death of an active member who exercised the option under rule C.8.

(2) If a lump sum is paid under rule E.20 in respect of the member, otherwise than to a person entitled to a pension by virtue of rule E.1(13), the amount of the lump sum (or, if two or more lump sums are so paid, their aggregate amount) must be—

- (a) four times what the member's representative rate of pay would have been if the member had had the maximum amount of reckonable service permitted by rule A.11(2), or
- (b) four times the member's annual pensionable earnings at the date of the death,

whichever is the greater.

C.10 Maximum amount of contributions under this Part

(1) This rule applies in relation to a member whose pensionable service began on or after 1st June 1989.

(2) The aggregate of—

- (a) the member's total contributions under rules C.1, C.4, C.6 and C.8 in respect of any tax year, and
- (b) any other direct superannuation contributions made by the member in respect of that tax year,

may not exceed the permitted amount.

- (3) The permitted amount is 15% of—
 - (a) the member's pensionable earnings for that tax year, or

(b) the permitted maximum in relation to that tax year,

whichever is the lower.

(4) In paragraph (3) "the permitted maximum" has the same meaning as in rule A.8 (restrictions on final pensionable earnings).

C.11 General

(1) An option under this Part may be exercised only by notice in writing to the Scheme administrator, in such form as he or she may require.

(2) The Defence Council must consult the Scheme actuary before issuing any table for the purpose of any provision of this Part.

(3) Subject to paragraph (4), a member may not cancel the exercise of any option under this Part.

(4) The Defence Council may permit a member to cancel the exercise of an option under rule C.1, C.4, C.6 or C.8 on grounds of exceptional circumstances outside the member's control.

(5) If the Defence Council permits a member to cancel the exercise of an option-

- (a) rule C.2, C.5, C.7 or C.9 (as the case may be) does not apply;
- (b) no contributions are payable in respect of the period beginning with the date of the Defence Council's decision; but
- (c) no contributions made in respect of any previous period shall be refunded.

PART D

RETIREMENT BENEFITS

Immediate pensions

D.1 Entitlement to immediate pension and lump sum

(1) This rule applies if a member ceases pensionable service and—

- (a) the member has reached the immediate pension point; or
- (b) the ill-health condition is met.

(2) The member is entitled to—

- (a) a pension for life, the annual amount of which is calculated in accordance with whichever of rules D.4 to D.7 applies, and
- (b) a lump sum of three times the annual amount of the pension,

payable immediately.

D.2 Immediate pension point: officers

(1) This rule applies to a member whose pension rank is that of OF-1 or above.

(2) The member has reached the immediate pension point if any of conditions A to C is met.

(3) Condition A is that the member has at least 16 years' qualifying service that were served after the member reached the age of 21, and of which at least five were served as an officer.

(4) Condition B is that the member has at least 22 years' qualifying service that were served after the member reached the age of 18.

(5) Condition C is that—

- (a) the member is notified by the Defence Council that the member is to be treated for the purposes of AFRS as having become redundant; and
- (b) the member has—

- (i) 16 years' qualifying service that were served after the member reached the age of 21; or
- (ii) 18 years' qualifying service that were served after the member reached the age of 18.

D.3 Immediate pension point: other ranks

(1) This rule applies to a member whose pension rank is that of OR-9 or below.

(2) The member has reached the immediate pension point if any of conditions A to C is met.

(3) Condition A is that the member has 22 years' qualifying service that were served after the member reached the age of 18.

(4) Condition B is that—

- (a) the member has at least 21 years' and 274 days' qualifying service that were served after the member reached the age of 18; and
- (b) the Scheme administrator is satisfied that the member intends—
 - (i) to enter civilian employment which would not be available if the member continued in service until condition A is met; or
 - (ii) to undertake a course of full-time education, or a training course at an educational establishment, which starts before the time at which (if the member continued in service) condition A would be met.

(5) Condition C is that-

- (a) the member is notified by the Defence Council that the member is to be treated for the purposes of AFRS as having become redundant; and
- (b) the member has 18 years' qualifying service that were served after the member reached the age of 18.

D.4 Amount of immediate pension: officers of or above OF-7 rank

(1) This rule applies if—

- (a) a member is entitled to a pension under rule D.1;
- (b) the member's pension rank is that of OF-7 or above;
- (c) the member was not serving as a medical or dental officer immediately before ceasing pensionable service; and
- (d) the ill-health condition is not met.

(2) The annual amount of the pension is the aggregate of-

- (a) the relevant percentage of the member's final pensionable earnings; and
- (b) if rule D.8 (reckonable service in excess of whole years) applies, an additional amount calculated in accordance with that rule.

(3) For the purposes of paragraph (2)(a) the relevant percentage is that specified, for a person of the member's pension rank and with the number of whole years' reckonable service that the member has, in the pension code in force on the last day of the member's pensionable service.

D.5 Amount of immediate pension: other officers

(1) This rule applies if—

- (a) a member is entitled to a pension under rule D.1;
- (b) the member's pension rank is that of OF-1 or above;
- (c) rule D.4 (officers of or above OF-7 rank) does not apply; and
- (d) the ill-health condition is not met.

(2) Subject to the following provisions of this rule and rule D.10 (increase at age 60 or 65), the annual amount of the pension is the aggregate of—

- (a) the amount specified, for a person of the member's pension rank with the number of whole years' reckonable service that the member has, in the relevant table in the pension code in force on the member's last day of pensionable service; and
- (b) if rule D.8 (reckonable service in excess of whole years), D.13 (rank addition) or D.15 (professional supplement) applies, an additional amount calculated in accordance with that rule.
- (3) If the member—
 - (a) ceases service—
 - (i) at the end of the period for which the member's terms and conditions of commission commit the member to serve, or
 - (ii) on or after reaching the member's normal retirement age,
 - (b) is called upon to retire for reasons outside the member's control, or
 - (c) is notified by the Defence Council that the member is to be treated for the purposes of AFRS as having become redundant,

for the purposes of paragraph (2)(a) the relevant table is that setting out rates of pension paid on compulsory retirement for officers.

(4) If paragraph (3) does not apply, for the purposes of paragraph (2)(a) the relevant table is that setting out rates of pension paid on premature voluntary retirement for officers.

(5) If the member—

- (a) was serving in a permanent cadre of the special forces immediately before ceasing service, or
- (b) served in such a cadre for a period of at least two years, or two or more periods amounting in total to at least two years, within the period of five years ending with the member's last day of pensionable service,

in paragraph (2)(a) "the pension code" means the pension code for the special forces.

- (6) If—
 - (a) the member has not completed five years' qualifying service as an officer, and
 - (b) the member ceases service at the member's own request,

the annual amount of the pension is calculated under rule D.6, and not this rule, as if the member had been discharged with the pension rank of OR-9 on the day on which the member ceased service.

D.6 Amount of immediate pension: other ranks

(1) This rule applies if—

- (a) a member is entitled to a pension under rule D.1;
- (b) the member's pension rank is that of OR-9 or below; and
- (c) the ill-health condition is not met.

(2) Subject to the following provisions of this rule and rule D.10 (increase at age 60 or 65), the annual amount of the pension is the aggregate of—

- (a) the amount specified, for a person of the member's pension rank with the number of whole years' reckonable service that the member has, in the relevant table in the pension code in force on the member's last day of pensionable service;
- (b) if rule D.8 (reckonable service in excess of whole years), D.14 (rank addition) or D.15 (professional supplement) applies, an additional amount calculated in accordance with that rule; and
- (c) if the member served as an officer for a period of at least two years, an additional amount calculated in accordance with paragraph (8).

(3) Unless paragraph (4) applies, for the purposes of this rule the relevant table is that setting out standard rates of service pension for ratings and other ranks.

(4) If the member is discharged in accordance with a sentence of dismissal with disgrace passed by the Court Martial, for the purposes of this rule the relevant table is that setting out lower rates of service pension for ratings and other ranks.

(5) If the member's pension rank is one from which the member was reduced by way of punishment for an offence, paragraph (2)(a) applies as if the member's pension rank were that held on the member's last day of pensionable service, unless—

- (a) rule D.7 (ill-health pension) applies; or
- (b) the Defence Council directs that this paragraph shall not apply.

(6) For the purposes of paragraph (5) a reduction in the member's rank under section 293 of the Armed Forces Act 2006(a) (effect of custodial sentence or sentence of detention) is to be treated as a reduction by way of punishment.

(7) If—

- (a) the member—
 - (i) was serving in a permanent cadre of the special forces immediately before ceasing service, or
 - (ii) served in such a cadre for a period of at least two years, or two or more periods amounting in total to at least two years, within the period of five years ending with the member's last day of pensionable service, and
- (b) the member was not an officer before joining the special forces,

in paragraph (2)(a) "the pension code" means the pension code for the special forces.

(8) The additional amount mentioned in paragraph (2)(c) is the product of-

- (a) the number of years for which the member served as an officer; and
- (b) the amount of the annual commissioned service addition specified in the pension code in force on the last day of the member's pensionable service.

(9) If—

- (a) at a time when the member has at least 22 years' qualifying service that were served after the member reached the age of 18, the member begins to serve in a lower rank, and
- (b) the alternative amount given by paragraph (10) is greater than that given by paragraph (2),

the annual amount of the pension is that alternative amount.

(10) The alternative amount is that given by the formula

$$\mathbf{A} + (\underline{\mathbf{B} - \mathbf{C}} \ge \mathbf{x} \ \mathbf{y})$$

where---

A is the amount that would be given by paragraph (2) if the member had ceased pensionable service instead of beginning to serve in the lower rank;

B is the amount specified, for a person whose pension rank is the lower rank and who has 37 years' reckonable service, in the relevant table in the pension code in force on the member's last day of pensionable service;

C is the amount specified, for a person whose pension rank is the lower rank and who has 22 years' reckonable service, in the relevant table in the pension code in force on the member's last day of pensionable service; and

y is the number of years for which the member serves in the lower rank.

⁽a) 2006 c. 52.

D.7 Amount of immediate pension: ill health

(1) This rule applies if—

- (a) a member is entitled to a pension under rule D.1; and
- (b) the ill-health condition is met.
- (2) Unless paragraph (3) applies, the annual amount of the pension is—
 - (a) the aggregate of—
 - (i) the amount specified, for a person of the member's pension rank with the number of whole years' reckonable service that the member has, in the table setting out the rates of service ill-health pension in the pension code in force on the member's last day of pensionable service; and
 - (ii) if rule D.8 (reckonable service in excess of whole years) or rule D.13 or D.14 (rank addition) applies, an additional amount calculated in accordance with that rule; or
 - (b) such lesser amount as the Defence Council may direct.

(3) If—

- (a) the member has reached the immediate pension point, and
- (b) if the ill-health condition were not met, the annual amount given by rule D.4, D.5 or D.6 would be greater than that given by paragraph (2),

the annual amount of the pension is that greater amount.

(4) This rule is subject to rule D.10 (increase at age 60 or 65).

D.8 Addition for reckonable service in excess of whole years

(1) This rule applies if—

- (a) a member is entitled to a pension under rule D.1; and
- (b) the amount of reckonable service that the member has is greater than the number of whole years' reckonable service that the member has.

(2) The additional amount mentioned in rule D.4(2)(b), D.5(2)(b), D.6(2)(b) or D.7(2)(a)(ii) (as the case may be) is that given by the formula

$$(B-A) \ge \frac{C}{365}$$

where----

A is the amount given by rule D.4(2)(a), D.5(2)(a), D.6(2)(a) or D.7(2)(a)(i) (as the case may be);

B is what that amount would be if the member had one more year's reckonable service; and

C is the number of days' reckonable service that the member has, in excess of the number of whole years.

(3) If the member's last 12 months of pensionable service include 29th February, paragraph (2) has effect as if in the formula "366" were substituted for "365".

D.9 Recall for permanent service

(1) This rule applies if a pensioner member again becomes an active member by virtue of rule B.2 (recall under the Reserve Forces Acts).

(2) If the member is an active member by virtue of that rule for a period of six months or more, the annual amount of the pension is increased by half of the difference between—

- (a) what, but for this paragraph, that amount would be; and
- (b) what that amount would be if the period of recalled service were reckonable service.
- (3) No further lump sum is payable in respect of the recalled service.

D.10 Increase at age 60 or 65

(1) This rule applies if—

- (a) a member is entitled to a pension under rule D.1; and
- (b) rule D.4 (officers of or above OF-7 rank) does not apply.

(2) If—

- (a) the member reaches the age of 60, and
- (b) the annual amount of the pension would otherwise be less than the annual amount of the pension that would be payable under rule D.11(2)(a) (preserved pension) if rule D.1 did not apply,

the annual amount of the pension is increased to that higher amount.

(3) If—

- (a) the member reaches the age of 65, and
- (b) the annual amount of the pension would otherwise be less than the aggregate of the annual amounts of the pensions that would be payable under rule D.11(2) if rule D.1 did not apply,

the annual amount of the pension is increased to the aggregate of those amounts.

Preserved benefits

D.11 Preserved pensions and lump sums

- (1) This rule applies if—
 - (a) a member ceases pensionable service; and
 - (b) rule D.1 (immediate pension) does not apply.
- (2) The member is entitled to—
 - (a) a pension for life, payable from the age of 60; and
 - (b) a further pension for life, payable from the age of 65.
- (3) The annual amount of the pension under paragraph (2)(a) is that given by the formula

where---

A is the overall pension amount (see rule D.12);

B is the number of years' reckonable service that the member would have if the member had ceased service on 5th April 2006; and

C is the number of years' reckonable service that the member has.

(4) The annual amount of the further pension under paragraph (2)(b) is the difference between the overall pension amount and the annual amount of the pension under paragraph (2)(a).

(5) The member is also entitled to—

- (a) a lump sum, payable when the member reaches the age of 60, of three times the annual amount of the pension payable under paragraph (2)(a); and
- (b) a further lump sum, payable when the member reaches the age of 65, of three times the annual amount of the pension payable under paragraph (2)(b).

(6) References in paragraph (5) to the annual amount of a pension include any increase under rule D.23 (pension increases).

(7) Paragraphs (2)(b) and (5)(b) are subject to rule D.17 (early payment of benefits with actuarial reduction).

D.12 Overall pension amount

(1) In rule D.11 "the overall pension amount" means-

- (a) if the member's pension rank is that of OF-7 or above, the relevant percentage of the member's final pensionable earnings;
- (b) otherwise, the aggregate of-
 - (i) the relevant percentage of the full career pension, multiplied by the number of years' reckonable service that the member has; and
 - (ii) if rule D.13 or D.14 (rank addition) or rule D.15 (professional supplement) applies, an additional amount calculated in accordance with that rule.

(2) For the purposes of paragraph (1) the relevant percentage is—

- (a) if the member's pension rank is that of OF-7 or above, that specified for a person of the member's pension rank, with the amount of reckonable service that the member has, in the pension code in force on the member's last day of pensionable service;
- (b) if the member's pension rank is between OF-1 and OF-6, 3%;
- (c) otherwise, 2.75%.

(3) In paragraph (1)(b) "the full career pension" means the amount specified, for a person of the member's pension rank with the relevant amount of reckonable service, in the relevant table in the pension code in force on the member's last day of pensionable service.

(4) If the member—

- (a) was serving in a permanent cadre of the special forces immediately before ceasing service, or
- (b) served in such a cadre for a period of at least two years, or two or more periods amounting in total to at least two years, within the period of five years ending with the member's last day of pensionable service,

in paragraph (3) "the pension code" means the pension code for the special forces.

(5) For the purposes of paragraph (3) the relevant table is—

- (a) if the member's pension rank is that of OF-1 or above, that setting out rates of pension paid on compulsory retirement for officers;
- (b) otherwise, that setting out standard rates of service pension for ratings and other ranks.
- (6) For the purposes of paragraph (3) the relevant amount of reckonable service is—
 - (a) if the member's pension rank is that of OF-1 or above, 34 years;
 - (b) otherwise, 37 years.

(7) In relation to a member whose grade for pension purposes is that of a chaplain, the reference in paragraph (3) to a person of the member's pension rank is to be read—

- (a) if the member has 10 or more years' reckonable service, as a reference to a person whose pension rank is that of OF-3;
- (b) otherwise, as a reference to a person whose pension rank is that of OF-2.

(8) For the purposes of paragraph (7), any period by which the member's reckonable service is increased under rule F.3 (transferred-in service) is to be disregarded.

Additional entitlements

D.13 Rank addition: officers

(1) This rule applies if—

- (a) a member is entitled to a pension under rule D.1 or D.11;
- (b) the member's pension rank is that of OF-1 or above;

- (c) in the case of a pension under rule D.1, rule D.4 (officers of or above OF-7 rank) does not apply; and
- (d) condition A or B is met.

(2) Condition A is that the member has held a substantive rank, higher than the member's pension rank, for a period of at least one year (but less than two years).

(3) If condition A is met, the amount of the rank addition is that given by the formula

$$(Y-X) \ge \frac{Z}{730}$$

where----

X is the amount that would be given by rule D.5, D.7 or D.12 (as the case may be) if references to this rule were disregarded;

Y is what that amount would be if the member's pension rank were the higher rank mentioned in paragraph (2); and

Z is the number of days for which the member held that higher rank.

(4) Condition B is that the member has at any time held a paid acting rank, higher than the member's pension rank, for one or more periods amounting in aggregate to at least one year (but less than three years).

(5) If condition B is met, the amount of the rank addition is that given by the formula

$$(Y-X) \ge \frac{Z}{1095}$$

where---

X is the amount that would be given by rule D.5, D.7 or D.12 (as the case may be) if references to this rule were disregarded;

Y is what that amount would be if the member's pension rank were the paid acting rank mentioned in paragraph (4); and

Z is the number of days for which the member held that paid acting rank.

(6) If conditions A and B are both met in relation to the same rank, the amount of the rank addition is the aggregate of the amounts given by paragraphs (3) and (5).

(7) Paragraphs (8) to (10) apply if—

- (a) the member has held two ranks, both higher than the member's pension rank; and
- (b) the aggregate of the periods for which the member has held those ranks is at least one year.

(8) If the member has held the higher of those ranks for less than one year, this rule applies as if the lower of those ranks had been held for the aggregate of the periods for which either rank was held.

(9) But, if the lower of those ranks is a substantive rank and the higher is a paid acting rank, in paragraph (8) the reference to the aggregate of the periods for which either rank was held does not include any period for which the substantive rank was not held.

(10) If the member has held the higher of those ranks for at least one year—

- (a) condition A or B (as the case may be) is to be treated as met in relation to the lower of those ranks, even if the member held that rank for less than one year; but
- (b) the period for which the higher of those ranks was held is to be disregarded in calculating the amount of the rank addition in respect of the lower.

(11) In this rule "the amount of the rank addition" means the additional amount mentioned in rule D.5(2)(b), D.7(2)(b) or D.12(1)(b)(ii) (as the case may be).

D.14 Rank addition: other ranks

(1) This rule applies if—

- (a) a member is entitled to a pension under rule D.1 or D.11;
- (b) the member's pension rank is that of OR-9 or below; and
- (c) the member has held a substantive or paid acting rank, higher than the member's pension rank—
 - (i) for a single period of which at least one year (but less than two years) fell within the qualifying period; or
 - (ii) for two or more periods of which at least one year in total (but less than two years) fell within that period.
- (2) The amount of the rank addition is that given by the formula

$$(Y-X)\mathbf{x}\frac{Z}{730}$$

where----

X is the amount that would be given by rule D.6, D.7 or D.12 (as the case may be) if references to this rule were disregarded;

Y is what that amount would be if the member's pension rank were-

- (a) if during the qualifying period the member was reduced in rank on grounds of misconduct, one rank higher than the member's pension rank;
- (b) otherwise, the higher rank mentioned in paragraph (1); and

Z is the number of days (within the qualifying period) for which the member held that higher rank.

(3) Paragraphs (4) to (6) apply if-

- (a) the member has held two ranks, both higher than the member's pension rank; and
- (b) the aggregate of the periods for which the member has held those ranks (within the qualifying period) is at least one year.

(4) If the member has held the higher of those ranks for less than one year within the qualifying period, this rule applies as if the lower of those ranks had been held for the aggregate of the periods for which either rank was held.

(5) But, if the lower of those ranks is a substantive rank and the higher is a paid acting rank, in paragraph (4) the reference to the aggregate of the periods for which either rank was held does not include any period for which the substantive rank was not held.

(6) If the member has held the higher of those ranks for at least one year within the qualifying period—

- (a) this rule applies in relation to the lower of those ranks, even if the member held that rank for less than one year within that period; but
- (b) the period for which the higher of those ranks was held is to be disregarded in calculating the amount of the rank addition in respect of the lower.

(7) In this rule—

"the amount of the rank addition" means the additional amount mentioned in rule D.6(2)(b), D.7(2)(b) or D.12(1)(b)(ii) (as the case may be);

"the qualifying period" means the qualifying period.

D.15 Professional supplement

(1) This rule applies if—

(a) a member is entitled to a pension under rule D.1 or D.11;

- (b) in the case of a pension under rule D.1, rule D.4 (officers of or above OF-7 rank) does not apply; and
- (c) any of conditions A to D is met.
- (2) Condition A is that the member has served as a medical officer or a dental officer.
- (3) Condition B is that the member has served as a nurse.
- (4) Condition C is that—
 - (a) the member has served as a professional aviator, or as non-commissioned aircrew; and
 - (b) the member's pay was calculated using the professional aviators' pay spine.
- (5) Condition D is that—
 - (a) the member has served as a clearance diver; and
 - (b) the member's pay was calculated using the clearance divers' pay spine.

(6) The additional amount mentioned in rule D.5(2)(b), D.6(2)(b) or D.12(1)(b)(ii) (as the case may be) is the product of—

- (a) the daily supplement specified for a person of the member's pension rank, holding the professional qualification or appointment held by the member, in the appropriate table of professional supplements in the pension code in force on the member's last day of pensionable service; and
- (b) the number of days' reckonable service that the member has.
- (7) For the purposes of paragraph (6)(b), a member's reckonable service does not include—
 - (a) where condition A is met—
 - (i) any day before 1st April 1992; or
 - (ii) any day on which the member was not fully qualified as a medical officer or a dental officer (as the case may be);
 - (b) where condition B is met—
 - (i) any day before 1st August 2009;
 - (ii) any day on which the member was not fully qualified as a nurse; or
 - (iii) any day in respect of which the member is entitled to a supplement because condition A is also met;
 - (c) where condition C is met, any day not falling within a continuous period of at least five years throughout which the member's pay was calculated using the professional aviators' pay spine;
 - (d) where condition D is met, any day not falling within a continuous period of at least five years throughout which the member's pay was calculated using the clearance divers' pay spine.

Pension credit members

D.16 Pension credit member's entitlement to pension and lump sum

- (1) A pension credit member is entitled to—
 - (a) a pension for life, and
 - (b) unless the pension debit member is a pensioner member when the order takes effect, a lump sum,

derived from the member's pension credit rights.

- (2) The pension and any lump sum become payable—
 - (a) when the pension credit member reaches pension benefit age, or
 - (b) when the order takes effect,

whichever is the later.

But this is subject to rule D.17 (early payment with actuarial reduction).

(3) If no lump sum is payable under this rule, the annual amount of the pension must be such that its value, as calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to the Welfare Reform and Pensions Act 1999(**a**), equals the amount of the pension credit.

- (4) If a lump sum is payable under this rule—
 - (a) the amount of the lump sum must be three times the annual amount of the pension; and
 - (b) the annual amount of the pension must be such that its value, when aggregated with the lump sum, is equal to the member's pension credit, as calculated in accordance with those regulations.

(5) If the pension credit member is also an active, deferred or pensioner member, benefits payable by virtue of that fact are to be disregarded for the purpose of calculating the benefits payable under this rule, and *vice versa*.

(6) For the purpose of determining whether the pension credit member is also a deferred or pensioner member within the meaning of paragraph (5) it is immaterial in which of the regular forces the member served.

(7) In this rule—

"the order" means the pension sharing order under which the pension credit member is entitled to the pension credit;

"pension benefit age" means-

- (a) if the order took effect before 6th April 2006, the age of 60;
- (b) otherwise, the age of 65.

Early payment of benefits

D.17 Early payment with actuarial reduction

(1) A member who is entitled to a further pension under rule D.11(2)(b) may opt, before reaching the age of 60, to receive the pension from the age of 60 at an actuarially reduced rate.

(2) If a member exercises the option under paragraph (1) and is entitled to a further lump sum under rule D.11(5)(b)—

- (a) the further lump sum is also payable at the age of 60; and
- (b) the amount of the further lump sum is three times the actuarially reduced annual amount of the further pension.

(3) A pension credit member may opt, before reaching pension benefit age (within the meaning of rule D.16), to receive the pension payable under that rule at an actuarially reduced rate—

- (a) if the member has not reached the age of 55, from that age;
- (b) if the member has reached that age, immediately.

(4) If a pension credit member exercises the option under paragraph (3)—

- (a) the annual amount of the pension is reduced by such amount as the Defence Council, after consulting the Scheme actuary, may determine; and
- (b) if the member is entitled to a lump sum under rule D.16—
 - (i) the lump sum is payable at the same time as the pension; and
 - (ii) the amount of the lump sum is three times the actuarially reduced annual amount of the pension.

(5) But, if a pension credit member exercises the option under paragraph (3), the Defence Council must be reasonably satisfied that the total value of the benefits payable by virtue of

⁽a) 1999 c. 30.

paragraph (4) is at least equal to the amount described in regulation 11 of the Pension Sharing (Pension Credit Benefit) Regulations 2000(**a**) (value of alternatives to pension credit benefit).

(6) An option under this rule must be exercised by notice in writing to the Scheme administrator, in such form as the Scheme administrator may require.

D.18 Early payment of preserved pension in case of ill health

(1) A deferred member who has not reached the age of 60 may claim early payment of the pensions and lump sums payable under rule D.11 on grounds of ill health.

(2) A deferred member who has reached the age of 60, but has not reached the age of 65, may claim early payment of the further pension and lump sum payable under rule D.11(2)(b) and (5)(b) on grounds of ill health.

(3) A claim under paragraph (1) or (2)—

- (a) must be made in writing to the Scheme administrator, in such form as the Scheme administrator may require; and
- (b) must be supported by evidence from a registered medical practitioner that because of physical or mental impairment the member is, and at least until reaching—
 - (i) in the case of a claim under paragraph (1), the age of 60, or
 - (ii) in the case of a claim under paragraph (2), the age of 65,

will continue to be, incapable of any full-time employment.

(4) If the Defence Council is satisfied of the matters mentioned in paragraph (3), and that the member has ceased to carry on the member's occupation—

- (a) the pension or pensions are payable with effect from the date on which the claim was received by the Scheme administrator; and
- (b) the lump sum or sums are payable immediately.

(5) If the member dies before the Defence Council has made a determination under paragraph (4)—

- (a) the member's personal representative is not entitled to any pension or lump sum under this rule; but
- (b) the member's personal representative may be paid such sum (not exceeding the aggregate of the arrears of pension, and the lump sum or sums, that would have been payable to the member if the Defence Council had been satisfied as mentioned in paragraph (4)) as the Defence Council may direct.

General

D.19 Guaranteed minimum pensions etc.

(1) This rule applies if a member has a guaranteed minimum under section 14 of the 1993 Act in relation to benefits under this Part.

(2) Nothing in the Scheme—

- (a) permits or requires anything that would cause requirements made by or under that Act in relation to such a member, and to such a member's rights under this Part, not to be met in the case of the member; or
- (b) prevents anything from being done which is necessary or expedient for the purpose of meeting such requirements in the case of the member;

and the following provisions are without prejudice to the generality of this paragraph.

(3) If—

(a) the member reaches pensionable age (as defined by paragraph (8)), and

⁽a) S.I. 2000/1054.

(b) but for this rule, no pension would be payable to the member under this Part,

the member is entitled to a pension for life, the weekly rate of which is equal to the guaranteed minimum.

(4) If—

- (a) the member reaches pensionable age, and
- (b) but for this rule, the weekly rate of any pension payable to the member under this Part (or, if more than one pension is so payable, the aggregate of their weekly rates) would be less than the guaranteed minimum,

the member is entitled to a pension for life, the weekly rate of which is equal to the difference between that of the other pension (or the aggregate of the weekly rates of the other pensions) and the guaranteed minimum.

(5) If on reaching pensionable age the member is in employment, and consents to a postponement of the member's entitlements under paragraphs (3) and (4), those paragraphs do not apply until the member leaves that employment.

(6) If the member continues in employment for a further period of five years after reaching pensionable age, and does not then leave employment, paragraphs (3) and (4) apply at the end of that period unless the member consents to a further postponement.

(7) Paragraphs (2) to (6) do not apply if—

- (a) the guaranteed minimum pension is withheld under rule J.6, in a case in which condition A in that rule (conviction of treason or Official Secrets Acts offences) is met; or
- (b) the guaranteed minimum pension is commuted under rule J.10 (commutation of small pensions) and the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(**a**) are met.

(8) In this rule "pensionable age" means-

- (a) in relation to a member who is a man, the age of 65;
- (b) in relation to a member who is a woman, the age of 60.

(9) Where a pension is paid otherwise than at weekly intervals, for the purposes of this rule the weekly rate of the pension is its annual amount divided by 52.1786.

D.20 Reduction in respect of members transferring from contracted-in service

(1) This rule applies if—

- (a) during any period between 6th April 1978 and 5th April 1997, a person served on the basis that the person was not eligible to be an active member but was entitled to a gratuity at the end of that period; and
- (b) on becoming an active member at the end of that period, the person-
 - (i) surrendered the right to a gratuity, or
 - (ii) if the gratuity had been paid, repaid it with interest,

so that that period was, under the former provisions of the Scheme, treated as qualifying service.

(2) When the member reaches state pension age, any pension payable to the member under this Part is reduced by the amount that would be the member's guaranteed minimum in respect of that period if it were a period of contracted-out service.

⁽a) S.I. 1996/1172. Regulation 60 was substituted by article 8(1) and (10) of the Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744).

D.21 Modification on account of national insurance benefits

(1) When a member reaches state pension age, the annual amount of any pension payable to the member under this Part is reduced by ± 0.8708 for each full year of qualifying service before 1st April 1980.

- (2) This rule does not apply to—
 - (a) a member whom the Defence Council determines to be exempt from the reduction in accordance with the rules formerly set out in the National Insurance (Modification of the Superannuation Acts) Regulations 1948(a); or
 - (b) a member who is permanently resident outside the United Kingdom and not in receipt of basic state pension or any corresponding pension payable under reciprocal arrangements.

D.22 Reduction in respect of graduated national insurance pensions

(1) This rule applies if, for any period of qualifying service beginning on or after 3rd April 1961 and ending before 6th April 1975, a member was not contracted out of the former state graduated pension scheme.

(2) When the member reaches state pension age, any pension payable to the member under this Part 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.

(3) But paragraph (2) does not apply if the annual amount of that pension does not exceed £5.20.

D.23 Pension increases

(1) Subject to paragraphs (2) and (4), the amount of a pension payable under this Part—

- (a) in respect of any period on or after 3rd January 2011, shall be (or continue to be) increased as if the former provisions of the Scheme corresponding to this rule were still in force; and
- (b) in respect of any period on or after 11th April 2011, shall be increased (or further increased) by any amount by which an official pension would, by virtue of an order made under section 59 of the Social Security Pensions Act 1975(**b**) and coming into force on or after that date, be increased in respect of that period if—
 - (i) it began on the day on which the pension begins, and were payable at an annual rate equal to the annual amount of the pension; and
 - (ii) a qualifying condition were satisfied.

(2) In the case of a pension under rule D.1 (immediate pension), paragraph (1) applies only in relation to amounts of pension payable on or after the member's 55th birthday, unless—

- (a) rule D.7 (ill-health pension) applies; or
- (b) on an application in writing by the member to the Scheme administrator, the Defence Council directs that paragraph (1) shall apply in relation to amounts of pension payable in respect of the period beginning with the day on which the application is received.

(3) An application under paragraph (2)(b) must be supported by evidence from a registered medical practitioner that because of physical or mental impairment the member is, and will continue to be, incapable of any full-time employment.

(4) If the member has a guaranteed minimum under section 14 of the 1993 Act by virtue of service during any period between 6th April 1978 and 5th April 1988, and has reached

⁽a) S.I. 1948/498, revoked by S.I. 1972/1954.

⁽b) 1975 c. 60.

pensionable age, paragraph (1) applies only in relation to the amount of the pension after deduction of the guaranteed minimum in respect of that period.

(5) In this rule—

"official pension" and "qualifying condition", and references to the day on which a pension begins, have the same meaning as in the Pensions (Increase) Act $1971(\mathbf{a})$;

"pensionable age" has the same meaning as in rule D.19.

PART E

DEATH BENEFITS

Pensions for surviving spouses and civil partners (service on or after 31st March 1973)

E.1 Surviving spouse or civil partner's pensions

- (1) This rule applies if any of conditions A to C is met.
- (2) Condition A is that-
 - (a) an active member dies; and
 - (b) the member leaves a surviving spouse or civil partner.

(3) Condition B is that-

- (a) a deferred or pensioner member dies;
- (b) the member was in pensionable service on or after 31st March 1973; and
- (c) the member leaves a widow.

(4) If the marriage was solemnized after the member ceased pensionable service, paragraph (3) has effect as if in sub-paragraph (b) "6th April 1978" were substituted for "31st March 1973".

(5) Condition C is that—

- (a) a deferred or pensioner member dies;
- (b) the member was in pensionable service on or after 1st October 1987; and
- (c) the member leaves a widower or a surviving civil partner.

(6) If the member was an active or pensioner member, the surviving spouse or civil partner is entitled to a short-term pension, payable for the immediate bereavement period.

(7) The surviving spouse or civil partner is entitled to a pension for life.

(8) A pension under paragraph (7) is payable—

- (a) if paragraph (6) applies, from the day after the last day of the immediate bereavement period;
- (b) otherwise, from the day after the date of the death.

(9) In this rule "the immediate bereavement period" means-

- (a) if, on the last day of the period of 13 weeks beginning with the day after the date of the death, any person entitled to a pension under rule E.12 or E.15 (child's pensions) is living in the same household as the surviving spouse or civil partner, the period of 26 weeks beginning with the day after the date of the death;
- (b) otherwise, the period of 13 weeks beginning with the day after the date of the death.

(10) For the purpose of paragraph (9)(a) a person who was living with the surviving spouse or civil partner until ceasing full-time secondary education is to be treated as still doing so.

(11) Paragraphs (6) and (7) are subject to—

⁽a) 1971 c. 56.

- (a) paragraph (12);
- (b) rule E.8(2) (effect of temporary allowance); and
- (c) rule E.9 (suspension of pension on marriage etc).

(12) If the marriage was solemnized, or the civil partnership formed, less than six months before the death, the Defence Council may determine that a pension which would otherwise be payable under this rule is to be reduced or withheld.

But this is subject to rule E.11 (guaranteed minimum pensions).

- (13) Where—
 - (a) an active, deferred or pensioner member dies,
 - (b) a person is entitled to compensation in respect of the death—
 - (i) under AFAB, by virtue of being a surviving eligible partner of the member within the meaning of that scheme, or
 - (ii) under AFCS 2005, by virtue of being a surviving adult dependant of the member within the meaning of that scheme, and
 - (c) had that person been the member's surviving spouse (if they were of opposite sexes) or the member's civil partner (if they were of the same sex), one of conditions A to C would be met,

this rule applies as if that condition were met.

- (14) Where this rule applies by virtue of paragraph (13)—
 - (a) references in this rule to the surviving spouse or civil partner are to the person mentioned in paragraph (13)(b); and
 - (b) in paragraph (12) and rules E.4(4) and E.5(5), references to the time when the marriage was solemnized, or the civil partnership formed, are to the earliest time at which that person would have been the member's surviving eligible partner or surviving adult dependant (as the case may be) if the member had died at that time.

E.2 Amount of surviving spouse or civil partner's short-term pension

(1) This rule applies if a pension is payable to a person ("the surviving partner") under rule E.1(6).

(2) If the member was an active member, the annual amount of the pension is equal to that of the member's basic pay.

(3) If the member was a pensioner member, the annual amount of the pension is the greater of—

- (a) the annual amount of the pension in payment to the member; and
- (b) the aggregate of the annual amounts of the pensions that would be payable in respect of the member to—
 - (i) the surviving partner, under rule E.1(7), and
 - (ii) any person or persons living in the same household as the surviving partner, under rule E.12(5),
 - if those pensions were payable from the day after the date of the death.
- (4) This rule is subject to rule E.8(3) (effect of temporary allowance).

E.3 Amount of surviving spouse or civil partner's long-term pension: active member

- (1) This rule applies if—
 - (a) a pension is payable under rule E.1(7); and
 - (b) the member was an active member.
- (2) The annual amount of the pension is—

- (a) where rule D.1 (immediate pension) would have applied if the member had ceased pensionable service on the date of the death (otherwise than by reason of the death), half of the annual amount of the pension that would have been payable to the member under that rule;
- (b) where rule D.11 (preserved pensions) would in those circumstances have applied, half of the aggregate of the annual amounts of the pensions that would have been payable to the member under that rule.
- (3) This rule is subject to—
 - (a) rule C.7 (effect of purchase of increased death benefits);
 - (b) rule E.8(3) (effect of temporary allowance);
 - (c) rule E.11 (guaranteed minimum pensions); and
 - (d) rule E.30 (death attributable to service).

E.4 Amount of surviving spouse or civil partner's long-term pension: deferred or pensioner member

(1) This rule applies if—

- (a) a pension is payable under rule E.1(7);
- (b) the member was a deferred or pensioner member; and
- (c) rule E.5 (service before 1st April 1973) does not apply.
- (2) The annual amount of the pension is half of the member's pension amount.

(3) In paragraph (2) "the member's pension amount" means the annual amount of the pension, or the aggregate of the annual amounts of the pensions, payable to the member.

But this is subject to paragraphs (4) and (5).

(4) If the marriage was solemnized, or the civil partnership formed, after the member ceased pensionable service, for the purposes of paragraph (3) the annual amount of any pension payable to the member is to be treated as the amount that would be so payable if any pensionable service given before 6th April 1978 were disregarded.

(5) If—

- (a) a pension under rule D.1 (immediate pension) was payable to the member, and
- (b) its annual amount would have been increased under rule D.10(2) or (3) if the member had reached the age of 60 or 65 (as the case may be),

for the purposes of paragraph (3) the annual amount of the pension payable to the member is to be treated as that which it would have been if the member had reached the age of 65.

- (6) This rule is subject to—
 - (a) rule C.7 (effect of purchase of increased death benefits);
 - (b) rule E.8(3) (effect of temporary allowance);
 - (c) rule E.11 (guaranteed minimum pensions); and
 - (d) rule E.30 (death attributable to service).

E.5 Amount of surviving spouse or civil partner's long-term pension: service before 1st April 1973

(1) This rule applies if—

- (a) a pension is payable under rule E.1(7);
- (b) the member was in pensionable service before 1st April 1973; and
- (c) the member did not exercise the option, under the former provisions of the Scheme corresponding to rule C.6, to purchase enhanced benefits for a surviving spouse or civil partner in respect of such service.

- (2) Unless paragraph (5) applies, the annual amount of the pension is the aggregate of-
 - (a) one third of the member's pre-1973 pension amount; and
 - (b) half of the difference between that amount and the member's full pension amount.
- (3) In this rule "the member's full pension amount" means-
 - (a) if—
 - (i) a pension under rule D.1 (immediate pension) was payable to the member, and
 - (ii) its annual amount would have been increased under rule D.10(2) or (3) if the member had reached the age of 60 or 65 (as the case may be),

what its annual amount would have been if the member had reached the age of 65;

- (b) otherwise, the annual amount of the pension (or the aggregate of the annual amounts of the pensions) payable to the member.
- (4) In this rule "the member's pre-1973 pension amount" means-
 - (a) if—
 - (i) a pension under rule D.1 was payable to the member, and
 - (ii) rule D.7 (ill-health pension) applied,

what would have been the annual amount of the pension payable to the member under rule D.11 (preserved pensions) if that rule had applied and the member had had no reckonable service other than the pensionable service given before 1st April 1973;

(b) otherwise, what the member's full pension amount would have been if the member had had no reckonable service other than the pensionable service given before 1st April 1973.

(5) If the marriage was solemnized, or the civil partnership formed, after the member ceased pensionable service, the annual amount of the pension is half of what the member's full pension amount would be if any pensionable service given before 6th April 1978 were disregarded.

(6) This rule is subject to—

- (a) rule C.7 (effect of purchase of increased death benefits);
- (b) rule E.8(3) (effect of temporary allowance);
- (c) rule E.11 (guaranteed minimum pensions); and
- (d) rule E.30 (death attributable to service).

Pensions for widows where service ended before 31st March 1973

E.6 Widows' pensions: service ended before 31st March 1973

- (1) This rule applies if—
 - (a) a pensioner member dies;
 - (b) the member's pensionable service ended before 31st March 1973;
 - (c) either-
 - (i) the member's pension rank was that of OR-9 or above; or
 - (ii) the member's pensionable service includes any period on or after 1st September 1950; and
 - (d) the member leaves a widow.

(2) If the marriage was solemnized before the member ceased pensionable service, the widow is entitled to a pension for life.

- (3) The pension is payable from the day after the date of the death.
- (4) Paragraph (2) is subject to-
 - (a) rule E.8(2) (effect of temporary allowance); and
 - (b) rule E.9 (suspension of pension on marriage etc).
- (5) The annual amount of a pension under paragraph (2) is—

- (a) one third of that of the member's pension, or
- (b) the minimum rate of widow's pension specified, in the pension code in force on the member's last day of pensionable service, in respect of a person of the member's pension rank,

whichever is the greater.

(6) Paragraph (5) is subject to-

- (a) rule E.8(3) (effect of temporary allowance); and
- (b) rule E.30 (death attributable to service).

(7) If paragraph (2) does not apply, the Defence Council may award the widow a pension for life, of such an annual amount as it may direct.

Pensions for widows where service ended before 1st September 1950

E.7 Widows' pensions: service ended before 1st September 1950

- (1) This rule applies if—
 - (a) a pensioner member dies;
 - (b) the member's pensionable service ended before 1st September 1950;
 - (c) the member leaves a widow;
 - (d) rule E.6 does not apply; and
 - (e) the widow has not been awarded a war widow's pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(a).

(2) If the marriage was solemnized before the member ceased pensionable service, the widow is entitled to a pension for life.

(3) The pension is payable from the day after the date of the death.

(4) Paragraph (2) is subject to-

- (a) paragraphs (7) and (8);
- (b) rule E.8(2) (effect of temporary allowance); and
- (c) rule E.9 (suspension of pension on marriage etc).

(5) The annual amount of a pension under paragraph (2) is the minimum rate of widow's pension specified, in the pension code in force on the member's last day of pensionable service, in respect of a person of the member's pension rank.

(6) Paragraph (5) is subject to-

- (a) paragraphs (7) and (8);
- (b) rule E.8(3) (effect of temporary allowance); and
- (c) rule E.30 (death attributable to service).

(7) If—

- (a) the Defence Council has determined that the member's service was not satisfactory, or
- (b) the widow was legally separated from him at the date of the death,

the widow is not entitled to a pension under paragraph (2) unless, because of exceptional circumstances, the Defence Council so determines; and, if the Defence Council so determines, it may impose such conditions, or reduce the pension to such extent, as it considers appropriate.

(8) If by virtue of the member's service in any of Her Majesty's forces any pension or allowance is awarded to the widow otherwise than under the Scheme, the Defence Council may determine that any pension payable under paragraph (2) shall be suspended for such time as, or reduced by such amount as, it considers appropriate.

⁽a) S.I. 2006/606, as amended by S.I. 2006/1455, 2007/909, 2008/679, 2008/2683 and 2009/706.
(9) If paragraph (2) does not apply, the Defence Council may award the widow a pension for life, of such an annual amount as it may direct.

Pensions for surviving partners: general

E.8 Effect of temporary allowance under the Service Pensions Order

(1) This rule applies if, in respect of any period—

- (a) a person is entitled to a temporary allowance under article 27 of the Service Pensions Order (allowances for surviving partners of war pensioners) in respect of a member; and
- (b) that person is (or but for paragraph (2) would be) entitled to a pension under rule E.1, E.6 or E.7 in respect of that member.

(2) The pension is payable in respect of that period only if the weekly rate of the allowance is less than the relevant amount.

(3) If, but for this paragraph, the weekly rate of the pension would be greater than the difference between the weekly rate of the allowance and the relevant amount, it is equal to that difference.

(4) In this rule "the relevant amount" means the aggregate of-

- (a) what would, but for this rule, be the weekly rate of the pension; and
- (b) the weekly rate of any benefits payable to the person under the Service Pensions Order, otherwise than under article 27 of that Order.

(5) Where a pension or allowance is paid otherwise than at weekly intervals, for the purposes of this rule its weekly rate is its annual amount divided by 52.143.

(6) In this rule "the Service Pensions Order" means the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006(a).

E.9 Suspension of pension on marriage etc

(1) If—

- (a) but for this rule, a pension would be payable to a member's surviving spouse or civil partner under rule E.1, E.6 or E.7, and
- (b) the surviving spouse or civil partner is not entitled under AFAB or AFCS 2005 to compensation in respect of the member's death,

the pension is not payable while any of paragraphs (2) to (4) applies.

(2) This paragraph applies while the surviving spouse or civil partner is married or is a person's civil partner, unless a legal separation has been obtained (anywhere) in respect of the marriage or civil partnership.

- (3) This paragraph applies while—
 - (a) the surviving spouse or civil partner and a person of the opposite sex are living together as husband and wife; or
 - (b) the surviving spouse or civil partner and a person of the same sex are living together in such circumstances that, if they were of opposite sexes, they would be regarded as living together as husband and wife.

(4) Where paragraph (2) or (3) has previously applied, this paragraph applies from the time when that paragraph ceases to apply, unless for reasons of hardship the Defence Council directs that this paragraph is not to apply.

(5) This rule is subject to rule E.11 (guaranteed minimum pension).

⁽a) S.I. 2006/606, as amended by S.I. 2006/1455, 2007/909, 2008/679, 2008/2683 and 2009/706.

E.10 Suspension of pension on marriage etc: past deaths

(1) This rule applies if, on 2nd January 2011, a pension was (or, but for any former provision of the Scheme corresponding to rule E.9, would have been) payable under any former provision of the Scheme corresponding to rule E.1, E.6 or E.7.

(2) Any former provision of the Scheme corresponding to rule E.9, or to any provision of that rule, shall have no further effect.

(3) But if, on 2nd January 2011, the pension was suspended under any such former provision, rule E.9 applies as if paragraph (1)(b), and the word "and" preceding it, were omitted.

E.11 Guaranteed minimum pensions

(1) This rule applies in respect of any period for which section 17 of the 1993 Act (minimum pensions for surviving spouses and civil partners) requires the Scheme to provide that a person is entitled to a guaranteed minimum pension.

(2) If—

- (a) one pension is payable to the person under this Part, and
- (b) but for this rule, the weekly rate of the pension would be less than the guaranteed minimum,

the weekly rate of the pension shall be the guaranteed minimum.

(3) If—

- (a) two or more pensions are payable to the person under this Part in respect of the same member, and
- (b) but for this rule, the aggregate of the weekly rates of the pensions would be less than the guaranteed minimum,

the weekly rate of the pension payable in respect of the earliest period of service shall be the difference between the guaranteed minimum and the aggregate of the weekly rates of the other pensions.

(4) If, but for this rule, no pension would be payable to the person under this Part, a pension shall be payable to the person at a weekly rate of the guaranteed minimum.

(5) Where a pension is paid otherwise than at weekly intervals, for the purposes of this rule its weekly rate is its annual amount divided by 52.143.

Pensions for eligible children

E.12 Child's pensions: service on or after 31st March 1973

- (1) This rule applies if—
 - (a) an active, deferred or pensioner member dies;
 - (b) the member was in pensionable service on or after 31st March 1973; and
 - (c) a person ("the child") is an eligible child in relation to the member (as defined by rule E.16).

(2) If—

- (a) the member was an active or pensioner member,
- (b) the child is not living in the same household as any person entitled to a pension under rule E.1 in respect of the member, and
- (c) the relevant date falls within the immediate bereavement period,

the child is entitled to a short-term pension.

(3) A child who until ceasing full-time secondary education was living in the same household as a person is to be treated for the purposes of paragraph (2)(b) as still living in the same household as that person.

(4) A pension under paragraph (2) is payable from the relevant date until—

- (a) the last day of the immediate bereavement period, or
- (b) the last day on which the child is an eligible child,

whichever is the earlier.

(5) The child is entitled to a pension, payable for as long as the child is an eligible child.

(6) The pension under paragraph (5) is payable—

- (a) if paragraph (2) applies, from the day after the last day of the immediate bereavement period;
- (b) if paragraph (2) would apply but for the condition in sub-paragraph (b) of that paragraph not being met, from the day after the last day of the period of 26 weeks beginning with the day after the date of the death;
- (c) if—
 - (i) the member was a deferred member, or
 - (ii) the relevant date falls after the end of the immediate bereavement period,

from the relevant date.

(7) If the child ceases to be an eligible child and becomes an eligible child again, a pension under this rule is payable in respect of (but only of) every period during which the child is an eligible child.

(8) In this rule—

"the relevant date" means the latest of-

- (a) the day after the date of the death;
- (b) the day on which the child is born; and
- (c) the first day on which the child is an eligible child;

"the immediate bereavement period" means-

- (d) if, on the date of the death, the child is living in the same household as another person entitled to a pension under this rule, the period of 26 weeks beginning with the day after that date;
- (e) otherwise, the period of 13 weeks beginning with the day after the date of the death.
- (9) This rule is subject to rule E.19 (child's pensions in respect of three or more deceased).

E.13 Amount of child's short-term pension

- (1) This rule applies if a person ("the child") is entitled to a pension under rule E.12(2).
- (2) If the member was an active member, the annual amount of the pension is equal-
 - (a) if another person living in the same household as the child is also entitled to a pension under rule E.12(2) in respect of the member, to that of the member's basic pay divided by the number of persons living in that household who are so entitled;
 - (b) otherwise, to that of the member's basic pay.

(3) If the member was a pensioner member and paragraph (4) does not apply, the annual amount of the pension is equal—

- (a) if another person living in the same household as the child is also entitled to a pension under rule E.12(2) in respect of the member, to that of the member's pension divided by the number of persons living in that household who are so entitled;
- (b) otherwise, to that of the member's pension.

(4) If—

- (a) the member had reached the age of 75, and
- (b) but for this paragraph, the annual amount of the pension would exceed the appropriate portion of the initial member pension limit,

the annual amount of the pension is equal to that portion of that limit.

(5) In paragraph (4) "the appropriate portion" and "the initial member pension limit" have the same meanings as in paragraph 16B of Schedule 28 to the Finance Act $2004(\mathbf{a})$.

E.14 Amount of child's longer-term pension

(1) This rule applies if a pension is payable to a person ("the child") under rule E.12(5).

- (2) Unless paragraph (3) applies, the annual amount of the pension is equal to the lesser of-
 - (a) one quarter of the member's notional pension amount; and
 - (b) half of the member's notional pension amount divided by the number of pensions payable under rule E.12 in respect of the member.

(3) This paragraph applies if—

- (a) no pension is payable to any person under rule E.1 in respect of the member; and
- (b) the child has no living parent, or the Defence Council considers that each such parent is unable or unwilling to take responsibility for the child.
- (4) If paragraph (3) applies, the annual amount of the pension is equal to the lesser of-
 - (a) one third of the member's notional pension amount; and
 - (b) the member's notional pension amount divided by the number of pensions payable under rule E.12 in respect of the member.
- (5) In this rule "the member's notional pension amount" means-
 - (a) in relation to an active member, the annual amount of the pension (or the aggregate of the annual amounts of the pensions) that would have been payable to the member under rule D.1 or D.11, as the case may be, if the member had ceased pensionable service on the date of the death (otherwise than by reason of the death);
 - (b) in relation to a deferred or pensioner member, the annual amount of the pension (or the aggregate of the annual amounts of the pensions) payable to the member.
- (6) But if—
 - (a) the member was an active or deferred member, and
 - (b) the member had less than five years' reckonable service,

references in paragraph (5) to the annual amount of the pension that was or would have been payable to the member are to the annual amount of the pension that would have been so payable if the member had had five years' reckonable service.

(7) Paragraphs (5) and (6) are subject to rule E.30 (death attributable to service).

(8) The annual amount of the pension—

- (a) may be calculated under each of paragraphs (2) and (4) at different times, and
- (b) if calculated under either of those paragraphs at two or more different times, may be a different amount at each of those times,

according to the circumstances.

E.15 Child's pension: service ended between 1st September 1950 and 30th March 1973

(1) This rule applies if—

- (a) a pensioner member dies;
- (b) the member's last day of pensionable service was between 1st September 1950 and 30th March 1973 (inclusive); and
- (c) a person is an eligible child in relation to the member (as defined by rule E.16).
- (2) The person is entitled to a pension, payable for as long as the person is an eligible child.

⁽a) 2004 c. 12. Paragraph 16B was inserted by section 101 of, and paragraphs 1 and 28 of Schedule 10 to, the Finance Act 2005 (c. 7).

(3) The pension is payable from the day after the date of the death.

(4) If the member's widow is entitled to (or is awarded) a pension under rule E.6, the annual amount of the pension under paragraph (2) is equal to one third of that of the widow's pension.

(5) If—

- (a) paragraph (4) does not apply, and
- (b) a parent or step-parent of the person entitled to the pension lives with that person in order to care for that person,

the annual amount of the pension is equal to one third of that of the widow's pension that would be payable if rule E.6 applied.

(6) If neither of paragraphs (4) and (5) applies, the annual amount of the pension is equal to two thirds of that of the widow's pension that would be payable if rule E.6 applied.

(7) This rule is subject to rule E.19 (child's pensions in respect of three or more deceased).

E.16 Meaning of "eligible child"

(1) For the purposes of rules E.12 and E.15 a person is an eligible child in relation to a member if—

- (a) the person has a qualifying relationship to the member (as defined by rules E.17 and E.18); and
- (b) any of conditions A to D is met.
- (2) Unless paragraph (3) applies, condition A is that the person is aged under 17.

(3) If—

- (a) the member's last day of pensionable service was before 31st March 1973, and
- (b) the member's pension rank was that of OR-9 or above,

condition A is that the person is aged under 18.

(4) Condition B is that the person is in full-time secondary education.

(5) If the person ceased to be in full-time secondary education before reaching the age of 19, for the purposes of condition B the person is in such education until whichever of the following next falls—

- (a) the second Monday in January;
- (b) the second Monday after Easter Monday;
- (c) the second Monday in September;
- (d) the person's 19th birthday;
- (e) the day on which the person becomes engaged in full-time gainful employment.
- (6) Condition C is that—
 - (a) the person is aged under 23;
 - (b) the person is in full-time further or higher education or unpaid full-time vocational training;
 - (c) the period between the last day on which the person was in full-time secondary education and the first day of that further or higher education or vocational training was not more than 15 months; and
 - (d) unless the death occurred after the last day on which condition B was met, the person gave the Scheme administrator notice, on or before that day, of the person's intention to undertake such education or training.

(7) If the person is in paid vocational training—

(a) that training may be treated as unpaid for the purposes of paragraph (6)(b); but

(b) any pension payable to the person shall be abated to the extent of the person's earnings, after deduction of such amount (if any) as the Scheme administrator considers appropriate to offset any expenditure incurred by the person for the purposes of the training.

(8) If—

- (a) but for paragraph (6)(c), condition C would be met, and
- (b) the Scheme administrator is satisfied that it was not reasonably practicable for the person to meet the requirement imposed by that sub-paragraph,

condition C may be treated as being met.

(9) A notice given after the last day on which condition B was met may be treated as satisfying paragraph (6)(d) if the Scheme administrator is satisfied that there was good cause for the person's failure to give the notice by that day.

(10) If it appears to the Scheme administrator that condition C is likely to be met, or to be treated by virtue of any of paragraphs (7) to (9) as being met, condition B may be treated as being met at any time between the last day on which it is met and the first day on which condition C is met or treated as met, subject to such conditions as to the meeting of condition C as the Scheme administrator may consider appropriate.

- (11) Condition D is that, because of physical or mental impairment—
 - (a) the person is, in the opinion of the Scheme administrator, unable to engage in full-time gainful employment; and
 - (b) the person was dependent on the member at the date of the death.

E.17 Qualifying relationships: active members

(1) For the purposes of rule E.16 a person ("the child") has a qualifying relationship to an active member if any of conditions A to C is met.

- (2) Condition A is that the child is a child of the member.
- (3) Condition B is that—
 - (a) the child is a child of a person who was at any time the member's spouse or civil partner; and
 - (b) the child was financially dependent on the member at the time of the death.

(4) Condition C is that—

- (a) the child is a grandchild of the member, or of a person who was at any time the member's spouse or civil partner;
- (b) if the child has a living parent, the Defence Council considers that each such parent is unable or unwilling to take responsibility for the child; and
- (c) the child was financially dependent on the member at the time of the death.

E.18 Qualifying relationships: deferred and pensioner members

(1) For the purposes of rule E.16 a person ("the child") has a qualifying relationship to a deferred or pensioner member if any of conditions A to F is met.

(2) Condition A is that—

- (a) the child is a child of the member and the member's spouse or civil partner; and
- (b) the marriage was solemnized, or the civil partnership formed, before the member ceased to be in pensionable service.
- (3) Condition B is that—
 - (a) the child is a natural child of the member; and
 - (b) the child was born before, or within nine months after, the member ceased to be in pensionable service.
- (4) Condition C is that—

- (a) the child is an adopted child of the member; and
- (b) either—
 - (i) the member adopted the child before ceasing to be in pensionable service; or
 - (ii) the child was financially dependent on the member, and in the Scheme administrator's opinion the member intended to adopt the child, before the member ceased to be in pensionable service.
- (5) Condition D is that—
 - (a) the child is a natural child of a person who was, during the member's pensionable service, the member's spouse or civil partner;
 - (b) the child was born before, or within nine months after, the member ceased to be in pensionable service; and
 - (c) the child was financially dependent on the member at the time of the death.
- (6) Condition E is that—
 - (a) the child is an adopted child of a person who was, during the member's pensionable service, the member's spouse or civil partner;
 - (b) that person adopted the child during the member's pensionable service; and
 - (c) the child was financially dependent on the member at the time of the death.
- (7) Condition F is that—
 - (a) the child is a child of a person who has or had a qualifying relationship to the member;
 - (b) if the child has a living parent, the Defence Council considers that each such parent is unable or unwilling to take responsibility for the child; and
 - (c) the child was financially dependent on the member at the time of the death.

E.19 Child's pensions in respect of three or more deceased

If, but for this rule, a person would be entitled to a pension under rule E.12 or E.15 in respect of each of three or more deceased members, the person is entitled only to the two pensions whose annual amount is for the time being the greatest.

Lump sum death benefits

E.20 Lump sum benefit: active, deferred and pensioner members

(1) This rule applies on the death of—

- (a) an active member;
- (b) a deferred member who was in pensionable service on or after 31st March 1973; or
- (c) a pensioner member, if—
 - (i) the member's pension was payable under rule D.1 (immediate pension); and
 - (ii) the death occurs within the period of one year beginning with the day after the member's last day of pensionable service.

(2) The Defence Council may pay a lump sum—

- (a) to any person entitled to a pension under rule E.1 in respect of the member;
- (b) if there is no person within sub-paragraph (a), to any person entitled to a pension under rule E.12 in respect of the member;
- (c) if there is no person within sub-paragraph (a) or (b), to the member's personal representative.

(3) If the Defence Council pays a lump sum to a person entitled to a pension under rule E.12 in respect of the member, it must also pay a lump sum to any other person who is, or who subsequently becomes, so entitled (including a child born after the death).

(4) But paragraph (3) does not apply if, at the time of paying the first lump sum mentioned in that paragraph, the Defence Council is unaware that the other person is, or is likely to become, so entitled.

E.21 Amount of lump sum: active members

(1) This rule applies if a lump sum is paid under rule E.20 in respect of an active member.

(2) The amount of the lump sum must be three times what would have been the member's representative rate of pay if—

- (a) the member had ceased pensionable service on the date of the death (otherwise than by reason of the death); and
- (b) any reckonable service in excess of the number of whole years were disregarded.

(3) This rule is subject to rule C.9 (effect of purchase of enhanced death in service benefit).

E.22 Amount of lump sum: deferred members

(1) This rule applies if a lump sum is paid under rule E.20 in respect of a deferred member.

(2) The amount of the lump sum must be equal to what would have been that of the lump sum (or the aggregate of the lump sums) payable to the member under rule D.11 if the corresponding pension or pensions had come into payment on the date of the death.

(3) This rule is subject to—

- (a) rule E.25 (reduction of lump sum for outstanding repayments); and
- (b) rule E.30 (death attributable to service).

E.23 Amount of lump sum: pensioner members

(1) This rule applies if a lump sum is paid under rule E.20 in respect of a pensioner member.

(2) The amount of the lump sum must be that which would have been given by rule E.21 if the death had occurred on the member's last day of pensionable service, minus the amount of any lump sum (or the aggregate amount of any lump sums) paid to the member under rule D.1, J.9 or J.10.

(3) This rule is subject to rule E.25 (reduction of lump sum for outstanding repayments).

E.24 Amount of lump sum: two or more eligible children

(1) This rule applies if in accordance with rule E.20(3) a lump sum is paid to each of two or more persons in respect of the same member.

(2) In whichever of rules E.21 to E.23 applies, references to the lump sum paid under rule E.20 are to the aggregate of the lump sums so paid.

(3) Each lump sum must be of an equal amount.

E.25 Reduction of lump sum for outstanding repayments

If—

- (a) a lump sum is paid under rule E.20,
- (b) the member had agreed to repay the amount of any benefit paid under the Scheme on the cessation of the member's service for the purpose of improving the benefits to which the member's surviving spouse would be entitled under this Part in respect of service before 1st April 1973, and
- (c) the member had not made all the repayments that the member had agreed to make for that purpose,

the amount of the lump sum must be reduced by that of the repayments outstanding.

E.26 Lump sum benefit: pension credit members

(1) The Defence Council may pay a lump sum to the personal representative of a pension credit member if condition A or B is met.

(2) Condition A is that the member—

- (a) would, on reaching pension benefit age, have been entitled to a lump sum under rule D.16; and
- (b) dies without reaching that age.

(3) Condition B is that the member—

- (a) is entitled to a lump sum under rule D.16; and
- (b) dies within the period of three years beginning with the day on which the member reached pension benefit age.
- (4) The amount of any lump sum paid under this rule—
 - (a) if condition A is met, must be equal to that of the lump sum to which the member would have been entitled;
 - (b) if condition B is met, must be three times the annual amount of the pension payable to the member under rule D.16 on the date when it first came into payment, less the total amount paid to the member (by way of pension or lump sum) under that rule.
- (5) In this rule "pension benefit age" has the same meaning as in rule D.16.

General

E.27 Membership in two or more capacities

(1) This rule applies where a deceased member was a member of two or more of the following kinds—

- (a) an active member;
- (b) a deferred member;
- (c) a pensioner member; and
- (d) a pension credit member.

(2) Benefits are payable under this Part in respect of the deceased 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), and the amounts payable are determined accordingly.

(3) But, if a lump sum is paid under rule E.20 by virtue of the deceased's having been an active member, the amount of that lump sum is reduced by that of any lump sum paid under that rule by virtue of the member's having also been a deferred or pensioner member.

(4) This rule does not require any person to be treated as being entitled to pensions in respect of two or more deceased members for the purposes of rule E.19 (child's pensions in respect of three or more deceased).

(5) If the deceased was an active member, for the purpose of determining whether the deceased was also a deferred or pensioner member within the meaning of this rule it is immaterial in which of the regular forces the deceased had previously served.

(6) If the deceased was a deferred member, for the purpose of determining whether the deceased was also a pensioner member within the meaning of this rule it is immaterial in which of the regular forces the deceased had previously served.

(7) If the deceased was a pensioner member, for the purpose of determining whether the deceased was also a deferred member within the meaning of this rule it is immaterial in which of the regular forces the deceased had previously served.

(8) For the purpose of determining whether the deceased was a pension credit member within the meaning of this rule it is immaterial in which of the regular forces the pension debit member served.

E.28 Membership of AFPS75 and another scheme

Benefits payable under this Part in respect of a member are not affected by the fact that benefits are payable in respect of the member under any other pension scheme.

E.29 General disregard of abatement, commutation, forfeiture and pension increases

(1) Where a deceased member's pension was abated or had been commuted, or some or all of it was withheld, references in this Part to its annual amount are to what would have been its annual amount if it had not been abated or commuted and none of it had been withheld.

(2) But paragraph (1) does not apply to rule E.2(3) or E.13(3) (short-term pensions).

(3) Unless otherwise stated, references in this Part to the amount of a pension payable to a deceased member are to the amount that would be payable but for rule D.23 (pension increases).

E.30 Death attributable to service

(1) This rule applies if—

- (a) a pension is payable under this Part;
- (b) the last rank held by the member was a paid acting rank;
- (c) the member had not held that rank for the qualifying period, within the meaning of rule A.2 (pension rank); and
- (d) compensation is payable under AFAB or AFCS 2005 in respect of the death.

(2) Any reference in this Part (except rules E.2 and E.13) to the annual amount of any pension payable to the member is to be read as a reference to what that amount would have been if the acting rank had been the member's pension rank.

(3) Any reference in this Part to what the annual amount of any pension payable to the member would in any specified circumstances have been is to be read as a reference to what that amount would in those circumstances have been if the acting rank had been the member's pension rank.

(4) Any reference in this Part to a minimum rate of widow's pension specified in a pension code in respect of a person of the member's pension rank is to be read as a reference to the minimum rate of widow's pension there specified in respect of a person whose pension rank is the acting rank.

(5) Any reference in this Part to the amount of a lump sum that would in any specified circumstances have been payable to the member is to be read as a reference to what that amount would in those circumstances have been if the acting rank had been the member's pension rank.

E.31 Pension increases

(1) Subject to paragraphs (2) and (3), the amount of a pension payable under this Part—

- (a) in respect of any period on or after 3rd January 2011, shall be (or continue to be) increased as if the former provisions of the Scheme corresponding to this rule were still in force; and
- (b) in respect of any period on or after 11th April 2011, shall be increased (or further increased) by any amount by which an official pension would, by virtue of an order made under section 59 of the Social Security Pensions Act 1975(a) and coming into force on or after that date, be increased in respect of that period if—
 - (i) it began on the day on which the pension begins, and were payable at an annual rate equal to the annual amount of the pension; and
 - (ii) a qualifying condition were satisfied.

(2) If—

⁽a) 1975 c. 60.

- (a) the member was a pensioner member, and
- (b) by virtue of paragraph (2) of rule D.23 (pension increases not payable to pensioner member aged under 55), paragraph (1) of that rule did not apply to the member's pension,

paragraph (1) does not apply to a pension payable under rule E.1(6) or E.12(2) (short-term pensions).

(3) If the pension is payable in respect of any period to which rule E.11 (guaranteed minimum pension) applies, paragraph (1) applies only in relation to the amount of the pension after deduction of the guaranteed minimum in respect of that period.

(4) In this rule "official pension" and "qualifying condition", and references to the day on which a pension begins, have the same meaning as in the Pensions (Increase) Act 1971(a).

E.32 Suspension and recovery of pensions

(1) This rule applies if it appears to the Defence Council that any person has—

- (a) made a false declaration, or
- (b) deliberately suppressed a material fact,

in connection with the award of a pension or a lump sum under this Part.

(2) The Defence Council may—

- (a) in the case of a pension, cease paying the pension; and
- (b) recover any payment made.

(3) This rule does not affect any other right of the Defence Council to recover a payment.

E.33 Payment of lump sums

(1) A lump sum under this Part may not be paid more than two years after the day on which the Scheme administrator first knew, or could reasonably be expected to have known, of the member's death.

(2) The annual amount of a pension payable to a person under this Part shall be increased by such amount as the Defence Council, after consulting the Scheme actuary, may determine, if—

- (a) the Defence Council has determined that a lump sum should be paid to the person under this Part, but the lump sum is not paid within two years of the date of the death; or
- (b) the Defence Council has determined that, but for paragraph (1), a lump sum would have been paid to the person.

E.34 Payment of children's benefits

(1) This rule applies if a pension is (or, but for this rule, would be) payable to a person ("the child") under rule E.12 or E.15.

(2) If the child is aged under 18, the pension, and any lump sum payable to the child under rule E.20, must be paid to such person as the Defence Council may direct.

(3) If the child is aged under 18 and no such direction is given, the pension and any lump sum must be paid—

- (a) if the child is living in the same household as a person to whom a pension is payable under this Part in respect of the member, to that person;
- (b) otherwise, to a person with parental responsibility for the child within the meaning of—
 - (i) the Children Act 1989(b);
 - (ii) the Children (Northern Ireland) Order 1995(c); or

⁽a) 1971 c. 56.

⁽**b**) 1989 c. 41.

⁽c) S.I. 1995/755.

(iii) section 1(3) of the Children (Scotland) Act 1995(a).

(4) If the child is aged 18 or over, the pension and any lump sum must be paid—

- (a) if the child or the relevant person so requests, to the child;
- (b) otherwise, to the relevant person.

(5) In paragraph (4) "the relevant person" means the person to whom the pension or lump sum would have been payable under paragraph (2) or (3) if it had been payable on the day before the child's 18th birthday.

(6) Any payment made in accordance with this rule discharges the Defence Council's obligation to the child in respect of the amount paid.

(7) Any reference in the Scheme to a pension or lump sum being payable to the child is to be read subject to this rule.

PART F

TRANSFERS

F.1 Transfers out

(1) This rule supplements the rights conferred by or under Chapter 4 of Part 4 of the 1993 Act (transfer values), and is without prejudice to that Chapter or regulations made under it.

(2) Unless the Scheme administrator otherwise directs, an application under section 95 of that Act for a transfer value payment to be made under the public sector transfer arrangements may only be made—

- (a) before the first anniversary of the day on which the member becomes eligible to begin pensionable service for the purposes of the scheme to which the transfer is to be made;
- (b) in the case of a transfer value payment reflecting the member's entitlement under rule D.11(2)(a), before the member's 60th birthday; and
- (c) in the case of a transfer value payment reflecting the member's entitlement under rule D.11(2)(b), before the member's 65th birthday.

(3) Subject to paragraphs (6) and (7), the amount of the transfer value payment to which a member is entitled under section 94 of the 1993 Act is to be calculated in accordance with guidance and tables issued by the Defence Council for use at the guarantee date.

(4) In preparing those tables the Defence Council must use such factors as it considers appropriate, having regard to section 97 of the 1993 Act and regulations made under that Act.

(5) The Defence Council must consult the Scheme actuary before—

- (a) determining the factors mentioned in paragraph (4); and
- (b) issuing the guidance and tables mentioned in paragraph (3).

(6) If the amount calculated in accordance with paragraph (3) is less than the aggregate value of— -

- (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,

the amount of the transfer value payment is to be equal to that value instead.

(7) If the transfer value payment is to be made under the public sector transfer arrangements, its amount is to be calculated—

(a) in accordance with those arrangements rather than paragraph (3); and

⁽a) 1995 c. 36.

(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.2 Application for transfer in

(1) Subject to the provisions of this rule and rules F.3 and F.4, 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 the member under any scheme or arrangement to which a transfer value payment may be made under Chapter 4 of Part 4 of the 1993 Act, to be accepted by the Scheme.

(2) Paragraph (1) does not apply—

- (a) to rights that are directly or indirectly attributable to a pension credit;
- (b) if the transfer value payment to which the application relates ("the relevant payment") would be made by a personal pension scheme; or
- (c) if—
 - (i) the relevant payment relates only to voluntary contribution rights; and
 - (ii) paragraph (3) does not apply.
- (3) This paragraph applies 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.

(4) In this rule, "voluntary contribution rights" means rights under an occupational pension scheme that derive from voluntary contributions made by the applicant.

(5) The public sector transfer arrangements do not apply to a transfer under this rule.

- (6) An application under this rule—
 - (a) must be made by notice in writing to the Scheme administrator, on or before the member's 54th birthday; and
 - (b) must specify—
 - (i) the scheme or arrangement from which the transfer value payment is to be made; and
 - (ii) the anticipated amount of the payment.

F.3 Acceptance of transfer value payment

(1) Where a member duly makes an application under rule F.2, the Scheme administrator shall accept the transfer value payment if such conditions as the Defence Council may require are met, unless paragraph (2) applies.

(2) The Scheme administrator may not accept the 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.

(3) If the Scheme administrator accepts the payment, the member is entitled to count the period calculated in accordance with rule F.4 as reckonable service.

F.4 Calculation of transferred-in reckonable service

(1) The period of reckonable service that a member is entitled to count under rule F.3(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.2 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.

PART G FURTHER SERVICE

G.1 Application of this Part

(1) This Part applies in relation to a person who-

- (a) has previously ceased to be in pensionable service;
- (b) has resumed such service; and
- (c) is a member.
- (2) In this Part—

"the earlier period" means the period of pensionable service which ceased as mentioned in paragraph (1)(a);

"the later period" means the period of pensionable service-

- (a) beginning with the day on which the person resumed pensionable service as mentioned in paragraph (1)(b); and
- (b) ending with the day on which the person next ceases or ceased to be in pensionable service.

(3) For the purpose of references in this Part to a person who is (or is not) a deferred or pensioner member in respect of the earlier period, it is immaterial in which of the regular forces the person served during the earlier period.

G.2 General rule: periods of service treated separately

(1) For the purpose of determining rights in respect of the later period, reckonable service and qualifying service in respect of the earlier period are to be disregarded.

(2) For the purpose of determining rights in respect of the earlier period, reckonable service and qualifying service in respect of the later period are to be disregarded.

(3) But this rule is subject to—

- (a) rule G.3 (automatic aggregation); and
- (b) rules G.4 to G.6 (options to aggregate).

G.3 Automatic aggregation

(1) This rule applies if condition A or B is met.

(2) Condition A is that, in respect of the earlier period, the person is a pensioner member and rule D.7 (ill-health pension) applies.

(3) Condition B is that the person is neither a deferred member nor a pensioner member in respect of the earlier period.

(4) The person is to be treated as having been in pensionable service for a single continuous period, consisting of the earlier period and the later period, but not including the interval between them.

(5) Where condition A is met, the pension payable to the person in respect of any period after the end of the later period, and the amount of that pension, are to be determined in accordance with Part D, and the fact that rule D.7 applied in relation to the earlier period is to be disregarded.

G.4 Option to aggregate: deferred members

(1) This rule applies if the person is a deferred member in respect of the earlier period.

(2) The person may opt for reckonable service and qualifying service in respect of the earlier period—

- (a) to be treated as reckonable service and qualifying service (respectively) in respect of the later period, for the purpose of determining rights in respect of that period; and
- (b) to be disregarded for all other purposes.
- (3) The option may not be exercised after the end of the later period.

(4) The option may be exercised only by notice in writing to the Scheme administrator, in such form as he or she may require.

(5) If—

- (a) the person dies without exercising the option,
- (b) the person could have exercised the option on the date of the death,
- (c) but for this paragraph, pensions would be payable under rule E.1 in respect of both periods, and
- (d) the aggregate amount of those pensions would be less than the amount of the pension that would be payable if the person had exercised the option,

the person is to be treated as having exercised the option.

(6) If—

- (a) the person has two or more earlier periods of service, and
- (b) any of those periods (other than the most recent) is not already aggregated with the most recent,

the option may not be exercised in relation to that earlier period.

G.5 Option to aggregate: pensioner members

(1) This rule applies if, in respect of the earlier period, the person is a pensioner member and rule D.7 (ill-health pension) does not apply.

(2) The person may opt for reckonable service and qualifying service in respect of the earlier period—

- (a) to be treated as reckonable service and qualifying service (respectively) in respect of the later period, for the purpose of determining rights in respect of that period; and
- (b) to be disregarded for all other purposes.
- (3) The option may only be exercised on the first day of the later period.

(4) But, if satisfied that there are exceptional reasons for the person's failure to exercise the option on that day, the Scheme administrator may permit the person to exercise it by such later date as the Scheme administrator may direct.

(5) Paragraphs (4) and (6) of rule G.4 apply in relation to this rule as they apply in relation to that rule.

G.6 Effect of exercise of option to aggregate

(1) This rule applies where a member has exercised the option under rule G.4 or G.5.

(2) Paragraph (3) applies if—

- (a) the annual amount of any pension payable to the member following the end of the later period would be greater if rule D.5, D.6, D.7 or D.12 (as the case may be) were modified in accordance with that paragraph; and
- (b) paragraph (6) does not apply.

(3) Any reference in rule D.5, D.6, D.7 or D.12 to an amount specified for a person of the member's pension rank in a pension code in force on the member's last day of pensionable service is to be read as a reference to the corresponding amount specified, for a person of what would be the member's pension rank if the relevant day were the member's last day of pensionable service, in the corresponding pension code in force on that day.

(4) For the purposes of rule D.5, D.6, D.7 or D.12 as modified by paragraph (3), any reference in rule D.15 (professional supplement) to a pension code in force on the member's last day of pensionable service is to the corresponding pension code in force on the relevant day.

(5) In paragraphs (3) and (4) "the relevant day" means—

- (a) the last day of the earlier period; or
- (b) if the member is aged 55 or over on the last day of the later period, and the amount given by rule D.5, D.6, D.7 or D.12 as modified by paragraph (3) would be greater if this subparagraph applied—
 - (i) the member's 55th birthday; or
 - (ii) if later, the day on which the member reaches the member's normal retirement age.
- (6) If—
 - (a) immediately before the start of the later period, the member was entitled to a pension under rule D.1 in respect of the earlier period,
 - (b) the member's pension rank is—
 - (i) lower than what it would be if the later period were disregarded, and
 - (ii) below that of OF-1, and
 - (c) alternative amount A or B (defined by paragraphs (7) and (8) respectively) is greater than what would otherwise be the annual amount of any pension payable to the member following the end of the later period,

the annual amount of the pension is that greater amount (or, if alternative amounts A and B are both greater, the greater of them).

(7) Alternative amount A is the aggregate of—

- (a) what the annual amount of the pension would be if—
 - (i) the later period were disregarded; and
 - (ii) the member's pension rank were what it would be if the later period were disregarded; and
- (b) the amount given by the formula

where-

- (i) X is the amount specified, for a person of the member's pension rank who has 37 years' reckonable service, in the relevant table in the pension code in force on the last day of the later period;
- (ii) Y is the amount there specified for a person of the member's pension rank who has 22 years' reckonable service; and
- (iii) Z is the number of years in the later period.

(8) Alternative amount B is the aggregate of—

(a) what the annual amount of the pension would be if-

- (i) the later period were disregarded;
- (ii) the member's pension rank were what it would be if the later period were disregarded; and
- (iii) any reference in rule D.6, D.7 or D.15 to the member's last day of pensionable service were to the last day of the earlier period; and
- (b) the amount given by the formula

$$\frac{X-Y}{15} \ge Z$$

where----

- (i) X is the amount specified, for a person of the member's pension rank who has 37 years' reckonable service, in the relevant table in the pension code in force on the last day of the earlier period;
- (ii) Y is the amount there specified for a person of the member's pension rank who has 22 years' reckonable service; and
- (iii) Z is the number of years in the later period.
- (9) In paragraphs (7)(b) and (8)(b) "the relevant table"—
 - (a) if rule D.7 applies to the pension payable at the end of the later period, means the table setting out the rates of service ill-health pension;
 - (b) otherwise, has the meaning given by rule D.6(3) or (4), as the case may be.

(10) Paragraph (11) applies if-

- (a) the member is entitled to a pension under rule D.1; and
- (b) by virtue of paragraph (2) of rule D.23 (pension increases), paragraph (1) of that rule does not apply in relation to amounts of that pension payable before the member reaches the age of 55.

(11) In relation to the period beginning with the member's 55th birthday, references in paragraph (2)(a) and (6)(c) to the annual amount of any pension payable to the member following the end of the later period are to be read as references to the annual amount given (with effect from that day) by rule D.5 or D.6 in conjunction with rule D.23(1).

(12) If a lump sum has been paid to the member in respect of the earlier period, the amount of that lump sum is to be deducted from that of—

- (a) any further lump sum payable to the member under Part D; or
- (b) any lump sum payable in respect of the member under rule E.20 on the member's death during the later period.

PART H

ABATEMENT

H.1 Further pensionable service: general rule

(1) This rule applies if a pensioner member is in further pensionable service, other than service in respect of which the member is eligible to be an active member by virtue of rule B.2 (pensioner members recalled under the Reserve Forces Acts).

(2) The member's pension shall be abated in full, for as long as this rule applies.

(3) This rule is subject to—

- (a) rule H.2 (further service for short periods); and
- (b) rule H.3 (further service on lower pay).

H.2 Service for short periods

(1) Rule H.1 does not apply if the further service is—

- (a) for a period not exceeding six months; or
- (b) for two or more periods not including more than six months out of any period of 12 months.
- (2) For the purposes of this rule, any period of unpaid leave is not part of the further service.
- (3) If it is not clear whether the further service will fall within this rule—
 - (a) rule H.1 applies until such time (if any) as it is clear that the further service falls within this rule; but
 - (b) if that becomes clear, arrears of pension shall be payable as if rule H.1 had not applied.

H.3 Service on lower pay

(1) This rule applies, and rule H.1 does not apply, if-

- (a) a pensioner member is in further pensionable service, other than service in respect of which the member is eligible to be an active member by virtue of rule B.2; and
- (b) the member's rate of basic pay is lower than that applicable on the last day of the service in respect of which the pension is payable.

(2) The annual amount of the pension shall be abated by the relevant amount, for as long as this rule applies.

(3) The relevant amount is the amount given by the formula (A + B) - C, where—

A is the annual amount of the pension;

B is the member's annual rate of basic pay on the first day of the further service; and

C is the member's annual rate of basic pay on the last day of the service in respect of which the pension is payable.

But this is subject to paragraphs (4) to (6).

(4) If the pension has been commuted, A is what would otherwise have been its annual amount.

(5) If the member's rank changes after the first day of the further service, B is the member's annual rate of basic pay immediately after the change (or, if there is more than one such change, the last).

(6) If rule D.23(1) (pension increases) applies in relation to the pension, C is increased in proportion to the increase in the amount of the pension.

H.4 Reserve service

(1) This rule applies if a pensioner member is in reserve service.

(2) The annual amount of the pension shall be abated by the relevant amount, for as long as this rule applies.

(3) The relevant amount is the amount given by the formula (A + B) - C, where—

A is the annual amount of the pension;

B is the member's annual rate of basic pay on the first day of the reserve service; and

C is the member's annual rate of basic pay on the last day of the service in respect of which the pension is payable.

But this is subject to paragraphs (4) to (6).

(4) If the pension has been commuted, A is what would otherwise have been its annual amount.

- (5) If, after the first day of the reserve service—
 - (a) the member's rank changes,
 - (b) the member takes up a different post, or

(c) the member enters into a new commitment under section 24 or 25 of the Reserve Forces Act 1996(a),

B is the member's annual rate of basic pay immediately after that event (or, if there has been more than one such event, the last).

(6) If rule D.23(1) (pension increases) applies in relation to the pension, C is increased in proportion to the increase in the amount of the pension.

(7) In this rule, "reserve service" means-

- (a) service in the reserve forces (within the meaning of the Reserve Forces Act 1996) under a commitment under section 24 or 25 of that Act; or
- (b) full-time service with the regular forces by a member of the reserve forces.

H.5 Employment in reserved civil service post

(1) This rule applies if a pensioner member aged under 55 is employed in the civil service of the State, in a post reserved for former members of Her Majesty's forces.

(2) The annual amount of the pension shall be abated by the relevant amount, for as long as this rule applies.

(3) The relevant amount is the amount given by the formula (A + B) - C, where—

A is the annual amount of the pension;

B is the member's annual salary on the first day of the employment; and

C is the member's annual rate of basic pay on the last day of the member's pensionable service.

But this is subject to paragraphs (4) to (6).

(4) If the pension has been commuted, A is what would otherwise have been its annual amount.

(5) If the member's grade or conditioned hours change after the first day of the employment, B is the member's annual salary immediately after the change (or, if there is more than one such change, the last).

(6) If rule D.23(1) (pension increases) applies in relation to the pension, C is increased in proportion to the increase in the amount of the pension.

PART J

MISCELLANEOUS AND SUPPLEMENTARY

Claims and payment

J.1 Claims for benefits

(1) This rule applies where, but for this rule, under any provision of the Scheme a pension would be payable to a person from a particular day ("the relevant day"), unless the pension would be payable under rule D.1 (immediate pension) and rule D.7 (ill health) applies.

(2) Neither the pension nor any associated lump sum is payable unless the person makes a declaration in writing, in such form as the Scheme administrator may require, that—

(a) the person has been or will be entitled to the pension from the relevant day; and

(b) if an associated lump sum is payable to the person, that that sum is so payable.

(3) But, if rule E.34 (payment of children's benefits) applies, the declaration under paragraph (2) may be made by any person to whom the pension may or must be paid under that rule.

⁽a) 1996 c. 14.

(4) If the declaration under paragraph (2) is made after the end of the period of six years beginning with the relevant day, the Scheme administrator may direct—

- (a) that the pension is to be forfeited, and any associated lump sum is not payable; or
- (b) that the pension is to be payable only in respect of the period beginning with the day after the day on which the declaration is made.

(5) If—

- (a) the person to whom the pension would (but for this rule) be payable dies without making a declaration under paragraph (2), and
- (b) the Scheme administrator considers that exceptional circumstances justify payment in respect of the pension (or the pension and any associated lump sum) to the person's estate,

such payment may be made as the Scheme administrator may direct.

(6) References in the rules of the Scheme to a pension or lump sum which is payable to a person include a pension or lump sum which would be payable but for this rule.

(7) For the purposes of this rule—

- (a) a lump sum is associated with a pension if it is payable under the rule under which, and at the time from which, the pension is payable;
- (b) a lump sum payable under rule E.20(2)(a) is associated with the pension under rule E.1 mentioned in that sub-paragraph; and
- (c) a lump sum payable under rule E.20(2)(b) is associated with the pension under rule E.12 mentioned in that sub-paragraph.

J.2 Information and evidence

(1) The Defence Council may require any person who claims or is receiving any benefit under the Scheme to provide evidence of the person's identity and entitlement (or continuing entitlement).

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

J.3 Payment of pensions

(1) Pensions payable under the Scheme are payable monthly in arrears, unless paragraph (2) applies.

(2) If it appears to the Scheme administrator that monthly payment would cause hardship, a pension may instead be paid weekly in arrears.

(3) Where paragraph (1) applies, the amount of each monthly payment must be one twelfth of the annual amount of the pension.

(4) Where payment falls to be made (because of paragraph (2) or for any other reason) in respect of a period of less than one month ("the pension period"), the amount of the payment must be the appropriate fraction of the amount that would be payable if payment fell to be made in respect of the period of one month ending on the date of the payment.

(5) In paragraph (4) "the appropriate fraction" means the fraction obtained by dividing the number of days in the pension period by the number of days in the calendar month in which the payment is made.

J.4 Non-assignability

(1) No benefit to which a person is entitled under the Scheme is—

- (a) assignable; or
- (b) chargeable with any person's debts.

(2) 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 $1826(\mathbf{a})$.

J.5 Beneficiaries who are incapable of looking after their affairs

(1) If, in the opinion of the Defence Council, a person to whom any benefit under the Scheme is payable ("the beneficiary") is (by reason of illness or mental disorder or otherwise) unable to look after his or her 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.

Forfeiture of benefits

J.6 Forfeiture of benefits under Part D

(1) The Defence Council may withhold any benefit payable to a member under Part D, to such extent as it considers appropriate, if any of conditions A to C is met.

(2) Condition A is that—

- (a) the member has been convicted of-
 - (i) treason; or
 - (ii) one or more offences under the Official Secrets Acts for which the member has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years; and
- (b) the offence was (or, if sub-paragraph (a) applies by reason only of convictions for two or more offences, the offences were) committed before the benefit became payable.
- (3) Condition B is that—
 - (a) the member has been convicted of an offence in connection with the service that qualifies the member to belong to the Scheme; and
 - (b) the Secretary of State considers that offence to have been gravely injurious to the defence, security or other interests of the State.
- (4) Condition C is that—
 - (a) the member 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 regular forces; and
 - (b) if the amount of the obligation is in dispute, 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.

(5) Where—

- (a) condition A is not met, and
- (b) 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,
- only so much of the member's pension as exceeds that guaranteed minimum may be withheld.
 - (6) Where condition C is met, the benefits withheld must not exceed the amount of-
 - (a) the monetary obligation; or

⁽a) 7 Geo 4 c.16.

(b) if less, the value of the person's entitlement or the accrued right in question (as determined in accordance with section 93(2) of the Pensions Act 1995(**a**)).

J.7 Forfeiture of benefits under Part E

(1) The Defence Council may withhold any benefit payable to a person ("the beneficiary") under Part E in respect of a member, to such extent as it considers appropriate, if condition A or B is met.

(2) Condition A is that—

- (a) benefits payable to the member under Part D had been, or were liable to be, withheld under rule J.6 because condition A or B in that rule was met; and
- (b) the Defence Council is satisfied that the beneficiary was also guilty (whether as principal or accessory) of the offence mentioned in paragraph (2) or (3) of that rule, as the case may be (or, where condition A in that rule was met by reason only of the member's convictions for two or more offences, those offences).

(3) Condition B is that the beneficiary has been convicted of—

- (a) the murder or manslaughter of the member; or
- (b) any other offence of which unlawful killing of the member (or aiding, abetting, counselling or procuring the unlawful killing of the member) is an element.

J.8 Procedure

(1) If the Defence Council proposes to withhold under rule J.6 or J.7 any benefit payable to a person, it must notify the person in writing of the 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.6 or J.7.

(3) If the Defence Council withholds a benefit under rule J.6 in a case where condition C in that rule (monetary obligations) applies, the member must be given a certificate showing the amount withheld and the effect of its being withheld on the member's benefits under the Scheme.

Commutation

J.9 Commutation of pension in respect of service before 6 April 1980

(1) This rule applies if—

- (a) an active member began pensionable service before 1st April 1978; and
- (b) rule D.1 (immediate pension) is expected to apply when the member ceases pensionable service.

(2) The member may opt to exchange part of the pension payable under rule D.1 for a lump sum.

(3) The annual amount of pension that may be exchanged for a particular lump sum under this rule shall be determined by the Defence Council, after consultation with the Scheme actuary.

(4) The part of the pension that is exchanged—

- (a) must not exceed 50% of that part which is attributable to pensionable service given before 6th April 1980; and
- (b) must not exceed 25% of the total pension.
- (5) The amount of the lump sum must be such that the aggregate of—

⁽a) 1995 c. 26.

- (a) that amount, and
- (b) that of the lump sum payable to the member under rule D.1,

does not exceed that of the greatest lump sum that could be paid under that rule to a person of the member's pension rank who ceased pensionable service on the same day as the member.

(6) A member who is not an officer may not exercise the option without the consent of the Defence Council.

(7) The Defence Council may give such consent only if-

- (a) the Scheme medical adviser is of the opinion—
 - (i) that the member is in good health; or
 - (ii) that the member's life expectancy is not reduced by more than five years on account of the member's state of health; and
- (b) the Defence Council is satisfied that the exchange would be of distinct and permanent advantage to the member.

(8) The option must be exercised—

- (a) before the member ceases pensionable service, and in any event before 6th April 2020; and
- (b) by notice in writing to the Scheme administrator, in such form as the Defence Council may require.
- (9) This rule does not apply to pensions derived from pension credit rights.

J.10 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; and
 - (b) a pension payable to any person under Part E 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 the member 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.16, or
 - (ii) to one or more pensions within sub-paragraph (a) in addition to one or more pensions under rule D.16,

those pensions may be commuted under this rule only 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 the Scheme 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 of the Pension Sharing (Pension Credit Benefit) Regulations 2000(c); or
- (d) by paragraph 7 of Schedule 29 to the Finance Act 2004(d) (which defines trivial commutation lump sums for the purposes of Part 1 of that Schedule).

Supplementary

J.11 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.12 False declarations etc about members' health

(1) This rule applies where—

- (a) it has been determined that rule D.7 (ill-health pension) applies in relation to a member,
- (b) the Scheme administrator has accepted an application by a member for a transfer value payment to be accepted by the Scheme, or
- (c) a member has exercised an option under Part C,

and it appears to the Defence Council that the member made a false declaration, or deliberately suppressed a material fact, about the member's health.

(2) The Defence Council may withhold payment (or further payment) of any benefits payable to or in respect of the member, and recover any such benefits already paid.

(3) If this rule applies by virtue of paragraph (1)(c), the Defence Council may rescind the member's exercise of the option.

J.13 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 Finance Act 2004(e) ("the table") occurs in relation to a member; and
 - (b) the member and the Scheme administrator are jointly and severally liable to the charge in respect of the event.
- (2) Where this rule applies—
 - (a) the Scheme administrator must pay the tax payable on the event;

⁽a) S.I. 1996/1172. Regulation 19 was substituted by regulation 2(1) and (7) of S.I. 2002/681, and is amended by article 8(1) and (4) of S.I. 2006/744. Regulation 20 was substituted by article 8(1) and (5) of S.I. 2006/744, and is amended by regulations 1 and 4(1) and (3)(a) of S.I. 2009/2930. Regulation 60 was substituted by article 8(1) and (10) of S.I. 2006/744, and is amended by regulations 1 and 2(1) and (2) of S.I. 2006/1337, regulation 4(1) and (4) of S.I. 2009/2930, and regulation 2(1) and (2) of S.I. 2010/499.

⁽b) S.I. 1997/785. Regulation 2 is amended by regulation 14 of, and paragraph 12 of Part 2 of the Schedule to, S.I. 2005/706, article 14(1) and (3) of S.I. 2006/744, regulation 6(1) and (2) of S.I. 2006/778, and regulation 7 of S.I. 2009/2930.

⁽c) S.I. 2000/1054. Regulation 3 was substituted by regulation 9 of S.I. 2009/2930.

⁽**d**) 2004 c. 12.

⁽e) 2004 c. 12.

- (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.14 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 Finance Act 2004 (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).

PART K

GURKHAS

K.1 Application to join the Scheme

(1) This rule applies to a person who was an active member of the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 ("the GPS") at any time between 1st July 1997 and 30th September 2007 and—

- (a) was a pensioner member of the GPS on 30th September 2007; or
- (b) was an active member of the GPS for at least two years, but ceased service before 1st October 2007 without qualifying for a pension.

(2) For the purposes of paragraph (1) a person is to be treated as having been an active member of the GPS on 1st July 1997 if he was permitted to cease service before that date on the basis that a period after his last day of service, and including that date, would count as pensionable service under the GPS.

(3) On application by a person to whom this rule applies, the Defence Council may at its discretion permit him to join the Scheme.

(4) An application for such permission must be made in writing to the Scheme administrator, in such form as the Defence Council may require.

K.2 Effect of permission under rule K.1: pensioner members of GPS

(1) This rule applies if a person falling within paragraph (1)(a) of rule K.1 is under that rule permitted to join the Scheme.

(2) The person is entitled to a pension for life, payable from the relevant date.

(3) If—

(a) the person has—

- (i) at least 16 years' qualifying service that were served after the person reached the age of 21, and of which at least five were served as an officer, or
- (ii) at least 22 years' qualifying service that were served after the person reached the age of 18, or
- (b) his pension under the GPS was an ill-health pension,

the relevant date is the day after his last day of service, or such later date as the Defence Council may direct.

(4) In paragraph (3)(a) "qualifying service" means service that would have been qualifying service if the person had been an active member of the Scheme, but including any such period as is mentioned in rule K.1(2).

(5) If paragraph (3) does not apply, the relevant date is 1st March 2008 or the person's 60th birthday, whichever is the later.

(6) The annual amount of the pension—

- (a) is such as the Defence Council (after consulting the Scheme actuary) may direct; and
- (b) may be increased by such amount (if any) as the Defence Council may direct, when the person reaches the age of 60 or 65 (or both).

(7) Rule D.23 (pension increases) applies in relation to the pension as it applies in relation to a pension under Part D; and paragraph (2) of that rule (suspension of increases until age 55) applies if paragraph (3)(a) of this rule applies and paragraph (3)(b) does not.

(8) For the purposes of Parts E, H and J-

- (a) the person's service is to be treated as having been pensionable service under the Scheme;
- (b) the pension is to be treated as one payable under Part D; and
- (c) the person is accordingly to be treated as being (or having been) a pensioner member of the Scheme from the relevant date.

K.3 Effect of permission under rule K.1: Gurkhas retiring without a pension

(1) This rule applies if a person falling within paragraph (1)(b) of rule K.1 is under that rule permitted to join the Scheme.

(2) The person is to be treated as being (or having been) a deferred member of the Scheme from 1st March 2008 until the day before the person's 60th birthday.

(3) The person is entitled to—

- (a) a pension for life, payable from his 60th birthday; and
- (b) a lump sum, payable on that day.

(4) For the purposes of rule D.23 (pension increases) and Parts E, H and J-

- (a) the person's service is to be treated as having been pensionable service under the Scheme;
- (b) the pension is to be treated as one payable under rule D.11; and
- (c) the person is accordingly to be treated as a pensioner member of the Scheme from the person's 60th birthday.

(5) The annual amount of the pension, and the amount of the lump sum, are such as the Defence Council (after consulting the Scheme actuary) may direct.

K.4 Application by dependant of deceased GPS member for entitlement under the Scheme

(1) This rule applies if a person ("the deceased") was an active member of the GPS on or after 1st July 1997 and—

- (a) died in service before 1st October 2007; or
- (b) ceased service before that date and died before 1st March 2008.

(2) On application by a dependant of the deceased, the Defence Council may at its discretion permit the dependant to acquire an entitlement under the Scheme.

(3) In this rule and rule K.5, references to a dependant of the deceased are to a person who-

- (a) is a widow or surviving civil partner of the deceased; or
- (b) is an eligible child in relation to the deceased.

(4) For the purposes of paragraph (3)(b) and rule K.5—

(a) if this rule applies by virtue of paragraph (1)(a), rules E.16 and E.17 (definition of "eligible child") apply as if the deceased had been an active member of the Scheme; and

(b) if this rule applies by virtue of paragraph (1)(b), rules E.16 and E.18 apply as if the deceased's service had been pensionable service, and the deceased had been a deferred or pensioner member of the Scheme.

(5) An application under this rule must be made in writing to the Scheme administrator, in such form as the Defence Council may require.

(6) An application on behalf of a person within paragraph (3)(b) may be made by any person who appears to the Scheme administrator to be a responsible adult in relation to that person.

K.5 Effect of permission under rule K.4

(1) This rule applies if a person ("the applicant") has under rule K.4 been permitted to acquire an entitlement under the Scheme in respect of a deceased member of the GPS.

(2) If the applicant is a widow or surviving civil partner of the deceased, the applicant is entitled to—

- (a) a pension for life, payable from the day after the date of the death, or such later date as the Defence Council may direct; and
- (b) subject to paragraph (6), a lump sum.

(3) If the applicant is an eligible child in relation to the deceased, the applicant is entitled to—

- (a) a pension, payable from the relevant date and for as long as he or she is an eligible child; and
- (b) if no lump sum is payable under paragraph (2)(b), and subject to paragraph (6), a lump sum.

(4) In paragraph (3)(a) "the relevant date" means the latest of—

- (a) the day after the date of the death;
- (b) the day on which the applicant was born; and
- (c) the first day on which the applicant was an eligible child.

(5) The annual amount of a pension, and the amount of any lump sum, payable under this rule are such as the Defence Council (after consulting the Scheme actuary) may direct.

(6) A lump sum under paragraph (2)(b) or (3)(b) may not be paid more than two years after the day on which the Scheme administrator first knew, or could reasonably be expected to have known, of the death; but, where by reason of this paragraph the lump sum may not be paid, the annual amount of the pension under paragraph (2)(a) or (3)(b) (as the case may be) shall accordingly be increased by such amount as the Defence Council (after consulting the Scheme actuary) may direct.

(7) Paragraphs (2) to (6) apply in relation to a person other than the applicant as they apply in relation to the applicant, unless the Defence Council otherwise directs.

(8) In relation to a pension under paragraph (2)(a), the following apply as they apply in relation to a pension under rule E.1(6)—

- (a) rule E.8 (effect of temporary allowance);
- (b) rule E.9 (suspension of pension on marriage etc);
- (c) rule E.31 (pension increases); and
- (d) rule E.32 (suspension and recovery of pensions).

(9) In relation to a pension under paragraph (3)(a), rules E.31, E.32 and E.34 (payment of children's benefits) apply as they apply in relation to a pension under rule E.12.

(10) In relation to any benefit payable under this rule, rule J.7 (forfeiture of benefits) applies as if the benefit were payable under Part E, and the deceased had been a member of the Scheme entitled to benefits under Part D.

K.6 Cancellation of effect of permission

(1) A person to whom permission has been granted under rule K.1 or K.4 may not withdraw the application; but this is subject to paragraph (2).

(2) Rule K.2, K.3 or K.5 (as the case may be) shall cease to apply, and shall be regarded as never having applied, if—

- (a) the Defence Council gives notice in writing to the applicant stating that the applicant may cancel the effect of that rule by giving notice in writing to the Defence Council before the expiry of the period of three months beginning with the date on which the notice is given by the Defence Council; and
- (b) the applicant gives such notice within that period."

SCHEDULE 2

AMENDMENTS TO THE ARMY ATTRIBUTABLE BENEFITS SCHEME

1. Schedule 2 to the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant $2010(\mathbf{a})$ is amended as follows.

2. In the definition of "pension rank" in rule A.1 (interpretation), for "A.3" substitute "A.2".

3. In paragraph (2)(a) of rule B.11 (reduction of the annual compensation payment to take account of benefits paid under other armed forces pensions schemes)—

- (a) for "an ill health pension under AFPS 1975" substitute "a pension under rule D.1 of AFPS 1975 in relation to which rule D.7 of that scheme (ill health) applies"; and
- (b) for "D.22 and D.23" substitute "D.21 and D.22".

4. Omit rules C.1(4) and C.11 (additional lump sum payments to surviving eligible partners).

5. In rule C.12 (level of compensation for post-service marriages and civil partnerships), for "the level of long term compensation payable shall be determined in accordance with the calculation in rule E.6 of AFPS 1975" substitute "for the purpose of determining the level of long term compensation payable any service given before 6th April 1978 shall be disregarded".

6. In rule C.14(1) (deduction of other benefits from short term compensation), for "any increased pension payable in respect of the same deceased person under rule C.7 of AFPS 1975" substitute "any pension payable in respect of the same deceased person under rule E.1(6) of AFPS 1975".

7. In rule D.1(1) (entitlement to child's compensation), for "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" substitute "a person who is an eligible child in relation to a deceased person (as defined by rule D.2) is entitled to child's compensation for that person's death in accordance with the provisions set out in this Part, payable for as long as the child is an eligible child,".

8. For rules D.2 (definition of "eligible child") and D.3 (suspension of a child's compensation during a gap year) substitute—

"D.2 Meaning of "eligible child"

(1) For the purposes of this Part a person is an eligible child in relation to a deceased person if—

- (a) the person has a qualifying relationship to the deceased (as defined by rule D.2A); and
- (b) any of conditions A to D is met.
- (2) Unless paragraph (3) applies, condition A is that the person is aged under 17.
- (3) If—
 - (a) the deceased's last day of service was before 31st March 1973, and
 - (b) the deceased's pension rank was that of an officer or that of Warrant Officer (1st class),

condition A is that the person is aged under 18.

⁽a) 10th February 2010.

(4) Condition B is that the person is in full-time secondary education.

(5) If the person ceased to be in full-time secondary education before reaching the age of 19, for the purposes of condition B the person is in such education until whichever of the following next falls—

- (a) the second Monday in January;
- (b) the second Monday after Easter Monday;
- (c) the second Monday in September;
- (d) the person's 19th birthday;
- (e) the day on which the person becomes engaged in full-time gainful employment.

(6) Condition C is that—

- (a) the person is aged under 23;
- (b) the person is in full-time further or higher education or unpaid full-time vocational training;
- (c) the period between the last day on which the person was in full-time secondary education and the first day of that further or higher education or vocational training was not more than 15 months; and
- (d) unless the death occurred after the last day on which condition B was met, the person gave the Scheme administrator notice, on or before that day, of the person's intention to undertake such education or training.

(7) If the person is in paid vocational training—

- (a) that training may be treated as unpaid for the purposes of paragraph (6)(b); but
- (b) any compensation payable to the person shall be abated to the extent of the person's earnings, after deduction of such amount (if any) as the Scheme administrator considers appropriate to offset any expenditure incurred by the person for the purposes of the training.
- (8) If—
 - (a) but for paragraph (6)(c), condition C would be met, and
 - (b) the Scheme administrator is satisfied that it was not reasonably practicable for the person to meet the requirement imposed by that sub-paragraph,

condition C may be treated as being met.

(9) A notice given after the last day on which condition B was met may be treated as satisfying paragraph (6)(d) if the Scheme administrator is satisfied that there was good cause for the person's failure to give the notice by that day.

(10) If it appears to the Scheme administrator that condition C is likely to be met, or to be treated by virtue of any of paragraphs (7) to (9) as being met, condition B may be treated as being met at any time between the last day on which it is met and the first day on which condition C is met or treated as met, subject to such conditions as to the meeting of condition C as the Scheme administrator may consider appropriate.

(11) Condition D is that, because of physical or mental impairment-

- (a) the person is, in the opinion of the Scheme administrator, unable to engage in fulltime gainful employment; and
- (b) the person was dependent on the deceased at the date of the death.

D.2A Qualifying relationships

(1) For the purposes of rule D.2 a person ("the child") has a qualifying relationship to a deceased person if any of conditions A to F is met.

(2) Condition A is that—

(a) the child is a child of the deceased and the deceased's spouse or civil partner; and

- (b) the marriage was solemnized, or the civil partnership formed, before the deceased ceased to be in service.
- (3) Condition B is that—
 - (a) the child is a natural child of the deceased; and
 - (b) the child was born before, or within nine months after, the deceased ceased to be in service.
- (4) Condition C is that-
 - (a) the child is an adopted child of the deceased; and
 - (b) either-
 - (i) the deceased adopted the child before ceasing to be in service; or
 - (ii) the child was financially dependent on the deceased, and in the Scheme administrator's opinion the deceased intended to adopt the child, before the member ceased to be in service.
- (5) Condition D is that-
 - (a) the child is a natural child of a person who was, during the deceased's service, the deceased's spouse or civil partner;
 - (b) the child was born before, or within nine months after, the deceased ceased to be in service; and
 - (c) the child was financially dependent on the deceased at the time of the death.
- (6) Condition E is that—
 - (a) the child is an adopted child of a person who was, during the deceased's service, the deceased's spouse or civil partner;
 - (b) that person adopted the child during the deceased's service; and
- (c) the child was financially dependent on the deceased at the time of the death.
- (7) Condition F is that—
 - (a) the child is a child of a person who has or had a qualifying relationship to the deceased;
 - (b) if the child has a living parent, the Defence Council considers that each such parent is unable or unwilling to take responsibility for the child; and
 - (c) the child was financially dependent on the deceased at the time of the death."