

## CHAPTER 41

# FAMILY PENSIONS AND GRATUITIES TO SURVIVING SPOUSES, SURVIVING CIVIL PARTNERS, SURVIVING ELIGIBLE PARTNERS AND CHILDREN OF OFFICERS AND AIRMEN

The pension guidance enclosed in the 5<sup>th</sup> Edition (1999) of Queen's Regulations (RAF) which relate to Armed Forces Pension Scheme 1975 (AFPS 75) remain extant for RAF Service personnel who left the Service prior to 6 April 10. RAF Service personnel still serving after 6 April 10 should refer to the appropriate RAF document found in the Tri-Service Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme Prerogative Instruments 2010. This document may be found in the Intranet Publications library

<http://defenceintranet.diif.r.mil.uk/Personnel/Military/Remuneration/Pages/PensionsfortheArmedForces.aspx>

### SECTION 1 - FAMILY PENSIONS AND GRATUITIES - GENERAL CONDITIONS

#### 3064. Applicability of Regulations.

*Sponsor: SPP(Pens)*

(1) The family pensions and gratuities under this chapter apply in respect of the deaths of officers and airmen to whom, on the date of their death, Chapters 38 or 39 applied in accordance with Sections 11 and 8 of those Chapters respectively. The attributable short term family pensions under Section 3, the attributable long-term family pensions under Section 5 and the attributable gratuities under Section 6 also apply in respect of the death of an officer or airman who had opted out of the pension arrangements under Chapters 38 or 39 at the time of his death. Except where otherwise stated therefore, these regulations apply to the families of officers and airmen who die:

- (a) While serving on full-pay and who would have been eligible to receive retired pay or service pension had they been invalided at date of death.
- (b) While receiving half-pay, retired pay or service pension.
- (c) Before payment of a preserved pension to which they were entitled at pension benefit age (vide Section 6) and also to the families of those who, while serving, are reported missing presumed killed (or the presumption of death is extremely strong) and before the issue of a death certificate.

(2) Except as provided for in para 3064(2a), female officers and airwomen in respect of whose death a pension and/or gratuity is awarded under the terms of this chapter must, unless otherwise stated, have given service on or after 1 October 1987.

- (a) Officers of either sex and airmen/airwomen in respect of whose death a pension and/or gratuity is awarded under the terms of this chapter by virtue of a civil partnership must, unless otherwise stated, have given service on or after 1<sup>st</sup> October 1987.
- (b) A surviving eligible partner of an officer or airmen/airwomen who gave service on or after 5 December 2005 may be awarded a pension or gratuity under Section 3, 5 or 7 of this chapter, as appropriate, provided they satisfy the conditions at para **3069A**.

(3) The Veterans Agency is defined in para **2927**.

(4) For the avoidance of doubt, no attributable short term pension under paragraph 3085(2) or attributable long term family pension under Section 5 is payable to the surviving spouse or surviving civil partner or child of a deceased officer or airman where that survivor is entitled to the payment of benefit under the Armed Forces Compensation Scheme (established under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (c.32)) in respect of the same officer's or airman's death.

**3065. Awards of Pension.**

*Sponsor: SPP(Pens)*

- (1) Except as provided for in para **3066**, a pension cannot be claimed as a right nor will it be granted unless, in the opinion of the Defence Council, the service given by the deceased has been such as to justify the award.
- (2) If the death of an officer or airman was due wholly or in part to his own negligence or misconduct or to any cause within his own control, the award and amount of any family pension payable will be at the discretion of the Defence Council.
- (3) Pension benefits otherwise payable to a surviving spouse, surviving civil partner or dependant of an officer or airman shall be forfeited if that person is convicted of the offence of murder or manslaughter of that officer or airman or any other offence of which the unlawful killing of that officer or airman is an element.
- (4) Where an officer or airman gave full pay service on or after 31 March 1984 and suffered an abatement of retired pay or pension (including preserved pension) for grave misconduct, any family pension and associated gratuity will, unless the spouse, or civil partner was also party to the offence, be determined by reference to the unabated rate of retired pay or pension for his rank.
- (5) Where a male officer or airman gave full pay service prior to 31 March 1984 and his retired pay or pension was abated or forfeited for reasons of misconduct or inefficiency the award of any family pension will be at the discretion of the Defence Council. However, for those who served after 30 March 1975 with an entitlement to preserved benefits see para **3095**.
- (6) Any pension which might otherwise have been granted under this chapter may be withheld or reduced in amount if the applicant is eligible also for another pension or allowance from public funds on account of the services of the deceased.
- (7) Where an officer has suffered an abatement of retired pay as a consequence of re-employment in the public services or elsewhere, any family pension and associated gratuity will be determined by reference to the rate of retired pay that would have been in payment but for the abatement.

**3066. Guaranteed Minimum Pension.**

*Sponsor: SPP(Pens)*

Under the Social Security (Contributions and Benefits) Act 1992, state pensions are in two parts; first, a basic, flat rate pension; secondly, an additional earnings related pension which will build up until retirement. The Armed Forces Pension Scheme has “contracted out” of the state earnings related pension. As a consequence any benefits granted to surviving spouses or surviving civil partners under Sections 4 and 5 of this chapter must not be less than a specific proportion of the deceased officer or airmen guaranteed minimum pension (GMP) as calculated under Section 13 of the Pension Schemes Act 1993. Further details are set out in **Appendix 45**.

**3067. Date of Commencement of Pension.**

*Sponsor: SPP(Pens)*

- (1) The date of commencement of pension will be determined according to the circumstances of the case and will normally, if application is not unduly delayed, be the date following the Service spouse’s or civil partner’s death or the date following the cessation of his/her retired pay or pension (if this is later).
- (2) Where Temporary Allowance for surviving spouse or surviving civil partner has been awarded by Veterans Agency for the first 26 weeks following death because of the spouse’s or civil partner’s severe disability the pension will normally commence on the day following cessation of this allowance. A supplement may be paid where necessary to ensure that the temporary allowance during the first 26 weeks is no less than her pension income would otherwise have been.
- (3) This paragraph is subject to the rule (3) on the commencement date of attributable long term family pensions set out in paragraph 3089A.

**3068. Establishment of Claim.**

*Sponsor: SPP(Pens)*

If a claim is not established before the death of the person to whom it might have been made, arrears of pension

will not, save in exceptional circumstances, be allowed to his or her estate.

**3069. Conditions Relating to Marriage or Civil Partnership.**

*Sponsor: SPP(Pens)*

- (1) A surviving spouse or surviving civil partner who was married to or had formed a civil partnership with the deceased before his or her retirement or discharge, or before the completion of any further service leading to re-assessed retired pay or pension, may be awarded a pension under Section 2, 3, 4, 5 or 6 as appropriate.
- (2) A surviving spouse or surviving civil partner who married or formed a civil partnership with the deceased after his or her retirement or discharge may be awarded a short term pension under Section 3, if appropriate, and a long term pension under Section 4, 5 or 6 assessed only on the deceased spouse's or civil partner's service given from the 6 April 1978.
- (3) No addition will however be payable in respect of any child of a post retirement marriage or post-retirement civil partnership.
- (4) The Defence Council may, in the light of the circumstances of the case, withhold, or reduce the amount of, any award otherwise admissible if the death of the officer or airman occurs:
  - (a) on or before 5 April 2005 and within a year of his marriage; or
  - (b) on or after 6 April 2005 and within six months of (as the case may be) his or her marriage, the formation of a civil partnership or the beginning of a relationship with an eligible partner.

**3069A. Conditions Relating to Surviving Eligible Partners.**

*Sponsor: SPP(Pens)*

A person is to be regarded as a surviving eligible partner of an officer or airman if the officer or airman leaves no surviving spouse or surviving civil partner and if, but only if, the person satisfies the Defence Council that at the time of the officer or airman's death:

- (a) their relationship was exclusive, committed and long-term;
- (b) their relationship was substantial;
- (c) they were not prevented from (as the case may be) marrying or forming a civil partnership; and
- (d) either the partner was financially dependent on the officer or airman or they were financially interdependent.

**3069B. Living Together as Husband and Wife.**

*Sponsor: SPP(Pens)*

Two persons of the opposite sex are to be regarded as living together as if they were husband and wife if the Defence Council considers that they have a substantial relationship. The Defence Council will take into account whether:

- (a) they are members of the same household;
- (b) their relationship is established and publicly acknowledged; and
- (c) they are financially interdependent.

**3069C. Living Together as Civil Partners.**

*Sponsor: SPP(Pens)*

Two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were instead of two people of the opposite sex.

**3070. Effect of Separation.**

*Sponsor: SPP(Pens)*

A surviving spouse's or surviving civil partner's pension is payable only to a person to whom a service man or woman was married or with whom the service man or woman had formed a civil partnership at the time of his or her death. Consequently, benefits are not paid to divorced husbands or wives or former civil partners. For Armed Forces Pension Scheme purposes, only death, the granting of a decree absolute or the granting of a

decree of nullity ends a marriage and only death, dissolution or the granting of a decree of nullity ends a civil partnership; neither separation (legal or otherwise) nor the issue of a decree nisi are regarded as bringing the marriage to an end and separation (legal or otherwise) is not regarded as bringing the civil partnership to an end. Under these circumstances, benefits would continue to be due from the scheme.

**3071. The Formation of a Subsequent Marriage or Civil Partnership.**

*Sponsor: SPP(Pens)*

Subject to para 3071A a family pension awarded under the Section will continue in payment until the surviving spouse or surviving civil partner's death except that:

(1) where a male officer or airman retired, was discharged or died in service before 6 April 1978 and his widow:

- (a) forms a subsequent marriage;
- (b) lives together with a man, to whom she is not married, as if they were husband and wife;
- (c) forms a subsequent civil partnership; or
- (d) lives together with a woman, with whom she has not formed a civil partnership, as if they were civil partners;

the pension will not be payable thereafter;

(2) where a female officer or airwoman retired, was discharged or died in service before 6 April 1989 and her widower:

- (a) forms a subsequent marriage;
- (b) lives together with a woman, to whom he is not married, as if they were husband and wife;
- (c) forms a subsequent civil partnership; or
- (d) lives together with a man, with whom he has not formed a civil partnership, as if they were civil partners;

the pension will not be payable thereafter;

(3) where an officer of either sex, airman or airwomen retired or died in service before 6 April 1989 and their surviving civil partner:

- (a) forms a subsequent marriage;
- (b) lives together with a person of the opposite sex to whom they are not married as if they were husband and wife;
- (c) forms a subsequent civil partnership; or
- (d) lives together with a person of the same sex, with whom they have not formed a civil partnership, as if they were civil partners;

the pension will not be payable thereafter;

(4) where the officer or airman retired, was discharged or died in service on or after 6 April 1978 (male personnel, except as provided for in sub-para (5)) or on or after 6 April 1989 (female personnel, except as provided for in sub-para (5)) and their surviving spouse:

- (a) forms a subsequent
  - (i) marriage; or
  - (ii) (as the case may be) a civil partnership;

the pension will cease to be paid;

- (b) before reaching state pension age, lives together with a person of the
  - (i) opposite sex to whom they are not married as if they were husband and wife; or
  - (ii) same sex, with whom they have not formed a civil partnership, as if they were civil partners;
 the pension will cease to be paid; or
- (c) after reaching state pension age, lives together with a person of the
  - (i) opposite sex to whom they are not married as if they were husband and wife; or
  - (ii) same sex, with whom they have not formed a civil partnership, as if they were civil partners;
 any pension will thereafter be restricted to the surviving spouse's guaranteed minimum pension applicable to service before 6<sup>th</sup> April 1997;

(5) where an officer of either sex, airman or airwomen was discharged or died in service on or after 6 April 1989 and their surviving civil partner:

- (a) forms
  - (i) a marriage; or
  - (ii) (as the case may be) a subsequent civil partnership;
 the pension will cease to be paid;
- (b) before reaching state pension age, lives together with a person of the
  - (i) opposite sex to whom they are not married as if they were husband and wife; or
  - (ii) same sex, with whom they have not formed a civil partnership, as if they were civil partners;
 the pension will cease to be paid; or
- (c) after reaching state pension age, lives together with a person of the
  - (i) opposite sex to whom they are not married as if they were husband and wife; or
  - (ii) same sex, with whom they have not formed a civil partnership, as if they were civil partners;
 any pension will thereafter be restricted to the surviving civil partner's guaranteed minimum pension applicable to service before 6<sup>th</sup> April 1997

Sub-paragraphs 1(c), 1(d), 2(c), 2(d), 3(c), 3(d), 4(a)(ii), 4(b)(ii), 4(c)(ii), 5(a)(ii), 5(b)(ii) and 5(c)(ii) do not apply where the scheme member dies on or before 4<sup>th</sup> December 2005.

**3071A. Family Pension on subsequent Marriage or Formation of a Civil Partnership.**

*Sponsor: SPP(Pens)*

Sub-paras (1), (2), (3), (4) and (5) of para 3071 shall not apply to a surviving spouse or surviving civil partner in receipt of an attributable family pension awarded under Section 5 of this Chapter who:

- (1) on or after 31 October 2000, forms a subsequent marriage;
- (2) on or after 31 October 2000, forms a subsequent civil partnership;
- (3) on or after 31 October 2000, lives together with a person of the opposite sex, to whom they are not married, as if they were husband and wife; or
- (4) on or after 5 December 2005, lives together with a person of the same sex, with whom they have not formed a civil partnership, as if they were civil partners.

**3072. Restoration of pension.**

*Sponsor: SPP(Pens)*

- (1) This paragraph applies where a pension ceases to be paid, or is restricted, in accordance with para **3071**.
- (2) Where, in the case of a surviving spouse or surviving civil partner who forms a subsequent marriage or civil partnership, the marriage or civil partnership is terminated or the parties are judicially separated or obtain a separation order in respect of their civil partnership, any attributable long-term family pension payable to the surviving spouse or surviving civil partner shall be restored as follows:
  - (a) Where the claim for restoration is received within 3 months of the date of termination or the date of dissolution or the date on which the separation took place, from that date: or
  - (b) in any other case, from the date on which the claim for restoration is made.

For the purposes of this paragraph, references to termination of marriage or dissolution of a civil partnership and judicial separation shall be construed in accordance with Section 168 of the Pensions Act 1995.

- (3) Where the Defence Council are satisfied that a surviving spouse or surviving civil partner has ceased to live with a partner as a spouse or civil partner, any attributable long-term family pension payable to the surviving spouse or surviving civil partner shall be restored from the date on which the claim for restoration is made
- (4) Notwithstanding the provisions of para **3071**, the Defence Council may restore any family pension under this Chapter where it appears to them that there are compassionate grounds for doing so.
- (5) Where in any case to which this paragraph applies, the surviving spouse or surviving civil partner qualifies for more than one pension in respect of the service in any of Her Majesty's Armed Forces of a deceased spouse or deceased civil partner, that person shall only be entitled to be paid one pension, being the pension which appears to the Defence Council to be the most beneficial.

**3073. Childrens Pensions - Eligibility.**

*Sponsor: SPP(Pens)*

- (1) A "child" for the purpose of the award of a pension under this Section means:
  - (a) A legitimate child of the officer or airman provided that the child's other parent fulfilled the conditions relating to marriage contained in para **3069**.
  - (b) A step-child of the officer or airman who was mainly dependent on him or her at the time of death, provided that the child's other parent fulfilled the conditions relating to marriage, civil partnership or eligible partners contained in para **3069** and **3069A**.
  - (c) A child adopted by the officer or airman or by his spouse or civil partner, before retirement or discharge (or, if he subsequently gave further service in circumstances rendering him eligible for re-assessment of retired pay or service pension, before the termination of such further service) who was mainly dependent upon him at the time of death, and provided that the child's other parent by adoption fulfilled the conditions relating to marriage, civil partnership contained in paras **3069** and **3069A**.
  - (d) A child mainly dependent upon the officer or airman before his retirement or discharge (or, if he subsequently gave further service in circumstances rendering him eligible for re-assessment of retired pay or service pension, before the termination of such further service) who was adopted by the officer or airman or by his or her spouse, civil partner or eligible partner, after retirement or discharge (or after the termination of such further service), provided that the Defence Council are satisfied that the officer or airman had formed the intention before retirement or discharge (or before the termination of such further service) of adopting the child, and that the child was mainly dependent upon him at the time of death, and provided that the child's other parent by adoption fulfilled the conditions relating to marriage, civil partnership or eligible partners contained in paras **3069** and **3069A**.
  - (e) An illegitimate child of the officer or airman or of his spouse, civil partner or eligible

partner, born before or within 9 months of retirement or discharge (or, if he subsequently gave further service in circumstances rendering him or her eligible for re-assessment of retired pay or service pension, before the termination of such further service) and who was or would have been mainly dependent upon him at the time of death, and provided that, where the child is the illegitimate child of the spouse, civil partner or eligible partner, the latter fulfilled the conditions relating to marriage, civil partnership or eligible partners contained in paras **3069** and **3069A**.

(f) A child of the officer or airman, born no later than 12 months after the death of the officer or Airman, who would have been mainly dependent on him but for his death.

(2) In cases where a child could become eligible for multiple pensions (derived from one or more parents, step-parents, adoptive parents and/or guardians) the child's entitlement will be limited to the best two pensions.

**3074. Childrens Pensions - Payment.**

*Sponsor: SPP(Pens)*

Children's pensions will be payable to the surviving spouse, surviving civil partner or eligible partner or parent, parent of the child, or other person responsible for the child's maintenance, or to the child direct, as may be decided by the Defence Council.

**3075. Childrens Pensions - Cessation of Award.**

*Sponsor: SPP(Pens)*

(1) A child's pension will normally cease when the child attains the age of 17 years, except where the father was an officer or warrant officer who retired or was discharged before 31 March 1973 when payment will normally cease at the age of 18 years. However, it may be awarded or continued after these ages in the following circumstances:

(a) if the child continues to receive full-time education: or

(b) if the child is undertaking full-time training and not receiving more than nominal wages, or

(c) if, before attaining the age referred to above, the child was, and continues to be, afflicted by mental or bodily infirmity and is thereby incapable of earning his or her own living, provided that the Defence Council considers that the circumstances are such as to justify the award.

(d) Payment of child's forces family pension may be awarded or restored in respect of those students continuing in higher education who take a break of not more than one academic year between the conclusion of secondary school education and returning to pursue a full-time course in higher education or training, provided that the intention to do so had been stated in advance. In restoration cases, payment of the pension would be suspended at the end of secondary education and restoration would occur only on receipt of satisfactory evidence of return to higher education or training. Award or restoration of the pension to payment would date from the first official day in higher education or training.

(e) In any case where the child's pension ceases or is restricted under this para it may be restored in such circumstances and for such period as may be determined at the discretion of the Defence Council.

(2) An otherwise eligible child may continue to receive a pension even though he or she marries, forms a civil partnership or lives together with a person of the opposite sex as if they were husband and wife or with a person of the same sex as if they were civil partners.

**3076. Withholding or Diversion of Pension.**

*Sponsor: SPP(Pens)*

In exceptional circumstances the Defence Council may withhold any pension or divert the whole or part thereof for purposes deemed to be in the interest of the pensioner or his or her family.

**3077. Effect of Commutation.**

*Sponsor: SPP(Pens)*

Commutation of retired pay or pension shall not debar a surviving spouse, surviving civil partner or children,

otherwise eligible under the provision of this Section, from receiving an award of a long term family pension, nor shall any such pension be reduced or abated on that account unless there was service after 6 April 1978 and the marriage or civil partnership took place after the commutation.

**3078. Definition of half pay, Retired Pay or Pension.**

*Sponsor: SPP(Pens)*

(1) For the purpose of the following sections, the rate of half pay, retired pay or pension will be the rate in payment to the deceased at the date of his or her death excluding any attributable supplement, or if death occurs during service on full pay, the award which would have been made under the provisions of para **2938**(2) or **3023**(2) if the deceased had been invalided on the date on which he or she died, increased by:

(a) Pensions increases since the date of retirement or discharge as appropriate under Chapter 43.

(b) Subject to the provisions of para **3077**, any portion of his or her half-pay, retired pay or pension which may have been commuted and any pensions increase thereon which would have been payable under (a) if commutation had not taken place.

(c) Any abatement of half-pay, retired pay or pension made under para **3138**.

(2) Pensions increases which are introduced after the date of the spouse's or civil partner's death will be taken into account in re-assessing the family pension as from the effective date of the appropriate pensions increase. Pensions increases in the case of family pensions payable to the families of Marshals of the RAF will be calculated as if the half-pay previously in payment to the spouse or service civil partner under the retired pay code on the date of his death had been retired pay.

**3079. Effect of Veterans Agency War Pension.**

*Sponsor: SPP(Pens)*

Where the death of an officer or airman is accepted by the Veterans Agency as directly attributable to service, a pension or gratuity may be awarded under Part IV of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 ("the Service Pensions Order") as amended, or the predecessors of that Order.

**3080. Omitted**

**SECTION 2 - FAMILY PENSIONS PAYABLE TO THE ELIGIBLE SURVIVORS OF THOSE WHOSE SERVICE ENDED BEFORE 31 MARCH 1973**

**3081. Entitlement.**

*Sponsor: SPP(Pens)*

The provisions of this section apply to the widows and children of male officers and airmen whose last day of full paid service was before 31 March 1973 and who were granted service retired pay or pension, or who died in service on full pay. However;

(1) The widows of airmen below the rank of Warrant Officer 1 (including those given temporary promotion to commissioned or warrant rank during the second World War) will not be entitled to a pension under this section unless reckonable service was given after 31 August 1950 (but see Section 8).

**3082. Detailed Provisions.**

*Sponsor: SPP(Pens)*

(1) On the death of an officer or airman, a family pension will be payable, calculated as follows:

(a) For the widow - one third of the husband's basic half pay, retired pay or Service pension as defined in para **3078**, or the minimum rate **detailed in MMP 114 – Family Pension Benefits** if more favourable (where a pension is payable as referred to in paragraph 3079(1), the rates of pension payable under paragraph 3082(1)(a) are subject to adjustment in accordance with subparagraph (2) below).

(b) If there is a widow's pension in payment, an amount equal to one third of the widow's pension may be paid to each eligible child.

(c) If there is no widow's pension in payment and none of any eligible children is in the



care of a parent or step parent an amount equal to two thirds of the widow's pension appropriate to the rank and service of the father may be paid to each eligible child. Otherwise the award will be as (b) above.

(2) If the death of an officer was held to be attributable to Service and his widow is in receipt of a War Widow's pension from the Veterans Agency (see para **3079**), the pension payable under (1)(a) will be reduced by the amount by which War Widow's award exceeds that payable to the widow of a warrant officer.

(3) As children's pensions are not subject to rank element deduction, the pensions payable under 1(b) and 1(c) shall be calculated by reference to the pension payable under 1(a) before any reductions are made under the terms of (2) above.

**3083. Definition of Rank.**

*Sponsor: SPP(Pens)*

"Rank" for the purposes of para **3082** will be as follows:

**Officers** - As defined in paras **2932 to 2933**; higher paid acting or temporary rank, and rank held during further service after retirement, will be taken into account to the same extent as for retired pay purposes. Where however retired pay was assessed under the airmen regulations because there was no entitlement under the officer regulations, the warrant officer minimum rate will apply. Complete years only of higher rank service will count for additions to the minimum rate for those whose last day of service was prior to 31 March 1972. Odd days in excess of the minimum period of one year will count where the last day of service was on or after 31 March 1972 and before 31 March 1973.

**Airmen** - The highest paid rank held for a period of two years or more during the five years preceding termination of full-pay service (including service in a higher paid rank of less than two years' duration), or, if more favourable, where the airman was invalided or died whilst serving, the substantive rank held on discharge or death. If an airman had reverted to a lower rank as a condition of continuance in service under the provisions of para 571, the rank will be the highest paid rank held for two years or more during the last five years before such continuance, if this is more favourable. Where the last day of service was on or after 31 March 1972, and before 31 March 1973, additions to the rate for the rank so defined may be allowed on the same basis proportionately as they have been included in the assessment of the husband's pension under para 3020.

**SECTION 3 - SHORT TERM FAMILY PENSIONS PAYABLE TO ELIGIBLE SURVIVORS OF THOSE WHO SERVED ON OR AFTER 31 MARCH 1973**

**3084. Entitlement.**

*Sponsor: SPP(Pens)*

Subject to the restrictions in para **3085**, the provisions of this section apply to:

- (1) except as provided for in sub-paras (3) or (4), the eligible survivors of male officers and airmen who gave pensionable service on or after 31 March 1973;
- (2) except as provided for in sub-paras (3) or (4), the eligible survivors of female officers and airwomen who gave pensionable service on or after 1 October 1987;
- (3) the survivors, eligible by virtue of a civil partnership, of male and female officers and airmen and airwomen who gave pensionable service on or after 1 October 1987; and
- (4) the surviving eligible partners of male and female officers and airmen and airwomen who gave pensionable service on or after **5 December** 2005 if, but only if, the death of the officer or airman or airwoman was from causes accepted by the Defence Council, on a balance of probabilities, as attributable to or significantly hastened by service

**3085. Detailed Provisions.**

*Sponsor: SPP(Pens)*

Where death occurs in service, the short term family pension will be the same as the basic rate of military salary (including length of service pay) in payment to the officer, airman or airwoman at the time of his death. Where death occurs in retirement the short term family pension will equal the retired pay or pension in issue on the day of death.

(1) Where there is no entitlement to long term pension benefits (ie where the officer or airman died giving full pay service on non-pensionable terms, or having given less than two years service if on pensionable terms (five years if prior to 6 April 1988), and there is no entitlement to an attributable long term family pension under paragraph 3090 or 3090A, a short term pension will be payable as follows:

Eligible surviving spouse or surviving civil partner with no dependant children in his or her care 91 days

Eligible surviving spouse or surviving civil partner with one dependant child in his or her care 182 days

Eligible surviving spouse or surviving civil partner with two or more dependant children in his or her care 273 days

(2) Where the officer or airman dies on or after 31<sup>st</sup> March 1986 either whilst giving full pay service or in retirement, and an attributable long-term family pension is payable under paragraph 3090 or 3090A, a short term pension will be payable to the surviving spouse, civil partner or surviving eligible partner (whether or not there are dependant children) for 182 days.

(3) Where there is an entitlement to long term pension benefits (ie where the officer or airman died giving full pay service on pensionable terms and having given more than 2 years service (5 years if prior to 6 April 1988); or, whilst in receipt of retired pay or pension) and no long-term attributable family pension is payable under paragraph 3090 or 3090A, a short term pension will be payable as follows:

Eligible surviving spouse or surviving civil partner with no dependant children in his or her care 91 days

Eligible surviving spouse or surviving civil partner with one or more dependant children in his or her care 182 days

(however, where it is to his or her advantage, the surviving spouse or surviving civil partner may receive instead, the total long term family benefits from the first day after death in retirement)

(4) Where there are eligible children in the care of another person other than an eligible surviving spouse, surviving civil partner or eligible partner, a short term pension will be payable as follows:

One child in the care of another person 91 days

Two or more children in the care of another person 182 days

(5) All who qualify under the terms set out in subparagraphs (1), (2), (3) or (4) above will be awarded a short term pension for the specified period, at the end of which any long term pension for which they are eligible will come into payment. The total value of awards is not limited to the rate of pay or pension in issue.

#### **3086. Effect of Opting out - Personal Pension Plan.**

*Sponsor: SPP(Pens)*

Where an officer or airman dies in service after opting out of the Armed Forces Pension Scheme in favour of a personal pension plan, any short term pension paid to his survivors will be based on the retired pay or pension which would have been awarded had he retired or been discharged instead of the date of death.

#### **SECTION 4 - NON ATTRIBUTABLE LONG TERM FAMILY PENSIONS PAYABLE TO ELIGIBLE SURVIVORS OF THOSE WHO SERVED ON OR AFTER 31 MARCH 1973**

#### **3087. Entitlement.**

*Sponsor: SPP(Pens)*

Except where otherwise stated, the provisions of this section apply to the:

(1) Except as provided for in sub-para (3), the eligible survivors of male officers and airmen who gave pensionable service on or after 31 March 1973;

(2) Except as provided for in sub-para (3), the eligible survivors of female officers and airwomen who gave pensionable service on or after 1 October 1987; and

(3) the survivors, eligible by virtue of a civil partnership, of male and female officers and airmen and airwomen who gave pensionable service on or after 1 October 1987.

### **3088. Detailed Provisions.**

*Sponsor: SPP(Pens)*

If the death of the spouse or civil partner was not held to be attributable to his or her service, so that he is not entitled to an attributable family pension under paragraph 3090 or 3090A (depending on the date of his death) a family pension will be payable as follows:

#### **(1) *Surviving spouse or surviving civil partner.***

(a) One third of the proportion of the spouse's or civil partner's basic half pay, service retired pay or service pension as defined in para **3078**, earned by service prior to 1 April 1973 and one half for service thereafter.

(b) Where the surviving spouse's or surviving civil partner's pension is calculated by reference to their spouse's or civil partner's service invaliding retired pay or pension, the element in the latter which results from the special invaliding enhancement will attract a half rate surviving spouse or surviving civil partner pension. The enhancement is the difference between the rate of invaliding retired pay or pension and the preserved pension rate.

(c) Where the spouse or civil partner was serving prior to 1 April 1973 and has opted to "buy in" service before 1 April 1973, the surviving spouse or surviving civil partner will receive one half of their spouse's or civil partner's basic half pay, service retired pay, or service pension, subject to recovery, where necessary, of any outstanding contributions. A surviving spouse or surviving civil partner who married or formed a civil partnership after his or her spouse's or civil partner's retirement or discharge is eligible for an award only in respect of the spouse's or civil partner's service given from 6 April 1978. The rate will therefore be half of the spouse's or civil partner's pension proportionate to the amount of his or her reckonable service given on or after 6 April 1978.

(d) Where the amount of the Long Term Pension is less than the sum calculated by Department for Work and Pensions as the guaranteed minimum pension liability in respect of a surviving spouse or surviving civil partner, then the guaranteed minimum pension will be paid (vide para **3066**).

(e) Where, as a result of invaliding, an officer or airman was entitled to Service Attributable Retired Pay or Service Attributable Pension under paragraphs 2938(3) or (3A), or 3023(5) or (5A), but his death is not attributable to service so that no attributable family pension is payable under paragraph 3090 or 3090A, the rate of any surviving spouse's or surviving civil partner's pension payable will be based on the service invaliding retired pay or pension for which the serviceman may have been eligible. See para **3090(4)**.

(f) Where the officer or airman dies in service having given less than the minimum 2 years of qualifying service over age 18 for an invaliding award (5 years if prior 6 April 1988), the surviving spouse or surviving civil partner may be awarded a pension of one half of any preserved pension based on his contracted out service, which would have been awarded if the serviceman had retired or been discharged at the date of death.

#### **(2) *Children.***

(a) Where there is a surviving spouse's or surviving civil partner's pension in payment, an amount equal to one half of the officer's or airman's retired pay or pension entitlement may be divided equally among the eligible children, with no one child receiving more than one quarter of the entitlement;

(b) Where there is no surviving spouse's or surviving civil partner's pension in

payment and none of any eligible children is in the care of the parent or step-parent an amount equal to the officer's or airman's retired pay or pension entitlement may be divided equally among the eligible children, with no one child receiving more than one third. Otherwise the award to each eligible child shall be limited as under sub paragraph (1) above;

(c) Where the officer or airman dies in service, the children's pensions will be calculated under sub paras (1) and (2) above as though he had given a minimum of five years reckonable service; and where more than five years reckonable service has in fact been given, the pension will be calculated by reference to the service actually given. No minimum qualifying period for invaliding benefits is required.

## **SECTION 5- ATTRIBUTABLE LONG TERM FAMILY PENSIONS PAYABLE TO ELIGIBLE SURVIVORS OF THOSE WHO SERVED ON OR AFTER 31 MARCH 1973**

### **3089. Entitlement.**

*Sponsor: SPP(Pens)*

The provisions of this section apply;

(1) except as provided for in sub-paras (3) or (4), to the eligible survivors of male officers and airmen who gave pensionable service on or after 31 March 1973;

(2) except as provided for in sub-paras (3) or (4), to the eligible survivors of female officers and airwomen who gave pensionable service on or after 1 October 1987;

(3) to the survivors, eligible by virtue of a civil partnership, of male and female officers and airmen and airwomen who gave pensionable service on or after 1 October 1987; and

(4) to the surviving eligible partners of male and female officers and airmen and airwomen who gave pensionable service on or after **5 December 2005**.

### **3089A. Surviving Eligible Partners.**

*Sponsor: SPP(Pens)*

A surviving eligible partner shall not be precluded from receiving benefits under this section by virtue of the fact that an award has not been made under the Service Pensions Order.

### **3089B. Start Date of Attributable Long Term Family Pension.**

*Sponsor: SPP(Pens)*

An Attributable Long Term Family Pension under this Section is payable from the later of the day after any Short Term Family Pension under Section 3 ceases, and the date on which a war pension paid under Article 29 of the Service Pensions Order in respect of the same death commences (in accordance with the rules on commencement set out in that Order). If, in the case of surviving eligible partners, no Short Term Family Pension or war pension is paid, the Attributable Long Term Family Pension is payable from the date on which a claim is submitted under the terms of this Section.

### **3090.**

*Sponsor: SPP(Pens)*

This paragraph applies where an officer or airman dies on or before 31<sup>st</sup> March 2004.

(1) Where an officer or airman dies in service from causes accepted by the Veterans Agency as attributable or hastened by service, his eligible survivors may be awarded an attributable family pension at the discretion of the Defence Council at the rates set out in [AFPS 75 Pension Codes](#).

(2) Subject to subparagraph (2A), where an officer or airman dies in retirement or after discharge from causes accepted by the Veterans Agency as attributable to or hastened by service, his eligible survivors may be awarded an attributable family pension at the discretion of the Defence Council as follows:

(i) if the officer or airman was attributably invalided, at the rate of attributable family pension current at the date of the officer's or airman's invaliding, enhanced by all relevant pensions increase measures introduced between that date and the date of death;

(ii) if the officer or airman was non-attributably invalidated, or retired or was discharged for a reason other than invaliding, or if his death did not result from the cause of his invaliding from service, the Defence Council may at their discretion decide to make an award of attributable family pension under this section, rather than the normal entitlement under section 4. If an attributable pension is paid under this section, it will be at the rate current at the date of the officer's or airman's invaliding, discharge or retirement, enhanced by all relevant pensions increase measures introduced between that date and the date of death.

(2A) Where the officer's and airman's marriage or civil partnership took place after retirement or discharge, the rate of attributable long term family pension payable under subparagraphs (1) or (2) above will be based only on that part of the officer's or airman's service given on or after 6<sup>th</sup> April 1978.

(3) If the officer's or airman's surviving spouse, surviving civil partner, surviving eligible partner or other dependent receives any compensation and/or damages in respect of the officer's or airman's death, the attributable family pension payable under this section will be adjusted according to the amount of the compensation and/or damages received. Compensation and damages for these purposes includes sums received in pursuance of a court order, or by way of settlement of any proceedings.

**3090A.**

*Sponsor: SPP(Pens)*

This paragraph applies where an officer or airman dies on or after 1<sup>st</sup> April 2004.

(1) Where an officer or airman dies in service and a war pension is paid in respect of his death under article 29 of the Service Pensions Order, and where the death was from causes accepted by the Defence Council, on a balance of probabilities, as attributable to or significantly hastened by service, his eligible survivors may be awarded an attributable family pension at the discretion of the Defence Council at the rates set out in AP 3392, Volume 2, Leaflet 2009, Annex A.

(2) Subject to subparagraph (2A), where an officer or airman dies in retirement or after discharge and a war pension is paid in respect of his death under article 29 of the Service Pensions Order, and where the death was from causes accepted by the Defence Council, on a balance of probabilities, as attributable to or significantly hastened by service, his eligible survivors may be awarded an attributable family pension as follows:

(i) if, prior to his death, the officer or airman had been entitled to Service Attributable Retired Pay or Service Attributable Pension under paragraph 2938(3) or (3A) or 3023(5) or (5A), at the rate of attributable family pension current at the date of the officer's or airman's invaliding from service, enhanced by all relevant pensions increase measures introduced between that date and the date of death;

(ii) if the officer or airman was non-attributably invalidated, or retired or was discharged for a reason other than invaliding, or if his death did not result from the cause of his invaliding from service, the Defence Council may at their discretion decide to make an award of attributable family pension under this section, rather than the normal entitlement under section 4. If an attributable family pension is paid under this section, it will be at the rate current at the date of the officer's or airman's invaliding, discharge or retirement, enhanced by all relevant pensions increase measures introduced between that date and the date of death.

(2A) Where the officer's or airman's marriage or civil partnership took place or the relationship with the surviving eligible partner began after retirement or discharge, the rate of attributable long term family pension payable under subparagraphs (1) or (2) above will be based only on that part of the officer's or airman's service given on or after 6<sup>th</sup> April 1978.

(3) If the officer's or airman's surviving spouse, surviving civil partner, surviving eligible partner or other dependent receives any compensation and/or damages in respect of the officer's or airman's death, the attributable family pension payable under this section will be adjusted according to the amount of the compensation and/or damages received. Compensation and damages for these purposes includes sums received in pursuance of a court order, or by way of settlement of any proceedings.

**3091. Attributable Family Pensions Payable to the Eligible Survivors of Reservists.**

*Sponsor: SPP(Pens)*

Where the death of a member of a Reserve Force is attributable to service, the surviving spouse, surviving civil partner, surviving eligible partner or children may be eligible for attributable benefits under the Reserve Forces (Attributable Benefits Etc) Regulations. The Regulations do not apply in respect of periods of recalled permanent service under Part VII of the Reserve Forces Act 1996.

**3092. Temporary Allowances.**

*Sponsor: SPP(Pens)*

Where the officer or airman is immediately reported as missing presumed killed, or there is an extremely strong presumption of death, temporary allowances for dependants of missing personnel will be paid at pension benefit rates as detailed in Sections 3 and 4. See also paras 2750 to 2756

**SECTION 6 - FAMILY PENSIONS AND GRATUITIES DERIVED FROM PRESERVED PENSIONS**

**3093. Entitlement.**

*Sponsor: SPP(Pens)*

(1) Where a serviceman dies after his preserved pension benefits under para 3061 have been put into payment (whether by reason of age or otherwise), leaving an eligible surviving spouse or surviving civil partner and/or eligible children, then appropriate short and long term pension benefits may be awarded under the provisions of Sections 3, 4 and 5.

(2) Where an officer or airman dies in retirement before preserved benefits have been put into payment, the surviving spouse or surviving civil partner will not be eligible for a short term family pension but subject to eligibility the surviving spouse, surviving civil partner and/or children may be awarded a long term pension under the provisions of Sections 4 or 5 payable from the day following death. The rate of this pension will be calculated on the notional basic pension, increased by appropriate pensions increase awards since the serviceman's last day of service.

**3094.**

*Sponsor: SPP(Pens)*

Where pension awards to the family are assessed on the preserved pensions scale, the rate of pension on which that assessment is based may not exceed the rate for the spouse's or civil partner's rank and length of service as set out in AP 3392, Volume 2.

**3095.**

*Sponsor: SPP(Pens)*

Where the serviceman gave service after 30 March 1975 and his retired pay or pension was abated or forfeited for any reason, then the pension awards to the family, calculated under the previous Sections, shall not result in a pension less than the preserved pension scheme would have provided unless the abatement or forfeiture was for a grave offence against the state or other serious offence in which the surviving spouse or surviving civil partner was implicated.

**3096. (Omitted)**

**3097. Gratuities.**

*Sponsor: SPP(Pens)*

Where a serviceman dies in retirement before his preserved pension benefits become payable, his surviving spouse or surviving civil partner may be awarded a gratuity equal to the preserved terminal grant. The value of the preserved terminal grant shall be the initial assessment of the award enhanced by all pension increase measures introduced between the deceased's date of retirement and his/her death. Where there is no eligible surviving spouse or surviving civil partner, the gratuity may be divided equally among the eligible children (see note below). Where there is neither an eligible surviving spouse or surviving civil partner nor eligible children, a payment equal to the preserved terminal grant will be made to the estate of the deceased.

**3098.**

*Sponsor: SPP(Pens)*

Where a serviceman dies in retirement before his terminal grant has been adjusted to take account of preserved benefits, a payment equivalent to the difference between the terminal grant paid on voluntary retirement and a higher sum based on preserved benefit accrued rates, may be paid to his/her surviving spouse, surviving civil partner and/or eligible children (see note below). Where there is neither an eligible surviving spouse, surviving

civil partner nor eligible children, payment will be made to the estate of the deceased.

Note: For the purpose of paras **3097** and **3098**, eligible children are defined as in para **3073** except that there is no restriction on account of age and no dependency will be demanded of adopted children.

## SECTION 7 - DEATH IN SERVICE GRATUITIES

### **3099. Applicability of Regulations.**

*Sponsor: SPP(Pens)*

- (1) With the exception of para **3100(3)**, the provisions of this Section apply:
  - (a) except as provided for in sub-paras (c) or (d), to the eligible survivors of male officers and airmen who gave pensionable service on or after 31 March 1973;
  - (b) except as provided for in sub-paras (c) or (d), to the eligible survivors of female officers and airwomen who gave pensionable service on or after 1 October 1987;
  - (c) to the survivors, eligible by virtue of a civil partnership, of male and female officers and airmen and airwomen who gave pensionable service on or after 1 October 1987; and
  - (d) to the surviving eligible partners of male and female officers and airmen and airwomen who gave pensionable service on or after **5 December 2005** if, but only if, the death of the officer or airman or airwoman was from causes accepted by the Defence Council, on a balance of probabilities, as attributable to or significantly hastened by service.
- (2) All awards under this Section will be governed by the general conditions in Section 1.
- (3) Provisions exist for an advance payment of gratuity to be made by the commanding officer of the unit concerned to the surviving spouse or surviving civil partner to meet immediate needs within a maximum of £1000. The MOD must be notified immediately of any advances paid.

### **3100. Rates and Conditions.**

*Sponsor: SPP(Pens)*

Note: For the purpose of this paragraph, the rank rules applicable and the rates payable for those serving on non-pensionable engagements, or for those with insufficient service for pension, will be the ranks and rates applicable to those on pensionable engagements.

- (1) The surviving spouse, surviving civil partner of an officer or airman (other than those re-employed after receiving retired pay or pension) who dies whilst serving on full pay may be granted a gratuity irrespective of the terms of his engagement as follows:
  - (a) An amount equal to the terminal grant or gratuity for which the deceased would have been eligible had he been non-attributably invalidated on the date of death; or if greater
  - (b) Twice the maximum rate of Service retired pay or pension appropriate to his rank for invaliding purposes. For a Chaplain with less than 20 years' service the maximum retired pay used will be the rate for a squadron leader.
- (2) Where the officer or airman dies in service after having opted not to be a member of the Armed Forces Pension Scheme the award of a gratuity to the surviving spouse, surviving civil partner or surviving eligible partner will be restricted to the terminal grant or gratuity for which the serviceman would have been eligible had he been non-attributably invalidated on the date of death.
- (3) Where death occurs within one year of termination of full-time service, the surviving spouse, surviving civil partner or surviving eligible partner may be awarded a gratuity equal to the amount of the total gratuity which would have been payable had the deceased died on the last day of his or her service, reduced by the total of the terminal grant or gratuity paid and any sums raised by commutation.
- (4) Where the officer or airman did not leave a surviving spouse, surviving civil partner or surviving eligible partner eligible for an award under this section but a child or children, the full gratuity payable under sub-paras (1)-(3) above will, at the discretion of the Defence Council, be divided equally amongst the eligible children instead. For the purpose of this section, eligible children

are defined as in para **3073** except that there is no restriction on account of age and no dependency is demanded of adopted children.

(5) A gratuity in respect of a child may be paid to the surviving spouse, surviving civil partner or surviving eligible partner or parent of the child, or other person responsible for the child's maintenance, or to the child direct as may be decided. It may, where appropriate, be issued in instalments or withheld for later payment. A gratuity or the proportion of gratuity for which a child is eligible shall not be withheld beyond the age at which eligibility for a child's pension ceases, or age 18 whichever is earlier. The gratuity or proportion of gratuity shall be increased by relevant pensions increases from the date of the officer's or airman's death until the date of payment or the child's 17th birthday whichever is earlier.

(6) Where an officer or airman dies in service leaving neither an eligible surviving spouse, surviving civil partner, surviving eligible partner nor children, a sum equal to the gratuity payable under Clause (1) above may be paid to the estate of the deceased. However, such gratuities may be abated in respect of any public or service debt.

(7) When, had the officer or airman been invalided, his terminal grant or gratuity would have been abated by:

- (a) The whole or unrefunded portion of any gratuity he had previously received.
- (b) Any other non-effective payments he had received.
- (c) A loan under the Assisted House Purchase Scheme.
- (d) Any contributions towards the cost of a surviving spouse's, surviving civil partner's, surviving eligible partner's pension at the half-rate (payable by those with service prior to 1 April 1973 who have opted into the scheme).

The gratuity due under sub-paras (1)-(3) above will be so abated. Otherwise, a gratuity under this section, except as provided in Clause 6, will not be subject to abatement in respect of any service debt due from the deceased.

### **3101. Additional Attributable Gratuities.**

*Sponsor: SPP(Pens)*

(1) Where an officer or airman dies on or after 31<sup>st</sup> March 1986 but on or before 31<sup>st</sup> March 2004 while giving full pay service and his death is accepted by the Veterans Agency as being attributable to or aggravated by service, an additional gratuity equal to 100% of the annual rate of the full career retired pay or pension for the deceased's rank may be paid to the eligible surviving spouse, surviving civil partner or surviving eligible partner, less any supplementary benefits received from the deceased's personal pension plan. Where there is no eligible surviving spouse, surviving civil partner or surviving eligible partner for an award under this para, but an eligible child or children, the gratuity will, at the discretion of the Defence Council, be divided equally amongst the eligible children instead. Eligible child is as defined under para **3100(4)** and may be paid as provided for under para **3100(5)**.

(1A) Where an officer dies on or after 1<sup>st</sup> April 2004 whilst giving full pay service and a war pension is paid in respect of his death under article 29 of the Service Pensions Order, and where his death is accepted by the Defence Council, on a balance of probabilities, as being attributable to or significantly hastened by service or where benefit is payable in respect of his death under a compensation scheme established under section 1(2) of the Armed Forces (Pensions and Compensation) Scheme 2004 (c.32), an additional gratuity equal to 100% of the annual rate of the full career retired pay or pension for the deceased's rank may be paid to the eligible surviving spouse, surviving civil partner or surviving eligible partner, less any supplementary benefits received from the deceased's personal pension plan. Where there is no eligible surviving spouse, surviving civil partner or surviving eligible partner for an award under this para, but an eligible child or children, the gratuity will, at the discretion of the Defence Council, be divided equally amongst the eligible children instead. Eligible child is as defined under para **3100(4)** and may be paid as provided for under para **3100(5)**.

(2) Where an attributable family pension is awarded under paragraph 3090 or 3090A and the



officer's or airman's death has occurred within one year of retirement or discharge, payment of the gratuity under subparagraph (1) or (1A) above will be at the discretion of the Defence Council.

(3) Where an individual dies on or before 31<sup>st</sup> March 2004 whilst recalled for permanent service under Part VII of the Reserve Forces Act 1996 and the death is accepted by the Veterans Agency as attributable to or hastened by his period of recalled service, and he leaves neither an eligible surviving spouse, surviving civil partner or surviving eligible partner nor any eligible children, a gratuity as set out in AP3392, Vol2, Leaflet 2009, Annex C may be paid to his estate.

(3A) Where an individual dies on or after 1<sup>st</sup> April 2004 whilst recalled for permanent service under Part VII of the Reserve Forces Act 1996 and a war pension is paid in respect of his death under article 29 of the Service Pensions Order, and where his death is accepted by the Defence Council, on a balance of probabilities, as being attributable to or significantly hastened by his period of recalled service, and he leaves neither an eligible surviving spouse, surviving civil partner or surviving eligible partner nor any eligible children, a gratuity as set out in **AFPS 75 Pension Codes**.

## **SECTION 8 - SPECIAL WIDOWS PENSION**

### **3102. Applicability of Regulations.**

*Sponsor: SPP(Pens)*

These regulations have effect from 12 November 1979 and apply to the widows of airmen below the rank of Warrant Officer 1 (including those given temporary promotion to commissioned or warrant rank during the second World War) whose full-pay service ceased before 1 September 1950 and who are not eligible for a pension under Section 2.

### **3103. General Conditions governing the award of a Special Widows Pension.**

*Sponsor: SPP(Pens)*

For a widow to be eligible for the award of a special widow's pension, the following conditions must be satisfied:

- (1) The airman in respect of whose service the claim is made was in receipt of, or was eligible for, a service pension, or service retired pay, or invaliding pension determined by reference to his length of service or, where he died while serving, would have been eligible for such an award if he had been invalided from the Service on the day of his death.
- (2) The widow is not in receipt of a Forces Family Pension or a War Widows Pension.
- (3) The widow married the airman before his retirement or discharge or, if he subsequently gave further service in circumstances rendering him eligible to be considered for a reassessment of his service pension or service retired pay, before the termination of such further service.
- (4) The widow did not remarry after the death of the airman. If, however, she did remarry and the marriage comes to, or has come to, an end an award may be made in whole or in part, at the discretion of the Defence Council if her pecuniary circumstances justify such an award.
- (5) The widow is not living with a man as his wife. If she is and later ceases to do so, an award may be made at the discretion of the Defence Council under the conditions of clause (d) above.

### **3104. Separation.**

*Sponsor: SPP(Pens)*

A widow(er)'s pension is payable only to a person to whom a serviceman was married at the time of his death. Consequently, benefits are not payable to divorced husbands or wives. For Armed Forces Pensions Scheme purposes, only death or the granting of a decree absolute or the granting of a decree of nullity ends a marriage; neither separation (legal or otherwise) nor the issue of a decree nisi are regarded as bringing the marriage to an end and under these circumstances benefits would continue to be due from the scheme.

### **3105. Unsatisfactory Service.**

*Sponsor: SPP(Pens)*

A special widow's pension shall not, subject to any exception which the Defence Council may approve, be awarded if the service of the airman was, in the opinion of the Defence Council, unsatisfactory. If an exception is approved, the pension shall be at such a rate and subject to such conditions as the Defence Council may

determine.

**3106. Withholding or Diversion of Pension.**

*Sponsor: SPP(Pens)*

(1) In exceptional circumstances, the Defence Council may withhold part of, or the whole of, a pension admissible under this Section, and may divert such pension in whole or in part for purposes which may be deemed beneficial to the pensioner or to any person dependant on the pensioner.

(2) If the death of the airman occurred within a year of the widow's marriage to him, the Defence Council may reduce or withhold the amount of any award otherwise admissible.

(3) If a widow is awarded any other pension or allowance from public funds on account of the service of the deceased airman, any pension which might otherwise be admissible under this Section may be withheld or reduced at the discretion of the Defence Council.

**3107. Cessation of Pension on Re-marriage.**

*Sponsor: SPP(Pens)*

A special widow's pension shall cease when a widow remarries or lives with a man as his wife, but if the marriage has come to an end or the widow has ceased living with a man as his wife the Defence Council may restore the pension in whole or in part under the conditions of para **3103**(d).

**3108. Date of Commencement.**

*Sponsor: SPP(Pens)*

The date of commencement of a special widow's pension will be 12 November 1979 or the day following the date of the airman's death, if later, provided that the application is not unduly delayed.

**3109. Rank for Purposes of Award.**

*Sponsor: SPP(Pens)*

The rank of the airman for the purposes of assessing a special widow's pension shall be the highest paid rank held for a period of two years or more in his last five years of service unless he was invalided or died in service, when it will be the substantive rank held at the time of discharge or death.

**3110. Death of Applicant.**

*Sponsor: SPP(Pens)*

If an applicant for a special widow's pension dies before establishing a claim to pension, arrears of pension shall not be paid to the applicants estate, subject to any exception which the Defence Council may approve.

**3111-3120.** *(Omitted)*