

Submitted to Your Majesty with Kumble Duty :-

AN ORDER

Providing for the amendment of the Armed Forces Pension Scheme 1975 as it pertains to Her Majesty's Air Force; and the amendment of the Royal Air Force Attributable Benefits Scheme

Ministry of Defence

Mill Fille

ORDER BY HER MAJESTY

WHEREAS it is provided by section 2(1) of the Air Force (Constitution) Act 1917(a) that, subject to the provisions of that Act, it shall be lawful for Her Majesty, by order signified under the hand of the Secretary of State, to make orders with respect to the government, discipline and pensions of the Air Force, and with respect to all other matters and things relating to the Air Force that by that Act are authorised to be made by order or regulations;

AND WHEREAS Her Majesty was pleased by Order dated 10th February 2010 to restate the pensions arrangements that then comprised the Armed Forces Pension Scheme 1975 in relation to members and former members of the Air Force with amendments and to establish a separate Attributable Benefits Scheme;

AND WHEREAS Her Majesty was pleased by Order dated 14th December 2010 to provide for a further restatement of the Armed Forces Pension Scheme 1975 in relation to members and former members of the Air Force, and to amend the Attributable Benefits Scheme;

AND WHEREAS Her Majesty was pleased by Order dated 20th February 2012 to provide for an amendment of the Armed Forces Pension Scheme 1975 in relation to members and former members of the Air Force, and to amend the Attributable Benefits Scheme;

AND WHEREAS Her Majesty was pleased by Order dated 4th February 2015 to provide for an amendment of the Armed Forces Pension Scheme 1975 in relation to members and former members of the Air Force;

AND WHEREAS Her Majesty now deems it expedient to provide for an amendment of the Armed Forces Pension Scheme 1975 in relation to members and former members of the Air Force;

NOW THEREFORE Her Majesty in exercise of powers conferred on Her by the said Act is pleased to order and it is hereby ordered as follows:

⁽a) 1917 c.51; section 2 was amended by the Armed Forces Act 2006 (c.52). Schedule 16, paragraph 13(b) and Schedule 17, paragraph 1.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2017 and shall come into force on the 1st April 2017.

PART 2

AMENDMENT OF SCHEDULE 1 TO THE AIR FORCE (ARMED FORCES PENSION SCHEME 1975 AND ATTRIBUTABLE BENEFITS SCHEME) ORDER 2010

Amendment of Schedule 1 (the Armed Forces Pension Scheme 1975)

2. Schedule 1 to the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010(**a**) is amended as set out in this Part.

Amendment of rule A.1 (general)

3.—(1) In rule A.1(3), insert at the appropriate place—

"additional maternity leave" means leave which, in the opinion of the Defence Council, corresponds to additional maternity leave within the meaning of section 73 of the Employment Rights Act 1996(**b**);

"normal minimum pension age" has the same meaning as in section 279(1) of the Finance Act 2004(c);

⁽a) The rules of the Armed Forces Pension Scheme 1975 ("the Scheme") in relation to members and former members of the Royal Air Force were restated in Schedule 1 to the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010 approved by Her Majesty on 10th February 2010, which came into force on 6th April 2010, Schedule 1 was then revoked and replaced by a revised restatement set out in Schedule 1 to the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 approved by Her Majesty on 14th December 2010, which came into force on 3rd January 2011. Schedule 1 was amended by the Air Force (Armed Forces Pension Scheme) (Amendment) Order 2012 approved by Her Majesty on 20th February 2012, which came into force on 28th February 2012. Amendments were made to Part E of the Scheme by the Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107), the Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/3061). The Scheme was amended by the Air Force (Armed Forces Pension) Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2014 (S.I. 2014/3061). The Scheme was amended by the Air Force (Armed Forces Pension) Order 2014 (S.I. 2014/3061). The Scheme was amended by the Air Force (Armed Forces Pension) Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2015 approved by Her Majesty on 4th April 2015, which came into force on 1st April 2015. The Scheme was amended and a new Schedule 3 inserted by the Armed Forces (Transitional Provisions) Regulations 2015 (S.I. 2015/568).

⁽b) 1996 c.18: section 73 was substituted by the Employment Act 2002 (c.22), section 17(4), the Work and Families Act 2006 (c.18). Schedule 1, paragraph 32, and the Children and Families Act 2014 (c.6), section 118(3).

⁽c) 2004 c.12, to which there are amendments not relevant to this Order.

"ordinary adoption leave" means leave which, in the opinion of the Defence Council, corresponds to ordinary adoption leave within the meaning of section 75A of the Employment Rights Act 1996(a);

"ordinary maternity leave" means leave which, in the opinion of the Defence Council, corresponds to ordinary maternity leave under section 71 of the Employment Rights Act 1996(b);

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

"pension attachment order or provision" means-

- (a) an order made under section 23 of the Matrimonial Causes Act 1973(d) making provision under section 25B or section 25C of that Act(e);
- (a) an order made under section 17(1)(a)(i) of the Matrimonial and Family Proceedings Act 1984(f) making provision equivalent to an order referred to in paragraph (a) of this definition;
- (b) an order made under Part 1 of Schedule 5 to the Civil Partnership Act 2004(g) making provision under paragraph 25 or paragraph 26 of that Schedule;
- (c) an order made under paragraph 9 of Schedule 7 to the Civil Partnership Act 2004(**h**) making provision equivalent to an order referred to in paragraph (c) of this definition:
- (d) an order made under article 25 of the Matrimonial Causes (Northern Ireland) Order 1978(i) or article 21 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(j) making provision under article 27B or 27C of the Matrimonial Causes (Northern Ireland) Order 1978(k);

⁽a) 1996 c.18; section 75A was amended by the Work and Families Act 2006 (c.18). Schedule 1, paragraph 33, the Children and Families Act 2014 (c.6), sections 118(4), 121(1) and 122(1), and the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (SL 2016 (SL 2016) (S 2016 (S.I. 2016/413), regulation 145. (b) 1996 (c.18); section 71 was substituted by the Employment Relations Act 1999 (c.26), Schedule 4.

paragraph 1, and was amended by the Employment Act 2002 (c.22), section 17(2)-(3), the Work and Families Act 2006 (c.18), Schedule 1, paragraph 31, and the Children and Families Act 2014 (c.6), section 118(2).

 ⁽c) S.J. 2002/2788, amended by S.L 2005/2114, 2014/2112 and 2014/3206.
 (d) 1973 c.18; section 23 was amended by the Matrimonial and Family Proceedings Act 1984 (c.42), sections 21(a) and 48(2) and the Administration of Justice Act 1982 (c.53), sections 16 and 77(1);

⁽e) Section 25B was amended by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 4, paragraph 1(2)-(9), and section 25C was amended by the Welfare Reform and Pensions Act 1999 (c.30). Schedule 4, paragraph 1(2)-(9), and section 25C was amended by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 4, paragraph 2(2)-(5).
(f) 1984 c.42; section 17(1) was substituted by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 12, paragraph 3, and amended by the Pensions Act 2008 (c.30), Schedule 6, paragraph 14, paragraph 15, paragraph 17, paragraph 16, paragraph 17, paragraph 17,

¹¹

<sup>11.
(</sup>g) 2004 c.33.
(h) Paragraph 9 was amended by the Pensions Act 2008 (c.30). Schedule 6. paragraph 20(1) and (2).
(i) S.I. 1978/1045 (N.I.15); article 25 was amended by the Matrimonial and Family Proceedings Act (Northern Ireland) Order 1989 (S.I. 1989/677 (N.I.4)). article 5.
(j) S.I. 1989/677 (N.I.4); article 21 was substituted by the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I.11)). Schedule 9. paragraph 2. and amended by the Pensions (No. 2) Act (Northern Ireland) 2008 (c.13), Schedule 5. paragraph 11.
(k) Articles 27B and 27C were inserted by article 162(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and were amended by the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)). Schedule 4. paragraphs 1 and 2.

- (e) an order made under Part 1 of Schedule 15, or paragraph 9 of Schedule 17, to the Civil Partnership Act 2004(a) making provision under Part 5 of Schedule 15 to that Act:
- (f) an order made under section 8 of the Family Law (Scotland) Act 1985(b) by virtue of section 12A(c) of that Act:
- (g) an order made under Part 4 of the Matrimonial and Family Proceedings Act 1984(d) corresponding to an order referred to in paragraph (g) of this definition:
- (h) an order made under paragraph 2 of Schedule 11 to the Civil Partnership Act 2004(e) corresponding to an order referred to in paragraph (g) of this definition: or
- (i) a provision contained in a qualifying agreement within the meaning of section 28(3) of the Welfare Reform and Pensions Act 1999(f) corresponding to provision which may be made by an order under section 8(1)(ba) of the Family Law (Scotland) Act 1985(g);

"pension sharing order or provision" means an order or provision mentioned in section 28(1) of the Welfare Reform and Pensions Act 1999(**h**);

"personal representative" means—

- (a) a person responsible for administering the member's estate under the law of England and Wales, Scotland or Northern Ireland, or
- (b) a person who, under the law of another country or territory, has functions equivalent to those of administering the individual's estate;

"statutory adoption pay" has the meaning given in section 171ZL(1) of the Social Security Contributions and Benefits Act 1992(i);

"statutory maternity pay" has the meaning given in section 164(1) of the Social Security Contributions and Benefits Act 1992(j);

⁽a) Paragraph 9 of Schedule 17 was amended by the Pensions (No. 2) Act (Northern Ireland) 2008 c.13), Schedule 5, paragraph 20.

⁽c. 13), Schedule 5, paragraph 20.
(b) 1985 (c.37). Section 8 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40). Schedule 8. paragraph 34 and Schedule 9: the Pensions Act 1995 (c.26), section 167(1); the Welfare Reform and Pensions Act 1999 (c.30), section 20(2) and Schedule 12. paragraph 6: the Civil Partnership Act 2004 (c.33). Schedule 28, paragraph 14(2)-(3); and the Pensions Act 2008 (c.30). Schedule 7, paragraph 2 and Schedule 11, paragraph 1.
(c) Section 12A was amended by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 12, paragraph 0, and Schedule 12.

paragraph 9 and Schedule 13, paragraph 1; the Civil Partnership Act 2004 (c.33), Schedule 28, paragraph 19; the Family Law (Scotland) Act 2006 asp 2, section 17(4) and Schedule 2, paragraph 5(2); the Family Law (Scotland) Act 2006 (Consequential Modifications) Order, S.S.I. 2006/384, article 8(a) and (b); and the Pensions Act 2008 (c.30), Schedule 7, paragraph 5.

⁽d) 1984 c.42

 ⁽e) 2004 c.33; paragraph 2 was amended by the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011, S.I. 2011/1484, Schedule 7, paragraph 16(7).
 (f) 1999 c.30.
 (c) 1095 - 27

¹⁹⁸⁵ c.37

⁽g) 1985 c.37.
(h) 1999 c.30: section 28(1) was amended by the Civil Partnership Act 2004 (c.33). Schedule 27, paragraph 159(2)-(7) and the Children and Families Act 2014 (c.6), section 18(3)(b)(i).
(i) 1992 c.4. Section 171ZL was inserted by the Employment Act 2002 (c. 22), section 4, and was amended by: the Adoption and Children Act 2002 (Consequential Amendment to Statutory Adoption Pay) Order 2006 (S.I. 2006/2012), article 3(a) and (b): the Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740). Schedule 1, paragraphs 1 and 4: the Children and Families Act (c. 6), section 121(5): and the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regulation 135.

⁽j) 1992 c.4. Section 164 was amended by: the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 12(2) and (3): and the Employment Act 2002 (c. 22), section 20(b), (c) and (d), Schedule 7, paragraph 6 and Schedule 8, paragraph 1.

"statutory paternity pay" means statutory paternity pay within the meaning of section 171ZA(1) (entitlement: birth) or 171ZB(1) (entitlement: adoption) of the Social Security Contributions and Benefits Act 1992(a); and

"statutory shared parental pay" means any pay payable in accordance with the provisions of Part 12ZC of the 1992 Act(b).

(2) In rule A.1(3), for the definition of "pension code", substitute—

"pension code" means a code published by the Scheme administrator which specifies rates of pension based on the rates of pay approved by the Secretary of State;".

Amendment of rule A.6 (assumed pay)

4.—(1) In rule A.6(3)(b)(i), after "statutory paternity pay", insert ", statutory shared parental pay".

(2) In rule A.6(3)(b)(ii), after "on", insert "ordinary maternity leave, paternity leave, ordinary adoption leave, or".

Amendment of rule B.1 (eligibility: general)

5.—(1) For rule B.1(5)(b), substitute—

"(b)the person has opted to cease to be in pensionable service and paragraph (5A) applies to the person.".

(2) After rule B.1(5), insert the following paragraph—

"(5A) This paragraph applies to the person if—

- (i) the person opted (before 6th April 2005) to resume pensionable service and has not again opted to cease to be in such service; or
- (ii) the person opted to resume membership of the Scheme as an active member as described in rule B.4A(5).".

Amendment of rule B.3 (active membership)

6. For rule B.3. substitute—

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

(2) A member who is on loan to an organisation and is required to be an active member of a pension scheme open to members of that organisation resumes membership as an active member of the Scheme if the loan ends and the member continues to serve in the armed forces.

⁽a) 1992 c.4. Sections 171ZA and 171ZB were inserted by the Employment Act 2002 (c. 22), section 2. Section 171ZA was amended by the Work and Families Act 2006 (c.18), Schedule 1, paragraphs 11 and 12, and the Children and Families Act 2014 (c.6). Schedule 7, paragraphs 11 and 12(2) and (3). Section 171ZB was amended by: the Work and Families Act 2006, Schedule 1, paragraphs 11 and 13; the Children and Families Act 2014, Schedule 7, paragraphs 11 and 13(2)-(4); and the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S L 2016/413), regulations 132. (S.I. 2016/413), regulation 132.(b) Part 12ZC was inserted by the Children and Families Act 2014 (c. 6), section 119.

(3) For the purposes of paragraph (2), the date of resumption of membership as an active member of the Scheme is the day after the date on which the loan ends.

(4) A member who is on loan to an organisation and is required to be an active member of a pension scheme open to members of that organisation resumes membership as an active member of the Scheme if the member dies during the loan.

(5) For the purposes of paragraph (4), the date of resumption of membership as an active member of the Scheme is the date of the member's death.".

Amendment of rule B.4A (fixed protection membership)

7. After rule B.4A(4), insert—

"(5) A fixed protection member may opt to cease to be such a member and resume membership of the Scheme as an active member.

(6) A fixed protection member must exercise the option by notice in writing to the Scheme administrator in such form as the Scheme administrator may require, and the option is exercised on the date on which such notice is received by the Scheme administrator.

(7) A fixed protection member who exercises the option resumes membership of the Scheme as an active member on the last day of the calendar month in which the option is exercised.

(8) A fixed protection member may exercise the option only once.

(9) If a fixed protection member resumes membership of the Scheme as an active member—

- (a) the period of service in respect of which the person was a fixed protection member ("the fixed protection service") is not pensionable service; and
- (b) any promotion during the fixed protection service will be taken into account when determining the person's pension rank under rule A.2 and for the purpose of calculating any rank addition under rule D.13.".

Amendment of rule C.3 (purchase of additional reckonable service in respect of period on loan)

8.—(1) After rule C.3(1), insert—

"(1A) In the circumstances set out in paragraph (1B), the lump sum referred to in paragraph (1) may be paid by—

- (a) the member's personal representative;
- (b) the member's surviving spouse or civil partner; or
- (c) a person entitled to a pension by virtue of rule E.1(13) (surviving eligible partner or adult dependant).

(1B) The circumstances referred to in paragraph (1A) are that the member-

- (a) died during the period; or
- (b) died no more than 12 months after the date on which the period ended, and had not exercised the option.".

(2) In rule C.3(4), after "the member" insert "or a person specified in paragraph (1A)".

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

9. After rule D.7(4), insert—

"(5) If the member meets the ill-health condition immediately following a period which is qualifying service under rule A.10(c) (loan to another organisation), the Scheme administrator may reduce the amount of the pension payments in accordance with rule D.24.".

Insertion of rule D.24 (ill-health benefits: reduction in respect of loan to another organisation)

10. After rule D.23, insert—

"D.24 Ill-health benefits: reduction in respect of loan to another organisation

(1) This rule applies if the Scheme administrator reduces, under rule D.7(5), the amount of any pension paid to the member under Part D.

(2) The aggregate of the reductions must not exceed the aggregate amount of the ill-health benefits payable to the member by the organisation to which the member was on loan.".

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

11. After rule E.2(4), insert—

"(5) If, following the death of a member during a period in which they were on loan to another organisation, a pension is payable under rule E.1(6), the Scheme administrator may reduce the pension in accordance with rule E.35 (death benefits: reduction in respect of loan to another organisation).".

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

12. After rule E.3(3), insert—

"(4) If, following the death of a member during a period in which they were on loan to another organisation, a person is entitled to a pension under rule E.1(7) which is payable under rule E.1(8), the Scheme administrator may reduce the pension in accordance with rule E.35 (death benefits: reduction in respect of loan to another organisation)."

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

13. After rule E.13(2), insert—

"(2A) If, following the death of a member during a period in which they were on loan to another organisation, a person is entitled to a pension under rule E.12(2), the Scheme administrator may reduce the pension in accordance with rule E.35 (death benefits: reduction in respect of loan to another organisation).".

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

14. After rule E.14(8), insert—

"(9) If, following the death of a member during a period in which they were on loan to another organisation, a pension is payable under rule E.12(5), the Scheme administrator may reduce the pension in accordance with rule E.35 (death benefits: reduction in respect of loan to another organisation).".

Amendment of rule E.21 (amount of lump sum: active members)

15. After rule E.21(3), insert—

"(4) If, following the death of a member during a period in which they were on loan to another organisation, a lump sum is payable under rule E.20, the Scheme administrator may reduce the amount of that lump sum in accordance with rule E.35 (death benefits: reduction in respect of loan to another organisation).".

Insertion of rule E.35 (death benefits: reduction in respect of loan to another organisation)

16. After rule E.34, insert—

"E.35 Death benefits: reduction in respect of loan to another organisation

(1) This rule applies if the Scheme administrator reduces—

- (a) under rule E.2(5), any pension payable under rule E.1(6);
- (b) under rule E.3(4), any pension payable under rule E.1(7);
- (c) under rule E.13(2A), any pension payable under rule E.12(2);
- (d) under rule E.14(9), any pension payable under rule E.12(5); or
- (e) under rule E.21(4), a lump sum payable under rule E.20.

(2) The aggregate of the reductions must not exceed the aggregate amount of any death benefits payable in respect of the member's death by the organisation to which the member was on loan.".

Amendment of rule F.1 (transfers out)

17. In rule F.1(1), for "Chapter 4 of Part 4" substitute "Chapter 1 of Part 4ZA"(a).

Amendment of rule F.2 (application for transfer in)

18. In rule F.2(1), for "Chapter 4 of Part 4" substitute "Chapter 1 of Part 4ZA".

⁽a) Chapter 4 of Part 4 of the Pension Schemes Act 1993 (c.48) was renumbered as Chapter 1 of Part 4ZA of that Act by the Pension Schemes Act 2015 (c.8), Schedule 4(1), paragraph 4.

Amendment of rule G.6 (effect of exercise of option to aggregate)

19.—(1) After rule G.6(11), insert—

"(11A) Paragraph (12) applies in respect of a member who has exercised the option under rule G.4 or G.5 before 1 April 2017.

(11B) Paragraphs (13) to (17) apply in respect of a member who exercises the option under rule G.4 or G.5 on or after 1 April 2017.".

(2) After rule G.6(12), insert—

"(13) If a lump sum has been paid to the member under rule D.1 (entitlement to immediate pension and lump sum) in respect of the earlier period, the indexed amount must be deducted from—

- (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 (lump sum benefit: active or fixed protection, deferred and pensioner members) on the member's death during the later period.

(14) The "indexed amount" is to be calculated in accordance with paragraphs (15) to (19).

(15) For the financial year in which the lump sum was paid under rule D.1, the indexed amount is the original amount of the lump sum paid under rule D.1.

(16) For each subsequent financial year, the indexed amount is calculated in accordance with the following formula—

 $A + (A \times C).$

(17) In paragraph (16)—

- (a) "A" is the indexed amount calculated for the preceding financial year; and
- (b) "C" is—
 - (i) if there was a relevant increase in the consumer prices index in the preceding financial year, that percentage increase; or
 - (ii) if there was not a relevant increase in the consumer prices index in the preceding financial year, zero.

(18) There was a relevant increase in the consumer prices index for a financial year if the consumer prices index for September in that financial year was higher than the consumer prices index for September in the preceding financial year.

(19) In this rule, "consumer prices index" means—

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

Substitution of rule H.1 (further pensionable service: general rule)

20. For rule H.1, substitute—

"(1) This rule applies if a pensioner member is in further pensionable service including service by virtue of which the person is eligible for membership of the AFPS 2015, other than—

- (a) 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); or
- (b) permanent service of a member of a reserve force who is called out under Part 6 of the Reserve Forces Act 1996(**a**).

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

Amendment of rule H.3 (service on lower pay)

21. After rule H.3(4), insert—

"(4A) If a pension sharing order or provision or a pension attachment order or provision has been made in respect of the member's pension, A is the annual amount of the pension immediately after that order or provision takes effect.".

Amendment of rule H.4 (reserve service)

22.—(1) In rule H.4(1), after "AFPS 2015", insert "but not permanent service on call out under Part 6 of the Reserve Forces Act 1996".

(2) After rule H.4(4), insert the following paragraph—

"(4A) If a pension sharing order or provision or a pension attachment order or provision has been made in respect of the member's pension, A is the annual amount of the pension immediately after that order or provision takes effect.".

Amendment of rule H.5 (employment in reserved civil service post)

23. After rule H.5(4), insert—

"(4A) If a pension sharing order or provision or a pension attachment order or provision has been made in respect of the member's pension, A is the annual amount of the pension immediately after that order or provision takes effect.".

Amendment of rule J.10 (commutation of small pensions)

24.—(1) For rule J.10(1)(b), substitute—

"(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—

- (i) has reached state pension age; or
- (ii) having left service on or after 1 April 2017, has reached normal minimum pension age.".

⁽a) 1996 c.14. A member of a reserve force may be called out for permanent service under Part 6.

(2) After rule J.10(1), insert—

"(1A) The Scheme administrator may reduce the amount of the lump sum by such an amount as the Scheme actuary advises to represent the capital value of the pension on the date on which the lump sum is intended to be paid.".

PART 3

AMENDMENT OF SCHEDULE 3 TO THE AIR FORCE (ARMED FORCES PENSION SCHEME 1975 AND ATTRIBUTABLE BENEFITS SCHEME) ORDER 2010

Amendment of Schedule 3 (transitional provision for the Armed Forces Pension Scheme 1975)

25. Schedule 3 to the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010 is amended as set out in this Part.

Amendment of paragraph 41 (amount of immediate pension: other officers (including medical and dental officers of any rank))

26. In paragraph 41, in paragraph (2B) of the text substituted for paragraph (2) in rule D.5—

- (a) for "sub-paragraph 3(a), (b) or (c)", substitute "paragraph 3(a), (b) or (c)"; and
- (b) in Step 3, for "exactly 16 whole years reckonable service in the AFPS 1975", substitute "the same number of whole years' reckonable service that the member has in the AFPS 1975".

Insertion of paragraph 42A (amount of immediate pension: final salary link)

27. After paragraph 42, insert—

"Amount of immediate pension: final salary link

42A.—(1) This paragraph applies to transition members with continuity of service to whom rule D.5 (amount of immediate pension: other officers) or rule D.6 (amount of immediate pension: other ranks) of the AFPS 1975 applies.

(2) In rule D.5 or rule D.6 (as those rules apply to transition members by virtue of paragraphs 41 and 42), references to the "member's pension rank" are to be read as references to whichever is the higher of—

- (a) the pension rank(**a**) held by the member on their last day of pensionable service under the AFPS 2015; and
- (b) the pension rank held by the member on their last day of pensionable service under the AFPS 1975 before the transition date.

(3) In rule D.5 (as it applies to transition members by virtue of paragraph 41), references to the member's "representative rate of pay" are to be read as

⁽a) "Pension rank" is defined in rule A.2 of the AFPS 1975 rules.

references to the representative rate of pay for a person of the pension rank determined under paragraph (2)(a).".

Amendment of paragraph 48 (purchase of additional reckonable service in respect of period on loan)

28. In paragraph 48(2), in paragraph (1) of the text substituted for rule C.3, for "secondment", substitute "loan".

NIO_

Parliamentary Under Secretary of State Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010 approved by Her Majesty on 10th February 2010 ("the 2010 Order").

The rules of the Armed Forces Pension Scheme 1975 ("the Scheme") in relation to members and former members of the Royal Air Force set out in Schedule 1 to the 2010 Order were revoked and substituted by Schedule 1 to the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 approved by Her Majesty on 14th December 2010. That Order also amended the rules of the Air Force Attributable Benefits Scheme set out in Schedule 2 to the 2010 Order.

The 2010 Order has been further amended by:

- the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2012 approved by Her Majesty on 20th February 2012;
- the Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107);
- the Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560);
- -- the Marriage (Same Sex Couples) Act 2013 and Civil Partnership (Scotland) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/3061);
- the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2015 approved by Her Majesty on 4th February 2015; and
- -- the Armed Forces (Transitional Provisions) Pensions Regulations 2015 (S.I. 2015/568).

This Order amends Schedules 1 (the Scheme) and 3 (transitional provision for the Scheme) to the 2010 Order.

Part 2 of this Order amends the Scheme.

Paragraph 3(1) amends rule A.1 to define new terms used in amendments made by Part 2 of this Order to rules A.6, C.3, H.3, H.4, H.5 and J.10. Paragraph 2(2) amends the definition of "pension code" in rule A.1 to make it clear that the Scheme

administrator is responsible for publishing the pension code at least annually. The Scheme administrator is Defence Business Services ("DBS"), which is part of the Ministry of Defence.

Rule A.6 provides that the member will be considered to be in receipt of assumed pay during certain periods (i.e. the member is considered to be in receipt of amounts equal to the pensionable earnings they would otherwise have received). Paragraph 4 amends rule A.6 so that those periods also include periods during which the member is or was on ordinary maternity leave, paternity leave or ordinary adoption leave, or is or was receiving statutory shared parental pay.

Paragraphs 5 and 7 amend rules B.1 and B.4A so that a fixed protection member can opt to resume membership of the Scheme as an active member. The period of service during which a member is a fixed protection member is not pensionable service in the Scheme, even if the member later opts to resume service as an active member.

Amendments are made to the rules concerning the benefits payable to, or in respect of, a member who has been on a loan to a host organisation (e.g. the UN or NATO).

- Paragraph 6 amends rule B.3 so that a member who dies during the loan will be considered to resume membership of the Scheme as an active member from the date of death, and a member whose loan ends because of injury or illhealth will be considered to resume membership of the Scheme as an active member from the day after the date on which the loan ends. The benefits payable to, or in respect of, a member who resumes membership as an active member are calculated on the basis that they are an active member.
- Rule C.3 provides that a member, on returning from loan, may use the contributions refunded by the host organisation's pension scheme to pay a lump sum to purchase additional reckonable service equal to the period of the loan. Paragraph 8 amends rule C.3 so that the lump sum may be paid by a specified person such as the member's personal representative, or surviving spouse or civil partner if the member dies during the loan, or dies within 12 months after the loan ends not having exercised the option.
- Amendments made to rules D.7, E.2, E.3, E.13, E.14 and E.21 make provision with respect to the calculation of benefits payable in respect of a member whose loan ends because of injury or ill-health and who is medically retired from the Scheme, and a member who dies during the loan. If the host organisation pays benefits in respect of the member's ill-health, the Scheme administrator may proportionately reduce the ill-health benefits payable under the Scheme to ensure that the member does not receive more than they would have received had they not been on loan. If the host organisation pays a survivor benefits in respect of the member's death, the Scheme administrator may proportionately reduce the death benefits payable under the Scheme to ensure that the member's death, the Scheme administrator may proportionately reduce the death benefits payable under the Scheme to ensure that the survivor does not receive more than they would have received had the member not been on loan. Amendments made to rules D.24 and E.35

provide that the aggregate of any reductions must not exceed the amount of the relevant benefits that would have been payable under the Scheme to, or in respect of, a member.

Paragraphs 17 and 18 amend rules F.1 and F.2 to update references to the relevant provisions in the Pension Schemes Act 2015 (c. 8).

Paragraph 19 amends rule G.6 to set out the effect of a deferred member or pensioner member opting to aggregate an earlier period of pensionable service with a later period of pensionable service. In respect of members who opt to aggregate on or after 1st April 2017, rule G.6 is amended to allow the Scheme administrator to re-value the amount of any pension lump sum paid to the member in respect of the earlier period, which will be deducted from the amount of any further lump sum paid to the member. The amount of the first lump sum will be indexed to present day value in line with increases in the consumer prices index.

Paragraphs 20, 21, 22 and 23 amend rules H.1, H.3, H.4 and H.5 in relation to the interpretation of the pension abatement rules that apply to further service by certain pensioner members.

- Paragraph 20 amends rule H.1 to insert another exclusion from the pension abatement rules for service by pensioner members during their mobilisation as members of a reserve force under Part 6 of the Reserve Forces Act 1996 (c. 14).
- Paragraphs 21, 22 and 23 amend rules H.3, H.4 and H.5 to require the Scheme administrator to re-assess the calculation of the amount to be abated if a pension sharing order or pension attachment order has been made in respect of the member's pension.

Paragraph 24 amends rule J.10 to allow a member to commute small pensions into lump sums from "normal minimum pension age" (age 55) instead of "state pension age".

Part 3 of this Order amends Schedule 3 to the 2010 Order.

Schedule 3 to the 2010 Order makes provision with respect to members who transitioned from the Scheme to the Armed Forces Pension Scheme 2015 ("AFPS 15") established by the Armed Forces Pension Regulations 2014 (S.I. 2014/2336). AFPS 15 was established in accordance with the new arrangements for public service pension schemes set out in the Public Service Pensions Act 2013 (c. 25) ("the 2013 Act"). The Scheme members to whom Schedule 3 applies have accrued rights in the Scheme and continuity of service between the Scheme and AFPS 15.

- Paragraph 26 amends paragraph 41 of Schedule 3, under which the amount of immediate pension is calculated.

The 2013 Act protects the benefits earned by members in respect of past service in existing public service final salary schemes such as the Scheme ("old schemes") before they transitioned to also become members of public service schemes made in accordance with the 2013 Act ("new schemes"). Schedule 7 to the 2013 Act (final salary link) ensures that increases in a member's salary during their service in a new scheme are taken into account when calculating the member's final salary pension benefits under the old scheme. Paragraph 1 of Schedule 7 requires that, if there is continuity of service between a member's final salary for the purposes of the old scheme is based on their final salary at the point at which their new scheme service ends. It also requires that the amount of a member's earnings from their old scheme service must not be materially less than those earnings would have been if their new scheme service had been old scheme service.

The amendment made by paragraph 26 to Schedule 3 prevents the final salary link rule from inadvertently disadvantaging Scheme members who serve in AFPS 15 at a lower rank than their rank during service in the Scheme, and whose salary when they leave AFPS 15 service is lower than their salary at the end of their pensionable service in the Scheme. New paragraph 42A is inserted into Schedule 3 to modify the calculation of a member's immediate pension under rule D.5 or D.6 (as modified by paragraphs 41 and 42 of Schedule 3). The modified calculation will use the higher of: the member's pension rank on their last day in service in AFPS 15 and their pension rank on their last day of pensionable service under the Scheme. The Scheme uses pension rank (as defined in rule A2 of the Scheme) to calculate pension benefits rather than a member's final salary (except for officers of or above OF-7 rank).

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