

## Reserve Forces (Full Time Reserve Service Pension Scheme 1997) (Amendment) Regulations 2012

The Defence Council makes the following Regulations in exercise of the powers conferred by sections 4(2) to (4) and 8(1) and (3) of the Reserve Forces Act 1996<sup>(a)</sup>—

### **Citation and commencement**

1. These Regulations may be cited as the Reserve Forces (Full Time Reserve Service Pension Scheme 1997) (Amendment) Regulations 2012 and come into force on 7th December 2012.

### **Amendment of the rules of the Reserve Forces (Full Time Reserve Service Pension Scheme 1997) Regulations 2010**

2. The rules of the Full Time Reserve Service Pension Scheme 1997 set out in the Reserve Forces (Full Time Reserve Service Pension Scheme 1997) Regulations 2010<sup>(b)</sup> are amended as follows.

#### **Amendment of A.1 (interpretation: general)**

3. In rule A.1(2) insert in the appropriate place—

““the Armed Forces and Reserve Forces Compensation Scheme 2011” (“AFCS 2011”) means the compensation scheme as set out in the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>(c)</sup>.”.

#### **Amendment of C.1 (leaving service on or after reaching pension age)**

4. After rule C.1(6) insert—

“(7) Where a member has service on or after 6th April 2006, the member may opt to receive immediate payment of the pension and lump sum in respect of that service, on or after reaching the age of 60 at an actuarially reduced rate.

(8) Where a member has exercised the option under paragraph (7) the amount of the annual pension and lump sum to which the member is entitled is first calculated in accordance with paragraph (3) or (5) and then that amount is reduced by such amount as the Defence Council may determine after consulting the Scheme actuary.”.

#### **Amendment of C.2 (leaving before reaching pension benefit age)**

5. After rule C.2(6) insert—

“(7) Where a member has service on or after 6th April 2006, the member may opt to receive immediate payment of the pension and lump sum in respect of that service, on or after reaching the age of 60 at an actuarially reduced rate.

(8) Where a member has exercised the option under paragraph (7) the amount of the annual pension and lump sum to which the member is entitled is first calculated in

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(a) 1996 c. 14.

(b) This instrument is not a statutory instrument and a copy of the Regulations can be obtained from [www.mod.uk](http://www.mod.uk).

(c) S.I 2011/517 as amended by 2011/1240, 2011/2552 and 2012/1573.

accordance with paragraph (4) or (5) and then that amount is reduced by such amount as the Defence Council may determine after consulting the Scheme actuary.”.

**Amendment of C.3 (pension sharing orders and credit members’ pensions)**

6.—(1) For rule C.3(3) substitute—

“(3) The pension and any lump sum become payable—

- (a) immediately on the pension credit member reaching pension benefit age; or
- (b) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect.”.

(2) In rule C.3(6) omit “was made before 6th April 2009 and that order”.

(3) After rule C.3(9) insert—

“(10) If a pension credit member exercises the option under rule C.3(6), the Defence Council must be reasonably satisfied that the total value of the benefits payable by virtue of its exercise is at least equal to the amount described in regulation 11 of the Pensions Sharing (Pension Credit Benefit) Regulations 2000(a) (value of alternatives to pension credit benefit).”.

**Amendment of Part D (death benefits)**

7. For Part D substitute—

“PART D

Death Benefits

*Pensions for eligible surviving spouses and civil partners*

**D.1 Surviving spouse or civil partner’s pension**

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

(2) Condition A is that—

- (a) an active member dies; and
- (b) the member leaves a surviving spouse or civil partner.

(3) Condition B is that—

- (a) a deferred or pensioner member dies; and
- (b) the member leaves a surviving spouse or civil partner.

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

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

(6) Paragraphs (4) and (5) are subject to paragraph (7).

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

(8) Rule D(7) is subject to rule D.17 (guaranteed minimum pensions for surviving spouses and civil partners).

(9) Where—

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(a) S.I. 2000/1054 to which amendments have been made which are not relevant to these Regulations.

- (a) an active, deferred or pensioner member dies,
- (b) a person is entitled to compensation in respect of the death under AFCS 2011, by virtue of being a surviving adult dependant of the member within the meaning of that Scheme, and
- (c) had the person been the member's surviving spouse or the member's surviving civil partner, one of the conditions A or B would be met,

this rule applies as if that condition were met.

(10) Where this rule applies by virtue of paragraph (9)—

- (a) references in this rule to the surviving spouse or civil partner are to the person mentioned in paragraph (9)(b); and
- (b) in paragraph (7) and rule D.3(4) references to the time when the marriage was solemnized, or the civil partnership formed, are to the earliest time at which that person would have been the member's surviving eligible partner or surviving adult dependant (as the case may be) if the member had died at that time.

(11) In this rule “the immediate bereavement period” means—

- (a) if, on the last day of the period of 13 weeks beginning with the day after the date of the death, any person entitled to a pension under rule D.7 (child's pensions) is living in the same household as the surviving spouse or civil partner, the period of 26 weeks beginning with the day after the date of the death;
- (b) otherwise, the period of 13 weeks beginning with the day after the date of the death.

**D.2 Amount of surviving spouse or civil partner's long-term pension: active member**

(1) This rule applies if—

- (a) a pension is payable under rule D.1(5); and
- (b) the member was an active member.

(2) The annual amount of the pension is—

- (a) where rule C.4 (early payment of benefits: active members' ill-health) would have applied if the member had ceased pensionable service on the date of the death (otherwise than by reason of the death), half of the annual amount of the pension that would have been payable to the member under that rule;
- (b) where rule C.2 (leaving before reaching pension benefit age) would in those circumstances have applied, half of the aggregate of the annual amounts of the pensions that would have been payable to the member under that rule.

(3) This rule is subject to rule D.17 (guaranteed minimum pensions for surviving spouses and civil partners).

**D.3 Amount of surviving spouse or civil partner's long-term pension: deferred or pensioner member**

(1) This rule applies if—

- (a) a pension is payable under rule D.1(5);
- (b) the member was a deferred or pensioner member.

(2) The annual amount of the pension is half of the member's pension amount.

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

(4) This rule is subject to paragraph (5).

(5) If—

(a) a pension under rule C.1 (leaving service on or after reaching pension age) was payable to the member, and

(b) its annual amount would have been increased under rule C.9,

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

(6) This rule is subject to rule D.17 (guaranteed minimum pensions for surviving spouses and civil partners).

#### **D.4 Amount of surviving spouse or civil partner's short-term pension**

(1) This rule applies if a pension is payable to a person ("the surviving partner") under rule D.1(4).

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

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

(a) the annual amount of the pension in payment to the member; and

(b) the aggregate of the annual amounts of the pensions that would be payable in respect of the member to—

(i) the surviving partner, under rule D.1(5), and

(ii) any person or persons living in the same household as the surviving partner, under D.7(5),

if those pensions were payable from the day after the date of death.

#### *Suspension and reduction of pensions*

#### **D.5 Suspension of pension on marriage etc**

(1) If, but for this rule, a pension would be payable to a member's surviving spouse or civil partner under rule D.1 and the surviving spouse or civil partner is not entitled under AFCS 2011 to compensation in respect of the member's death, the pension is not payable while any of paragraphs (2) to (4) apply.

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

(3) This paragraph applies while the surviving spouse or civil partner and another person are living together as if they were partners in marriage or civil partners.

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

(5) This rule is subject to rule D.17 (guaranteed minimum pensions for surviving spouses and civil partners).

#### **D.6 [Blank]**

#### *Pensions for eligible children*

#### **D.7 Child's pensions**

(1) This rule applies if—

(a) an active, deferred or pensioner member dies; and

- (b) a person (“the child”) is an eligible child in relation to the member (as defined by rule D.8).
- (2) The child is entitled to a short-term pension if—
- (a) the member was an active or pensioner member;
  - (b) the child is not living in the same household as any person entitled to a pension under rule D.1 in respect of the member; and
  - (c) the relevant date falls within the immediate bereavement period.
- (3) A child who until ceasing full-time secondary education was living in the same household as a person is to be treated for the purposes of paragraph (2)(b) as still in the same household as that person.
- (4) A short-term pension under paragraph (2) is payable from the relevant date until—
- (a) the last day of the immediate bereavement period, or
  - (b) the last day on which the child is an eligible child,
- whichever is the earlier.
- (5) The child is entitled to a pension, payable for as long as the child is an eligible child.
- (6) The pension under paragraph (5) is payable—
- (a) if paragraph (2) applies, from the day after the last day of the immediate bereavement period;
  - (b) if paragraph (2) would apply but for the condition in sub-paragraph (b) of that paragraph not being met, from the day after the last day of the period of 26 weeks beginning with the day after the date of death;
  - (c) if—
    - (i) the member was a deferred member, or
    - (ii) the relevant date falls after the end of the immediate bereavement period, from the relevant date.
- (7) If the child ceases to be an eligible child and becomes an eligible child again, a pension under this rule is payable in respect of (but only of) every period during which the child is an eligible child.
- (8) In this rule—
- “the relevant date” means the latest of—
- (a) the day after the date of the death;
  - (b) the day on which the child is born; and
  - (c) the first day on which the child is an eligible child;
- “the immediate bereavement period” means—
- (d) if, on the date of the death, the child is living in the same household as another person entitled to a pension under this rule, the period of 26 weeks beginning with the day after that date;
  - (e) otherwise, the period of 13 weeks beginning with the day after the date of the death.
- (9) This rule is subject to rule D.9 (amount of child’s pensions under rule D.7).

**D.8 Meaning of “eligible child”**

- (1) For the purposes of rule D.7 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 rule D.8A and D.8B); 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 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 (6)(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 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.8A Qualifying relationships: active members**

(1) For the purposes of rule D.8 a person ("the child") has a qualifying relationship to an active member if any of conditions A to C is met.

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

(3) Condition B is that—

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

**D.8B Qualifying relationships: deferred and pensioner members**

(1) For the purposes of rule D.8 a person (“the child”) has a qualifying relationship to a deferred or pensioner member if any of conditions A to F is met.

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

### **D.9 Amount of child's pensions under rule D.7**

(1) This rule applies for determining the annual amount of a pension payable under rule D.7 (child's pensions).

(2) If a pension is payable under rule D.1 and any child entitled to a pension under rule D.7 is in the care of a parent or step-parent, and one or two pensions are payable at that time under rule D.7, the annual amount of the pension payable under rule D.7 is equal to one quarter of the member's notional pension amount.

(3) If a pension is payable under rule D.1 or any child entitled to a pension under rule D.7 is in the care of a parent or step-parent, and three or more pensions are payable at that time under rule D.7, the annual amount of each pension payable under rule D.7 is equal to half of the member's notional pension amount divided by the number of pensions payable under that rule.

(4) If no pension is payable under rule D.1 and no child entitled to a pension under rule D.7 is in the care of a parent or step-parent, and one, two or three pensions are payable at that time under rule D.7, the annual amount of each pension payable under rule D.7 is equal to one third of the member's notional pension amount.

(5) If no pension is payable under rule D.1 and no child entitled to a pension under rule D.7 is in the care of a parent or step-parent, and four or more pensions are payable at that time under rule D.7, the annual amount of each pension payable under rule D.7 is equal to the member's notional pension amount divided by the number of pensions payable under that rule.

(6) If—

- (a) a pension is payable under rule D.7 in respect of a child,
- (b) the annual amount of the pension is calculated under this rule on the basis that a pension is payable under rule D.1 immediately after the date of the member's death or that at least one child entitled to a pension under rule D.7 is in the care of a parent or step-parent, and
- (c) that basis ceases to apply,

the annual amount of the pension payable under rule D.7 in respect of the child shall be recalculated and replaced by the new amount from the date the basis ceased to apply.

(7) For the purposes of this rule—

“the member's notional pension amount” in relation to an active member means the amount of the annual pension to which the member would have been entitled under rule C.1 if the member had qualified for a pension under that rule on the date of death, but—

- (a) if the member had less than five years reckonable service, the notional pension is calculated as if 5 years reckonable service had been given; and
- (b) if at the time of death more than one period of service had been given, the notional pension amount is calculated as if all the periods of reckonable service had been served as one continuous period ending with the date of death, unless this is to the disadvantage of a child.

### **D.10 Increased pension under rule D.7 for the immediate bereavement period**

(1) The increased pension payable under rule D.7 to an eligible child for the immediate bereavement period where—

- (a) the member was an active member or pensioner member at the date of death,
- (b) the child is not in the care of an eligible surviving spouse or civil partner, and
- (c) no pension is payable under rule D.1,

is to be calculated in accordance with paragraph (2).

(2) The pension payable for the immediate bereavement period shall be increased—



- (a) in the case of a member who was an active member, to an annual amount of the deceased member's basic pay; or
  - (b) in the case of a member who was a pensioner member, to an annual amount of the deceased member's pension (ignoring commutation).
- (3) The increased pension payable under paragraph (2) shall be divided equally among all eligible children.
- (4) In this rule "immediate bereavement period" means—
- (a) where there is one eligible child, the period of 91 days beginning with the day following the date of the member's death; and
  - (b) where there is more than one eligible child, the period of 182 days beginning with the day following the date of the member's death.

#### **D.11 Provisional awards of child's pensions: later adjustments**

(1) This rule applies where after the death of an active member, a deferred member or a pensioner member—

- (a) a pension is paid in respect of one or more persons under this Part on the basis that they were eligible children at the date of the member's death and that there were then no other eligible children; and
- (b) subsequently it appears—
  - (i) that a person in respect of whom such a pension has been paid was not then an eligible child; or
  - (ii) that a further person was then an eligible child; or
  - (iii) that a child who was born after a member's death is an eligible child.

(2) Where the conditions in paragraph (1) apply the Defence Council may make such adjustments in the amount of the pension payable in respect of the child or children in question as are required in view of the facts as they subsequently appear.

(3) Paragraph (2) does not affect the Defence Council's right to recover a payment or overpayment in any case where he considers it appropriate to do so.

#### **D.11A Payment of child's benefits**

(1) This rule applies if a pension is (or, but for this rule, would be) payable to a person ("the child") under rule D.7.

(2) If the child is aged under 18, the pension, and any lump sum payable to the child under rule D.12, must be paid to such person as the Defence Council may direct.

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

- (a) if the child is living in the same household as a person to whom a pension is payable under this Part in respect of the member, to that person;
- (b) otherwise, to a person with parental responsibility for the child within the meaning of—
  - (i) the Children Act 1989(a);
  - (ii) the Children (Northern Ireland) Order 1995(b); or
  - (iii) section 1(3) of the Children (Scotland) Act 1995(c).

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

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

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

(b) otherwise, to the relevant person.

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

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

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

*Lump sum death benefits*

**D.12 Lump sum benefit: active, deferred and pensioner members**

(1) This rule applies on the death of—

- (a) an active member;
- (b) a deferred member who was in pensionable service; or
- (c) a pensioner member, if—
  - (i) the member’s pension was payable under rule C.1 (leaving service on or after reaching pension age); and
  - (ii) the death occurs within the period of one year beginning with the day after the member’s last day of pensionable service.

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

- (a) to any person entitled to a pension under rule D.1 in respect of the member;
- (b) if there is no person within sub-paragraph (a), to any person entitled to a pension under rule D.7 in respect of the member;
- (c) if there is no person within sub-paragraph (a) or (b), to the member’s personal representative.

(3) If the Defence Council pays a lump sum to a person entitled to a pension under rule D.7 in respect of the member, it must also pay a lump sum to any other person who is, or who subsequently becomes, so entitled (including a child born after the death).

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

**D.12A Payment of lump sums**

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

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

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

**D.13 Amount of lump sum benefit under rule D.12**

(1) The amount of the lump sum payable under rule D.12 is equal to the appropriate amount for the member, multiplied by three.

(2) In paragraph (1) “the appropriate amount”, is the amount of the pension the member would have been entitled to under rule C.4 if the member had ceased service due to ill-health.

(3) In the case of a pension credit member, the amount of the lump sum payable under rule D.12 is equal to the amount of pension that would have been due to the member but for the death calculated in accordance with rule C.3 multiplied by three, less the aggregate of any pension that was paid to the member before the death.

#### **D.14 Pension credit members**

(1) In the case of a pension credit member who—

- (a) dies before any benefits derived from the pension credit have become payable, and
- (b) had the member not died, would have been entitled to a pension and a lump sum under rules D.1 and D.12,

the amount of the lump sum payable under rule D.12 is the amount of the annual pension that would have been payable under that rule if that pension had become payable to the member on the date of death, multiplied by three.

(2) In the case of a pension credit member who—

- (a) dies after the pension under rule D.1 has become payable, and
- (b) did not receive the lump sum under rule D.12,

the amount of the lump sum payable under rule D.12 is the amount of the annual pension on the date it was put into payment, multiplied by three, less any amount already paid to the member as pension.

#### **D.15 Pension debit members**

(1) This rule applies where the deceased member was a pension debit member.

(2) If the member was an active member—

- (a) the amount of pension payable under rule D.1 (surviving spouse or civil partner’s pension) is first calculated under rule D.2 as if the member were not a pension debit member, and then it is reduced in the same proportion as the member’s notional pension amount would have been reduced under section 31 of the 1999 Act<sup>(a)</sup> if the member had been entitled to it on the date of death,
- (b) the amount payable under rule D.7 (child’s pensions)—
  - (i) is first calculated as if the member were not a pension debit member (in particular, in determining the member’s notional pension amount); and
  - (ii) is then subject to any reduction required under section 31 of the 1999 Act; and
- (c) the lump sum payable under rule D.12 (lump sum benefit: active, deferred and pensioner members) is calculated under rule D.13.

(3) If the member was a deferred member or a pensioner member—

- (a) the amount of the pension payable under rule D.3 is calculated by reference to the amount of the pension to which the member would have been entitled after any reduction under section 31 of the 1999 Act; and
- (b) the amount payable under rule D.7—
  - (i) is first calculated as if the member were not a pension debit member (in particular, in determining the member’s notional pension amount); and
  - (ii) is then subject to any reduction required under section 31 of the 1999 Act.

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(a) The Welfare Reform and Pensions Act 1999 c.30.

(4) In this rule the “member’s notional pension amount” has the same meaning as in rule D.9(7).

**D.16 Pensions: suspension and recovery**

(1) This rule applies where—

- (a) on a member’s death a pension has been awarded and paid under this Part; and
- (b) subsequently it appears to the Defence Council that the member or the person to whom the pension has been paid made a false declaration or deliberately suppressed a material fact in connection with the award.

(2) The Defence Council may—

- (a) cease paying the pension; and
- (b) recover any payment made under the award.

(3) Paragraph (2) does not affect the Defence Council’s right to recover a payment or overpayment in any case where it is considered appropriate to do so.

**D.17 Guaranteed minimum pensions for surviving spouses and civil partners**

(1) This rule applies where the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum pension under section 17 of the 1993 Act(a) in relation to benefits in respect of the deceased member under the Scheme.

(2) If apart from this rule—

- (a) no pension would be payable to the surviving spouse or civil partner under this Part—
  - (i) for any period for which that section provides that the Scheme must provide for such a pension to be payable, or
  - (ii) in any circumstances in which it must so provide by virtue of that section, or
- (b) the weekly rate of the pension payable would be less than the guaranteed minimum,

a pension, the weekly rate of which is equal to the guaranteed minimum, is payable to the surviving spouse or civil partner.”.

**Amendment of H.3 (non-assignability)**

8. For rule H.3(1) substitute—

“(1) Subject to rule D.11A (payments of child’s benefits), every benefit to which a person is entitled under the Scheme is payable to or for his benefit.”.

On behalf of the Defence Council

Date

*Name*

Member of the Defence Council

*Name*

Member of the Defence Council

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(a) The Pension Schemes Act 1993 c.48.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the rules of the Full Time Reserve Service Pension Scheme 1997 (“the Scheme”). This amendment to the Scheme is in order to make the Scheme rules consistent with those in the Armed Forces Pension Scheme 1975 (“AFPS 1975”).

Part C, rule C.1 (leaving service on or after reaching pension age) is amended to provide a new rule to enable actuarial reduction of a pension for service on or after 6 April 2006 which otherwise would not be paid until the age of 65. The actuarial reduction is to be calculated with reference to the Scheme actuary. Rule C.2 (leaving before reaching pension benefit age) is amended to enable actuarial reduction of a pension on or after 6 April 2006 at the age of 60 which otherwise would not be paid until the age of 65. The actuarial reduction is to be calculated with reference to the Scheme actuary. Rule C.3 (pension sharing orders and credit members’ pensions) is amended to provide that the pension and lump sum become payable immediately on the pension credit member reaching pension benefit age (65) or when the pension sharing order under which the member is entitled to the pension credit takes effect, if this is later. A pension credit member may opt for early payment of a pension and lump sum on reaching pension age (55) but on actuarially reduced terms.

These changes are necessary to comply with section 101C of the Pensions Schemes Act 1993, Schedule 5 paragraph 5(b) of the Welfare Reform and Pensions Act 1999 and the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053) which concern the calculation of the value of rights for a pension credit member.

Part D, rule D.1 (surviving spouse or civil partner’s pension) is amended to provide that, where a member of the FTRS died in service as a result of an attributable injury and leaves an eligible partner, the eligible partner is to be treated as if they were a spouse or civil partner and is to receive equivalent pension for life, lump sum payment, and exemption from suspension. Rules D.2 and D.3 are amended to make the rules consistent with the amended rule D.1. Rule D.4 sets the amount of short-term pension payable to an eligible partner. Rule D.5 now makes provision for surviving adult dependants to be paid a pension for life where death was attributable to service, including an eligible partner where a survivor’s guaranteed income payment under AFCS 2011 award has been paid. Rule D.6 is left intentionally blank.

Rule D.7 (child’s pensions) is amended to provide for the circumstances when an eligible child’s pension is to be paid. Rule D.8 defines the meaning of ‘eligible child’. A new rule D.8A (qualifying relationships: active members) is introduced which sets out the criteria for qualifying relationships to active members, and a new rule D.8B (qualifying relationships: deferred and pensioner members) is introduced which sets out the criteria for qualifying relationships to deferred and pensioner members. Rule D.10 (increased pension under rule D.7 for the immediate bereavement period) increases the immediate bereavement period from 18 days to 182 days (the ‘18’ was a typographical error). A new rule D.11A (payment of child’s benefits) provides for the method and manner by which a child’s payments are to be made. Rule D.12 is amended to include provision for deferred and pensioner members lump sum benefits. A new rule D.12A (payment of lump sums) provides that payment of lump sum death benefit must take place within two years of the date the Scheme administrator first knew of the death. The changes to rules D.7 onwards are required in order for the Scheme to comply with the Finance Act 2004. The remaining rules within Part D are unchanged. Rule H.3 (non-assignability) is amended to reflect the new title in rule D.11A (payments of child’s benefits).