

## The Reserve Forces Non Regular Permanent Staff (Pension and Attributable Benefits Schemes) Regulations 2011

*Made* - - - - - *15th July 2011*

*Laid before Parliament* *15th July 2011*

*Coming into force* - - - *1st September 2011*

The Defence Council in exercise of the powers conferred by sections 4(2) and (3), 6(2) and 8 of the Reserve Forces Act 1996<sup>(a)</sup> make the following Regulations:

### **Citation and commencement**

1. These Regulations may be cited as the Reserve Forces Non Regular Permanent Staff (Pension and Attributable Benefits Schemes) Regulations 2011 and come into force on 1st September 2011.

### **Restatement of the Non Regular Permanent Staff Pension Scheme**

2. The scheme set out in Schedule 1 to these Regulations has effect and is to be known as the Non Regular Permanent Staff Pension Scheme.

### **Restatement of the Non Regular Permanent Staff Attributable Benefits Scheme**

3. The scheme set out in Schedule 2 to these Regulations has effect and is to be known as the Non Regular Permanent Staff Attributable Benefits Scheme.

### **Revocations**

4. The following Parts of Chapter 9 (non regular permanent staff pay, gratuities, pensions allowances and charges) of the Territorial Army Regulations 1978<sup>(b)</sup> are revoked—

- (a) Part 3 (pension scheme); and
- (b) Part 5 (redundancy scheme).

### **Transitionals**

5.—(1) If—

- (a) immediately before the day these Regulations come into force any person was entitled under a provision of the Non Regular Permanent Staff Pension Scheme (revoked by regulation 4(a)) to payment of any benefit to or in respect of service in the non regular permanent staff, and
- (b) but for the commencement of the provisions in Schedule 1 or Schedule 2, would continue to be entitled to such payments under that Scheme,

that person is to be treated as if the entitlement has arisen under the corresponding provisions in Schedule 1 or Schedule 2.

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<sup>(a)</sup> 1996 c. 14.

<sup>(b)</sup> These Regulations are not made as a statutory instrument. The Defence Council made a consolidated version in October 2008 (published as amendment 32) which is available from The Stationery Office.

(2) No accrued pension rights or pension credit rights in respect of service in the non regular permanent staff may, only by virtue of the coming into force of these regulations, be determined to that person's disadvantage.

(3) In this regulation "accrued pension rights", and "pension credit rights" have the same meaning as in section 124 of the Pensions Act 1995<sup>(a)</sup>.

13th July 2011

*Andrew Robathan*  
On behalf of the Defence Council

15th July 2011

*Ursula Brennan*  
On behalf of the Defence Council

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(a) 1995 c. 26.

SCHEDULE 1  
THE NON REGULAR PERMANENT STAFF PENSION SCHEME

PART A  
INTERPRETATION ETC.

**A.1 Interpretation general**

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

(2) In this Scheme, unless the context otherwise requires, the following expressions have the following meanings—

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

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

“active member” means a person who is in pensionable service under the Scheme;

“armed forces” means “the regular forces” and “the reserve forces” as defined in section 374 of the Armed Forces Act 2006(c);

“AFCS 2011” means the scheme set out in the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(d);

“basic pay” has the meaning given in rule A.3(1) and (2);

“the benefits Scheme” means the Non Regular Permanent Staff Attributable Benefits Scheme set out in Schedule 2

“deferred member” means a person other than an active or pensioner member who has previously been in service and who has accrued rights under the Scheme;

“eligible child” has the meaning given in rule D.11;

“final pensionable earnings” has the meaning given in rule A.3(3)(b);

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

(a) as increased in accordance with section 109 of that Act (annual increase of minimum pensions);

(b) as increased under section 15 of that Act (increase of guaranteed minimum where commencement of guaranteed minimum postponed), where that section applies; and

(c) as reduced under section 15A (reduction of guaranteed minimum in consequence of a pension debit) where that section applies;

“immediate bereavement period” means the period of 91 days beginning with the day following the date of a person’s death;

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

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

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(a) 1993 c. 48.

(b) 1999 c. 30.

(c) 2006 c. 52.

(d) S.I. 2011/517.

(e) The definition was substituted by section 239(1) and (3) of the Pensions Act 2004 c. 35.

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

“pension age” means the age of 60;

“pension credit” means a credit under section 29(1)(b) of the 1999 Act or article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(e);

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

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

“pension debit member” means an active, deferred or pensioner member whose benefits or future benefits under the Scheme are subject to a debit under section 29(1)(a) of the 1999 Act or article 26(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, whether the pension sharing order took effect before or after the member became a member;

“pension sharing order” means an order or provision which is mentioned in section 28(1) of the 1999 Act or article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, by virtue of which section 29 of that Act or article 26 of that Order (as the case may be) applies;

“pensionable earnings” has the meaning given in A.3(3)(a);

“pensionable service” has the meaning given by section 70 of the 1993 Act;

“pensioner member” means a person who in respect of a person’s service or by reason of transfer credits, is entitled to present payment of pension;

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

“reckonable service” is to be read in accordance with rule A.2;

“the Scheme” means the Non Regular Permanent Staff Pension Scheme, the rules of which are set out in this Schedule;

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

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

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

“service” means service in the non regular permanent staff in accordance with section 6 of the Reserve Forces Act 1996;

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

## **A.2 Reckonable service**

(1) A member’s reckonable service—

- (a) is the number of years of service served by the member in respect of which that member received pensionable earnings; and
- (b) any period by which the member’s service is increased under rule E.4 (transfer in of reckonable service).

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(a) 1911 c. 28 (1 & 2 Geo 5).

(b) 1920 c. 75 (10 & 11 Geo 5).

(c) 1939 c. 121 (2 & 3 Geo 6).

(d) 1989 c. 6.

(e) S.I. 1999/3147 (N.I. 11).

- (2) Periods of services which are not continuous may be aggregated where the member—
  - (a) was not paid any benefits in respect of the earlier period of service; or
  - (b) has repaid any benefits received.
- (3) The period of reckonable service, or aggregation of periods of reckonable service, is to be determined—
  - (a) as a number of years; and
  - (b) for that purpose, the number of days (if any) in excess of the number of whole years (or, if the period is less than one year, the number of days) is to be divided by 365.25, to four decimal places, and the quotient added to the number of whole years.

### **A.3 Basic pay and pensionable earnings**

- (1) References to a member's basic pay are to—
  - (a) the rate of pay to which a person of the member's rank and at the member's increment level is entitled; and
  - (b) any other amount which the Defence Council have determined is to be treated as basic pay.
- (2) But basic pay does not include—
  - (a) allowances; or
  - (b) additional amounts payable in respect of particular qualifications or duties, the location of service or the conditions in which service is temporarily performed.
- (3) References to—
  - (a) "pensionable earnings" means basic pay and any amount if and to the extent the Defence Council have determined that it is to be treated as pensionable earnings;
  - (b) "final pensionable earnings" means the greatest amount that is the member's total pensionable earnings for whichever period of 12 consecutive months during the last 3 years of reckonable service gives the highest figure.

## **PART B**

### **MEMBERSHIP**

#### **B.1 Eligibility**

- (1) A person is eligible to be an active member if conditions A to C are met.
- (2) Condition A is that the person was—
  - (a) on the day before these Regulations come into force, and
  - (b) has been continuously since that date,a member of the non regular permanent staff.
- (3) For the purpose of paragraph (2), a break of one month or less in the person's membership of the non regular permanent staff does not prevent that membership from being continuous.
- (4) Condition B is that—
  - (a) the person has not opted to cease to be in pensionable service; or
  - (b) having so opted, the person opted (before the day these regulations come into force) to resume pensionable service, and has not again opted to cease to be in such service.
- (5) Condition C is that the person is not in pensionable service under any other occupational pension scheme.

## **B.2 Active membership**

An active member continues to be such a member for as long as they are eligible to be such a member.

## **B.3 Option to cease to be an active member**

- (1) An active member may opt to cease to be such a member.
- (2) The option may only be exercised by notice in writing to the Scheme administrator, in such form as the Scheme administrator may require.
- (3) A member who exercises the option ceases to be an active member—
  - (a) at the end of the calendar month in which the option is exercised; or
  - (b) on such later date as the Defence Council may direct.

## **B.4 Membership in more than one capacity**

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

# **PART C**

## **RETIREMENT BENEFITS**

### *Pensions for members*

## **C.1 Conditions for payment of an annual pension: immediate pension**

(1) An annual pension and lump sum is payable immediately where any of conditions A to C is met.

- (2) Condition A is a member—
  - (a) has completed 2 or more years' reckonable service; and
  - (b) leaves service on or after 6th April 1988—
    - (i) on reaching pension age; or
    - (ii) in circumstances where rule C.6 applies.
- (3) Condition B is a member—
  - (a) had completed 5 or more years' reckonable service; and
  - (b) left service on or before 5th April 1988—
    - (i) on reaching pension age; or

- (ii) in circumstances where rule C.6 applied.
- (4) Condition C is a member—
  - (a) leaves service aged 55 or over;
  - (b) has completed 5 or more years' reckonable service; and
    - (i) has been notified by the Defence Council that they are to be treated as having become redundant, and the Defence Council has approved payment of such benefits; or
    - (ii) has completed a NRPS (05) tenure of appointment.
- (5) In this rule—
  - (a) a "NRPS (05) tenure of appointment" has the same meaning as in paragraph 6.002a(2) of Chapter 6 of the Territorial Army Regulations 1978;
  - (b) a reference to being "treated as having become redundant" includes selection for redundancy as part of a programme for the planned reduction of the armed forces.

### **C.2 Conditions for payment of an annual pension: at pension age**

- (1) An annual pension and lump sum is payable on reaching pension age where condition A or B is met.
- (2) Condition A is a member—
  - (a) has completed 2 or more years' reckonable service; and
  - (b) leaves service on or after 6th April 1988 before reaching pension age.
- (3) Condition B is a member—
  - (a) had completed 5 or more years' reckonable service; and
  - (b) left service on or before 5th April 1988 before reaching pension age.

### **C.3 Amount of annual pension and lump sum**

- (1) The amount of an annual pension and a lump sum is determined as follows.
- (2) Subject to paragraph (3)—
  - (a) the annual pension is 1/80th of the member's final pensionable earnings multiplied by the number of years of reckonable service;
  - (b) the lump sum is 3/80ths of the member's final pensionable earnings multiplied by the number of years of reckonable service.
- (3) The maximum length of reckonable service which may count towards the determination of the benefits is 40 years.

### **C.4 Guaranteed minimum pensions etc.**

- (1) Paragraphs (3) to (6) apply where a member has a guaranteed minimum under section 14 of the 1993 Act in relation to a pension under this Part.
- (2) A member does not have a guaranteed minimum where—
  - (a) the member's service ended before pension age;
  - (b) the member had not completed 2 years' reckonable service; and
  - (c) a contribution equivalent premium was paid by the Defence Council for the purpose of extinguishing the accrued right to a guaranteed minimum.
- (3) Where a member reaches state pension age and—
  - (a) but for this rule no pension would be payable to the member under the Scheme, or
  - (b) the weekly rate of the pension payable would be less than the guaranteed minimum,
 a pension, the weekly rate of which is equal to the guaranteed minimum, is payable to the member for life from the date.

(4) If on reaching state pension age the member is in employment and the member consents, paragraph (3) applies on the cessation of that employment.

(5) If the member continues in employment for a further period of 5 years after reaching state pension age and does not then leave it, paragraph (3) applies at the end of the 5 year period, unless the member consents to a further postponement.

(6) If paragraph (4) or (5) applies, the amount of the guaranteed minimum to which the member is entitled under this rule is increased in accordance with section 15 of the 1993 Act.

(7) Except where paragraph (8) applies, if any other provision of the Scheme is inconsistent with this rule, this rule prevails.

(8) The guaranteed minimum in relation to a pension under the Scheme does not apply if the pension is forfeited in a case where rule F.5(2)(a) (conviction of treason or Official Secrets Acts offences) applies.

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

### **C.5 Modification on account of national insurance benefits**

(1) Subject to paragraph (2), where a member reaches state pension age, the amount of a pension determined under rule C.3(2)(a) is reduced by £1.70 for each year of reckonable service before 1st April 1980, and in proportion for any period of less than a year.

(2) The total reduction under paragraph (1) may not exceed £67.75 a year.

(3) Subject to paragraph (5), a pension is to be reduced in accordance with paragraph (4) if for any period of reckonable service beginning on or after 3rd April 1961 and ending before 6th April 1975, a member was not contracted out of the former state graduated pension scheme.

(4) When the member reaches state pension age the amount of a pension determined under rule C.3(2)(a) is reduced by the amount of pension earned by graduated contributions paid at the following rates—

(a) from 3rd April 1961 to 31st May 1963, 4.25% of earnings between £9 and £15 a week;

(b) from 1st June 1963 to 5th April 1975, 4.25% of earnings between £9 and £18 a week.

(5) The reductions in paragraph (4) do not apply if the amount of that pension is £5.20 a year or less.

#### *Early payment of benefits*

### **C.6 Active members: medical discharge**

(1) An active member is entitled to immediate payment of an annual pension and lump sum under this Part before reaching pension age if—

(a) the member's service is terminated on medical grounds; and

(b) the member has 2 or more years' reckonable service.

(2) For the purpose of determining the amount of the annual pension and lump sum, where the member has 5 or more years' (but less than 19.25 years) reckonable service, that service is enhanced in accordance with paragraph (3).

(3) Subject to paragraph (4), the number of years' enhanced service specified in column (b) of the table in paragraph (6) is the period of enhanced service in relation to the corresponding number of years of actual reckonable service specified in column (a).

(4) The number of years' enhanced service may not be higher than the number of years of actual service that a member would have accrued if the member had remained in service until pension age.

(5) For the purposes of determining actual reckonable service to be enhanced under this rule, no account is to be taken of any transfer value payment made under rule E.3.

(6) The table referred to in paragraph (3) is—



<i>Column (a)</i> <i>Years of actual reckonable service</i>	<i>Column (b)</i> <i>Years of enhanced service</i>
5 but less than 6	10
6 but less than 7	10.5
7 but less than 8	11.25
8 but less than 9	12
9 but less than 10	12.5
10 but less than 11	13.25
11 but less than 12	14
12 but less than 13	14.5
13 but less than 14	15.25
14 but less than 15	16
15 but less than 16	16.5
16 but less than 17	17.25
17 but less than 18	18
18 but less than 19	18.5
19 but less than 19.25	19.25

(7) Where a member's service was terminated on medical grounds on or before 5th April 1988, paragraph (1)(b) has effect as though the reference to "2 or more years" was a reference to "5 or more years".

### **C.7 Early payment of preserved pension in case of ill-health**

(1) A deferred member who has not reached pension age may claim early payment of an annual pension and lump sum under this Part on grounds of ill-health.

(2) A claim under paragraph (1) must be—

- (a) made in writing to the Scheme administrator, in such form as the Scheme administrator may require; and
- (b) supported by evidence from a registered medical practitioner that because of physical or mental impairment the member is, and at least until reaching pension age, will continue to be, incapable of any full-time employment.

(3) If the Defence Council are satisfied of the matters mentioned in paragraph (2), and that the member has ceased to carry on their occupation—

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

(4) If the member dies before the Defence Council have made a determination under paragraph (3)—

- (a) the member's personal representative is not entitled to any pension or lump sum under this rule; but
- (b) the member's personal representative may be paid such sum (not exceeding the aggregate of the arrears of pension, and the lump sum or sums, that would have been payable to the member if the Defence Council had been satisfied as mentioned in paragraph (3)) as the Defence Council may direct.

### *Pension credit members*

### **C.8 Pension credit member's entitlement to pension and lump sum**

(1) A pension credit member is entitled to—

- (a) a pension for life, and

(b) unless the pension debit member is a pensioner member when the order takes effect, a lump sum,  
derived from the member's pension credit rights.

(2) Subject to rule C.9 (early payment with actuarial reduction) the pension and any lump sum become payable—

- (a) when the pension credit member reaches pension benefit age, or
- (b) when the order takes effect,

whichever is the later.

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

(4) If a lump sum is payable under this rule—

- (a) the amount of the lump sum must be 3 times the annual amount of the pension;
- (b) the annual amount of the pension must be such that its value, when aggregated with the lump sum, is equal to the member's pension credit, as calculated in accordance with those regulations.

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

(6) In this rule—

- (a) "the order" means the pension sharing order under which the pension credit member is entitled to the pension credit;
- (b) "pension benefit age" means the age of 60.

### **C.9 Early payment with actuarial reduction**

(1) A pension credit member may opt, before reaching pension benefit age (within the meaning of rule C.8), to receive the pension payable under that rule at an actuarially reduced rate—

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

(2) If a pension credit member exercises the option under paragraph (1)—

- (a) the annual amount of the pension is reduced by such amount as the Defence Council, after consulting the Scheme actuary, may determine; and
- (b) if the member is entitled to a lump sum—
  - (i) the lump sum is payable at the same time as the pension; and
  - (ii) the amount of the lump sum is 3 times the actuarially reduced annual amount of the pension.

(3) But, if a pension credit member exercises the option under paragraph (1), the Defence Council must be reasonably satisfied that the total value of the benefits payable by virtue of paragraph (2) is at least equal to the amount described in regulation 11 of the Pension Sharing (Pension Credit Benefit) Regulations 2000(a) (value of alternatives to pension credit benefit).

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

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(a) S.I. 2000/1054.

## PART D

### DEATH BENEFITS

#### *Interpretation of Part D*

##### **D.1 Interpretation of Part D**

In this Part “notional pension” means the amount of an annual pension to which a member would have been entitled, determined in accordance with rule C.3(2)(a), if the member had qualified for a pension under Part C on the date of death.

#### *Lump sums*

##### **D.2 Lump sum death benefit**

(1) If an active member dies, a death benefit equal to 2 years’ final pensionable earnings may be paid to—

- (a) the person nominated by the deceased;
- (b) in the absence of a valid nomination to the deceased’s personal representatives.

(2) If a deferred member dies before a pension and lump sum become payable, a death benefit equal to the lump sum which would have been payable on the deceased member reaching pension age may be paid to a person specified in paragraph (1)(a) or (b).

(3) If a pension credit member dies before any benefits derived from the pension credit have become payable under rule C.8 or C.9, a death benefit equal to the lump sum which would have been payable on the deceased member reaching pension age may be paid to a person specified in paragraph (1)(a) or (b).

(4) A nomination is not valid at the time of the member’s death if any of the following apply—

- (a) the person nominated was the nominator’s spouse or civil partner at the time the nomination was made but the marriage or civil partnership has come to an end;
- (b) the Defence Council are of the opinion that payment of the death benefit to the person nominated is not reasonably practicable, or is prevented by the operation of the common law rule of forfeiture;
- (c) the person nominated has died;
- (d) the nomination was not by notice in writing in such form as the scheme Administrator may from time to time require;
- (e) the person nominated is the witness on such form.

(5) Where a pension sharing order has been made, then to the extent that the order does not provide for the whole or a proportion of the death benefit to be applied to the benefit of the person named in the order, then the balance of the death benefit may be applied to the person nominated, or in the absence of a valid nomination, to deceased’s personal representatives.

#### *Pensions for an adult dependant*

##### **D.3 Pensions for adult dependants**

(1) This rule applies if any of conditions A to D is met.

(2) Condition A is—

- (a) an active member dies on or after 6th April 1988;
- (b) the member leaves a surviving spouse or civil partner; and
- (c) the member had 2 or more years’ reckonable service.

(3) Condition B is—

- (a) an active member died on or before 5th April 1988;

- (b) the member left a widow; and
  - (c) the member had 5 or more years' reckonable service.
- (4) Condition C is that—
- (a) a deferred or pensioner member dies; and
  - (b) the member leaves a widow.
- (5) Condition D is that—
- (a) a deferred or pensioner member dies;
  - (b) the member was in pensionable service on or after 1st October 1987; and
  - (c) the member leaves a widower or surviving civil partner.
- (6) Subject to rules D.7 and D.8, the surviving spouse or surviving civil partner of a deceased member is entitled to a pension for life.
- (7) Where an active, deferred or pensioner member dies without leaving a surviving spouse or surviving civil partner and—
- (a) a person is entitled to compensation in respect of the death—
    - (i) under the benefits Scheme, by virtue of being a surviving eligible partner of the member within the meaning of that Scheme, or
    - (ii) under the AFCS 2011, by virtue of being a surviving adult dependant of the member within the meaning of that Scheme, and
  - (b) had that person been a surviving spouse or surviving civil partner of that member one of conditions A to D would be met,
- this rule applies as if that condition were met.

#### **D.4 Short term pension for immediate bereavement period: active and pensioner members**

- (1) This rule applies where an active or pensioner member dies.
- (2) A short term pension for the immediate bereavement period is payable to—
- (a) a surviving spouse or civil partner; or
  - (b) where rule D.3(7) applies to a surviving eligible partner or surviving adult dependant.
- (3) The annual amount of the short term pension payable is equal to the annual amount of the deceased member's —
- (a) basic pay, in the case of an active member, or
  - (b) pension, in the case of a pensioner member,
- immediately before the date of death.
- (4) Where an active member had less than 2 years' reckonable service the immediate bereavement period is extended—
- (a) by a further period of 46 days if there is 1 eligible child in the care of a person specified in paragraph (2); or
  - (b) by a further period of 91 days if there are 2 or more eligible children in the care of a person specified in paragraph (2).
- (5) This rule does not apply if the amount of pension payable to the person entitled under rule D.5 or D.6 would be greater apart from this rule.

#### **D.5 Amount of pension: active members**

- (1) This rule applies if—
- (a) a pension is payable under rule D.3; and
  - (b) the member was an active member.

(2) Rule C.6 has effect for determining the enhancement of reckonable service and the calculation of the deceased member's notional pension.

(3) Subject to paragraph (4), the pension payable to a surviving spouse or civil partner is—

(a) 33.3333% of the member's notional pension in respect of reckonable service before 1st April 1973; and

(b) 50% of the member's notional pension in respect of reckonable service on or after 1st April 1973.

(4) The pension commences on the day following—

(a) the immediate bereavement period, where a short term pension is payable under rule D.4; or

(b) the date of the member's death.

#### **D.6 Amount of pension: deferred and pensioner members**

(1) This rule applies if—

(a) a pension is payable under rule D.3; and

(b) the member was a deferred or pensioner member.

(2) Subject to paragraph (3), the pension payable to a spouse or civil partner is—

(a) 33.3333% of the member's notional pension in respect of reckonable service before 1st April 1973; and

(b) 50% of the member's notional pension in respect of reckonable service on or after 1st April 1973.

(3) If the deceased member married or formed a civil partnership after ceasing service, reckonable service before 6th April 1978 is disregarded in determining the amount of the member's pension or notional pension for the purpose of this rule.

(4) The pension commences on the day following—

(a) the immediate bereavement period, where a short term pension is payable under rule D.4; or

(b) the date of the member's death.

#### **D.7 Reduction or withholding of pension: marriage or forming a partnership less than 6 months before death**

(1) The Defence Council may reduce or withhold a pension under rule D.3 where paragraph (2) applies.

(2) This paragraph applies where—

(a) the deceased married or formed a civil partnership less than 6 months before death; or

(b) a pension is payable by virtue of rule D.3(7) and the Defence Council are satisfied that the person was—

(i) a surviving eligible partner (within the meaning of the benefits Scheme), or

(ii) a surviving adult dependant (within the meaning of the AFCS 2011),

for less than 6 months before death.

#### **D.8 Suspension and restoration of pensions**

(1) This rule is subject to rule D.9.

(2) Subject to paragraph (6), a pension under rule D.3 is not payable to surviving spouse or civil partner while paragraphs (3) to (5) apply.

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

(4) This paragraph applies while—

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

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

(6) Paragraphs (3) and (4) do not apply if the surviving spouse or civil partner is entitled under the benefits Scheme or the AFCS 2011 to compensation in respect of the member's death.

#### **D.9 Guaranteed minimum pensions for surviving spouses and civil partners**

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

(2) If—

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

the weekly rate of the pension is to be the guaranteed minimum.

(3) If—

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

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

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

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

#### *Pensions for eligible children*

#### **D.10 Children's pensions**

(1) A pension determined in accordance with this rule is payable to an eligible child on the death of an active, deferred or pensioner member with 2 or more years' reckonable service.

(2) Where an active member dies, rule C.6 has effect for determining the member's notional pension.

(3) Where a pension is payable under rule D.3 (pensions for adult dependants), the pension for an eligible child is—

- (a) 25% of the member's pension or notional pension for each of the first 2 eligible children; or
- (b) where there are more than 2 eligible children, 50% of the amount of the member's pension or notional pension divided by the number of eligible children.

(4) Where no pension is payable under rule D.3, the pension for an eligible child is—

- (a) 33.3333% of the member's pension or notional pension for each of the first 2 eligible children; or
  - (b) where there are more than 2 eligible children, 66.6666% of the amount of the member's pension or notional pension divided by the number of eligible children.
- (5) Subject to paragraph (6), payment of pension is to commence on the applicable date.
- (6) No pension is payable in respect of any period before a child's birth.
- (7) Where a member died on or before 5th April 1988 paragraph (1) has effect as though the reference to "2 or more years" was a reference to "5 or more years".
- (8) In this rule "applicable date" means—
- (a) where a short term pension is payable to a surviving adult dependant under rule D.4, the day after that ceases;
  - (b) the day following the date of the member's death where—
    - (i) sub-paragraph (a) does not apply; or
    - (ii) the Defence Council consider there are circumstances justifying special consideration for doing so.

#### **D.11 Meaning of "eligible child"**

- (1) For the purposes of this part a person is an eligible child in relation to a member if—
- (a) the person has a qualifying relationship to the member (as defined by rules D.12 and D.13); and
  - (b) any of conditions A to D is met.
- (2) Condition A is that the person is aged under 17.
- (3) Condition B is that the person is in full-time secondary education.
- (4) If the person ceased to be in full-time secondary education before reaching the age of 19, for the purposes of condition B the person is in such education until whichever of the following next falls—
- (a) the second Monday in January;
  - (b) the second Monday after Easter Monday;
  - (c) the second Monday in September;
  - (d) the person's 19th birthday;
  - (e) the day on which the person becomes engaged in full-time gainful employment.
- (5) Condition C is that—
- (a) the person is aged under 23;
  - (b) the person is in full-time further or higher education or unpaid full-time vocational training;
  - (c) the period between the last day on which the person was in full-time secondary education and the first day of that further or higher education or vocational training was not more than 15 months; and
  - (d) unless the death occurred after the last day on which condition B was met, the person gave the Scheme administrator notice, on or before that day, of the person's intention to undertake such education or training.
- (6) If the person is in paid vocational training—
- (a) that training may be treated as unpaid for the purposes of paragraph (5)(b); but
  - (b) any pension payable to the person is to be abated to the extent of the person's earnings, after deduction of such amount (if any) as the Scheme administrator considers appropriate to offset any expenditure incurred by the person for the purposes of the training.
- (7) If—

- (a) but for paragraph (5)(c), condition C would be met, and
- (b) the Scheme administrator is satisfied that it was not reasonably practicable for the person to meet the requirement imposed by that sub-paragraph,

condition C may be treated as being met.

(8) A notice given after the last day on which condition B was met may be treated as satisfying paragraph (5)(d) if the Scheme administrator is satisfied that there was good cause for the person's failure to give the notice by that day.

(9) If it appears to the Scheme administrator that condition C is likely to be met, or to be treated by virtue of any of paragraphs (6) to (8) as being met, condition B may be treated as being met at any time between the last day on which it is met and the first day on which condition C is met or treated as met, subject to such conditions as to the meeting of condition C as the Scheme administrator may consider appropriate.

(10) Condition D is that, because of physical or mental impairment—

- (a) the person is, in the opinion of the Scheme administrator, unable to engage in full-time gainful employment; and
- (b) the person was dependent on the member at the date of the death.

#### **D.12 Qualifying relationships: active members**

(1) For the purposes of rule D.11 a person ("the child") has a qualifying relationship to an active member if any of conditions A to C is met.

(2) Condition A is that the child is a child of the member.

(3) Condition B is that—

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

(4) Condition C is that—

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

#### **D.13 Qualifying relationships: deferred and pensioner members**

(1) For the purposes of rule D.11 a person ("the child") has a qualifying relationship to a deferred or pensioner member if any of conditions A to F is met.

(2) Condition A is that—

- (a) the child is a child of the member and the member's spouse or civil partner; and
- (b) the member married or formed the civil partnership, before the member ceased to be in pensionable service.

(3) Condition B is that—

- (a) the child is a natural child of the member; and
- (b) the child was born before, or within nine months after, the member ceased to be in pensionable service.

(4) Condition C is that—

- (a) the child is an adopted child of the member; and
- (b) either—
  - (i) the member adopted the child before ceasing to be in pensionable service; or



- (ii) the child was financially dependent on the member, and in the Scheme administrator's opinion the member intended to adopt the child, before the member ceased to be in pensionable service.
- (5) Condition D is that—
- (a) the child is a natural child of a person who was, during the member's pensionable service, the member's spouse or civil partner;
  - (b) the child was born before, or within 9 months after, the member ceased to be in pensionable service; and
  - (c) the child was financially dependent on the member at the time of the death.
- (6) Condition E is that—
- (a) the child is an adopted child of a person who was, during the member's pensionable service, the member's spouse or civil partner;
  - (b) that person adopted the child during the member's pensionable service; and
  - (c) the child was financially dependent on the member at the time of the death.
- (7) Condition F is that—
- (a) the child is a child of a person who has or had a qualifying relationship to the member;
  - (b) if the child has a living parent, the Defence Council consider that each such parent is unable or unwilling to take responsibility for the child; and
  - (c) the child was financially dependent on the member at the time of the death.

#### **D.14 Payment of children's benefits**

- (1) Subject to paragraph (2), a payment to an eligible child aged less than 18 is to be paid to the child's parent or the person having legal responsibility for the child.
- (2) This paragraph applies if the Defence Council consider that it is in the interests of the child that the payments be made to a person other than a person specified in paragraph (1).
- (3) Where paragraph (2) applies the Defence Council may appoint in writing a person to—
- (a) receive payments on behalf of the child;
  - (b) apply the payments to the benefit of the child.
- (4) Where a person appointed is a natural person, the person must be over the age of 18.
- (5) The Defence Council may, before appointing a person, require that person to give such undertaking as they consider necessary as to the use of the payments.
- (6) Where an appointment has been made the Defence Council may at any time revoke it and either make—
- (a) another appointment; or
  - (b) the payments to the parent or the person having legal responsibility for the child.
- (7) Any payment made in accordance with this rule discharges the Defence Council's obligation to the child in respect of the amount paid.
- (8) Any reference in the Scheme to a pension being payable to the child is to be read subject to this rule.

## PART E

### TRANSFERS

#### **E.1 Transfers out**

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

(2) Unless the Scheme administrator otherwise directs, an application under section 95 of that Act for a transfer value payment to be made under the public sector transfer arrangements may only be made before the first anniversary of the day on which the member becomes eligible to begin pensionable service for the purposes of the scheme to which the transfer is to be made.

(3) A person with less than 2 years' reckonable service who leaves service at least 1 year before pension age may apply for a transfer value payment under this Part.

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

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

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

- (a) determining the factors mentioned in paragraph (5); and
- (b) issuing the guidance and tables mentioned in paragraph (4).

(7) If the amount calculated in accordance with paragraph (4) is less than the aggregate value of any transfer value payments that have been made to the Scheme in respect of the member, the amount of the transfer value payment is to be equal to that value instead.

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

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

## **E.2 Application for transfer in**

(1) Subject to the provisions of this rule, and rules E.3 and E.4, an active member may apply for a transfer value payment, in respect of some or all of the rights that have accrued to or in respect of the member under any scheme or arrangement to which a transfer value payment may be made under Chapter 4 of Part 4 of the 1993 Act, to be accepted by the Scheme.

(2) Paragraph (1) does not apply—

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

(3) This paragraph applies if—

- (a) the applicant is also applying for the Scheme to accept a transfer value payment from a different occupational pension scheme from that by which the relevant payment is payable (“the second scheme”);
- (b) the second scheme relates to the same employment as that to which the scheme by which the relevant payment is payable relates; and
- (c) the transfer value payment payable by the second scheme relates to rights that are or include rights that are not voluntary contribution rights.

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

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

(6) An application under this rule—

- (a) must be made by notice in writing within 12 months of joining the Scheme to the Scheme administrator, on or before the member's 54th birthday; and

- (b) must specify—
  - (i) the scheme or arrangement from which the transfer value payment is to be made; and
  - (ii) the anticipated amount of the payment.

### **E.3 Acceptance of transfer value payment**

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

- (2) The Scheme administrator may not accept the payment if—
  - (a) it would be applied in whole or in part in respect of the member's or the member's spouse's or civil partner's entitlement to a guaranteed minimum pension; and
  - (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the Scheme actuary for the purposes of this paragraph.

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

### **E.4 Calculation of transferred-in reckonable service**

(1) The period of reckonable service that a member is entitled to count under rule E.3(3) is calculated as at the date on which the transfer payment is received by the Scheme, and in accordance with guidance and tables provided by the Scheme actuary for the purpose.

(2) For the purposes of that calculation the member's pensionable earnings are to be taken to be the amount of those earnings as at—

- (a) 2 months after the application under rule E.2 is received, or
- (b) the date on which the transfer value payment is received,

whichever is the later; and, in a case where the transfer value payment is received earlier than 2 months after that application is received, any necessary adjustment is to be made to that calculation to reflect any change in the amount of those earnings.

## **PART F**

### **MISCELLANEOUS AND SUPPLEMENTARY**

#### *Claims and payment*

### **F.1 Claims and payment of benefits**

(1) No benefit becomes payable under the Scheme unless, in addition to any other conditions in relation to payment of that benefit being satisfied, the person to whom it would be payable has declared—

- (a) that they are entitled to it; or
- (b) in the case of a payment to an eligible child under aged 18 that the person on whose behalf it is payable is so entitled.

(2) A declaration under paragraph (1) must be made in writing to the Scheme administrator in such form as the Scheme administrator requires.

(3) Pensions under the Scheme are payable by monthly instalments in arrears.

### **F.2 Information and evidence**

(1) The Defence Council may require any person who is receiving a pension under the Scheme to provide evidence to establish—

- (a) the person's identity; and

(b) their continuing entitlement to payment of any amount.

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

### **F.3 Non-assignability**

(1) Subject to rule D.14 (payments of children's benefits), every benefit to which a person is entitled under the Scheme is payable to or for their benefit.

(2) No benefit is assignable or chargeable with their or any other person's debts.

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

### **F.4 Persons who are incapable of looking after their affairs**

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

(a) use any amount due to the beneficiary under the Scheme for the beneficiary's benefit; or

(b) pay it to some other person to do so.

(2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Defence Council from any obligation under the Scheme in respect of the amount.

### *Forfeiture*

### **F.5 Forfeiture of benefits under Part C**

(1) Where paragraph (2) applies, and subject to paragraph (3), the Defence Council may withhold, to such an extent as they consider appropriate, any benefits payable to a member under Part C.

(2) This paragraph applies to a member who is an active, deferred or pensioner member if the member—

(a) is convicted of treason or of one or more offences under the Official Secrets Acts for which the member has been sentenced—

(i) to a term of imprisonment of at least 10 years; or

(ii) to two or more consecutive terms amounting in the aggregate to at least 10 years;

(b) is convicted of an offence in connection with their pensionable service which the Defence Council consider to have been gravely injurious to the defence, security or other interests of the State; or

(c) has after becoming a member of the Scheme incurred a monetary obligation to the Crown which—

(i) arises out of a criminal, negligent or fraudulent act or omission by the member; or

(ii) arises out of or in connection with service of the member in the armed forces.

(3) Where paragraph (2)(c) applies—

(a) if the amount of the obligation is in dispute, paragraph (1) only applies if the obligation has become enforceable—

(i) under an order of a competent court; or

(ii) in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement by the parties) by the sheriff; and

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(a) 1826 c. 16 (7 Geo 4).

- (b) the benefits withheld must not exceed the amount of the monetary obligation or, if less, the value of the person's entitlement or the accrued right in question (as determined under section 93(2) of the Pensions Act 1995(a)).

(4) Except where paragraph (2)(a) applies, if a person has a guaranteed minimum under section 14 of the 1993 Act in relation to service by reference to which they are entitled to benefits under the Scheme, paragraph (1) applies to so much of the member's pension as exceeds that guaranteed minimum.

#### **F.6 Forfeiture of benefits under Part D**

(1) Where paragraph (2) or (3) applies, and subject to rule F.5(4), the Defence Council may withhold, to such an extent as they consider appropriate, any benefits payable to a person under Part D.

(2) This paragraph applies where—

- (a) benefits payable to member under Part C have been, or were liable to be withheld under rule F.5(2)(a) or (b); and
- (b) the Defence Council are satisfied that the person entitled to benefit under Part D was also guilty (whether as principal or accessory) of—
  - (i) an offence mentioned in rule F.5(2) (a) or (b); or
  - (ii) where rule F.5(2)(a)(ii) applies, two or more of those offences.

(3) This paragraph applies to a person who is convicted—

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

#### **F.7 Procedure, references etc**

(1) If the Defence Council propose to withhold a person's benefits under rule F.5 or F.6, they must notify the person in writing that it is proposed to do so.

(2) Such a notification must give the person information about rights under—

- (a) the arrangements established for the resolution of disputes relating to the Scheme that are in force at the time the notification is given, and
- (b) Part 10 of the 1993 Act (investigations: the Pensions Ombudsman),

in respect of any decision made under rule F.5 or F.6.

(3) If the Defence Council withholds benefits under rule F.5(2)(c) (monetary obligations), the member must be given a certificate showing any amount withheld and the effect of its being withheld on the member's benefits under the Scheme.

#### *Pension Increases*

#### **F.8 Pension increases**

(1) Subject to paragraph (2) and (4), pension payable under this Scheme is to be increased as if it was an official pension eligible to be increased by virtue of an order made under section 59 of the Social Security Pensions Act 1975(b).

(2) In the case of a pension under rule C.7 (early payment of benefits), paragraph (1) applies only in relation to amounts of pension payable on or after the member's 55th birthday, unless paragraph (3) applies.

(3) This paragraph applies where—

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(a) 1995 c. 26.  
(b) 1975 c. 60.

- (a) a member makes an application supported by evidence from a registered medical practitioner that because of physical or mental impairment the member is, and will continue to be, incapable of any full-time employment; and
- (b) the Defence Council direct that paragraph (1) applies in relation to amounts of pension payable in respect of the period beginning with the day on which the application is received.

(4) If the member has a guaranteed minimum under section 14 of the 1993 Act by virtue of service during any period between 6th April 1978 and 5th April 1988, and has reached pension age, paragraph (1) applies only in relation to the amount of the pension after deduction of the guaranteed minimum in respect of that period.

*Supplementary*

**F.9 Determination of questions**

Except as otherwise provided by these Rules, any question arising under the Scheme is to be determined by the Defence Council.

**F.10 False statements etc. about ill-health**

(1) The rule applies to the payment of an award under rule C.6 or C.7 (early payment of benefits).

(2) The Defence Council may cease paying a pension, withhold the whole or part of the pension, or recover any payment made under an award where—

- (a) it subsequently appears to the Defence Council that the member made a false declaration about their health; or
- (b) deliberately suppressed a material fact that was relevant to the award.

**F.11 Reduction of benefits and transfer values where lifetime allowance charge payable**

(1) This rule applies if—

- (a) an event that is a benefit crystallisation event listed in the table in section 216(1) of the Finance Act 2004(a) (“the table”) occurs in relation to a member; and
- (b) the member and the person who is the Scheme administrator for the purposes of section 217 of that Act are jointly and severally liable to the charge in respect of the event.

(2) Where this rule applies—

- (a) the Scheme administrator must pay the tax payable on the event;
- (b) if the event is benefit crystallisation event 8 in the table (transfer to qualifying recognised overseas pension scheme), the amount or value of the sums or assets transferred must be reduced; and
- (c) in the case of any other event, the amount or value of the benefits payable to or in respect of the member must be reduced.

(3) The amount or value of the reduction must be such that, in the opinion of the Scheme actuary, it fully reflects the amount of the tax so paid.

**F.12 Deduction of special lump sum death benefits charge**

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

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(a) 2004 c. 12.

SCHEDULE 2  
THE NON REGULAR PERMANENT STAFF ATTRIBUTABLE  
BENEFITS SCHEME

PART A  
INTERPRETATION ETC

**A.1 Interpretation general**

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

(2) In this Scheme, unless the context otherwise requires, the following expressions have the following meanings—

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

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

“armed forces” means “the regular forces” and “the reserve forces” as defined in section 374 of the Armed Forces Act 2006(b);

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

“eligible child” has the meaning given in rule C.9;

“final pensionable earnings” has the meaning given in rule A.2(1)(b);

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

“long term compensation” means the compensation referred to in rules C.4 and C.8;

“member” means a member or former member of the non regular permanent staff in service on or after 31st March 1973;

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

“the Official Secrets Acts” means the Official Secrets Acts of 1911(d), 1920(e), 1939(f) and 1989(g);

“pensionable earnings” has the meaning given in rule A.2(1)(a);

“the pension Scheme” means the Non Regular Permanent Staff Pension Scheme set out in Schedule 1 to these Regulations;

“personal pension scheme” has the meaning given by section 1(1)(h) of the 1993 Act;

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

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

“the Scheme” means the Non Regular Permanent Staff Attributable Benefits Scheme set out in this Schedule;

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

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(a) 1993 c. 48.

(b) 2006 c. 52.

(c) The definition was substituted by section 239(1) and (3) of the Pensions Act 2004 c. 35.

(d) 1911 c. 28 (1 & 2 Geo 5).

(e) 1920 c. 75 (10 & 11 Geo 5).

(f) 1939 c. 121 (2 & 3 Geo 6).

(g) 1989 c. 6.

(h) The definition was substituted by section 239(1) and (3) of the Pensions Act 2004 c. 35.

“service” means service in the non regular permanent staff in accordance with section 6 of the Reserve Forces Act 1996(a);

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

“surviving adult dependant” has the meaning given in rule C.1(1)(b);

“surviving eligible partner” has the meaning given in rule C.1(2).

## **A.2 Basic pay and pensionable earnings**

(1) References to—

(a) “pensionable earnings” means basic pay and any amount if and to the extent the Defence Council have determined that it is to be treated as pensionable earnings;

(b) “final pensionable earnings” means the greatest amount that is the member’s total pensionable earnings for whichever period of 12 consecutive months during the last 3 years of reckonable service gives the highest figure.

(2) In this rule “basic pay” means—

(a) the rate of pay to which a person of the member’s rank and at the member’s increment level is entitled; and

(b) any other amount which the Defence Council have determined is to be treated as basic pay.

(3) But such references do not include—

(a) allowances; or

(b) additional amounts payable in respect of particular qualifications or duties, the location of service or the conditions in which service is temporarily performed.

## **PART B**

### **BENEFITS PAYABLE TO MEMBERS**

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

(1) Subject to paragraph (2) and rule B.3, a member is entitled to an annual compensation payment and an attributable lump sum as compensation for an injury in accordance with these provisions if—

(a) the member’s service was terminated on medical grounds;

(b) the injury was caused by service in the period starting with 31st March 1973 and ending on 5th April 2005; and

(c) the member’s degree of disablement due to a relevant disabling condition is not less than 20%.

(2) The amount of compensation payable is to be reduced or extinguished in accordance with the following rules—

(a) rule B.9 (other compensation payments);

(b) rule B.10 (misconduct or negligence); and

(c) rule B.11 (further service in armed forces).

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

(1) An injury is a relevant disabling condition if—

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(a) 1996 c. 14.

(b) S.I. 2006/606 as amended by S.I. 2006/1455, 2007/909, 2008/679, 2008/2683, 2009/706, 2010/240 and 2011/235.



- (a) it is the principal invaliding condition; or
- (b) in the case of a termination of service in the period starting on 1st January 2000 and ending on 5th April 2005—
  - (i) it would alone have resulted in the member being unfit for service if another injury had not done so; or
  - (ii) the injury was a result of another injury within sub-paragraph (a) or (b)(i) and which was present at the date of termination.

(2) In this rule “principal invaliding condition” means the injury identified as the main reason for the member’s permanent unfitness for service.

**B.3 Date of injury**

(1) In the case of a disablement which is due to an injury caused by service on or before 31st March 2004, entitlement to benefits is subject only to the member satisfying the conditions in rule B.1(1).

(2) In the case of a disablement which is due to an injury caused by service during the period starting on 1st April 2004 and ending on 5th April 2005 entitlement to benefits is subject to—

- (a) the member satisfying the conditions in rule B.1(1); and
- (b) the Defence Council being satisfied on the balance of probabilities that the relevant disabling condition was attributable to, or significantly aggravated by the member’s service.

**B.4 Relevant degree of disablement**

(1) For the purposes of rules B.1, B.5, B.6 and B.7 the person’s relevant degree of disablement is the degree, expressed as a percentage, determined on—

- (a) an assessment under article 42 of the Service Pensions Order; or
- (b) a revised assessment under that article.

(2) That part of the percentage so determined (if any) as relates to disablement in respect of an injury that is not a relevant disabling condition is to be disregarded for the purposes of the Scheme.

(3) In a case where two or more injuries together cause the disablement leading to the termination of a member’s service on medical grounds they are together treated as a relevant disabling condition for the purposes of this rule.

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

(1) The annual compensation payment is a percentage of final pensionable earnings paid according to the relevant degree of disablement determined in accordance with paragraph (2).

(2) The percentage of final pensionable earnings is the percentage specified in column (b) of the table in paragraph (3) corresponding to the relevant degree of disablement specified in column (a).

(3) The table referred to in paragraph (2) is—

<i>Column (a)</i>	<i>Column (b)</i>
<i>Relevant degree of disablement expressed as a %</i>	<i>Annual compensation payment expressed as a %</i>
100	70
90	65
80	60
70	50
60	45
50	40
40	35

30	30
20	25

(4) The amount of annual compensation determined in accordance with this rule to be reduced (if necessary to nil) by the annual amount of a pension payable under Part C of the pension Scheme.

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

(1) The attributable lump sum (“the lump sum”) payable under rule B.1 is a percentage of final pensionable earnings paid according to the relevant degree of disablement determined in accordance with paragraph (2).

(2) The lump sum is the percentage of final pensionable earnings specified in column (b) of the table in paragraph (3) corresponding to the relevant degree of disablement specified in column (a).

(3) The table referred to in paragraph (2) is—

<i>Column (a)</i>	<i>Column (b)</i>
<i>Relevant degree of Disablement expressed as a %</i>	<i>Lump sum payment expressed as a %</i>
80-100	50
60-79	37.5
40-59	25
20-39	12.5

### **B.7 Changes in the degree of disablement: annual compensation payment and attributable lump sum**

(1) This rule applies if a member’s relevant degree of disablement is revised after the time when it is first determined

(2) The amount of annual compensation payment is to be revised where—

- (a) a member’s relevant degree of disablement increases; or
- (b) subject to paragraph (3), there is a decrease in the member’s relevant degree of disablement to not less than 20%.

(3) Paragraph (2)(b) applies only where the decrease is within 12 months of the date of the termination of the member’s service.

(4) Annual compensation payment is to—

- (a) commence where a person’s relevant degree of disablement increases from less than 20% to 20% or more;
- (b) cease where a person’s relevant degree of disablement decreases to less than 20%.

(5) Where, after a decrease in a person’s relevant degree of disablement to less than 20%, there is subsequently an increase to 20% or more, annual compensation payment is to re-commence.

(6) Any revision to the amount of annual compensation payment (including commencing, re-commencing and ceasing payment) takes effect on the day following the day of the revised assessment of relevant degree of disablement.

(7) The amount of attributable lump sum is to be revised where—

- (a) a person has been awarded an attributable lump sum; and
- (b) the relevant degree of disablement increases.

(8) The revised amount of annual compensation payment and attributable lump sum is determined in accordance with Rule B.8.

### **B.8 Determination of revised annual compensation payment and attributable lump sum**

(1) This rule applies where the amount of annual compensation payment or attributable lump sum is revised under rule B.7.

(2) The amount of annual compensation payment or attributable lump sum is determined in accordance with rule B.5 or B6 (as the case may be), where the references to final pensionable earnings are read as references to relevant earnings.

(3) Where a member's attributable lump sum is increased any amount already paid by way of an attributable lump sum is to be deducted from any additional lump sum which is payable.

(4) In this rule "relevant earnings" means the person's final pensionable earnings up-rated for inflation in accordance with rule D.8.

### **B.9 Reduction of amount of compensation payment to take account other compensation payments**

(1) To prevent double recovery in relation to the same heads of damage, where damages have been or will be recovered by a person in respect of a relevant disabling condition for which an annual compensation payment is payable—

- (a) those damages are to be taken into account against that person's annual compensation payment which might otherwise be payable; and
- (b) any such payment is to be withheld or reduced accordingly.

(2) For the purposes of this rule damages may include any payments received as a result of a claim in respect of the injury for which an annual compensation payment is payable.

(3) Paragraph (2) applies whether or not the payment is made in pursuance of a judgment or order of the court of any jurisdiction by way of settlement or compromise of the claim, and whether or not proceedings are instituted to enforce the claim.

(4) A person to whom compensation is paid is treated as having recovered damages, and the compensation paid is treated as damages recovered where it is paid—

- (a) under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995(a);
- (b) under the Criminal Injuries Compensation Scheme established the Criminal Injuries (Compensation) (Northern Ireland) Order 2002(b); or
- (c) under the scheme established by the Ministry of Defence for the purposes of paying compensation to members of the armed forces who suffer injury as a result of a crime committed outside the United Kingdom,

### **B.10 Reduction of the amount of compensation payment in cases of misconduct or negligence**

The Defence Council may withhold all or part of a person's annual compensation payment if they are satisfied the relevant disabling condition was due wholly, or in part, to the member's misconduct, negligence or any other matter within their control.

### **B.11 Persons giving further service in the armed forces**

(1) Where a member gives further service in the armed forces annual compensation payment is not payable for the duration of that service.

(2) Paragraph (1) applies only if during the period of further service the person is eligible to be a member of an occupational pension scheme for the armed forces.

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(a) 1995 c. 53.

(b) S.I. 2002/796 (N.I. 1).

## PART C

### DEATH BENEFITS

#### *Interpretation and application of Part C*

#### **C.1 Interpretation and application of Part C**

(1) In this Part—

- (a) “relevant earnings” means the deceased member’s final pensionable earnings, and in the case of a member who dies after leaving service, up-rated for inflation in accordance with rule D.8.
- (b) “surviving adult dependant” means—
  - (i) a surviving spouse or surviving civil partner; or
  - (ii) a surviving eligible partner.

(2) A person is a surviving eligible partner of a deceased person if at the time of the deceased member’s death that person satisfies the Defence Council that—

- (a) the person and the deceased were cohabiting as partners in a substantial and exclusive relationship;
- (b) the deceased leaves no surviving spouse or civil partner;
- (c) the person and the deceased were not prevented from marrying or forming a civil partnership; and
- (d) either the person was financially dependent on the deceased or the person and the deceased were financially interdependent.

#### *Benefits payable to a surviving adult dependant*

#### **C.2 Entitlement to compensation payments and lump sum in case of a member’s death**

(1) A surviving adult dependant is entitled to—

- (a) a survivor’s attributable lump sum, and
- (b) long term compensation for life

if condition A and any of conditions B to E apply.

(2) Condition A is that—

- (a) it has been accepted for the purpose Part 3 of the Service Pensions Order that the death was attributable to or hastened by—
  - (i) an injury which was attributable to the deceased’s service; or
  - (ii) the aggravation by such service of an injury which existed or arose during service;
- (b) the service referred to in sub-paragraph (a) was service in the period starting with 31st March 1973 and ending on 5th April 2005; and
- (c) the Defence Council accepts on the balance of probabilities that the death was attributable to or hastened by the deceased’s service.

(3) Where a member dies leaving a surviving eligible partner but the condition in paragraph (2)(a) is not met the Defence Council may award a surviving eligible partner the benefits referred to in paragraph (1) where the other conditions in paragraph (2) are fulfilled.

(4) Condition B is that—

- (a) the deceased person was male;
- (b) was in service on or after 31st March 1973;
- (c) married before ceasing service; and
- (d) died leaving a widow.

- (5) Condition C is that—
  - (a) the deceased person was male;
  - (b) was in service on or after 6th April 1978;
  - (c) married after leaving service; and
  - (d) died leaving a widow.
- (6) Condition D is that the deceased person—
  - (a) was in service on or after 1st October 1987; and
  - (b) died leaving a widow, widower or surviving civil partner.
- (7) Condition E is that the deceased person—
  - (a) was in service on or after 5th December 2005; and
  - (b) died leaving a surviving eligible partner.
- (8) Long term compensation may be reduced or extinguished under—
  - (a) rule C.5 (marriage or partnership formed less than 6 months before death);
  - (b) rule C.6 (re-marriage); and
  - (c) rule C.13 (other compensation payments, negligence or misconduct).

### **C.3 Amount of a surviving adult dependant’s attributable lump sum**

The amount of the survivor’s attributable lump sum payable to a surviving adult dependant is a sum equal to 3 months’ relevant earnings.

### **C.4 Amount of long term compensation**

(1) Subject to paragraph (2) and rule C.2(8), the amount long term compensation payable to a surviving adult dependant (“the dependant”) is  $A - (B - C)$  where—

- (a) “A” is 45% of the deceased’s relevant earnings;
- (b) “B” is the amount of a pension payable to a surviving spouse or civil partner determined in accordance with article 23 of the Service Pensions Order, whether or not the dependant is in receipt of that amount; and
- (c) “C” is the amount of basic pension whether or not the dependant is in receipt of that amount.

(2) The amount of long term compensation is to be reduced (if necessary to nil) by the annual amount of a pension payable to the dependant under rule D.3 or D.4 of the pension Scheme in respect of the same deceased person.

(3) The payment of long term compensation commences on the applicable date.

(4) In this rule—

- (a) “the amount of basic pension” means the amount of Category A retirement pension the weekly rate of which is specified in section 44(4) of the Social Security Contributions and Benefits Act 1992(a);
- (b) “applicable date” means—
  - (i) where the dependant is in receipt of a short term pension under rule D.4 of the pension Scheme, the day after that ceases; or
  - (ii) the day following the date of the member’s death where—
    - (aa) paragraph (i) does not apply; or
    - (bb) the Defence Council consider there are circumstances justifying special consideration for doing so.

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(a) 1992 c. 4; section 44(4) was substituted by section 68 of the Social Security Act 1998 c. 14.

### **C.5 Reduction where marriage or partnership formed less than 6 months before death**

The Defence Council may reduce or withhold long term compensation if—

- (a) the deceased married or formed a civil partnership less than 6 months before death; or
- (b) in the case of a surviving eligible partner, the person satisfied the criteria in rule C.1(2) for less than 6 months before the deceased's death.

### **C.6 Cessation and restoration on re-marriage**

(1) A surviving spouse is not entitled to long term compensation if before 31st October 2000 that person—

- (a) remarried; or
- (b) in the opinion of the Defence Council started living with a person of the opposite sex as husband and wife.

(2) The surviving spouse may make a claim for the long term compensation to be restored where on or after 31st October 2000—

- (a) the marriage is dissolved;
- (b) the parties to the marriage are legally separated;
- (c) the husband or wife of the surviving spouse dies; or
- (d) the surviving spouse has ceased living with a person of the opposite sex as husband and wife.

(3) Where a person makes a claim under paragraph (2), and the Defence Council determine that long term compensation should be restored, long term compensation is payable from the applicable date.

(4) In this rule “the applicable date” is—

- (a) where paragraph (2)(a), (b) or (c) apply and the claim is made within 3 months of the date of the dissolution, legal separation or death, that date; or
- (b) in all other circumstances, the date of claim.

### *Benefits payable for eligible children*

### **C.7 Entitlement to a child's compensation**

(1) Subject to paragraphs (2) and (3), a person who is an eligible child (as defined rule C.9) in relation to a deceased member is entitled to child's compensation for that member's death where—

- (a) it has been accepted for the purpose of Part 3 of the Service Pensions Order that the death was attributable to or hastened by—
  - (i) an injury which was attributable to the deceased's service; or
  - (ii) the aggravation by such service of an injury which existed or arose during such service;
- (b) the service referred to in sub-paragraph (a) was service in the period starting with 31st March 1973 and ending on 5th April 2005; and
- (c) the Defence Council accept that on the balance of probabilities that the death was attributable to or hastened by the deceased's service.

(2) The level of a child's compensation may be reduced or extinguished under rule C.13 (other compensation payments, negligence or misconduct).

### **C.8 Amount of long term compensation payable to an eligible child**

(1) Subject to paragraph (4) and rule C.7(2), the long term compensation payable to an eligible child is the amount determined in accordance with paragraph (2) or (3), as is applicable to the case.

(2) The amount referred to in paragraph (1) is—

- (a) where a surviving adult dependant is entitled to long term compensation under rule C.4—
  - (i) 10% of the deceased's relevant earnings in respect of each of the first 4 eligible children; or
  - (ii) 40% of the deceased's relevant earnings divided by the number of eligible children, where there are more than 4 eligible children.
- (b) where no long term compensation is payable to a surviving adult dependant under rule C.4, the amount referred to in paragraph (1) is—
- (c) 20% of the deceased's relevant earnings in respect of each of the first 4 eligible children; or
- (d) 80% of the deceased's relevant earnings divided by the number of eligible children, where there are more than 4 eligible children.

(3) The amount of long term compensation is to be reduced (if necessary to nil) by the annual amount of a pension payable to the eligible child under rule D.10 of the pension Scheme in respect of the same deceased person.

(4) Subject to paragraph (5), the payment of long term compensation commences on the applicable date.

(5) No pension is payable in respect of any period before a child's birth.

(6) In this rule "applicable date" means—

- (a) where a short term pension is payable to a surviving adult dependant under rule D.4 of the pension Scheme, the day after that ceases; or
- (b) the day following the date of the member's death where—
  - (i) sub-paragraph (a) does not apply; or
  - (ii) the Defence Council considers there are circumstances justifying special consideration for doing so.

### **C.9 Meaning of "eligible child"**

(1) For the purposes of this Part a person is an eligible child in relation to a deceased person if—

- (a) the person has a qualifying relationship to the deceased (as defined by rule C.10 or C.11); and
- (b) any of conditions A to D is met.

(2) Condition A is that the person is aged under 17.

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

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

- (a) the second Monday in January;
- (b) the second Monday after Easter Monday;
- (c) the second Monday in September;
- (d) the person's 19th birthday;
- (e) the day on which the person becomes engaged in full-time gainful employment.

(5) Condition C is that—

- (a) the person is aged under 23;

- (b) the person is in full-time further or higher education or unpaid full-time vocational training;
  - (c) the period between the last day on which the person was in full-time secondary education and the first day of that further or higher education or vocational training was not more than 15 months; and
  - (d) unless the death occurred after the last day on which condition B was met, the person gave the Scheme administrator notice, on or before that day, of the person's intention to undertake such education or training.
- (6) If the person is in paid vocational training—
- (a) that training may be treated as unpaid for the purposes of paragraph (5)(b); but
  - (b) any compensation payable to the person is to be abated to the extent of the person's earnings, after deduction of such amount (if any) as the Scheme administrator considers appropriate to offset any expenditure incurred by the person for the purposes of the training.
- (7) If—
- (a) but for paragraph (5)(c), condition C would be met, and
  - (b) the Scheme administrator is satisfied that it was not reasonably practicable for the person to meet the requirement imposed by that sub-paragraph,

condition C may be treated as being met.

(8) A notice given after the last day on which condition B was met may be treated as satisfying paragraph (5)(d) if the Scheme administrator is satisfied that there was good cause for the person's failure to give the notice by that day.

(9) If it appears to the Scheme administrator that condition C is likely to be met, or to be treated by virtue of any of paragraphs (6) to (8) as being met, condition B may be treated as being met at any time between the last day on which it is met and the first day on which condition C is met or treated as met, subject to such conditions as to the meeting of condition C as the Scheme administrator may consider appropriate.

(10) Condition D is that, because of physical or mental impairment—

- (a) the person is, in the opinion of the Scheme administrator, unable to engage in full-time gainful employment; and
- (b) the person was dependent on the deceased at the date of the death.

### **C.10 Qualifying relationships: death in service**

(1) For the purposes of rule C.9 a person ("the child") has a qualifying relationship to a member who dies in service if any of conditions A to C is met.

(2) Condition A is that the child is a child of the member.

(3) Condition B is that—

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

(4) Condition C is that—

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



### **C.11 Qualifying relationships: death after leaving service**

(1) For the purposes of rule C.9 a person (“the child”) has a qualifying relationship to a deceased person who dies after leaving service if any of conditions A to F is met.

(2) Condition A is that—

- (a) the child is a child of the deceased and the deceased’s spouse or civil partner; and
- (b) the marriage took place, or the civil partnership formed, before the deceased ceased to be in service.

(3) Condition B is that—

- (a) the child is a natural child of the deceased; and
- (b) the child was born before, or within 9 months after, the deceased ceased to be in service.

(4) Condition C is that—

- (a) the child is an adopted child of the deceased; and
- (b) either—
  - (i) the deceased adopted the child before ceasing to be in service; or
  - (ii) the child was financially dependent on the deceased, and in the Scheme administrator’s opinion the deceased intended to adopt the child, before the member ceased to be in service.

(5) Condition D is that—

- (a) the child is a natural child of a person who was, during the deceased’s service, the deceased’s spouse or civil partner;
- (b) the child was born before, or within 9 months after, the deceased ceased to be in service; and
- (c) the child was financially dependent on the deceased at the time of the death.

(6) Condition E is that—

- (a) the child is an adopted child of a person who was, during the deceased’s service, the deceased’s spouse or civil partner;
- (b) that person adopted the child during the deceased’s service; and
- (c) the child was financially dependent on the deceased at the time of the death.

(7) Condition F is that—

- (a) the child is a child of a person who has or had a qualifying relationship to the deceased;
- (b) if the child has a living parent, the Defence Council consider that each such parent is unable or unwilling to take responsibility for the child; and
- (c) the child was financially dependent on the deceased at the time of the death.

### **C.12 Payment of children’s benefits**

(1) Subject to paragraph (2), a compensation payment to an eligible child aged less than 18 is to be paid to the child’s parent or the person having legal responsibility for the child.

(2) The paragraph applies if the Defence Council consider that it is in the interests of the child that the payments be made that a person other than a person specified in paragraph (1).

(3) Where paragraph (2) applies the Defence Council may in writing appoint a person to—

- (a) receive payments on behalf of the child;
- (b) apply the payments to the benefit of the child.

(4) Where a person appointed is a natural person, the person must be over the age of 18.

(5) The Defence Council may, before appointing a person, require that person to give such undertaking as they consider necessary as to the use of the payments.

(6) Where an appointment has been made the Defence Council may at any time revoke it and either make—

- (a) another appointment; or
- (b) the payments to the parent or the person having legal responsibility for the child.

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

(8) Any reference in the Scheme to payments being payable to the child is to be read subject to this rule.

#### *Reduction and restoration*

#### **C.13 Reduction to take account of other compensation payments, negligence or misconduct**

Rules B.9 (reduction for other compensation payments) and B.10 (reduction for negligence and misconduct) have effect as though references to—

- (a) a relevant disabling condition were references to a death; and
- (b) an annual compensation payment were references to long term compensation payable under this Part.

#### **C.14 Restoration of long term compensation**

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

## PART D

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Claims and payments*

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

(1) No compensation becomes payable under the Scheme unless, in addition to any other conditions in relation to that compensation being satisfied, the person to whom it would be payable—

- (a) has declared that they are entitled to it; or
- (b) in the case of a payment to an eligible child under aged 18 that the person on whose behalf it is payable is so entitled.

(2) A declaration under paragraph (1)—

- (a) must be made in writing in such form as the Scheme administrator requires; and
- (b) must be submitted to the Scheme administrator.

(3) Compensation under the Scheme is payable by monthly instalments in arrears.

(4) If a surviving adult dependant dies before establishing a claim to a compensation payment no compensation is payable to the deceased's personal representative except where the Defence Council considers there are exceptional circumstances.

#### **D.2 Information and evidence**

(1) The Defence Council may require any person who is receiving a compensation payment under this Scheme to provide evidence to establish—

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

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

### **D.3 Non-assignability**

(1) Subject to rule C.12 (payment of children's benefits) every benefit to which a person is entitled under the Scheme is payable to or for their benefit.

(2) No such benefit is assignable or chargeable with that person's or any other person's debts.

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

### **D.4 Persons who are incapable of looking after their affairs**

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

- (a) use any amount due to the beneficiary under the Scheme for the beneficiary's benefit; or
- (b) pay it to some other person to do so.

(2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Defence Council from any obligation under the Scheme in respect of the amount.

### *Forfeiture*

### **D.5 Forfeiture of benefits under Part B**

(1) Where paragraph (2) applies and subject to paragraph (3), the Defence Council may withhold, to such an extent as they consider appropriate, any benefits payable to a member under Part B.

(2) This paragraph applies if a member—

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

(3) Where paragraph (2)(c) applies—

- (a) if the amount of the obligation is in dispute, paragraph (1) only applies if the obligation has become enforceable—
  - (i) under an order of a competent court; or
  - (ii) in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement by the parties) by the sheriff; and
- (b) the benefits withheld must not exceed the amount of the monetary obligation or, if less, the value of the person's entitlement or the accrued right in question (as determined under section 93(2) of the Pensions Act 1995(a)).

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(a) 1826 c. 16 (7 Geo 4).

#### **D.6 Forfeiture of benefits under Part C**

(1) Where paragraph (2) or (3) applies, the Defence Council may withhold, to such an extent as they consider appropriate, any benefits payable to a person under Part C.

(2) This paragraph applies where—

- (a) benefits payable to member under Part B have been, or where liable to be withheld under rule D.5(2)(a) or (b); and
- (b) the Defence Council are satisfied that the person entitled to benefit under Part C was also guilty (whether as principal or accessory) of—
  - (i) an offence mentioned in rule D.5(2)(a) or (b); or
  - (ii) where rule D.5(2)(a)(ii) applies, two or more of those offences.

(3) This paragraph applies to a person who is convicted—

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

#### **D.7 Procedure, references etc**

(1) If the Defence Council propose to withhold a person's compensation payment under rule D.5 or D.6 they must notify the person in writing of this proposal.

(2) Such a notification must give the person information about rights under—

- (a) the arrangements established by the Defence Council for the resolution of disputes relating to the Scheme that are in force at the time the notification is given; and
- (b) Part 10 of the 1993 Act (investigations: the Pensions Ombudsman), in respect of any decision made under rule D.5.

(3) If the Defence Council withhold compensation benefits under rule D.5(2)(c) (monetary obligations), the person must be given a certificate showing any amount withheld and the effect of its being withheld on the member's benefits under this Scheme.

#### *Increases*

#### **D.8 Compensation payment increases**

(1) The compensation specified in paragraph (2) is to be increased as if it was an official pension eligible to be increased by virtue of an order made under section 59 of the Social Security Pensions Act 1975**(b)**.

(2) The compensation referred to in paragraph (1) is—

- (a) annual compensation payable to a member under Rule B.5; and
- (b) long term compensation payable in respect of the death of a member under Rule C.4 (payment to surviving adult dependant) and C.8 (payment to an eligible child).

(3) Where in the definition of relevant earnings in rules B.8(4) and C.1(1)(a), the final pensionable earnings of a person is to be up-rated for inflation, the earnings are to be increased as if they were a pension eligible to be increased under the Pensions (Increase) Act 1971**(c)**.

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(a) 1995 c. 26.  
(b) 1975 c. 60.  
(c) 1971 c. 56.

*Supplementary*

**D.9 Determination of questions**

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