

**Pensions & Compensation
Policy Instruction**

**The Armed
Forces Pension
Schemes**

PCPI 02/15

Jan 2015

Reference: CDP Remuneration – AFPS - AFPS75 – Pensions - Children

Title:	Children's Pensions – Awards pre and post 6 April 2006
Which schemes are affected:	AFPS 75
Who should read this:	Veterans UK MOD Authority
When it takes effect:	Jan 2015
Review date:	n/a
Contact points:	Pers Trg-Rem-AFPS Pol 4

Purpose

1. The purpose of this instruction is to clarify when Children's Pensions, awarded under the AFPS 75 before April 2006, can be paid beyond age 23 to a child with transitional protection who remains in full time education. It will also clarify how the current rules operate for pensions that come into payment post April 2006 and include information on the earnings limits when a child pension is being paid.

Background

2. The Finance Act 2004 gave transitional protection to registered pension schemes for payment of pensions to children aged over 23 who remained in full time education or vocational training where no upper age limit was prescribed in the scheme rules. The AFPS75 scheme rules that were in force before 6 April 2006 ('A' Day) did not define an upper age limit for children's pension when the child was in full time education or vocational training.

3. The Army Pension Warrant 1977 (APW 77)¹ were the Army regulations in force when transitional protection was introduced. These rules state that ordinarily a child pension would be paid for 3 years from age 18 as per Art 223. However, the provisions highlighted below [in **bold italic**] do not prevent the pension from continuing for as long as the child stays in full time education or training:

223. a. A child's pension will normally cease when the child attains the age of 17 years, except where an officer or warrant officer class I was retired or discharged before 31st March 1973, when payment of a child's pension will normally cease at the age of 18 years.

However, it may be granted or continued after these ages in the following circumstances:

(1) if the child continues to receive full-time education (then the normal limit will be 3 years from the age of 18 years, **but the pension may be further continued where there are circumstances justifying special consideration**); or

(2) **if the child is in full-time training and not receiving more than nominal wages**; or

(3) if, before attaining the age referred to above, the child was, and continues to be, afflicted by mental or bodily infirmity and is in the opinion of the Defence Council therefore incapable of earning his or her own living.

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

223. b. 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.

Policy – Pension Awarded pre 6 April 2006

4. The scheme may pay a dependant's pension to a child of a deceased member after that child has reached age 23, when continuing in full time education or vocational training, providing that:

- the child's pension came into payment before 6 April 2006, or
- the member's pension was in payment on 6 April 2006 and
- the child was born on or before 5 April 2007.

The child need not be in full time education at the time the pension was awarded.

¹ Also contained within the Naval Order in Council and RAF QRs.

HMRC Rules

5. HMRC's rules on the transitional arrangements referred to in paragraph 2 are stated in: Finance Act 2004 (Part 4, Schedule 28), 'Pension Death Benefit Rules – Defined benefits and money purchase arrangements'. This Act was amended by Article 2 of SI 2009/1989. This provides that pensions may continue if the child is either:

- *still in full-time education or undertaking vocational training, or*
- *where at the point of reaching the age of 23, or at the time of ceasing full-time education / vocational training, they were suffering from a physical or mental deterioration that was either serious enough to prevent them from following a normal employment, or which would seriously impair their earning capacity.*

a. The particular requirement to qualify under the first scheme rule² (SI 2009 /1989 - See Annex A), is that either Condition A or B is satisfied:

Condition A: The pension was in payment to a child of the member on 5th April 2006 or the member had died on or before that date and a pension was due to come into payment to the child,

Condition B: The pension was in payment to the member on 5th April 2006 and the child was born on or before 5th April 2007.

Policy - Pension Awarded Post 6 April 2006

6. If the member died after 6 April 2006, the upper age limit is 23 for children in full time further or higher education, or unpaid/nominally paid full time vocational training. Unless, at the date of the member's death, the child was dependent on the member due to physical or mental impairment.

7. Rule E16 of the AFPS75 (Amendment) 2010 rules is interpreted as follows:

- a. Condition B: the child is in full-time secondary education
- b. Condition C: the child is aged under 23, is in full time education or vocational training, or is on a gap period after secondary education of not more than 15 months; the child gives notice before leaving secondary education of their intention to undertake further education or vocational training (unless member's death was after the last day Condition B was met).

8. However, the scheme administrator may consider that Rule E16³ (7), or (8) or (9) (see Annex B) is met or maybe met. These allow:

² The First Scheme rule: Where the rules of the pension scheme allowed a pension to be paid to a child of the member following member's death until the child ceased full-time education or vocational training. However, if the pension rules stated the pension would not be paid after a specified age it does not prevent the condition from being met.

³ AFPS 75 Attributable Benefits Scheme (Amendment) Order 2010
<http://defenceintranet.diif.r.mil.uk/Personnel/Military/Remuneration/Pages/ArmedForcesPensionScheme1975-Legislation.aspx>

(a) If the person is in paid vocational training, the pension will normally be abated by their earnings, but the costs incurred to undertake the training can be deducted allowing them to retain a higher proportion of their pension. So the training does not have to be unpaid (Rule E16(7)).

(b) The gap between secondary and further / higher education / vocational training should not normally be more than 15 months unless there is a reasonable explanation. So the gap could exceed 15 months in some cases (Rule E16(8)).

(c) The person should normally give notice of their intention to undertake further / higher education or vocational training before secondary education ends (it can end at a number of points listed in E16(5) unless there is a reasonable explanation. So the notice could still be accepted even after these points have been reached (Rule E16(9)).

Definitions

9. Full time education can be interpreted as both full-time further and higher education and/or unpaid/nominally paid full time vocational training. The appropriate amount to deduct from earning before abatement (in accordance with Rule E16(7)(b)) is determined by the Earning Limit.

The Earnings Limit

10. If a child is in receipt of a Forces Family Pension whether transitionally protected or otherwise beyond the age of 17 years and is in full-time vocational training they may not receive more than nominal wages, otherwise the pension may be abated (see para 8a above). Originally, the Department of Employment set weekly earnings limits, but in 1999 the PCSPS annual rate, which is set by the Cabinet Office, was adopted. The 1 June 1972 is used as the start date, originally updated by the RPI and since 2011 by the CPI (rounded to up to the nearest £1 each year).

YEAR	MONTHLY UPPER EARNINGS LIMIT	ANNUAL UPPER EARNINGS LIMIT
2011-12	£225.25	£2703
2012-13	£236.92	£2843
2013-14	£242.17	£2906
2014-15	£248.67	£2984

11. When notified that a child is in full-time vocational training and receiving a wage, the monthly equivalent of which is greater than the upper earnings limit, the child's monthly pension payment should be reduced by the amount the wage exceeds the upper earnings limit.

12. If the wage subsequently changes, the calculation should be repeated. If the monthly wage falls below the upper earnings limit, the pension should be restored in full.

Change in Educational Direction

13. There are no restrictions or reduction to a child pension in payment in the event that a child changes course or moves from one discipline to another.

Distribution:

CDP Remuneration - AF Pensions AHd

Pay Colonels

Navy Pers-PPA SO1

Army PersSvcs-PS10-AD

Air-COSPers-Pol PayAllces DACOS

Veterans UK - MOD Authority:

DBSVets-Pensions-C1

DBSVets-Pensions C2-1

DBSVets-Pensions C2-2

DBSVets-Pensions C2-3

DBSVets-Pensions C2-5

DBSVets OPPT C1-2

DBSVets OPPT D-23

**SI 2009/1989 – Taxation of Pension Schemes (Transitional Provisions)
(Amendment No 2) Order 2009**

Payments to children aged 23 or over

34. (1) Paragraph (2) applies to the payment of a pension death benefit by a pension scheme which falls within paragraph 1(1) of Schedule 36⁽⁴⁾ where—

(a) either of Conditions A and B is satisfied and the first scheme rules condition is satisfied; or

(b) Condition C and the second scheme rules condition are satisfied.

(2) Paragraph 15(2) of Schedule 28 shall be modified as follows—

(a) at the end of paragraph (a) omit the word “or”; and

(b) after paragraph (b) insert—

“(c) has reached that age and is in full time education or undertaking vocational training, or

(d) on reaching that age or, if later, on ceasing full time education or vocational training is, in the opinion of the scheme administrator, suffering from physical or mental deterioration which is sufficiently serious to prevent the individual from following a normal employment or which would seriously impair his earning capacity.”.

(3) The Conditions A, B and C mentioned in paragraph (1) are:

- *Condition A*
The pension⁽⁵⁾ was in payment to a child (“C”) of the member (“M”) on 5th April 2006 or M had died on or before that date and a pension was due to come into payment to C.
- *Condition B*
The pension was in payment to M on 5th April 2006 and C was born on or before 5th April 2007.
- *Condition C*
An election such as is described in the second scheme rules condition had been made by M and accepted by the scheme administrator on or before 5th April 2006.

(4) The scheme rules conditions mentioned in paragraph (1) are:

- *First scheme rules condition*
The rules of the pension scheme allowed a pension to be paid to a child (“C”) of the member (“M”) following M’s death until C ceased full-time education or vocational training.
- *Second scheme rules condition*

⁴ Article 1(2) of S.I. 2006/572 provides that a reference to a numbered section or Schedule (without more) is a reference to that section or Schedule in “Part4”, which is in turn defined as meaning Part 4 of the Finance Act 2004.

⁵ Section 165(2) of the Finance Act 2004 defines “pension”

The rules of the pension scheme on 10 December 2003 allowed an irrevocable election to be made designating part of the sums or assets representing M's rights as available for the payment of a pension to C following M's death until C ceased full-time education or vocational training.

(5) For the purpose of the first scheme rules condition, a rule that the pension would not be paid to C if or after C reached a specified age (even if that is before C ceased full-time education or vocational training) does not prevent the condition being satisfied.

(6) Paragraph (2) also applies to the payment of a pension death benefit by a qualifying transferee scheme (as to which see article 34B) where either—

(a) paragraph (2) had applied to payment by the original pension scheme or another transferee pension scheme; or

(b) paragraph (2) would have applied—

(i) if there had been no block transfer on or after 6th April 2006, and

(ii) if payment had been by the original pension scheme.

AFPS 75 – 2010 Amended Rules

Rule E16 – Meaning of Eligible Child

(1) For the purposes of rules E.12 and E.15 a person is an eligible child in relation to a member if—

- (a) the person has a qualifying relationship to the member (as defined by rules E.17 and E.18); and
- (b) any of conditions A to D is met.

(2) Unless paragraph (3) applies, condition A is that the person is aged under 17.

(3) If—

- (a) the member's last day of pensionable service was before 31st March 1973, and
- (b) the member's pension rank was that of OR-9 or above,

condition A is that the person is aged under 18.

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

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

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

(6) 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.

(7) 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 shall 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.

(8) If—

- (a) but for paragraph (6)(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.

(9) A notice given after the last day on which condition B was met may be treated as satisfying paragraph (6)(d) if the Scheme administrator is satisfied that there was good cause for the person's failure to give the notice by that day.

(10) 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 (7) to (9) 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.

(11) 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.