

JSP 764

PART 3

RESERVE FORCES PENSION SCHEME

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Chapter 1

INTRODUCTION TO THE RESERVE FORCES PENSION SCHEME

GENERAL

0101. The Reserve Forces Pension Scheme is introduced under the powers held by the Defence Council through the Reserve Forces Act 1996. This guidance is an interpretation of the Reserve Forces Pension Scheme 2005 Regulation but does not supersede its contents.

0102. Changes to the scheme will be made by the Order of the Defence Council. The *scheme actuary* will be consulted on changes to the scheme which could adversely affect *accrued* benefits. Scheme *members'* consent will be sought before such a change is brought in.

0103. Consent will be deemed to be given where the scheme administrator has written twice to the member's last known address with no response.

0104. The scheme administrator is the Service Personnel and Veterans Agency (SPVA(GL)). The Scheme Manager is Deputy Chief of the Defence Staff Personnel Pensions Compensation and Veterans AFPS 05 Policy (DCDS Pers PCV AFPS 05 Pol).

0105. References to 'he' throughout this document should be read as 'he or she', references to 'him' should be read as 'him or her' and references to 'his' should be read as 'his or her'.

0106. A glossary of terms used in this guidance note is at Part 4 of this JSP. Those terms which are defined in the glossary will be marked in *bold italics* in the text of this publication to indicate that an explanation is available.

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Chapter 2

MEMBERSHIP

GENERAL

0201. A person is eligible to be an **active member** of the Scheme if:

(a) he is serving in a Full Time Reserve Service (FTRS) (including Additional Duties Commitments) appointment or is mobilised under Part 4, 5 or 6 of the Reserve Forces Act 1996, or a corresponding power in the Reserve Forces Act 1980,

(b) either:

(1) his service began on or after 6 April 2005, or

(2) he opted to transfer to RFPS from AFPS 75 on the Member Transfer Date of 6 April 2006, and

(c) he is not:

an active member of AFPS 75

Some people may wish to pay in to a Stakeholder Pension or a personal pension in addition to their membership of RFPS. This will not prevent membership of RFPS but it is the individual's responsibility to ensure that these private provisions do not put him in breach of any tax limits on pensions savings eligible for tax relief. See Part 4, Chapter 6 for more information on tax simplification or visit www.hmrc.gov.uk.

0202. Membership begins on the individual's first day of paid service. Benefits can be **accrued** for a maximum of 40 years.

0203. If a new entrant does not wish to belong to the scheme, he must give notice in writing. The effective date for such an option will be the date on which it is received by SPVA (GL) or the unit administrator. Those who opt out will receive no compensation for the surrender of their membership of the RFPS.

0204. An eligible person who has opted out may opt back in at any time providing that he is still serving, he can prove that he is medically fit and under age 60, but he may only do so once. Any costs linked with obtaining proof of medical fitness must be borne by the individual. If he opts out a second time, he will not be eligible to opt in again. This provision has nothing to do with the Offer To Transfer (OTT) and cannot be taken to give those who opted to stay in AFPS 75-FTRS a further opportunity to transfer into RFPS. See Chapter 10 for OTT rules.

0205. If a member opts out and, within six months, opts back in, his service will be considered as continuous, providing it is within the same engagement. The gap between the two periods of service for which he has opted in will not be reckonable unless 0508 applies.

Chapter 3

RETIREMENT BENEFITS

ENTITLEMENT TO BENEFITS

0301. A scheme member is entitled to a taxable **pension** for life and a tax-free **pension lump sum** if he leaves the Reserve Forces at or beyond age 60. The pension lump sum is normally tax-free. See Part 4, Chapter 6 for tax simplification information. The pension and pension lump sum become payable immediately on the member ceasing to be in pensionable service after age 60 on the day before their 60th birthday. Although the normal retirement age is 60 there will be certain groups (eg those in the FTRS (Home Commitment) Reserve Staff Group) who will be contracted to serve beyond this age. Nothing in the Regulations does anything to alter the terms of employment members of such groups have entered into.

0302. A scheme member who leaves before the age of 60 is entitled to a taxable **preserved pension** for life and a one-off pension lump sum (normally tax-free), both payable at the age of 65, providing that he does not transfer his benefits out of the scheme. You will need to claim this pension. An electronic version of the application form is available on the Defence Intranet under “Find out about Armed Forces/pensions” and on the internet at www.armedforcespensions.mod.uk. (<http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/PersonnelPublications/SPVA/SpvaPensionsForms.htm>). The application needs to be sent to SPVA(GL) three months before the pension is due to come into payment. Where service is short, pensions will be small and it may be possible to exchange them for a one-off lump sum (see para 0935 for more information on commutation of small pensions).

If he does not meet the criteria above, and does not transfer his notional benefits out of the scheme, he may be entitled to a one-off lump sum (see Chapter 6 for further information on transfers). Any lump sum payable will be calculated by the **scheme actuary**.

0303. Pensions are calculated individually for each period of service at the end of that service using an **accrual rate** of $\frac{1}{70}$ of final pensionable earnings for each year of reckonable service and then, at age 60 if the person is in service or at age 65 if he is not, the separate awards will be added together. The tax-free pension lump sum is three times the amount of annual pension. HMRC rules require that those receiving lump sums on the commencement of a pension must sign a declaration regarding investment of that lump sum into See Part 4, Chapter 6 for information on Life Time Allowance (LTA) and the implications of exceeding it.

CALCULATION OF FINAL PENSIONABLE PAY

0303A. The examples below show how final pensionable pay is calculated if the best 365 days pay is in the last 12 months of service. Example 1 shows a straightforward calculation where the entire 365 days is at the same rate of pay. In reality, there will normally be a split with the pay rise in April affecting the salary and ultimately the final pensionable pay. Example 2 shows the effect of the April pay rise.

EXAMPLE 1

An individual who completes a five year engagement on 31 March, leaving on final pensionable earnings of £30,000 would be entitled to a pension of £2,142.86 ($£30,000 \times 5 \times \frac{1}{70}$) and a lump sum of £6,428.57. This award would be preserved until age 65 if the individual was under age 60. It would be payable immediately if he were age 60 or over when he left.

EXAMPLE 2

An individual who completes a five year engagement on 12 September at age 60:

13 Sep – 31 Mar = 200 days @ £30,000 = £16,438.36

1 Apr – 12 Sep = 165 days @ £32,000 = £14,465.75

(£16,438.36 + £14,465.75) = final pensionable pay of £30,904.11

$5 \times £30,904.11 \times \frac{1}{70} = £2,207.44$ pension paid in monthly arrears

and

$£2,207.44 \times 3 = £6,622.32$ pension lump sum

ADJUSTMENTS FOR INFLATION IN DETERMINING FINAL PENSIONABLE EARNINGS

0304. The member's *final pensionable earnings* is the greatest amount of pensionable pay that he has earned in 365 consecutive days falling within the last three years of service.

0305. The last 365 days will normally be the best and, of course, will not require adjustment for inflation. But it is not out of the question that the last three years of service included a temporary promotion or mobilised service which did not occur in the last 365 days.

0306. The earlier years will need to be adjusted for inflation by increasing them by the same amount as that by which an annual pension of an equal amount would have been increased under the Pensions (Increase) Act 1971. This is a compound calculation.

EXAMPLE

If an individual's actual earnings over the last three years were £32,000 for the last 365 days, £30,000 for the previous year and £32,000 for the year before that, assuming that the pension increase figure was 2% per year, the earnings would be adjusted as follows:

For the last 365 days - £32,000 with no adjustment

For the previous year - $£30,000 + 2\% = £30,600$

For the year before that - $(£32,000 + 2\%) + 2\% = £32,640 + 2\% = £33,292.80$

Thus the final pensionable earnings used in this individual's pension calculation would be £33,292.80 in respect of the earliest period that could be considered as part of the calculation. This is a very simple example as it uses full years. Actual comparisons could compare many permutations of 365 consecutive days.

GROSSING UP OF EARNINGS

0307. If there were periods during the final three years where the member was unpaid for any reason or for periods of ADC it will be necessary to annualise earnings to determine **final pensionable earnings**. They are worked out by using the following formula:

$$PE + (DPE \times N)$$

PE is the member's pensionable earning for the year

DPE is his daily rate of **pensionable earnings** on his last day of service

N is 365 minus the number of days for which he has actually received pay

0308. For periods of ADC, pensions are calculated by multiplying $\frac{1}{70}$ of the member's final pensionable earnings at the full-time equivalent rate by **reckonable service**. Reckonable service for ADC is calculated as actual days worked/committed times qualifying service divided by 365.

EXAMPLE

Member completes ADC engagement to work 120 days per year for two years on a daily rate of £75.58. His final pensionable pay is £27,586.70 (which is £75.58 x 120 (£9,069.60) + (which is 245 x £75.58 (£18,517.10)) = £27,586.70) and his reckonable service is 0.6576 years (120 x 2 divided by 365). His pension would be £27,586.70 x 0.6576 x $\frac{1}{70}$ = £259.16 and his pension lump sum would be £777.47.

PENSIONS INCREASES

0309. Under this Scheme pensions increases apply in the following circumstances:

- (a) when members are in receipt of pensions or ill-health benefits;
- (b) when dependants are in receipt of pensions;
- (c) in respect of **preserved pension** calculations at the point at which they are due to come in to pay;
- (d) when adjusting **abatements**.

0310. The amount of the pensions increase is that which applies under the Pensions (Increase) Act 1971.

PENSION CREDIT MEMBERS

0311. Where a PSO is made, the general rule is that a pension for the member's ex-spouse for life is derived from the member's **pension credit** rights (the value of

pension benefits earned, as at a specific date). The member's ex-spouse becomes a '**pension credit member**' whose pension becomes payable:

- (a) immediately on the pension credit member attaining 55 if the PSO was sealed after 1 April 2009 (but see para 0313 and 0316). **Pension Credit Members** whose **PSOs** were sealed before 6 April 2009, may now claim their benefits at age 55, rather than age 60 or 65, but their benefits will be adjusted for early payment of their pension, or
- (b) if it is later, when the PSO takes effect.

The value of the pension must be equal to the pension credit as calculated by the court and, if the member's pension is not in payment at the time that the order is made, the pension credit (normally tax-free) will normally provide the pension credit member with a one-off lump sum and an annual payment for life. A pension credit does not provide survivor benefits in the event of the death of the pension credit member. If a pension credit member dies before the pension becomes payable a lump sum of three times pension is paid to the estate. If the pension credit member dies shortly after the pension is payable, the balance of five years' pension is paid to the estate taking into account any lump sum that has already been paid, which is worth three years pension.

0312. The pension credit may not be **aggregated** with any other benefits to which the pension credit member is entitled under the Scheme nor can they be supplemented by the purchase of added years. A person can have two or more pension credits and each is to be independent from the others.

EARLY PAYMENT OF PENSIONS

0313. **Actuarial reduction.** A member who has two years qualifying service and is not entitled to immediate payment of a pension may apply for immediate payment of an **actuarially reduced** pension and pension lump sum provided that he is a deferred member who has reached the age of 55. If the pension is a result of a PSO and the PSO has taken effect the PCM can opt for immediate payment of a reduced pension and lump sum if applicable providing the PCM has reached age 55. The application to SPVA(GL) must be in writing and the sum payable is determined after consultation with the **scheme actuary**, who, in the case of deferred members, will take into account any **inverse commutation** which might have been applied for in accordance with para 0332. The decision becomes binding on the member only after he has seen and accepted the actuary's figures. Early payment of preserved pension factors are at Part 4, Chapter 4.

0314. **Early payment in the event of permanent ill-health.** A **deferred member** is entitled to apply for the immediate payment of the **preserved pension** and lump sum before reaching 65 if they have two years qualifying service and:

- (a) in the opinion of SPVA(GL) (who has received evidence from a registered medical practitioner and other specialists) that the member has suffered a permanent breakdown in health involving incapacity for any full-time employment, and will continue at least until the member reaches pension benefit age.
- (b) he is not an active member of another occupational pension scheme (other than an AVC scheme). The test is whether he belongs to another occupational pension scheme in respect of which his employer is making contributions in relation to his employment, and

(c) he makes a claim in writing to SPVA(GL) for immediate payment of his pension and lump sum.

In these circumstances, the pension is not actuarially reduced. It will be adjusted for the inflation which has occurred between the date of his discharge from the Reserve Forces and the date it comes into payment, and it will attract pension increases thereafter.

0315. Review of early payment of preserved benefits in the event of ill-health. Entitlement to early payment of this pension may be reviewed and the pension will cease if at any time before the member reaches age 60 SPVA(GL) is of the opinion that the member no longer meets the criteria. In these circumstances the pension will be preserved until age 65, unless the deferred member re-applies successfully for its early payment on ill-health grounds.

0316. Life expectancy of less than 12 months. If as a result of a written application, SPVA(GL) (having received evidence from a registered medical practitioner and other specialists) that certifies that either an *active member*, a *deferred member* or a *pension credit member*, who has not received any benefits has a life expectancy of less than 12 months, he may opt to exchange the whole of his pension for a lump sum (normally tax-free) including the Guaranteed Minimum Pension (GMP) element. For active members and deferred members, the amount of the lump sum will be five times the annual pension (taking into account the pension lump sum). Pension credit members will receive a lump sum which in the opinion of the scheme actuary is equivalent to the value of his pension credit rights. The lump sum due will be paid as soon as reasonably practicable. There will be no further lump sum benefits payable on the member's death.

ILL-HEALTH BENEFITS

0317. RFPS offers ill-health benefits if a career is cut short by injury or illness irrespective of cause. Additionally, if the injury or illness is *attributable* to service, compensation for conditions arising on or after 6 April 2005 will be considered under the Armed Forces Compensation Scheme (AFCS), details of which can be found in JSP 765. If a Guaranteed Income Payment is awarded under the AFCS for the condition which brought about the member's medical discharge, the member's pension becomes tax-free. Those who are medically discharged because of an *attributable* condition caused before 6 April 2005 will have their RFPS pension compared to the Minimum Guaranteed Income (MGI) (formally known as the Service Attributable Pension (SAP)). If the MGI is higher than the RFPS pension then a top-up will be made. The ill-health pension also becomes tax-free. Each case will be considered on the facts. The assessment of attributable benefits in this way will not result in the loss of other RFPS benefits (eg the *eligible partner's* pension entitlement).

0318. If an *active member* with at least two years' *qualifying service* suffers ill-health leading to his discharge on medical grounds, he will be entitled to an ill-health award. The type of award will depend upon which RFPS tier his ill-health falls into. The size of the award will depend upon the tier allocated by reference to the Tariff (see Part 4 for Tariff) as at 15 December 2008, the length of the individual's service in his current engagement and the length of service remaining in his current engagement. Members who are assessed as falling under tariff levels 12 – 15 do not receive any enhancement to their pension. Although medical discharges after the age of 60 do not attract the enhancement described below. In categorising conditions in terms of tiers and relative capacity for gainful employment, no account will be taken of the individual's motivation or skills or the employment market.

0319. An RFPS Tier 2 will be awarded when in the opinion of SPVA(GL) a member suffers permanent breakdown in health, which will continue until he reaches normal retirement age of 60, which SPVA(GL) deems makes him incapable of any civilian full-time employment (tariff levels 1–6). He will be entitled to an annual pension calculated by multiplying one seventieth of his *final pensionable earnings* by his *reckonable service* in his current engagement enhanced by half of the time between his discharge and the date his appointment should have finished.

EXAMPLE

If an individual who joined on a five year engagement was injured and medically discharged under RFPS Tier 2 after two year's service his ill-health pension for that engagement would be worked out on reckonable service calculated as follows:

Two years + half of the three years' of his engagement remaining = three and a half years.

Thus the ill-health pension is calculated on three and a half years' service multiplied by one seventieth of his final pensionable salary.

This total will be added to any earlier preserved awards. He will also receive a lump sum (normally tax-free) which is calculated by multiplying the amount of his total annual pension by three.

0320. An RFPS Tier 1 will be awarded when in the opinion of SPVA(GL), an active member suffers a breakdown in health which SPVA(GL) deems would significantly impair his capacity for gainful civilian employment (tariff levels 7–11). He will be entitled to an annual pension calculated by multiplying one seventieth of his final pensionable earnings by the sum of his reckonable service and one-third of the further reckonable service which he would have been able to count under the scheme if he had remained an active member until the end of his current engagement.

EXAMPLE

If an individual joined on a six year engagement was injured and medically discharged under RFPS Tier 1 after three years' service this ill-health pension would be based on reckonable service worked out as follows:

Three years + one-third of the three years of his engagement remaining = four years.

Thus the ill-health pension is calculated on four years' service multiplied by one seventieth of his final pensionable salary. This illustration uses years and proportions of years; SPVA(GL) will use years and days to ensure accuracy.

This total will be added to any earlier preserved awards. He will also receive a tax-free lump sum which is calculated by multiplying the amount of annual pension so payable by 3. For implications of rejoining the Reserve Forces after receiving a Tier 1 award see Chapter 7.

0321. Once in payment, irrespective of the age of the recipient, ill-health pensions are adjusted in line with the Retail Prices Index (RPI) each year, usually in April, using the previous September's annual headline rate of inflation.

0322. **Request by member for review.** A member entitled to a pension under RFPS Tier 1 may request a review of his condition within five years of discharge. In exceptional circumstances a review may be conducted out of time.

0323. The request must be made in writing. SPVA(GL) will refer it to the Scheme Medical Adviser, and respond to the individual within two months. If an individual is not satisfied with the response then he can pursue through the Internal Disputes Resolution Procedure (IDRP) (see para 0913). If SPVA(GL) (having received evidence from a registered medical practitioner and other specialists) accepts that his discharge condition should be placed in RFPS Tier 2, the member will become entitled to a payment which will depend on whether the original decision on his condition was wrong or whether his condition had deteriorated in an unexpected way.

0324. **Error in the original decision.** In the event of an error having been made he will be entitled to:

- (a) the difference between the pension paid and the pension he is then entitled to backdated to the date of his medical discharge and increased by the RPI as appropriate, and
- (b) the difference between the lump sum paid and the lump sum he is then entitled to, increased by RPI as appropriate.

EXAMPLE

If an individual who left with an award based on an RFPS Tier 1 condition two years into a five year engagement on a final salary of £25,000 he would have received a taxable pension of £1,071.43 and a tax-free lump sum of £3,214.29. The pension is calculated by multiplying £25,000 by three (two years + one third of the three remaining years to the end of the engagement) and then dividing by 70. The lump sum is three times the pension.

An RFPS Tier 2 award for the same person would have resulted in a taxable pension of £1,250 and a tax-free lump sum of £3,750. The pension is calculated by multiplying £25,000 by three and a half (two years + half of the three years remaining of the engagement) and then dividing by 70. The lump sum is three times the pension.

Thus a successful review on the grounds that the original decision was wrong would result in the payment of:

- £178.57 extra in annual pension.
- Any back payments due between the date of discharge and the date at which the higher pension is actually paid.
- A tax-free lump sum of £535.71 (the difference between £3750 and £3214.29).

0325. **Deterioration after an RFPS Tier 1 award.** In allocating conditions tiers, account has been taken of expected deterioration and consequential conditions. Thus successful appeals relating to deterioration will be very rare. However, in the event of an appeal on the grounds of unexpected deterioration of a condition being successful he will be entitled to:

(a) the difference between the pension paid and the pension he is then entitled to, backdated to the date of his application for review and increased by RPI as appropriate, and

(b) the difference between the lump sum paid and the lump sum he is then entitled to, increased by RPI as appropriate.

0325A. HMRC rules do not allow a second lump sum to be paid so the difference in lump sum will be inversely commuted using factors provided by GAD and added to the pension.

EXAMPLE

Using the example in 0324, a successful review of a Tier 1 award to a Tier 2 award on the grounds of deterioration of the original condition would result in the payment of:

- £178.57 extra in pension
- Any back payments due between the date of the application for review and the date at which the higher pension is actually paid (this can be paid as a lump sum), and
- The difference between a Tier 1 and Tier 2 lump sum of £535.71 will be inversely commuted using a factor only to increase the member's pension. If the factor was 4.2 this would lead to an additional increase in pension of £22.50 per annum.

0326. **Review of medical discharge by the scheme.** Although routine review is not intended, SPVA(GL) has the discretion to review any medical discharge and either reduce or stop the pension if they find that the condition which gave rise to the award has improved significantly or no longer exists. The review must take place before the member reaches the age of 60.

GUARANTEED MINIMUM PENSIONS

0327. If a member of RFPS has a guaranteed minimum in relation to his pension under the scheme in respect of service prior to 6 April 1997, in accordance with Section 14 of the Pension Schemes Act 1993, the following applies:

(a) From state pension age the member will be entitled to receive a pension payable for the remainder of his lifetime at the rate equivalent to a weekly rate of not less than the guaranteed minimum (subject to para 0329). If he continues serving beyond state pension age, payment may be postponed with his consent. If he does not consent, the GMP would be paid. If he continues serving for a further five years after reaching state pension age, and does not leave, he is entitled to receive the guaranteed minimum from that point unless he consents to a further postponement.

(b) If the member dies leaving a spouse, a pension shall be provided for the spouse at a weekly rate of not less than half of the member's guaranteed minimum.

(It is appreciated that FTRS only dates back to 1997 but some members may transfer in value from another scheme which has a GMP element in it.)

0328. The GMP will increase in line with Section 148 Order (approximately average earnings) in deferment until age 60 for females and age 65 for males. The increase in payment depends on when the GMP was **accrued**. GMP accrued before 6 April 1988 does not increase in payment and GMP accrued after 5 April 1988 increase in payment in line with **RPI** but is capped at 3%.

0329. He will not receive a pension for life if:

(a) the pension is forfeited (see paras 0907-0912):

(i) as a result of a conviction for treason, or

(ii) if he is convicted of Official Secrets Act offences, or

(b) the pension is commuted under the arrangements for commutation of small pensions and the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-Out) Regulations are met.

ALLOCATION OF PENSION

0330. An **active member** or a **deferred member** whose pension is not in payment may opt to allocate up to a total of 37.5% or such lower percentage as appears to the scheme administrator to be capable of being allocated without risk that a part of the pension to which any person becomes entitled on the death of the member after 75 does not qualify as a dependant scheme pension for the purpose of section 167 of the Finance Act 2004 (the pension death benefits rule) of his pension to one or more person(s) who is financially dependent upon him. This can be one allocation of up to 37.5% of his pension or several allocations which, together, total no more than 37.5% of his pension.

0331. An active member who is due to leave the Reserve Forces with an ill-health pension or a deferred member who has applied to have his deferred pension paid early on ill-health grounds, will not be allowed to allocate part of his pension to anyone else.

0332. The election to allocate must be submitted to SPVA(GL) during the six months before the member's pension becomes payable. He may revoke it or amend it before his pension becomes payable, but, once his pension is in payment, the allocation cannot be changed or cancelled. Anyone considering making such an allocation might wish to take independent financial advice as to the tax or benefit implications of his plans. An electronic version of the allocation application form is available on the Defence intranet under "Find Out About Armed Forces Pensions" and on the internet at www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/Personnel/Publications/SPVA/SpvaPensionsForms.htm) The application must be sent to SPVA(GL).

0333. Allocation means that during the member's lifetime, any pension payable would be paid at a reduced rate and that, on his death, the nominee(s) would benefit from the allocation for life. The sum payable to the beneficiary will be calculated by the **scheme actuary**, taking into account their age and sex. Allocation tables for males allocating to a female beneficiary and females allocating to a male beneficiary are at Part 4, Chapter 4. Factors for allocating to a same sex dependant will be produced by the Government Actuary when required. The arrangement will not be binding on the member until he has seen and accepted the actuary's figures. There will be no charge for the administration lined with the making of an allocation. Allocation

does not reduce the level of spouse's, civil partner's, eligible partner's or eligible children's pension as these benefits **accrue** separately from the **member's** benefits., but in some cases there may be tax implications for them. Members are advised to take financial advice at his own cost before entering into such an arrangement as there are possible tax implications should he die at or after the age of 75. See Part 4, Chapter 6 for further details.

0334. If the member dies after having made an allocation but before his pension is due to start, his option will be invalid.

0335. If there is evidence of coercion or duress in respect of the option to allocate pension, or if SPVA(GL) is of the opinion that the member was mentally impaired at the time he made the election and would not have made it had it not been for the impairment, the option will be invalid.

0336. If the member dies within two years of receiving his pension and it is found that he has made a false declaration about his health in connection with making the allocation, payment to the beneficiary of the allocation may be withheld. Any pension foregone by the member will be credited to his estate.

INVERSE COMMUTATION

0337. Benefits may also be improved by **inverse commutation** which redistributes the lump sum in one of two ways. An active member or a deferred member may opt to exchange the whole or part of his pension lump sum for an increase in the amount of pension payable to:

- the **member's** pension only
- both member's and dependants' benefits.

EXAMPLE

An individual retires at age 60 with 7 years' reckonable service and a final pensionable salary of £35,000 pa. He is entitled to a pension of £3,500 pa ($7 \times £35,000 \times 1/70$) and a lump sum of £10,500 ($3 \times £3,500$). He opts to exchange £5,000 of his lump sum for an addition to his own pension. The factor per £100 is 4.90, therefore $£5,000/£100 \times 4.90 = £245$ additional pension pa. If he were to increase both his and his spouse's pension the factor would be 4.72, which would increase their pensions by $£5,000/£100 \times 4.72 = £236$ pa.

The actual conversion factors, showing the amount of additional pension obtained per £100 of the lump sum foregone is dependent on the age and sex of the person receiving the pension, appear in Part 4, para 0415.

0338. This option can only be exercised within the six months before the pension is due to come into payment. The application must be sent to SPVA(GL) who will arrange for the value of the exchange to be calculated by the **scheme actuary**. An electronic version of the Inverse Commutation application form is available on the Defence intranet under "Find Out About Armed Forces Pensions" and on the internet [www.armedforcespensions.mod.uk](http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/PersonnelPublications/SPVA/SpvaPensionsForms.htm). (<http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/PersonnelPublications/SPVA/SpvaPensionsForms.htm>). The application must be sent to SPVA(GL). Once the member has seen and accepted the actuary's figures, the exchange is agreed and the lump sum is reduced by the amount exchanged whether or not the pension that is to be increased as a result of

the option actually becomes payable. For example, if a member reduces his lump sum to improve his and his partner's benefits but she dies before him, the exchange will not be reversed.

0339. An individual who is being medically discharged with an ill-health pension will be allowed to inversely commute his pension lump sum, as will an individual who applies to have his preserved pension paid early on ill-health grounds. If a member opts for ***inverse commutation*** but dies before his pension becomes payable, the option is invalid.

0340. There will be no charge for the administration linked with opting for inverse commutation.

Deliberately Blank

Chapter 4

DEATH BENEFITS

GENERAL

0401. Pensions for *spouses, civil partners, eligible partners* and *eligible children* are payable from the day after the date of the death of the member but they must be claimed. Lump sums will be paid to the individuals or organisations nominated by the member or, where there is no nomination, to his spouse, civil partner or eligible partner. If he dies with no nominees, spouse, civil partner or eligible partner the lump sum will be paid to his estate. The calculations described in this Chapter assume that dependants' benefits have not been increased by *allocation* (paras 0330-0336) or *inverse commutation* (paras 0337-0340).

0402. In circumstances where the individual is 'missing', the date of death used for pensions purposes will be notified to SPVA(GL) by the Joint Personnel Administration Centre (JPAC).

0403. A married member or a member who enters into a *civil partnership* does not need to take special action for their spouse or civil partner to receive a pension, as the relationship is a legally documented one. For a member who is not married or in a civil partnership but has a partner, things are not so clear. By nominating his partner as the recipient of the lump sum it would add to the evidence which would be considered when establishing eligibility for pension. (See para 0418 for eligibility criteria.)

0404. Members may nominate more than one individual or one incorporated or unincorporated body as the recipient of a lump sum in the event of his death. The nomination must be made to SPVA(GL) in writing, and if there is more than one nominee, he must specify the percentage which will go to each. It may be revoked or altered but, again, this must be done in writing. It is the responsibility of the member to review his nomination from time to time but unit administration or personnel staffs should raise the issue of nomination when they are notified that, for example, a member has married, *divorced*, become a widow(er) or dissolved a civil partnership. An electronic version of the nomination form is available on the Defence intranet under "Find Out About Armed Forces Pensions" and on the internet at www.armedforcespensions.mod.uk. (<http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/PersonnelPublications/SPVA/SpvaPensionsForms.htm>). The application must be sent to SPVA(GL).

0405. The nomination becomes invalid if:

- (a) the member nominated his or her spouse or civil partner and then the relationship is legally dissolved. There will be instances where the member will want his ex-spouse or civil partner to receive the lump sum irrespective of the break up of the relationship and, in these circumstances, the member must submit a new nomination post-dating the divorce or dissolving of the civil partnership,

- (b) the nominee dies before the member,
- (c) the nominee is convicted of the murder or manslaughter of the member, or
- (d) the nominee is convicted of any other offence of which the unlawful wounding or killing of the member is an element.

0406. The timescales within which lump sums must be paid are:

- for a death in service where the beneficiary is known (eg a nomination or, if there is no nomination, a surviving spouse, civil partner or eligible partner), normally within one month of notification of the death (see para 0409);
- for a death in service where there are no nominee(s), spouse, civil partner or eligible partner as soon as possible after the grant of probate/letters of administration but, in any case, within two years of the death of the member;
- for death after leaving the Reserve Forces, as soon as possible but, in any case, within two years of notification of the death of the member. This longer timescale takes account of the fact that SPVA(GL) will not get to know about a death unless someone tells them and, even then, it is necessary to establish who the beneficiary is (see para 0411). (Again, if there is no nomination but the deceased had a spouse, civil partner or eligible partner, they will automatically be the beneficiary.)

0407. Where there is a court order requiring that a payment should be made to the member's former spouse or civil partner, the calculations will be undertaken as if the order had not been made and then reduced by the amount payable under the order.

0408. Pensions and lump sums may be suspended, reduced or recovered if:

- (a) the member or the beneficiary made a false declaration or deliberately suppressed a material fact in connection with the award;
- (b) SPVA(GL) considers it appropriate to do so (eg reduction of children's pensions on the birth of an additional eligible child after the death of the member).

LUMP SUMS

0409. **Death in Service.** If an *active member* (including a member who also has preserved benefits from this scheme or AFPS 75) dies in service, a lump sum (normally tax-free) will be paid to a nominated recipient(s), his spouse, civil partner or eligible partner or, if he has none of these, to his estate. The value of the lump sum will be four times his pensionable pay. As a death-in-service lump sum is paid, there will be no additional lump sum payable in respect of the preserved benefits. This entitlement is irrespective of length of service.

0410. If the deceased was in service but also in receipt of a pension from this scheme or AFPS 75 (albeit that it is abated or suspended), a lump sum will be paid to his nominated recipient(s), his spouse, civil partner or eligible partner or, if he has none of these, to his estate. The value of the lump sum will be four times his pensionable pay less the lump sum already received.

EXAMPLE

If an individual dies in service as a member of RFPS he is entitled to a tax-free lump sum equivalent to four times his pensionable pay. If he previously left the Armed Forces with an Immediate Pension (IP) under AFPS 75, he would receive four times his pensionable pay less the IP lump sum.

0411. **Death after leaving the Service.** If a *deferred member* dies, his deferred pension lump sum will be paid to his nominated recipient(s), his *spouse*, *civil partner* or *eligible partner* or, if he has none of these, to his estate. The lump sum will be adjusted to take account of inflation between his discharge and his death and the resulting lump sum will be tax-free.

0412. If a *pensioner member* dies more than two years after his pension has become payable, his pension ceases. Nothing further is payable. If he dies within five years of drawing his pension, his spouse, civil partner, eligible partner or his estate will be paid the balance of five years' worth of pension, less the value of the pension lump sum and pension he has already received. This payment will be tax-free.

EXAMPLE

If an individual leaves the Armed Forces at age 60 with a pension of £20,000 per year but dies six months later his estate will receive a lump sum of £30,000. The value of five years' worth of pension would have been £100,000. He has already received a pension lump sum of £60,000 and £10,000 pension (total of £70,000). Thus the balance of 5 years' worth of pension is £30,000.

0413. **Death of a pension credit member.** If a *pension credit member* dies before any pension credit benefits have become payable, a tax-free lump sum will be paid to his estate. The value of the lump sum will be three times the annual amount payable.

0414. If a pension credit member dies after any pension credit benefits are in payment, the balance of five years' worth of pension will be paid to his estate less the value of any benefits received including any lump sum already paid. This lump sum will be tax-free.

0415. **Death of a pension debit member.** Where a *pension debit member* dies, his benefits are calculated as if he were not a pension debit member and reduced in accordance with the PSO. In these circumstances HMRC limits are disregarded for the purposes of making the calculations but not in respect of the amount actually paid.

EXAMPLE

The pension benefits of an FTRS Sergeant who died in service at age 45, who had served eight years of a 10 year engagement on pensionable earnings of £30,000 would be worked out as follows:

9 (this is 8 + half of the two years he could have served to the end of his engagement)
x £30,000 x $\frac{1}{70}$ = £3,857.14.

If, six years into his service, he got divorced and a PSO was made which gave his ex-wife 50% of his accrued pension rights to that point. The monetary amount would be annotated on his pension file. On his death, the annotated amount would be increased by pension increases and taken away from the sum calculated above.

If the amount annotated was £1,200, and assuming that the rate of increase was 2% pa, the amount deducted from the pension entitlement calculated above would be £1,248.48. This would mean that the benefits for any eligible spouse, civil partner or partner would be based on a members pension entitlement of £2,608.66 (£3,857.14 - £1,248.48) rather than the £3,857.14 which would have applied had it not been for the Pension Sharing Order.

PENSIONS FOR SPOUSES, CIVIL PARTNERS OR ELIGIBLE PARTNERS

Eligibility

0416. If an **active member** with two years' **qualifying service**, a **deferred member** or a **pensioner member** dies leaving a **spouse** or **civil partner**, the surviving spouse or civil partner is entitled to a pension for life. Under the provision of the **Civil Partnership Act 2004**, civil partners will be treated similarly to spouses as far as is reasonably practicable.

0417. If the marriage or civil partnership ceremony took place less than six months before the member's death, the pension may be withheld, although the Guaranteed Minimum Pension (**GMP**) may not. (For information on GMP see paras 0327-0329.) In deciding whether the pension should be withheld Deputy Chief of the Defence Staff Personnel Pensions Compensation and Veterans AFPS 05 Policy (DCDS Pers PCV AFPS 05 Pol) will consider all the facts. If DCDS Pers PCV AFPS 05 Pol concludes that the marriage has been contracted simply to obtain a pension which would otherwise not be paid, the pension will be withheld. If the individual is not happy with the decision made they can pursue through IDR (see para 0913).

0418. If an active member or a deferred member with two years' qualifying service or a **pensioner member** dies leaving a surviving **eligible partner** and no surviving spouse or civil partner, the surviving eligible partner is entitled to a pension for life providing they can demonstrate that at the time of the member's death:

- (a) the person and the member were cohabiting as partners in a substantial, exclusive, committed relationship,
- (b) the person and the member were not prevented from marrying or entering a civil partnership, and
- (c) either the person was financially dependent on the member or they were financially interdependent.

To support such a claim, SPVA(GL) would expect to see some of the following as evidence:

- nomination for receipt of the scheme member's pension under the scheme;
- evidence of regular financial support by the scheme member;
- provision under a will naming the partner as a beneficiary in relation to a substantial proportion by value of the scheme member's estate (or vice versa);
- a life insurance policy, valid at the time of the scheme member's death, which was taken out by the deceased naming his partner as beneficiary or which was taken out by the partner naming the scheme member as beneficiary;
- joint ownership of a dwelling or other property of a substantial nature;
- a lease or rental agreement relating to a dwelling where the scheme member and the partner lived, under which both the deceased and the partner were liable to pay rent;
- joint bank or building society accounts from which money could be withdrawn by either the scheme member or the partner;
- financial arrangements entered into by the scheme member and the partner jointly;
- a valid power of attorney exercisable by the scheme member in relation to the partner or the partner in relation to the scheme member;
- payment by the scheme member of the partner's debts or by the partner of the deceased's debts;
- shared responsibility for children.

This list is not exhaustive. If the claim for the scheme member's pension is rejected the individual can pursue the claim through IDR (see para 0913).

0419. Where a pension is payable to a **spouse, civil partner or eligible partner** who is more than 12 years younger than the member, the amount of pension will be reduced by the lesser of the following:

- (a) 50% of the pension calculated, or
- (b) 2.5% times the number of whole years by which the beneficiary is younger than the member.

This reduction is made in recognition that, where the spouse, civil partner or eligible partner is significantly younger than the member, the pension will be in payment for longer than the period used in the actuarial calculations upon which the scheme costings rely. The reduction does not result in a higher percentage of the member's pension being available for children's pensions.

EXAMPLE:

No of whole years younger than member	Reduction in spouse's, civil partner's or eligible partner's pension
12	Nil
13	2.5%
18	15%
23	27.5%
28	40%
32	50%
34	50%

0420. Para 0419 does not apply where the member transferred from AFPS 75 under the OTT arrangements and was married to the beneficiary at the common date of transfer (6 April 2006). If the couple who qualified for these preserved rights **divorce** and remarry each other, they lose their preserved rights. There are no such preserved right for unmarried partners as they were not entitled to non-attributable pension benefits under AFPS 75.

Calculation of spouse's, civil partner's or eligible partner's pension

0421. In the case of the death of an **active member** with at least two years' **qualifying service**, the amount payable will be the member's **final pensionable earnings**, multiplied by $\frac{1}{112}$, multiplied by his **reckonable service** enhanced by half the further reckonable service he would have been able to count had he served until the end of his engagement. This will then be added to any previous, separately calculated preserved awards under RFPS. The value of the pension is subject to para 0419, any PSO that may be in place and to a maximum of $37\frac{1}{3}$ years' worth of reckonable service.

Example of calculation of reckonable service

If an individual died two years into a five year engagement, the number of years' service his spouse's, civil partner's or eligible partner's pension would be based on is three and a half years (two years actual service + half of the three years remaining on the engagement).

Example of calculation of pension

If the person in the above example had a final pensionable salary of £30,000, his spouse, civil partner or eligible partner would receive a pension of £937.50 ($\text{£}30,000 \times 3.5 \times \frac{1}{112}$).

0422. SPVA(GL) will automatically add together any previous RFPS awards.

0423. In the case of the death of a **deferred member**, the amount payable is calculated by multiplying the member's final pensionable earnings (adjusted for inflation which has taken place between his discharge from the Reserve Forces and his death) by $\frac{1}{112}$, and then by his **reckonable service**. The maximum reckonable service which may be used for this calculation is limited to $37\frac{1}{3}$ years. The value of

the pension is subject to para 0419 and any PSO that may be in place. Any allocation that had taken place will be disregarded when calculating spouse's, civil partner's or eligible partner's pensions.

0424. In the case of the death of a **pensioner member**, the amount payable is calculated by multiplying the member's final pensionable earnings by $\frac{1}{112}$, and then by his reckonable service. The maximum reckonable service which may be used for this calculation is limited to $37\frac{1}{3}$ years. The value of the pension is subject to para 0419 and any PSO that may be in place if the member is in receipt of an ill-health pension (see para 0319 and 0320), the enhanced reckonable service used to calculate this pension will also be used to calculate the spouse's, civil partner's or eligible partner's pension.

0425. Where a **spouse, civil partner or eligible partner** is entitled to two or more pensions the total amount of the pensions payable must be reckoned on service not exceeding 35 years unless one or more of the members has more than 35 years' reckonable service, in which case the limit is $37\frac{1}{3}$ years. The sum payable should be calculated in such a way as to give the greatest total amount.

EXAMPLE

If an individual receives a partner's pension of £5,000 per year based on awards totalling 10 years' reckonable service, then, following a marriage to another RFPS member, is entitled to a widow's pension of £3,000 per year based on nine years' total reckonable service, she is entitled to receive both pensions. If she goes on to marry another RFPS member, who then dies, leaving her with an entitlement to pension of £2,000 per year based on six years' total reckonable service, she is entitled to keep all three pensions.

If she then goes on to become entitled to a further RFPS widow's pension worth £8,000 per year based on 10 years' total reckonable service, the pension will be limited to benefits based on 35 years. The reduction will be made to the least valuable pension.

If an individual receives a partner's pension of £10,000 per year based on 25 years' total reckonable service, then, following a marriage to another RFPS member, is entitled to a widow's pension of £16,750 per year based on $37\frac{1}{3}$ years' total reckonable service, the second pension will remain in payment and the first pension will stop.

0425A. Where the spouse's, civil partner's or eligible partner's pension is within 1% of the LTA, the pension can be commuted and paid as a one-off lump sum. This is then taxed as pension income. For the forthcoming Financial Years, this equates to a pension of less than:

2008-09	£715 pa
2009-10	£760 pa
2010-11	£782 pa

PENSIONS FOR ELIGIBLE CHILDREN

0426. A member must have accrued two or more years' **qualifying service** for his children to be entitled to a pension on his death. An **eligible child** is a natural child

or any other child who meets conditions (a), (b) or (c) and was financially dependent upon the member at the date of his death. The conditions are:

- (a) that the person is under the age of 18, or
- (b) that the person is in full-time education or vocational training and is aged under 23, or
- (c) if the pensioner member died before 6 April 2006, that the person is unable to engage in gainful employment because of physical or mental disability from which the person began to suffer before age of 23.
- (d) In the case of any other member, the person is under 23 and was at the date of the member's death dependant on the member because of physical or mental impairment and unable because of that impairment to engage in gainful employment. In this case the pension is payable for life.

0427. The member may be regarded as leaving a child providing he or she is born before the first anniversary of the member's death. No pension is payable in respect of the period before the child is born. The amount payable to existing eligible children will be adjusted to take account of the additional eligible child or when an eligible child ceases to be eligible.

0428. A child who qualifies under para 0426(b) who is prevented from attending his full-time educational or vocational training by ill-health will keep his pension unless he voluntarily drops out of that education or training or is too ill to continue.

0429. There may be a gap of up to 15 months between leaving school and going into higher education or vocational training or during the higher education or vocational training. A pension will not be payable during this period. If the child is working pending a place in full-time education or vocational training, he must take up that place within this 15 month period.

0430. **Calculation of children's pensions.** In the case of the death of an **active member** or a **deferred member**, if a pension is to be paid to a **spouse, civil partner** or **eligible partner**, children's pensions will be paid as follows:

- (a) if there is only one eligible child, his pension will equal one quarter of the rate (see paras 0421, 0423 and 0424 for details of the method of calculating the scheme member's pension depending on whether he is an active, deferred or pensioner member) at which the member's pension would have been paid had it been due on the date of his death or member's pension in payment disregarding allocation; or
- (b) if there are two or more eligible children, their pensions will be 37.5% of the member's pension divided by the number of eligible children.

0431. In the case of the death of an **active member** or a **deferred member**, if there is no spouse, civil partner or eligible partner, children's pensions will be paid as follows:

- (a) if there are one, two or three **eligible children**, each pension will be equal to one third of the member's pension; or

(b) where there are four or more **eligible children**, the member's pension is divided by the number of children.

0432. All previous preserved awards (which will have been calculated separately) will be increased by pension increases and added together to form the basis for the calculation.

0433. In the case of the death of a **pensioner member**, if a pension is to be paid to a **spouse, civil partner or eligible partner**, children's pensions will be paid as follows:

(a) if there is only one **eligible child**, his pension will equal one quarter of the member's pension; or

(b) if there are two or more **eligible children**, their pensions will be 37.5% of the member's pension divided by the number of eligible children.

This is subject to paras 0337-0330.

0434. In the case of the death of a pensioner member, if there is no spouse, civil partner or eligible partner, children's pensions will be paid as follows:

(a) if there are one, two or three eligible children, each pension will be equal to one third of the member's pension; or

(b) where there are four or more eligible children, the member's pension is divided by the number of children.

This is subject to paras 0337-0339.

0435. Unless the member opted for **inverse commutation or allocation**, the total amount of spouse's, civil partner's or eligible partner's and children's benefits may not exceed 100% of the member's pension. This is because allocation is disregarded when calculating spouse's, civil partner's, eligible partner's and children's benefits.

0436. Children's pensions will be paid to the child's carer or to the child, dependent upon circumstances.

0437. **Variations to children's pensions.** If a member dies leaving an eligible child, a pension is payable in respect of the child. The amount of the pension may be adjusted if:

(a) a further person is identified as an eligible child,

(b) an eligible child is born after the member's death (see para 0427)

(c) an eligible child ceases to be eligible, or

(d) there was a spouse, civil partner or eligible partner at the time of the member's death who dies whilst the children's pension is in payment.

0438. If three or more pensions would be payable in respect of the same child, only two pensions which, together, result in the payment of the greatest annual amount in respect of the child are payable.

EXAMPLE

A child has parents who are both active RFPS members. One parent dies leaving him a pension. The surviving parent marries another member of the RFPS who adopts the child. The couple then die together in a car crash. Two more children's pensions become payable in respect of this child but he will receive only the two which are of the greatest monetary value.

Chapter 5

INCREASING BENEFITS

COMMERCIAL AVC AND STAKEHOLDER PENSIONS

0501. RFPS does not feature in-scheme added years. However, there may be potential for the purchase of AVCs to top up personal entitlement or *dependants'* benefits through a commercial supplier.

0502. When the need arises (eg to improve recruitment and/or retention of certain specialists), it is possible that MOD would offer to share the cost of certain commercial AVCs. Details of any shared-cost agreements will be published in DINs as and when they occur.

0503. It is possible to purchase a Stakeholder pension and build up an RFPS pension subject to any limits on pensions savings eligible for tax relief. See Part 4, Chapter 6 for more information on tax simplification or visit www.hmrc.gov.uk. Such arrangements are outside the scheme.

0504. It is the responsibility of the individual to seek any necessary independent financial advice at their own cost and to ensure that their pension provisions remain within HMRC limits on pensions savings eligible for tax relief. See Part 4, Chapter 6 for more information on tax simplification or visit www.hmrc.gov.uk.

0505. A list of independent financial advisors accredited by the Services Insurance and Investment Advisory Panel is published regularly in DINs, but individuals should not feel that they are limited to those listed. Additionally, the Financial Services Authority can advise on how to find a financial adviser. Their helpline number is 0300 500 5000 or visit their website www.fsa.gov.uk/consumer.

0506. Scottish Widows has been designated as the preferred provider of stakeholder pensions to the Armed Forces. Contact details are as follows:

Scottish Widows Helpline: 0845 608 0376 or +44 131 655 6600
Email: armedforces@scottishwidows.co.uk

Write to: Scottish Widows, Direct Sales, 69 Morrison St,
Edinburgh, EH3 0BR

SECONDMENT

0507. Where an *active member* is seconded to industry, his period on secondment will be both qualifying and reckonable providing that the employer to whom he is seconded is paying pension contributions to the scheme.

SERVICE WITH THE UN, NATO OR OTHER COLLABORATIVE ARRANGEMENTS

0508. Where an active member is seconded to UN, NATO or other similar collaborative arrangement, he will be considered to be on unpaid leave. The employer

will not pay pension contributions into RFPS but will require the secondee to join the employer's scheme. The period of the secondment will not be reckonable unless, on his return from unpaid leave, he pays both elements of his severance payment into the Scheme. There is always a shortfall between the total of both elements of the severance pay and the sum needed to buy back the lost reckonable service and any shortfall between the amount paid and the amount due will be made up by the MOD project which required the secondment. Members are advised to establish the position regarding project funding before agreeing to such a secondment.

Chapter 6

TRANSFERS

TRANSFERS OUT

0601. Chapter 4 of Part 4 of the Pension Schemes Act 1993 confers a right on the member to transfer pension rights to another scheme. These rights do not apply to benefits directly attributable to a *pension credit*.

0602. RESERVED.

0603. If a member with at least two years' qualifying service either leaves the Reserve Forces before age 60 (thus becoming a deferred member) or opts to leave the Scheme but stay in the Reserve Forces he has the right to apply for a written statement giving the transfer value of the benefits he has *accrued* under the scheme (a statement of entitlement).

0604. The application for a statement of entitlement must be made in writing to SPVA(GL). The member may withdraw the application for a statement of entitlement at any time before the statement is provided. If he has made an application for a statement of entitlement and has not withdrawn it, he may make only one other such application in the period of twelve months beginning with the date of the first application.

0605. If he has left the Reserve Forces, the application must be made before he reaches age 64. If he is intending to transfer out on reaching normal pension age, he must apply at least one year before his retirement date. (see also para 0610)

0606. A statement of entitlement will be provided within three months of being requested, unless, for reasons beyond the control of the scheme administrator (eg disputes about entitlement), the requisite information cannot be obtained to calculate the amount of the cash equivalent.

0607. The guaranteed cash equivalent transfer value will remain valid for three months from the date specified on the statement. The individual must be provided with the statement within 10 working days of the date on the statement.

0608. The member may apply in writing to SPVA(GL) for the cash equivalent value to be paid. The payment must be made no later than six months after the date specified on the statement of entitlement or, if it is earlier, the date on which the member reaches normal pension age unless the transfer value payment is to be made under the public sector transfer arrangements (see para 0610). His application must specify the pension scheme or other arrangement to which the payment should be made.

0609. An application for transfer value payments 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 be an active member of the scheme to which the transfer is to be made, and

(b) before the member reaches age 65.

0610. An application for the cash equivalent value to be paid to another scheme or arrangement may be withdrawn by notice in writing unless an agreement in respect of the whole or part of the guaranteed cash equivalent transfer value has been entered into with a third party before the notice is given. So, in other words, if the new scheme has received the transfer, the arrangement may not be withdrawn.

0611. If the payment is made later than six months after the date specified on the statement of entitlement the amount of the payment to which the member is entitled must be increased by:

(a) the difference between the amount specified in the statement of entitlement and the amount had the calculation been made on the date on which the payment is made, or

(b) if it is greater and there was no reasonable excuse for the delay in payment, the interest on the amount specified in the statement of entitlement calculated on a daily basis over the period from the date specified on the statement of entitlement to the date the payment is made at 1% above Bank of England base rate.

0612. The guaranteed cash equivalent transfer value will be calculated in accordance with guidance and tables provided by the *scheme actuary* (see Part 4, Chapter 4 for the Transfer Out factors). It will take into account any transfer value payments that have been made to the scheme in respect of *accrued* rights in other schemes.

0613. If the scheme to which the guaranteed cash equivalent payment is to be made has no GMP, the GMP element will not be available for transfer. Instead, it will either remain in RFPS or be vested in an approved insurance scheme.

0614. Where a transfer value payment is made in respect of a member's rights under RFPS, those rights are extinguished.

TRANSFERS IN

0615. An *active member* may apply to have some or all of the rights that have accrued to him under any scheme or arrangement to which a transfer value payment made be made under Part 4 Chapter 4 of the Pension Schemes Act 1993 (transfer values).

0615A. In the case of a transfer value payment being made from

(a) personal pension scheme or

(b) relates to voluntary contribution rights

It must be made during the period of one year beginning with the relevant day unless para 0615B applies. The "relevant day" means the day on which the applicant becomes eligible to be an active member of the scheme or 6 April 2006, whichever is the later.

0615B. This para applies in the case of a transfer value payment within para 0615A(b) if

- (a) the member is also applying to transfer in a different occupational pension scheme from that 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 by the second scheme relates to rights that are or include rights that are not voluntary contribution rights.

This does not apply to rights that are directly attributable to a ***pension credit***. The timescales involved are:

- (a) within 12 months for a transfer-in from another Public Sector pension scheme, a personal pension arrangement, a short service benefit by virtue of section 71 of the Pension Act 1993 or a Stakeholder pension; and
- (b) before the 12 months prior to the member's normal pension age (so, before age 59) for non-public sector occupational pension schemes and any defined benefit AVCs linked with such pension benefits.

0616. An application to transfer in must be made in writing. It must be made while the individual is an active member of the scheme and he must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of that payment.

0617. In the case of a transfer value payment to be made under the Public Sector Transfer Arrangements, the application must be made during the first year during which he is eligible to be a member of the Scheme. It must be received by SPVA(GL) before the applicant reaches the normal pension age under the scheme from which the transfer value is to be made.

0618. SPVA(GL) may accept the transfer value payment and, if they do, the member is entitled to count the appropriate period of ***reckonable service*** for the purposes of the scheme. The value of the transfer is calculated in accordance with tables and guidance provided by the ***scheme actuary***. These tables are in Part 4, Chapter 4. The calculation will be done using the member's pensionable earnings as at:

- (a) two months after the application is received, or
- (b) the date on which the transfer value payment is received,

whichever is the later. If the transfer value payment is received earlier than two months after the application is received, any necessary adjustment will be made to the calculation to reflect any changes in the amount of ***pensionable earnings***.

0619. If the transfer value payment is accepted under the Public Sector Transfer Arrangements, the calculation is made in accordance with those arrangements and by reference to tables and guidance provided by the scheme actuary for the purpose. These tables are in Part 4, Chapter 4.

0620. SPVA(GL) will not accept a transfer value payment if:

- the sum is not coming from another Public Sector scheme and is insufficient to cover the member's or the member's spouse's entitlement to GMP;
- the time limits are not complied with; or
- the member is under notice of redundancy or medical discharge.

OVERSEAS TRANSFERS

0621. UK pension benefits can only transferred to a Qualifying Recognised Overseas Pension Scheme (QROPS). HMRC will provide confirmation that the Scheme is a QROPS. The decision on whether an application for an overseas transfer may be accepted is made by the SPVA(GL). QROPS will require details of the member's **LTA**. A transfer to QROPS will give rise to a LTA charge only if the amount exceeds the members LTA. For more information on tax simplification see Part 4 Chapter 6.

Chapter 7

REJOINING THE RESERVE FORCES

RE-JOINING WHERE THE MEMBER WAS AN ACTIVE MEMBER OF RFPS DURING HIS EARLIER SERVICE

0701. These re-employed *active members* could have been either:

(a) active members of RFPS, who have ended an engagement or broken service and subsequently re-engaged or been mobilised under Part 4, 5 or of the Reserve Forces Act 1996 or corresponding provision of the Reserve Forces Act 1980 and opted to join the RFPS for their period of mobilised service; or

(b) an active member who opted out of RFPS and later opted back in.

0702. Each period of reckonable service is treated separately.

0703. If his previous discharge was one which attracted an enhancement to *reckonable service* (eg RFPS Tier 1 or RFPS Tier 2 medical discharge), the enhancement will not count towards his pension to the extent that it exceeds the break in service. This reckonable service will be preserved, with the new service treated separately. If re-joining after receiving a RFPS Tier 1 award, the pension would cease to be paid. Any enhancement to service used to calculate the ill-health pension will only count to the extent that it covers the break in service. A RFPS Tier 2 lump sum would be worth a certain amount of pay and if the break is less than the amount represented by the lump sum, the unexpired portion will have to be repaid as a condition of rejoining.

EXAMPLE

If an individual left on RFPS Tier 1 ill-health terms having served for two years of a five year engagement, his pension would have been based on two years' actual service plus one third of his remaining engagement. This means that the reckonable service used for the calculation was three years (two + one year's enhancement). If he then rejoined after six months, the break would count as reckonable but the balance of the enhancement would not.

If he had rejoined after one and a half years, the full one year enhancement would count as reckonable but the remaining six months would not.

OFFER TO TRANSFER (OTT)

0704. Individuals transferring from AFPS 75 – FTRS as a result of the OTT exercise will have a common Member Transfer Date (MTD) of 6 April 2006. These individuals are entitled to count pre-age 18 and pre-age 21 service for Other Ranks and Officers respectively but the maximum which may be transferred across is 35 years. This additional reckonable service would not be lost if an individual subsequently left the

Reserve Forces and later rejoined. Individuals who join RFPS for the first time at a date other than MTD will not be able to count this otherwise non-reckonable service towards their pension.

Chapter 8

ABATEMENT

GENERAL

0801. Where a person who is in receipt of an RFPS pension is re-engaged in the FTRS or the Armed Forces (other than on mobilisation under Part 4, 5 or 6 of the Reserve Forces Act 1996 (RFA 96), or corresponding provision of the Reserve Forces Act 1980 (RFA 80)) his pension may be abated in full or in part. This applies whether he is over or under age 55. Abatement may also apply if he is in receipt of a pension under AFPS 75, AFPS 75-FTRS or AFPS 05.

0802. Where a person is mobilised under the RFA 96 or corresponding provision of RFA 80, his pension remains in payment. For implications for Early Departure Payments see Part 2 of this JSP.

0803. The rule is that the new rate of pay plus pension cannot exceed the old rate of pay and the pension will be abated accordingly. For the purposes of the calculation, the old rate of pay would be increased in line with pension increases when there has been a gap between leaving in receipt of a pension and joining either the Regular Armed Forces or the FTRS. Where the new rate equals the old rate, the pension is suspended. Where the new rate plus the pension exceeds the old rate the pension is abated to ensure that pension is paid only to the extent that it does not take the new rate plus pension above the old rate.

EXAMPLE

If an officer with a final pensionable salary of £50,000 left the Regular Armed Forces at age 55 with a pension of £25,000 in May and then joined the FTRS two months later on a pensionable salary of £30,000, his pension would be abated so that his new rate of pay together with his pension would not exceed £50,000. Thus his pension would be abated by £5,000.

0804. This does mean that an individual can never earn more than his old rate of pay. He can, however, if his new rate of pay exceeds his old rate of pay equals or, (adjusted in line with pension increases) his pension will cease entirely for the duration of his new service.

0805. Increases to rates of pay or pension increases will not lead to a reassessment of the amount of pension being abated; but a change in rank (for example the regrading of an FTRS post) will lead to such a re-assessment. At the time of promotion the total income would not increase, but the amount of pay received would be higher, reducing the level of pension payable. However, the member would receive future increases based on the pay in the higher rank.

0806. Where a member has opted for *inverse commutation* of his *pension lump sum* to improve his pension, the amount of the increase will be disregarded for abatement purposes. This is because inverse commutation redistributes the pension

lump sum and, had inverse commutation not taken place, the pension lump sum would not have been recovered on re-employment.

- | 0807. Where an individual is in receipt of an ***Immediate Pension*** from AFPS 75, his pension will be abated under the rules of that Scheme in line with the principles set out above.

Chapter 9

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

CLAIMS FOR AND PAYMENT OF BENEFITS

0901. The payment of benefits are subject to the receipt by SPVA(GL) of a written claim from the *member* or, in the event of his death, his *dependants*. This will involve the completion of a declaration confirming his entitlement to benefits. The claim should be made within one year of the pension becoming due for payment.

0902. In the event of a late claim, the question of payment of arrears will be considered as follows:

- (a) periods of up to six years, by SPVA(GL), or
- (b) where the period exceeds six years, by HM Treasury.

Where arrears are paid, any interest due will be paid at Bank of England base rate.

INFORMATION AND EVIDENCE

0903. SPVA(GL) may require any person who is receiving a pension under the Scheme to provide him with evidence to establish:

- (a) the person's identity, and
- (b) his continuing entitlement to payment of any amount.

If such evidence is not provided, the whole or any part of any benefits payable to him under the scheme may be withheld.

FALSE STATEMENTS ETC ABOUT ILL-HEALTH

0904. Where a member has been awarded an ill-health pension or the early payment of a deferred pension on ill-health grounds and it becomes apparent that he has made a false statement about his health or deliberately suppressed a material fact in relation to his health, SPVA(GL) may:

- (a) instruct the cessation of the pension,
- (b) instruct that the whole or part of the pension should be withheld,
- (c) take action to recover any payment under the award, or
- (d) prosecute the person responsible for the fraud.

NON-ASSIGNABILITY

0905. Benefits payable to the *member* under the Scheme are payable to him or for his benefit. They are not assignable or chargeable with his debts or the debts of any other person.

ADMISSION TO THE ROYAL HOSPITAL CHELSEA

0906. If an FTRS *pensioner member* is admitted to the Royal Hospital Chelsea his FTRS pension will not cease.

FORFEITURE OF PENSION BENEFITS

0907. A member or his *dependants* may forfeit the whole or part of their benefits in certain circumstances.

0908. If it is proposed that benefits should be withheld, SPVA(GL) must notify the would-be recipient in writing. Individuals may appeal against forfeiture as follows:

(a) the member's appeal route is to the Pensions Ombudsman through the Scheme's Internal Disputes Resolution Procedure (see para 0913-0934);

(b) in the case of dependants, if there is a question as to whether a dependant's benefit should be forfeited, DCDS Pers PCV AFPS 05 Pol may refer it to a Social Security Commissioner. As a decision by SPVA(GL) not to penalise a *spouse, civil partner* or *eligible partner* could affect the sums due to *eligible children*, they too may ask for the case to be referred to a Social Security Commissioner.

0909. A member's benefits may be forfeited if he:

(a) is convicted of one or more offences under the Official Secrets Act 1911 to 1989 for which he has been sentenced to a term of imprisonment of at least 10 years or two or more consecutive terms amounting together to at least 10 years,

(b) is convicted of treason,

(c) is convicted of an offence in connection with the service which qualifies him to belong to this Scheme, in respect of which a forfeiture certificate has been issued. Such offences include:

(1) assisting, aiding or communicating with the enemy in time of war,

(2) mutiny or incitement to mutiny in time of war or peace,

(3) failure to suppress a mutiny in time of war or peace,

(4) desertion in time of war or while on active service,

(5) sabotage in war or grave sabotage in time of peace,

(6) grave breach of the Geneva Convention,

or

(d) has, after becoming a *member* of the Scheme, incurred a monetary obligation to the crown as a result of a criminal, negligent or fraudulent act or omission by him which arises out of or is in connection with his service in the Reserve Forces. He will be given a certificate showing any amount withheld and the effect of it being withheld on his benefits under the Scheme.

0910. If forfeiture is under 0909(a) or (b), the whole of the pension may be forfeited. If it is under 0909(d), the amount forfeit will be the amount of the obligation which will be decided by a court or, in Scotland, an arbiter appointed by the Sheriff. This sum can only be deducted from benefits to which the member himself is entitled.

0911. A dependant's benefits may be forfeited if he is convicted of the murder or manslaughter of the member or any other offence which involves the unlawful wounding or killing of the member.

0912. A person who has forfeited their pension will still receive the Guaranteed Minimum Pension (GMP), unless forfeiture is under para 0909(a) or (b) when the GMP may also be forfeited.

INTERNAL DISPUTES RESOLUTION PROCEDURE (IDRP)

0913. The Pensions Act 1995, which has since been amended by the Pensions Act 2004, imposed a statutory requirement on scheme administrators to ensure that procedures are in place to deal internally with pension disputes, known as Internal Disputes Resolution Procedures (IDRP). Scheme administrators need to comply with that legislation and related guidance, including the requirement that decisions are taken within a reasonable period. Its aim is to provide arrangements that give the member the opportunity to explain the nature of his complaint to the scheme administrators and maximise the opportunity to resolve the disagreement internally. IDRP is not final and disputes involving alleged or actual maladministration or disputes concerning fact or law can also be considered independently by the Pensions Ombudsman (PO) if the complaint cannot be resolved internally.

0914. IDRP can be used for all cases where there is alleged or actual maladministration, or in cases where there is a dispute over fact or law.

0915. Complaints against SPVA(GL) may be made under the scheme's IDRP. Those eligible to complain under these procedures are:

- (a) serving members of the scheme,
- (b) members of the scheme who have left service,
- (c) dependants of deceased members of the scheme,
- (d) pension credit members of the scheme,
- (e) potential members of the scheme,
- (f) anyone claiming to be in any one of the above categories,
- (g) an appointed representative (eg a friend or solicitor) of the above.

A former member of the Scheme who transferred pension benefits out of the Scheme into a new scheme more than six months prior to making a complaint is not permitted to complain under IDR. This does not apply in respect of the transfer from AFPS 75-FTRS to RFPS as a result of the OTT where the individual will be treated as if no change of scheme had occurred for these purposes.

0916. There are two stages to the IDR. Decisions under first stage IDR will be made by a single deciding officer at C1 or C2 grade at SPVA(GL).

0917. The complaint must be made in writing and should clearly state in respect of which scheme IDR is being invoked eg AFPS 75, AFPS 75 – FTRS, AFPS 05, NRPS or RFPS. It would help with the processing of the complaint if it is made clear whether:

- The complaint is against the application of the pension scheme rules or
- The exercise of discretion within the rules.
- It should explain the capacity of the complainant (eg serving member, member who has left service or pensioner), giving details of Service, rank, Service number etc and any other relevant information. It should state what the disagreement is about, and what the desired outcome is.
- A dependant of a deceased scheme member should give their own details as well as those of the scheme member, and explain their relationship to the member.
- If an appointed representative is acting on behalf of the claimant, he or she should provide details of name, address, profession and an address for correspondence; also proof that he has been appointed as representative.

Please ensure the letter is clearly headed “IDR Complaint” and indicate in which category the dispute should be considered. To provide full details of the complaint and evidence of why the rules have been incorrectly applied in relation to the pension or why discretion should be exercised in a different way.

0918. If the complaint does not contain the above information, it will be sent back stating what information is still required and that no further action can be taken until this is provided.

0919. Once a complaint is accepted for processing under IDR, receipt will be acknowledged.

0920. Paras 0920-0922 outline the first stage of the complaints procedure. The complaint must be made to SPVA(GL) at the following address:

Service Personnel and Veterans Agency (Glasgow)
C1 Armed Forces Pensions
MOD Authority Pensions
SPVA (GL) Mail Point 600
Kentigern House
Glasgow
G2 8EX

0921. The complainant should be issued with a decision under the first stage of IDRPs within two months of receipt of the complaint. This is known as “the notice of decision”. If a reply is not possible within that timescale, an interim reply will be sent explaining why there has been a delay and when a full reply can be expected.

0922. The notice of decision will include:

- An explanation of the decision, including references to any legislation or scheme rules on which it is based.
- If the complaint is rejected, advice on the right to refer the decision for consideration at the second stage of IDRPs by a single deciding officer at OF5 level at the SPVA within a time limit of six months from the date of the notice of decision.
- Advice that The Pensions Advisory Service (TPAS) is available, and its address.

0923. Paras 0923-0926 outline the second stage of the complaints procedure. Under the second stage, members of the Scheme have the right to appeal against the decision made on their complaint under the first stage. The appeal should be sent to SPVA(GL).

0924. Appeals against the decision made under the first stage, must be made in writing within six months of the notice of decision. Appellants must provide the same categories of basic information as were required at the first stage, but should also provide a clear statement as to why they disagree with the Stage 1 decision and offer evidence to demonstrate why they believe the original decision was wrong and the outcome they are seeking.

0925. As with the first stage, if the necessary information is not provided the complaint will be referred back to the appellant stating that no action can be taken until this is provided.

0926. Decisions on complaints under the second stage will normally be considered by a single deciding officer at OF 5 level at SPVA (GL) who will take the necessary medical or legal advice as appropriate, which will normally be separate from the advice provided at Stage 1. This process will take up to two months, although more complex cases can take longer. Individuals will be informed if it is likely that their case will take longer than two months.

The Pension Advisory Service and The Pension Ombudsman

0927. The Pension Advisory Service (TPAS) can be contacted for advice at any stage during IDRPs, but the individual must have raised their complaint in writing to SPVA (GL) before contacting TPAS for help. A TPAS adviser will assist the individual through and if necessary beyond the process.

0928. TPAS usually undertakes the initial investigation of a case in correspondence with the administrators of the pension scheme. It will then pass the complaint on to the Pensions Ombudsman if it believes the complainant has a case. TPAS will also assist with general enquiries on State pensions and gives free help and advice to members of the public on all matters concerning occupational pension schemes.

0929. The address for TPAS is:

TPAS
11 Belgrave Road
London
SW1V 1RB

0930. If the complaint is not resolved by IDRPs, the complainant is entitled to take the complaint to the Pensions Ombudsman, through The Pensions Advisory Service (TPAS) (see paras 0927-0929).

0931. A complaint to the Pensions Ombudsman should be made within three years from the date on which the event or decision causing the complaint took place. If the complainant did not know about the matter at the time, the three-year period runs from the time when he knew, or reasonably ought to have known.

0932. The Pensions Ombudsman investigates complaints of maladministration and disputes of fact or law concerning the scheme in question. He cannot investigate a complaint or dispute already subject to court proceedings, including employment tribunals.

0933. The Pensions Ombudsman has power to compel the disclosure of documents. He may also hold an oral hearing with both sides present. If the Ombudsman finds that a benefit has not been paid when it was due, he has the power to award interest.

0934. The Pensions Ombudsman's decision is final and binding both on the complainant and on the scheme, subject only to an appeal to the High Court on a point of law. The Pensions Ombudsman's address is:

The Pensions Ombudsman
11 Belgrave Road
London
SW1V 1RB

0935. Before appealing to the Pensions Ombudsman, however, complainants must go through the full IDRPs process unless the Ombudsman decides that there is no real prospect of an IDRPs decision being made in a reasonable time or he thinks it is reasonable to deal with the complaint straight away.

COMMUTATION OF SMALL PENSIONS

0936. If the RFPS pension is worth less than £100 per annum, this pension can automatically be commuted into a lump sum without doing a LTA test. If it is worth more than £100, but is within the limit of 1% of LTA then SPVA will ask the scheme member if they have any other pensions in payment. If when combined, the amounts do not amount to more than 1% of LTA then the individual can commute the pension into a lump sum. Seventy-five per cent of the lump sum paid is treated as taxable pension income. For the forthcoming Financial Years this equates to a pension of less than:

2008–09	£715 pa
2009–10	£760 pa
2010–11	£782 pa

0937. Where more than one pension exists they may only be commuted if they do not together exceed the small pensions commutation maximum.

0938. RESERVED

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Chapter 10

OFFER TO TRANSFER (OTT) ARRANGEMENTS

GENERAL

1001. Personnel who were **active members** of AFPS 75 – FTRS on 6 April 2006 were given a choice. They could choose to stay with AFPS 75 – FTRS or transfer to RFPS. The following details the terms agreed for those who chose to transfer.

1002. All personnel who opted to transfer to RFPS were transferred on a common Member Transfer Date (MTD) of 6 April 2006.

BASIS OF THE TRANSFER OF QUALIFYING AND RECKONABLE SERVICE

1003. Reckonable and **qualifying service** in AFPS 75 - FTRS was transferred to RFPS on a year-for-year service.

1004. Service prior to age 18 for Other Ranks and prior to age 21 for Officers did not count in AFPS 75 – FTRS but, under a special arrangement for the OTT only, those transferring to RFPS were allowed to count it as reckonable service.

1005. If an individual were to be credited with pre-18 or pre-21 service, leave the Reserve Forces leaving a preserved pension in the Scheme and subsequently rejoin, he would not lose this credit.

1006. Personnel who leave the Reserve Forces with preserved benefits in AFPS 75 – FTRS who subsequently rejoin after 6 April 2005 will not have the opportunity to have any pre-18 or pre-21 service they may have done as a member of AFPS 75 – FTRS counted.

1007. The maximum amount of **reckonable service** (including this pre-18 and pre-21 service) which could be transferred in to RFPS was 35 years (although it is acknowledged that, at the point of MTD, the AFPS 75 – FTRS was less than 10 years old). This is because, under AFPS 75, the maximum pension payable was worth 50% of pay (at representative rate) and 35 years gave the same benefit under RFPS (although RFPS gave individuals the opportunity to carry on building up reckonable service to a total of 40 years).

DISCHARGED ON ATTRIBUTABLE ILL-HEALTH GROUNDS FOR A CONDITION PRE-DATING 6 APRIL 2005

1008. RFPS does not offer separate **attributable** ill-health pensions. For attributable conditions caused by service on or after 6 April 2005 benefits will be considered under the rules of the Armed Forces Compensation Scheme. However, there may be individuals who opted to transfer to RFPS who are subsequently medically discharged as a result of conditions caused before 6 April 2005. In these circumstances, ill-health benefits will be calculated as if they were a member of

AFPS 75 – FTRS. This could involve a top-up payment in line with Reserve Forces Attributable Benefits (RFAB) Scheme. Each case will be considered on the facts. This does not mean that other benefits from RFPS are lost (eg *spouses*, *civil partners* and *eligible partners*’ pensions for life) or that other benefits from AFPS 75 – FTRS are gained (eg the option to commute pension lump sum).

**PROTECTION OF THOSE WHO TRANSFER WHO ALREADY HAVE
A SPOUSE OR CIVIL PARTNER WHO IS MORE THAN 12 YEARS
YOUNGER THAN THEMSELVES**

1009. RFPS contains a rule which reduces the pensions of spouses and civil partners and eligible partners who are more than 12 years younger than the member (para 0419). This is a rule common to most Public Sector Schemes, and in it takes account of the longer time that the pension would be in payment when compared to the life span figures assumed by the actuary for the purposes of assessing the reasonable cost for the Scheme used for the actuarial calculation. Individuals who opt to transfer to RFPS who already have a spouse or civil partner who is more than 12 years younger than themselves will not be subject to this rule. This transitional rule is not extended to existing eligible partners as eligible partners did not qualify for non-attributable pensions under AFPS 75-FTRS. If, however, they *divorce*, the *civil partnership* is dissolved or that spouse or civil partner dies and they form a qualifying relationship with another person who is more than 12 years younger than themselves, they will become subject to the rule. Further, if, for example, a couple divorced and then re-marry each other, the protection of this transitional rule would be lost.