

Reserve Forces (Full-Time Reserve Service Pension Scheme 1997) Regulations 2010

The Defence Council in exercise of the powers conferred by sections 4(2) and (3), and 8(1) and (3) of the Reserve Forces Act 1996^(a) make the following Regulations—

Preliminary

Citation and commencement

1. These Regulations may be cited as the Reserve Forces (Full-time Reserve Service Pension Scheme 1997) Regulations 2010 and shall come into force on 6th April 2010.

Establishment of the Reserve Service Pension Scheme

2. The Scheme set out in the Schedule to these Regulations has effect and is to be known as the Full-time Reserve Service Pension Scheme 1997.

On behalf of the Defence Council

Date

Member of the Defence Council

Date

Member of the Defence Council

SCHEDULE

Regulation 2

THE FULL-TIME RESERVE SERVICE PENSION SCHEME 1997 ARRANGEMENT OF SCHEME RULES

- PART A - INTERPRETATION ETC
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PART A

Interpretation etc

A.1 Interpretation: general

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

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

“the 1971 Act” means the Pension Increases Act 1971(**a**);

“the 1993 Act” means the Pension Schemes Act 1993 (**b**);

“the 1995 Act” means the Pensions Act 1995(**c**);

“the 1996 Act” means the Reserve Forces Act 1996;

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

“active member” has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the Scheme;

“active membership period” is to be read in accordance with rule A.9;

“the Armed Forces Pension Scheme 1975” (“AFPS 1975”) means the occupational pension scheme set out in Schedule 1 to the: Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010(**e**), the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant 2010(**f**), and the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010(**g**);

(a) 1971 c. 56.

(b) 1993 c. 48.

(c) 1995 c. 26.

(d) 1999 c. 30.

(e) Order in Council made on 16th February 2010.

(f) Royal Warrant made on 16th February 2010.

(g) Queen’s Order made on 17th February 2010.

“the Armed Forces Pension Scheme 2005” (“AFPS 2005”) means the occupational pension scheme established by article 2 of the Armed Forces Pension Scheme Order 2005(a) and set out in Schedule 1 of that Order;

“assumed pay” has the meaning given by rule A.5(1) and (2);

“basic pay”, has the meaning given by rule A.4;

“deferred member” has the meaning given in section 124(1) of the 1995 Act and, except where the context requires otherwise, refers to membership of the Scheme;

“final pensionable earnings” has the meaning given in rule A.6;

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

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

“ordinary adoption leave” means leave which, in the opinion of the Defence Council, corresponds to ordinary adoption leave within the meaning of section 75A of the Employment Rights Act 1996(b);

“ordinary maternity leave” means leave which, in the opinion of the Defence Council, corresponds—

(a) in relation to any period before 22nd August 1996, to leave under section 33 of the Employment Protection (Consolidation) Act 1978(c); and

(b) in relation to any period on or after 22nd August 1996, to leave under section 71 of the Employment Rights Act 1996(d);

“paternity leave” means leave which, in the opinion of the Defence Council, corresponds to paternity leave within the meaning of regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(e);

“pay period”, in relation to a person, means a period by reference to which the person’s pensionable earnings are payable;

“pension age” has the meaning given in rule A.14;

“pension benefit age” means the age of 60 in relation to service given before 6th April 2006 and the age of 65 in relation to service given on or after that date;

“pension code” means the tri-service pension codes that specify the rates of pension and rates of compensation for injury or death which are attributable to service as recommended by the Armed Forces Pay Review Body and approved annually by the Government;

“pension credit” means a credit under section 29(1)(b) of the 1999 Act, including a credit under corresponding Northern Ireland legislation;

“pension credit benefit” has the meaning given in section 101B of the 1993 Act;

“pension credit member” means a person, whether or not that person is otherwise eligible to belong to the Scheme, entitled to a pension credit within section 29(1)(b) of the 1999 Act;

“pension credit rights” has the meaning given in section 101B of the 1993 Act;

“pension debit” means a debit under section 29(1)(a) of the 1999 Act;

“pension debit member” means a member of the Scheme whose benefits or future benefits under the Scheme have been reduced in accordance with section 31 of the 1999 Act (reduction under pension sharing order following divorce or nullity of marriage);

(a) S.I 2005/438, as amended by S.I 2006/717; 2007/2608; 2008/229 and 2009/544.

(b) 1996 c. 18, Section 75A is inserted by section 3 of the Employment Act 2002 (c. 22).

(c) 1978 c. 44; Section 33 was repealed by section 242 and Part 1 of Schedule 3 to the Employment Rights Act 1996 and was re-enacted in section 71 of that Act.

(d) Section 71 was substituted by section 7 and Part 1 of Schedule 4 to the Employment Relations Act 1999 c. 26; section 71(3) was substituted by section 11(1) and paragraph 31 of Schedule 1 to the Work and Families Act 2006; section 71(4) was amended by sections 17(1) and (2)(a) to (c) of the Employment Act 2002; section 71(7) was substituted by sections 17(1) and (3) of the Employment Act 2002.

(e) S.I 2002/2788; regulation 4 was amended by article 2 and paragraphs 1(1) and 2(a) and (b) of Schedule 17 of S.I 2005/2114; regulation 8 was amended by article 2(17) and paragraphs 1(1) and (3) of Schedule 17 of S.I 2005/2114.

“pensionable earnings” has the meaning given by rule A.2;

“pensionable service” means service by virtue of which a person is eligible to be a member of the Scheme;

“pensioner member” has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the Scheme;

“pension rank” is to be read in accordance with rule A.3;

“pension sharing order” means an order or provision which is mentioned in section 28(1) of the 1999 Act;

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

“qualifying service” is to be read in accordance with rule A.10;

“reckonable service” is to be read in accordance with rule A.11;

“the Reserve Forces Pension Scheme 2005” (“RFPS 2005”) means the occupational pension scheme established by regulation 2 of the Reserve Forces Pension Scheme Regulations 2005(a);

“shareable rights” has the meaning given in section 27(2) of the 1999 Act;

“the Scheme” means the Full-time Reserve Service Pension Scheme 1997, the rules of which are set out in this Schedule;

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

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

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

“special short service commission” means a commission which enables personnel of the Royal Naval Reserve, the Royal Marines Reserve and the Royal Fleet Reserve to serve full-time for a period as a member of respectively the Royal Navy, the Royal Marines and the Royal Fleet Auxiliary;

“special type S commission” means a commission which enables personnel of the territorial army to serve full-time for a period of up to 12 months as members of the regular Army;

“state pension age” means pensionable age, as defined in section 181(1) of the 1993 Act; and

“tax year” means a year of assessment for income tax purposes.

A.2 Meaning of “pensionable earnings”

“Pensionable earnings”, means basic pay as a member of the reserve forces, and any other amount if and to the extent that the Defence Council has determined that it is to be treated as pensionable earnings.

A.3 Meaning of “pension rank”

(1) Subject to paragraph (2), a member’s pension rank is the rank that the person holds when the member’s reckonable service ceases (“leaving rank”).

(2) Paragraph (1) is subject to the following exceptions—

(a) where an officer—

(i) is entitled to count at least two years’ reckonable service when service ceases,

(a) Regulations made by the Defence Council on 4th April 2005

- (ii) does not cease service due to ill-health, and
- (iii) has not held the leaving rank for at least 2 years at the time when reckonable service ceases,

then the officer's pension rank is the highest rank held for at least 2 years prior to ceasing reckonable service;

- (b) subject to sub-paragraph (c), in the case of a member whose leaving rank is not that of an officer, if at any time in the last five years of reckonable service that member has held a paid acting rank higher than the leaving rank—
 - (i) if one such higher paid acting rank was held for at least 2 years or periods amounting in aggregate to at least 2 years, the pension rank is that higher paid acting rank;
 - (ii) if two such higher paid acting ranks were held for at least 2 years each or periods amounting in aggregate to at least 2 years each, the pension rank is the higher of those higher paid acting ranks;
 - (iii) if neither paragraph (i) nor (ii) applies but two or more higher paid acting ranks were held for periods which together total at least 2 years, the pension rank is the lowest of those higher paid acting ranks;
- (c) if in the case of a member who is not an officer when reckonable service ceases, that person is entitled to an ill-health pension under rule C.4 (early payment of benefits: active members' ill-health) and apart from this sub-paragraph that person's pension rank for the purposes of rule C.6(2) would be lower than the paid acting rank held on the last day of reckonable service, the pension rank for those purposes is that paid acting rank.

A.4 Meaning of “basic pay”

“Basic pay” means—

- (a) pay for the member's rank and seniority; and
- (b) any other amount if and to the extent that the Defence Council has determined that it is to be treated as basic pay; but
- (c) subject to sub-paragraph (b) does not include—
 - (i) any allowances;
 - (ii) any additional amounts payable in respect of particular qualifications or duties, the location of service or the conditions in which service is temporarily performed;
 - (iii) any additional amounts payable to medical or dental officers; or
 - (iv) any description of payment that the Defence Council has determined is not to be treated as basic pay.

A.5 Meaning of “assumed pay”

(1) In the circumstances specified in paragraph (3) a member is treated as receiving or as having received amounts equal to the pensionable earnings that the member would have received if those circumstances had not applied, with such increase, if any, as the Defence Council consider appropriate.

(2) The amounts a member is treated as receiving or as having received under paragraph (1) are referred to as “assumed pay”.

(3) The circumstances referred to in paragraph (1) are that the member is an active member who—

- (a) is on secondment to a different employer under an arrangement providing for the member to continue to be an active member of the Scheme in respect of such service;
- (b) is receiving statutory maternity pay;
- (c) is receiving statutory adoption pay;
- (d) is on ordinary maternity leave;

- (e) is on paternity leave;
- (f) is on ordinary adoption leave; or
- (g) is on unpaid leave for a period which the Defence Council has agreed can count as reckonable service.

A.6 Meaning of “final pensionable earnings”

- (1) Subject to rule A.7, in relation to a member “final pensionable earnings” means—
- (a) the amount of pensionable earnings received for the last 365 days of reckonable full-time reserve service prior to the last day of service, or
 - (b) the greatest amount that is the member’s total pensionable earnings for 365 consecutive days falling within the period of 5 years ending with the last day of reckonable service,

whichever is the greater.

(2) If the person was not in service as a member of the armed forces during any period of 365 consecutive days falling within the period of 5 years mentioned in paragraph (1)(b), that paragraph applies as if it referred to the person’s annualised pensionable earnings in the period of service ending with the last day of reckonable service.

(3) The person’s annualised pensionable earnings in a period of service are the amount given by the formula—

$$\frac{PE \times 365}{N}$$

where—

PE is the person’s pensionable earnings for the period; and

N is the number of days in the period for which pensionable earnings were received.

(4) If at any time during the period of 5 years mentioned in paragraph (1)(b) or the period mentioned in paragraph (2) the member is treated as receiving assumed pay, for the purposes of that paragraph pensionable earnings for each day during that period when the member is so treated include the assumed pay for that day.

A.7 Restrictions on final pensionable earnings

(1) If the calculation under rule A.6 produces an amount exceeding the permitted maximum, the excess is disregarded.

(2) In this rule “permitted maximum” means—

- (a) in relation to any tax year before the tax year 2006-07, the figure specified for that tax year in an order made under section 590C of the Income and Corporation Taxes Act 1988(a);
- (b) in relation to the tax year 2006-07, £108,600;
- (c) in relation to the tax year 2007-08, £112,800; and
- (d) in relation to any later tax year, the figure found for that year under paragraphs (3) and (4).

(3) Subject to paragraphs (4) and (5), the figure referred to in paragraph (2)(d) is £112,800.

(4) If the retail prices index for the month of September preceding the tax year 2008-09 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—

- (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index; and

(a) 1998 c. 1.

(b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

(5) If the retail prices index for the month of September preceding the tax year 2008-09 or any later tax year is not higher than it was for the previous September, the figure for that year shall be the same as for the previous tax year.

A.8 Inflation adjustments in determining final pensionable earnings

(1) For the purpose of determining which is the greatest amount mentioned in rule A.6(1), the amount of pensionable earnings for that part of the period of 365 days that falls 365 days or more before the last day of service is adjusted for inflation.

(2) Any adjustment made for the purpose of determining final pensionable earnings shall be disregarded for all other purposes of the Scheme.

(3) The reference in paragraph (1) to adjusting for inflation the amount of pensionable earnings for part of a period is a reference to increasing it by the same amount as that by which an annual pension of an amount equal to those earnings would have been increased under the 1971 Act on the day following the last day of reckonable service if the pension—

(a) were eligible to be so increased; and

(b) had come into payment on the day following the last day of that period.

A.9 Active membership period

(1) In this Scheme, references to a person's active membership period, in relation to the Scheme or to another occupational or personal pension scheme, are references to—

(a) the period during which the person has been an active member of the Scheme, or as the case may be, that other scheme; or

(b) in the case of a person whose active membership has not been continuous, the aggregate period during which the person has been such a member.

A.10 Qualifying service

(1) Subject to paragraph (2), in this Scheme references to a member's qualifying service are references to the aggregate of the following periods—

(a) the period during which the member is in service in respect of which the member—

(i) receives earnings that are pensionable earnings for the purposes of the Scheme; or

(ii) is treated as receiving assumed pay;

(b) in the case of a person in respect of whom a transfer value in respect of rights under another occupational pension scheme has been accepted under Part F (transfers)—

(i) any period during which the person was an active member in any scheme in respect of which those rights accrued; and

(ii) any period during which the person was an active member of this Scheme in respect of which those rights accrued.

(2) Any period during which the member is absent without leave from service shall be disregarded for the purposes of paragraph (1).

A.11 Reckonable service

(1) Subject to rule E.2(2) references to a member's reckonable service or the period of reckonable service that a member can count are references to the aggregate of the following periods—

(a) the period during which the member is in service in respect of which the member—

(i) receives earnings that are pensionable earnings for the purposes of the Scheme; or

(ii) is treated as receiving assumed pay;

(b) in the case of a member in respect of whom a transfer value in respect of rights under another pension arrangement has been accepted under Part F (transfers), the reckonable service the member is entitled to count as a result of the transfer.

(2) If on the cessation of a person's service—

(a) the person does not have at least two years' qualifying service,

(b) the person is not entitled to short service benefit by virtue of section 71 of the 1993 Act (basic principles as to short service benefit) because of a transfer value payment having been accepted, and

(c) a contributions equivalent premium is paid in respect of the cessation of the person's service,

the person ceases to be entitled to count any period of reckonable service.

A.12 Calculation of periods of membership or service etc.

(1) Subject to paragraph (2), for the purposes of the Scheme periods of membership and service are to be expressed in the first instance in complete years and days, and the initial aggregation of periods that require to be aggregated is done in the first instance by reference to periods so expressed.

(2) Where membership or service is referred to as membership or service in years, the days referred to in paragraph (1) are converted into years by dividing the number of days in excess of the period of whole years by 365, and using the result to four decimal places.

(3) If a period of membership or service is less than one year, this rule applies as if the words "complete years and" were omitted from paragraph (1) and the words "in excess of the period of whole years" were omitted from paragraph (2).

(4) In this Scheme, in provisions relating to the calculation of any amount, references to reckonable service in years are to the number of the years in question.

A.13 Disregard of short breaks in service or membership

(1) If an active member—

(a) ceases to serve in a capacity that qualifies that person to belong to the Scheme,

(b) after a period not exceeding 1 month rejoined the reserve forces in such a capacity, and

(c) rejoined before 6th April 2005,

any qualifying service and any reckonable service for the earlier period of active membership and for the later period are treated as a single period of qualifying service and a single period of reckonable service for all purposes.

(2) If an active member—

(a) opted to cease to be such a member whilst continuing to serve in a capacity that qualifies him to belong to the Scheme,

(b) opted to rejoin the Scheme after a period not exceeding 1 month, and

(c) became such a member again before 6th April 2005,

any qualifying service and any reckonable service for the earlier period of active membership and for the later period are treated as a single period of qualifying service and a single period of reckonable service respectively for all purposes.

(3) Paragraphs (1) and (2) do not apply if before the time when the condition in paragraph (1)(b) or, as the case may be, paragraph (2)(b) is met, a pension has come into payment for the earlier period of active membership.

A.14 Meaning of Pension age

"Pension age" means—

- (a) the age of 55 in relation to a member who undertakes—
 - (i) a full commitment full-time reserve service;
 - (ii) a short term volunteer commission; or
 - (iii) an S-type engagement;
- (b) the age of 60 in relation to a member who undertakes—
 - (i) home commitment full-time reserve service; or
 - (ii) limited commitment full-time reserve service.

PART B

Eligibility

B.1 Eligibility – general

(1) A person is eligible to be an active member of the Scheme if the conditions A to C are met and the person is not prevented by paragraph (6) or rule B.2 (persons with other pension arrangements).

(2) Condition A is that the person gave service as a member of the reserve forces before 6th April 2005.

(3) Condition B is that the person undertook—

- (a) a period of full-time reserve service under section 24 of the 1996 Act;
- (b) a special short service commission which commenced on or after 1st November 1997; or
- (c) a special S-type commission which commenced on or after 1st November 1997.

(4) Condition C is that the person is not in excluded service.

(5) For the purpose of Condition C, a person is in excluded service if—

- (a) that person is in service in a post—
 - (i) the duties of which are performed in a place outside the United Kingdom;
 - (ii) the post is designated as a post for locally employed persons; and
 - (iii) the person was engaged outside the UK; or
- (b) the terms on which the person was engaged to serve exclude that person from belonging to the Scheme.

(6) Where a member gives further service on or after 6th April 2005 the member is not eligible to be a member of the Scheme in respect of that further service.

(7) In this rule “further service” means where a member leaves full-time reserve service and then subsequently re-enters that service to carry out a further period of full-time reserve service pursuant to section 24 of the 1996 Act.

B.2 Persons with other pension arrangements

(1) A person is not eligible to be an active member of the Scheme in respect of service if—

- (a) that person is an active member of the RFPS 2005; or
- (b) that person makes arrangements under which continuity of pension rights with another occupational pension scheme or personal pension scheme will continue during the period of full-time reserve service, in respect of that service.

(2) For the purpose of paragraph (1)(b), a person is only taken to be an active member of another occupational pension scheme in respect of service if the person who is the employer in relation to that scheme is making contributions to it in respect of that service.

B.3 Date of joining the Scheme

A person who is eligible to be an active member of the Scheme in respect of service is treated as having become such a member on the day such service began.

B.4 Opting to cease to be an active member of the Scheme

- (1) An active member of the Scheme may opt to cease to be such a member.
- (2) The option may only be exercised by notice in writing to the Scheme administrator in such form as the Scheme administrator requires.
- (3) A member who exercises the option ceases to be an active member—
 - (a) at the end of the calendar month in which the option is exercised; or
 - (b) on such later date as the Defence Council considers appropriate.
- (4) For the purposes of this rule, an option is treated as having been exercised on the date on which it was received by the Scheme administrator.

PART C

Member Benefits

C.1 Leaving service on or after reaching pension age

- (1) A member is entitled to a pension for life and a lump sum on reaching pension age if the member ceases to be in pensionable service on or after reaching that age.
- (2) The pension and the lump sum become payable immediately on the member ceasing to be in service.
- (3) The amount of the annual pension payable under this paragraph to a member who undertakes—
 - (a) a full commitment full-time reserve service,
 - (b) a special short service commission,
 - (c) a special S-type commission,

is calculated by multiplying the amount of the member's final pensionable earnings by the number of years of reckonable service by 1.5%.

- (4) The amount of the lump sum payable where paragraph (3)(a), (b) or (c) applies, is calculated by multiplying by 3 the amount of the annual pension so payable at the time when the member ceases to be in service.

- (5) The amount of annual pension payable under this paragraph for a member who is in service undertaking—

- (a) home commitment full-time reserve service, or
- (b) limited commitment full-time reserve service,

is calculated by multiplying the amount of the member's final pensionable earnings by the number of years of reckonable service by 1.25%.

- (6) The amount of the lump sum payable where paragraph (5)(a) and (b) applies is calculated by multiplying the amount of the annual pension so payable by 3.

C.2 Leaving before reaching pension benefit age

- (1) Subject to paragraph (2), a member is entitled to a pension for life and a lump sum on reaching pension benefit age if the member ceases to be in pensionable service before reaching that age.

- (2) Where a member qualifies for a pension under rule C.1 the member shall not be entitled to a pension for life or lump sum under this rule.

(3) The pension and lump sum become payable immediately on the member attaining pension benefit age.

(4) The amount of the annual pension payable under this rule for a member who is in service undertaking—

- (a) full commitment full-time reserve service,
- (b) a short service commission, or
- (c) a special S-type commission,

is calculated by multiplying the amount of the member's final pensionable earnings by the number of years of reckonable service by 1.5%.

(5) The amount of the annual pension payable under this rule for a member who is in service undertaking—

- (a) home commitment full-time reserve service, or
- (b) limited commitment full-time reserve service,

is calculated by multiplying the amount of the member's final pensionable earnings by the number of years of reckonable service by 1.25%.

(6) The amount of the lump sum payable under this rule is calculated by multiplying the amount of the annual pension so payable by 3.

C.3 Pension sharing orders and credit members' pensions

(1) Where a pension sharing order is made for the benefit of a person that person becomes a pension credit member and is entitled to a pension for life and a lump sum derived from the member's pension credit rights.

(2) No lump sum is payable if the pension debit member is a pensioner member when the pension sharing order under which the pension credit member is entitled to the pension credit takes effect.

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

- (a) where the pension sharing order is made before 6th April 2009—
 - (i) immediately the pension credit member reaches pension benefit age; or
 - (ii) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect;
- (b) where the pension sharing order is made on or after 6th April 2009—
 - (i) immediately the pension credit member reaches age 55; or
 - (ii) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect.

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

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

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

(6) Where the pension sharing order was made before 6th April 2009 and that order has taken effect, the pension credit member may opt for the immediate payment of a reduced pension and lump sum on or after reaching age 55.

(7) Where a pension credit member has exercised the option under paragraph (6), the amount of the annual pension and lump sum to which the member is entitled are first calculated in

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

(8) The option under paragraph (6) may only be exercised by a notice in writing to the Scheme administrator in such form as the Scheme administrator requires.

(9) For the purposes of this rule “pension benefit age” means—

- (a) if the pension sharing order was made before 6th April 2006, the age of 60; and
- (b) otherwise, the age of 65.

C.4 Early payment of benefits: active members’ ill-health

(1) An active member who ceases to be in pensionable service because the ill-health condition is met is entitled to immediate payment of a pension and a lump sum.

(2) For the purpose of this rule, the ill-health condition is met if—

- (a) the Scheme administrator is satisfied that the member is (and will continue to be) incapable of carrying on the member’s occupation because of physical or mental impairment; and
- (b) the member has in fact ceased to carry on that occupation.

(3) The amount of the pension payable under this rule is calculated in accordance with rule C.5 or C.6.

(4) The amount of the lump sum payable under this rule is calculated by multiplying the amount of the annual pension so payable by 3.

C.5 Amount of pension under rule C.4: officers

(1) The amount of annual pension payable under rule C.4 to a member whose pension rank is that of an officer is calculated in accordance with this rule.

(2) The amount of the annual pension payable under rule C.4 depends on—

- (a) the member’s pension rank;
- (b) whether the member held another rank or paid acting rank; and
- (c) the number of qualifying years’ service that the member has.

(3) Subject to paragraphs (5) and (6), in the case of a member who has at least 5 years’ qualifying service of which at least 2 years’ qualifying service was served from the age of 21, the amount of the pension payable under rule C.4 is the amount specified for a person of the member’s pension rank and number of whole years’ reckonable service the member has in the table setting out the rates of service invaliding pension in the pension code in force on the last day of pensionable service and the appropriate fraction of the applicable increase.

(4) Subject to paragraphs (5) and (6), if the member has at least 2 years’ qualifying service after reaching the age of 18 but less than 5 years’ qualifying service after reaching that age, the amount of the annual pension payable is the same as the amount to which the member would have been entitled on reaching pension benefit age.

(5) In the case of a member whose pension rank is that of an officer who but for rule C.4 would have been entitled to an immediate pension under rule C.1, the amount of the annual pension is the higher of—

- (a) the amount of annual pension calculated in accordance with rule C.4; or
- (b) the amount of annual pension calculated in accordance with rule C.1.

(6) If in the opinion of the Defence Council in all the circumstances of the case the amount of the annual pension payable to any member by virtue of this rule should be a lower amount than would be payable by virtue of the previous paragraphs of this rule, that lower amount is payable instead.

(7) In this rule—

“applicable increase” means the amount that is the difference between—

- (a) the annual pension specified in the relevant table in the pension code in force on the last day of pensionable service for a person of the member’s pension rank and number of whole years reckonable service; and
- (b) the annual pension specified in that table for a person of the member’s pension rank if the member had one more whole year of reckonable service;

“appropriate fraction” means the fraction given by the following formula

$$\frac{RS}{Y}$$

where

“RS” is the number of days of reckonable service in excess of the number of whole years’ reckonable service that the member has; and

“Y” is 366 if the final year of service included February 29th, or 365 if not.

C.6 Amount of pension under rule C.4: other ranks

(1) The amount of the annual pension payable under rule C.4 to a member whose pension rank is not that of an officer is calculated in accordance with this rule.

(2) The amount of the annual pension payable under rule C.4 depends on—

- (a) the member’s pension rank and whether the member has held another rank or paid acting rank; and
- (b) the number of qualifying years’ service the member has.

(3) If the member has at least 5 years’ qualifying service after reaching the age of 18, subject to paragraphs (5) and (6), the amount of the annual pension payable is the amount specified for a person of the member’s pension rank and number of whole years’ reckonable service the member has in the table setting out the rates of service invaliding pension in the pension code in force on the last day of pensionable service, and the appropriate fraction of the applicable increase.

(4) If the member has at least 2 years’ qualifying service after reaching the age of 18 but less than 5 years’ qualifying service after reaching that age, subject to paragraphs (5) and (6), the amount of the annual pension payable is the same as the amount to which the member would have been entitled on reaching pension benefit age.

(5) In the case of a member whose pension rank is not that of an officer who but for rule C.4 would have been entitled to an immediate pension under rule C.1, the amount of the annual pension is the higher of—

- (a) the amount of annual pension calculated in accordance with rule C.4; or
- (b) the amount of the annual pension calculated in accordance with rule C.1.

(6) If in the opinion of the Defence Council in all the circumstances of the case the amount of the annual pension payable to any member by virtue of this rule should be a lower amount than would be payable under the previous paragraphs of this rule, that lower amount is payable instead.

C.7 Early payment of benefits: deferred members with permanent serious ill health

(1) A deferred member is entitled to immediate payment of a pension and a lump sum before reaching pension benefit age if—

- (a) in the opinion of the Defence Council the member has suffered a permanent breakdown in health involving incapacity for any full-time employment;
- (b) the Defence Council has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on any occupation because of physical or mental impairment; and

- (c) the member makes a claim for immediate early payment of the pension and lump sum under this rule to the Scheme administrator.
- (2) The amount of the annual pension payable under this rule is equal to the amount to which the member would have been entitled under rule C.2.
- (3) The amount of the lump sum payable under this rule is the amount of the annual pension so payable multiplied by 3.
- (4) For the purpose of this rule and rule C.9—
 - (a) a member's breakdown in health is permanent if, in the opinion of the Defence Council it will continue at least until the member reaches pension benefit age; and
 - (b) a member's breakdown in health involves incapacity for any full-time employment if, in the opinion of the Defence Council, as a result of the breakdown the member is, and at least until pension benefit age will be, incapable of any gainful full-time employment.

C.8 Guaranteed minimum pensions etc

- (1) Paragraphs (2) to (5) apply where a member has a guaranteed minimum under section 14 of the 1993 Act in relation to benefits under the Scheme.
- (2) If apart from this rule no pension would be payable to the member under the Scheme, or the weekly rate of the pension payable would be less than the guaranteed minimum, a pension, the weekly rate of which is equal to the guaranteed minimum, is payable to the member for life from the date on which the member reaches state pension age.
- (3) If on reaching state pension age the member is in employment and the member consents, paragraph (2) applies on the cessation of that employment.
- (4) If the member continues in employment for a further period of 5 years after reaching state pension age and does not then leave it, paragraph (2) applies at the end of the 5 year period, unless the member consents to a further postponement.
- (5) If paragraph (3) or (4) applies, the amount of the guaranteed minimum to which the member is entitled under this rule is increased in accordance with section 15 of the 1993 Act.
- (6) This rule does not apply if—
 - (a) the pension is forfeited in a case where rule H.6(1)(a) (conviction of treason or Official Secrets Acts(a) offences) applies, or
 - (b) the pension is commuted under rule H.8 (commutation of small pensions) and the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(b) are met,

but if any other provision of the Scheme is inconsistent with this rule, this rule prevails.

C.9 Pension Increases

- (1) The amount of pension shall be increased by the amount of the pension increases—
 - (a) where the amount is calculated from age 55 in relation to a pension under rule C.1;
 - (b) where the amount is calculated under—
 - (i) rule C.2,
 - (ii) rule C.3,
 - (iii) rule C.5 or C.6 in relation to a pension under C.4, and
 - (iv) rule C.7,

from the date the pension or further pension is first due to be paid.

(a) 1911 c. 28; 1920 c. 75; 1939 c. 121 and 1989 c. 6.
 (b) S.I 1996/1172.

(2) A member in receipt of an annual pension under rule C.1 is entitled to the immediate payment of pension increases before reaching 55 if—

- (a) in the opinion of the Defence Council the member has suffered a permanent breakdown in health involving incapacity for any gainful full-time employment;
- (b) the Defence Council has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on any occupation because of physical or mental impairment; and
- (c) the member makes a claim for immediate early payment of the increases under this rule to the Scheme administrator.

(3) For the purposes of paragraphs (1) and (2), “pension increases” means the amount that an annual pension of the same amount would have been increased under the 1971 Act on the day following the last day of pensionable service if it—

- (a) were eligible to be increased under that act and;
- (b) had come into payment following the last day of pensionable service.

PART D

Death Benefits

Pensions for eligible surviving spouses and civil partners

D.1 Surviving spouses’ and civil partners’ pensions

(1) If an active member dies leaving a surviving spouse or civil partner, subject to rules D.5 and D.6 (suspension and reduction of pensions) and the following paragraphs of this rule, the surviving spouse or civil partner is entitled to a pension for life.

(2) Subject to rule D.17 (guaranteed minimum pensions for surviving spouses and civil partners) the Defence Council may determine that the pension is to be reduced or withheld—

- (a) where it would be payable to a surviving spouse, if the member and the surviving spouse married less than 6 months before the member’s death; and
- (b) where it would be payable to a surviving civil partner, if the civil partnership was formed less than 6 months before the member’s death.

(3) The widower or surviving civil partner of a deceased member is only entitled to a pension under this rule if the whole or part of the member’s reckonable service was served on or after 1st October 1987.

(4) A surviving spouse or civil partner who married or formed a civil partnership with a member after the member ceased to be in service is only entitled to a pension under this rule if the whole or part of the member’s reckonable service was served on or after 6th April 1978.

D.2 Amount of pension under rule D.1

(1) This rule applies in the case of a deceased active member who would have qualified for a pension under rule C.1 if service had ceased on the date of death otherwise than by reason of the death.

(2) The annual amount of the pension payable under rule D.1 is one half of the member’s notional pension amount.

(3) For the purposes of this rule “the member’s notional pension amount” 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.

D.3 Amount of pension under rule D.1: deferred members

- (1) This rule applies in the case of a deceased deferred member.

(2) The annual amount of the pension payable under rule D.1 is one half of the member's notional pension amount.

(3) For the purposes of this rule a "member's notional pension amount" is the amount of the annual pension to which the member would have been entitled under rule C.2 if the member had qualified for a pension under that rule on the date of death.

D.4 Increased pension under rule D.1 for immediate bereavement period

(1) In the case of a deceased active member, the annual amount of the pension payable under rule D.1 (surviving spouses' and civil partners' pensions) for the immediate bereavement period is equal to the annual amount of the member's basic pay.

(2) In this rule "the immediate bereavement period" means—

- (i) if there are one or more dependent children in the care of the person entitled to the pension under rule D.1, 182 days beginning with the day following the date of the member's death; and
- (ii) otherwise, 91 days beginning with that day.

(3) This rule does not apply if the amount of pension payable to the person entitled under rule D.1 would be greater apart from this rule.

Suspension and reduction of pensions

D.5 Suspension and reduction of pensions: widows and widowers

(1) Subject to rule D.17 (guaranteed minimum pensions for surviving spouses and civil partners), a pension under rule D.1 is not payable to a person ("the beneficiary") who is the widow or widower of the deceased member if—

- (a) in a case where the beneficiary is the widow of a member whose reckonable service ceased on or after 6th April 1978, the beneficiary before reaching state pension age—
 - (i) marries;
 - (ii) lives with a man as his wife;
 - (iii) forms a civil partnership with another person;
 - (iv) lives with another person as her civil partner;
- (b) in a case where the beneficiary is the widower of a member whose reckonable service ceased on or after 6th April 1989, the beneficiary before reaching state pension age—
 - (i) marries;
 - (ii) lives with a woman as her husband;
 - (iii) forms a civil partnership with another person; or
 - (iv) lives with another person as his civil partner before the beneficiary reaches state pension age;

(2) In a case where the beneficiary is the widow of a member whose reckonable service ceased on or after 6th April 1978, the beneficiary after reaching state pension age—

- (a) marries,
- (b) lives with a man as his wife,
- (c) forms a civil partnership with another person,
- (d) lives with another person as her civil partner,

the amount of the pension to which the beneficiary is entitled is reduced to the amount of the widow's guaranteed minimum.

(3) In a case where the beneficiary is the widower of a member whose reckonable service ceased on or after 6th April 1989, the beneficiary after reaching state pension age—

- (a) marries,
- (b) lives with a woman as her husband,

- (c) forms a civil partnership with another person,
- (d) lives with another person as his civil partner,

the amount of the pension to which the beneficiary is entitled is reduced to the amount of the widower's guaranteed minimum.

(4) If a beneficiary's pension is not payable to the beneficiary under this rule because of the beneficiary's marriage or entry into a civil partnership and—

- (a) that marriage or civil partnership is dissolved, or the parties to it are legally separated or the marriage or civil partnership is terminated due to the death of the beneficiary's spouse or civil partner, and
- (b) the Defence Council is satisfied that the pension should become payable to the beneficiary for reasons of hardship,

the pension becomes payable to the beneficiary.

(5) If a beneficiary's pension is not payable to the beneficiary under this rule because of the beneficiary living with another person as that other person's spouse or civil partner and the Defence Council is satisfied that—

- (a) the beneficiary has ceased to live with that other person as that person's spouse or civil partner, and
- (b) the pension should become payable to the beneficiary for reasons of hardship,

the pension becomes payable to the beneficiary.

(6) This paragraph applies if, apart from this paragraph and paragraphs (7) and (8), as a result of a pension being payable under paragraph (4) or (5)—

- (a) a pension would be payable to the beneficiary in respect of two or more deceased members; or
- (b) a pension would become payable to the beneficiary under these rules in respect of a member and a pension would be payable to the beneficiary under the rules of a relevant scheme in respect of another person.

(7) If paragraph (6)(a) applies and it appears to the Defence Council that—

- (a) the pension payable in respect of one of the members is less beneficial than that payable in respect of the other member, or
- (b) they are equally beneficial,

then the less beneficial pension does not become payable or, in a case where they are equally beneficial, the pension in respect of the second or subsequent spouse or civil partner does not become payable.

(8) If paragraph (6)(b) applies and it appears to the Defence Council that—

- (a) the pension payable under these rules is less beneficial than that payable under a relevant scheme, or
- (b) they are equally beneficial,

then the pension under these rules does not become payable.

(9) In paragraph (6) "relevant scheme" means—

- (a) the AFPS 1975;
- (b) the AFPS 2005; or
- (c) the RFPS 2005.

D.6 Suspension and reduction of pensions: civil partners

(1) This rule applies where a pension under rule D.1 is payable to a person ("the beneficiary") who was the civil partner of a deceased member.

(2) Subject to rule D.17 (guaranteed minimum pensions for surviving spouses and civil partners), the pension under rule D.1 ceases to be payable to the beneficiary if before reaching state pension age the beneficiary—

- (a) marries;
 - (b) lives with a person as that person's spouse;
 - (c) forms a civil partnership with another person; or
 - (d) lives with a person as that person's civil partner.
- (3) If on or after reaching state pension age the beneficiary—

- (a) marries,
- (b) lives with a person as that person's spouse,
- (c) forms a civil partnership with another person, or
- (d) lives with a person as that person's civil partner,

the amount of the pension under rule D.1 is reduced to the amount of a surviving civil partner's guaranteed minimum in respect of the service of the deceased member.

(4) If a beneficiary's pension is not payable to the beneficiary under this rule because of the beneficiary's marriage or entry into a civil partnership and—

- (a) that marriage or civil partnership is dissolved, or the parties to it are legally separated or the marriage or civil partnership is terminated due to the death of the beneficiary's spouse or civil partner, and
- (b) the Defence Council is satisfied that the pension should become payable to the beneficiary for reasons of hardship,

the pension becomes payable to the beneficiary.

(5) If a beneficiary's pension is not payable to the beneficiary under this rule because of the beneficiary living with another person as that other person's spouse or civil partner and the Defence Council is satisfied that—

- (a) the beneficiary has ceased to live with that other person as that person's spouse or civil partner, and
- (b) the pension should become payable to the beneficiary for reasons of hardship,

the pension becomes payable to the beneficiary.

(6) This paragraph applies if, apart from this paragraph and paragraphs (7) and (8), as a result of a pension being payable under paragraph (4) or (5)—

- (a) a pension would be payable to the beneficiary in respect of two or more deceased members; or
- (b) a pension would become payable to the beneficiary under these rules in respect of a member and a pension would be payable to the beneficiary under the rules of a relevant scheme in respect of another person.

(7) If paragraph (6)(a) applies and it appears to the Defence Council that—

- (a) the pension payable in respect of one of the members is less beneficial than that payable in respect of the other member, or
- (b) they are equally beneficial,

then the less beneficial pension does not become payable or, in a case where they are equally beneficial, the pension in respect of the second or subsequent spouse or civil partner does not become payable.

(8) If paragraph (6)(b) applies and it appears to the Defence Council that—

- (a) the pension payable under these rules is less beneficial than that payable under a relevant scheme, or
- (b) they are equally beneficial,

then the pension under these rules does not become payable.

- (9) In paragraph (6) “relevant scheme” means—
- (a) the AFPS 1975;
 - (b) the AFPS 2005; or
 - (c) the RFPS 2005.

Pensions for eligible children

D.7 Surviving children’s pensions

- (1) If a member who gave service on or after 31st March 1973 dies leaving an eligible child, a pension is payable in respect of that child.
- (2) No pension is payable under this rule in respect of any period before an eligible child’s birth.

D.8 Meaning of “eligible child”

- (1) An “eligible child” for the purposes of any payments under rules D.9 to D.11 is any child who meets one of the conditions under paragraphs (2) to (8) and any of Conditions A to C in paragraphs (10) to (12).
- (2) The first condition is that the child is a legitimate child of the deceased member (“the deceased”) where the deceased was married to or in a civil partnership with the child’s other parent before the death of the deceased.
- (3) The second condition is that the child is an illegitimate child of the deceased born before or within 9 months of the deceased’s death who was mainly dependent on the deceased at the time of the deceased’s death.
- (4) The third condition is that the child is an illegitimate child of the deceased’s spouse or civil partner who was born before or within 9 months of the deceased’s death and who was or would have been mainly dependent on the deceased and who meets the condition in paragraph (9).
- (5) The fourth condition is that the child is an adopted child of the deceased member where the deceased was married to or had formed a civil partnership with the child’s other adoptive parent.
- (6) The fifth condition is that the child is an adopted child of the deceased, or the Defence Council is satisfied that the deceased had previously formed an intention to adopt the child before the deceased’s death, and the child was mainly dependent on the deceased at the date of death and meets the condition in paragraph (9).
- (7) The sixth condition is that the child is a step-child of the deceased where the natural or adoptive parent of the child was married to the deceased or was the deceased’s civil partner at the time of the deceased’s death and where the child was mainly dependent on the deceased at the date of death and meets the condition in paragraph (9).
- (8) The seventh condition is that the child is a grandchild of the deceased where the Defence Council considers that the child has been abandoned by its parents or the parents have died, where the child was mainly dependent on the deceased at the date of the deceased’s death and meets the condition in paragraph (9).
- (9) The condition referred to in paragraphs (4), (6), (7) and (8) is that the child was financially dependent on the member at the date of the member’s death or would have been had the child been born before the member’s death.
- (10) Condition A is that the child is aged under 17.
- (11) Condition B is that the child will not be eligible for a pension under rules D.9 and D.10 unless the child is aged under 23 and is—
- (a) in full-time secondary education;
 - (b) in full-time further education that started immediately after ceasing full-time secondary education;

- (c) undertaking full-time vocational training which in the opinion of the Scheme administrator is unpaid or substantially unpaid; or
- (d) the child is aged 23 or over and meets a condition in sub-paragraphs (a), (b) or (c) and—
 - (i) that person was in receipt of a pension under this Scheme before 6th April 2006:
 - (ii) the deceased had died before 6th April 2006 and a pension was due to come into payment in respect of the child; or
 - (iii) the deceased was a pensioner member before 6th April 2006 and the child was born before 6th April 2007.

(12) Condition C is that the person (who may be over 18) was dependent on the deceased at the date of the deceased's death because of physical or mental impairment and in the opinion of the Scheme administrator is incapable of earning a living.

(13) For the purposes of Condition B, a child who takes a break not exceeding 15 months between concluding secondary education and beginning further full-time education or vocational training is assumed to be continuing in such education or training during the break.

(14) Paragraph (13) does not apply at any time when the child's health is such that it is reasonable to assume that the child will not be capable of undertaking any further education or training.

(15) Nothing in paragraph (13) requires a pension to be paid in respect of a person during the break in education or training.

(16) Any payments due to an eligible child under the age of 18 may be paid to the surviving spouse, civil partner of the deceased, or mother or father of the child, or other person responsible for the child's maintenance, or the child direct as may be decided by the Defence Council.

(17) Any payments due in relation to an eligible child under paragraph (12) may be made to a person at the discretion of the Defence Council.

D.9 Amount of children's pension under rule D.7

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

(2) If a pension is payable under rule D.1 and any of the children 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 of the children 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 none of the children 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 none of the children 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 of the children 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 has the meaning given in rule D.2(3), but for the purpose of this rule—

- (a) if the member had less than 5 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 the children.

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 a 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,

shall 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 18 days beginning with the day following the date of the members death.

D.11 Provisional awards of children’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 the 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 pensions payable in respect of the 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.

Lump sum death benefits

D.12 Death of a member: lump sum death benefit

(1) On the death of an active member who dies before the age of 75 the Defence Council may pay a lump sum to—

- (a) any person who is entitled to a pension under rule D.1; or
- (b) subject to paragraph (4)—
 - (i) if there is no person within paragraph (a), any person who is entitled to a pension under rule D.7; or
 - (ii) if there is no person within paragraph (a) or subparagraph (i), the member's personal representative.

(2) If two or more persons fall within paragraph (1)(b)(i) and the Defence Council decides to pay a lump sum to them, each child shall receive the same amount.

(3) In the case of a pension credit member—

- (a) paragraph (1) only applies if the member meets one of the conditions specified in paragraph (4); and
- (b) paragraph (1) applies as if—
 - (i) there were no person within paragraph (1)(a) or (b)(i); and
 - (ii) the reference to an active member in paragraph (1) was a reference to a pension credit member.

(4) The conditions are that—

- (a) the member dies before becoming entitled to the payment of benefits that would have been due under rule C.3;
- (b) having claimed a pension under rule C.3, the member dies before it has been put into payment; or
- (c) the member dies after claiming a pension under rule C.3 and was not entitled to a lump sum under that rule.

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 3.

- (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 a 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 3, 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 spouses' and civil partners' pensions) 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 if the member had been entitled to it on the date of death,
 - (b) the amount payable under rule D.7 (surviving children'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 (death of a member: lump sum benefit) 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.
- (4) In this rule the "member's notional pension amount" shall have the same meaning as is rule D. 2(3).

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 under section 17 of the 1993 Act 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.

PART E

Further Full-Time Reserve Service

E.1 Application of Part E

(1) This Part applies to—

(a) persons who have been active members of the Scheme;

(b) have ceased to be in pensionable service; and

(c) begin to be in such service again on or before 6th April 2005.

(2) Paragraph (1) does not apply where rule A.13 (disregard of short breaks in service) applies.

(3) In this Part the service referred to—

(a) in paragraph (1)(b) is referred to as ‘the earlier service’; and

(b) in paragraph (1)(c) is referred to as ‘the further service’.

E.2 Periods of service aggregated

(1) Qualifying service that an active member was entitled to count in respect of the earlier service shall be aggregated with qualifying service that the active member is entitled to count in respect of the further service, unless a pension in respect of the earlier service has been put into payment.

(2) Reckonable service that an active member was entitled to count in respect of the earlier service is aggregated with reckonable service that the active member was entitled to count in respect of the further service, unless a pension in respect of the earlier service has been put into payment.

(3) Where paragraphs (1) and (2) apply, a member is no longer entitled to separate benefits under the Scheme in respect of the earlier service.

PART F

Transfers

Transfers out

F.1 Right to transfer value payment

(1) This Part supplements the rights conferred by or under Chapter 4 of Part 4 of the 1993 Act.

(2) This Part is without prejudice to that Chapter or Chapter 5 of that Part (early leavers: cash transfer sums and contribution refunds).

(3) Accordingly—

(a) a member to whom Chapter 4 of that Part applies (see section 93(1)(a) of that Act) is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of the member under the Scheme; and

(b) a member to whom Chapter 5 of that Part applies (see section 101AA(1) of that Act) is entitled to a cash transfer sum in accordance with that Chapter.

(4) Paragraph (3) does not apply to rights that are directly attributable to a pension credit.

F.2 Applications for statements of entitlement

(1) A member who requires a transfer value payment to be made must apply in writing to the Scheme administrator for a statement of the amount of the cash equivalent of the member's accrued benefits under the Scheme at the guarantee date (a "statement of entitlement").

(2) In this Scheme, "the guarantee date" means any date that—

(a) falls within the required period;

(b) is chosen by the Scheme administrator;

(c) is specified in the statement of entitlement; and

(d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(3) In counting the period of 10 days referred to in paragraph (2)(d), Saturdays, Sundays, Christmas Day, New Year's Day, Good Friday and bank holidays are excluded.

(4) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

(5) A member who—

(a) has made an application for a statement of entitlement under this rule, and

(b) has not withdrawn it,

may make only one other such application in the period of twelve months beginning with the date of the first application.

(6) In paragraph (2) "the required period" means—

(a) the period of 3 months beginning with the date of the member's application for a statement of entitlement; or

(b) such longer period beginning with that date (but not exceeding six months) as may reasonably be required if, for reasons beyond the control of the Scheme administrator, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

F.3 Applications for transfer value payments

(1) A member who has applied for and received a statement of entitlement under rule F.2 may apply in writing to the Scheme administrator for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of paragraph (10)), and in this Scheme such a payment is referred to as "the guaranteed cash equivalent transfer value payment".

(3) An application under paragraph (1) must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than—

(a) 6 months after that date; or

(b) if it is earlier, the date on which the member reaches pension age.

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Defence Council may require.

(6) An application for a transfer value payment to be made under the public sector transfer arrangements may only be made before the first anniversary of the day on which the member becomes eligible to be an active member of the scheme to which the transfer is to be made.

(7) In the case of a person who is not within rule C.2 (leaving before reaching pension benefit age), an application under paragraph (1) may only be made on or before the date that is 3 months after the date on which the Scheme administrator gives the person written notice of the options in accordance with section 101AC of the 1993 Act.

(8) The Scheme administrator may direct that any time limit applying to an application under paragraph (1) should be extended if it is considered to be reasonable to do so in the circumstances.

(9) An application under this rule may be withdrawn by notice in writing, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before such notice is given.

(10) If the payment is made later than 6 months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—

- (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or
- (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of 1% above the Bank of England base rate.

F.4 Ways in which transfer value payments may be applied

(1) A member may only require the Scheme administrator to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 95 of the 1993 Act.

(2) Paragraph (1) applies whether or not the member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 4 of Part 4 of that Act.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied.

(4) A transfer payment may only be made to—

- (a) a pension scheme that is registered under Chapter 2 of Part 4 of the Finance Act 2004(a); or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that 2004 Act).

F.5 Calculating amounts of transfer value payments

(1) This rule applies for the purpose of calculating the amount of a guaranteed cash equivalent transfer value payment.

(2) Subject to paragraphs (3) and (6), the amount of the guaranteed cash equivalent transfer value payment is to be calculated in accordance with guidance and tables determined by the Defence Council for use at the guarantee date after consultation with the Scheme actuary.

(3) In preparing those tables the Defence Council, after consultation with the Scheme actuary, must use such factors as are considered appropriate, having regard to section 97 of the 1993 Act

(a) 2004 c. 12.

and regulations made under that Act (whether or not the payment is in respect of a person entitled to a guaranteed cash equivalent transfer value payment under that Act).

(4) Subject to paragraph (6), if the amount calculated in accordance with paragraph (2) is less than the member's minimum transfer value (if any), the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value instead.

(5) The payments are any transfer value payments that have been made to the Scheme in respect of the member.

(6) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is calculated—

- (a) in accordance with those arrangements rather than paragraphs (2) and (3); and
- (b) by reference to the guidance and tables provided by the Government Actuary for the purposes of this paragraph that are in use on the date used for the calculation.

(7) In paragraph (4), “the minimum transfer value”, in relation to any person, means the sum of any of such payments as are mentioned in paragraph (5) as a result of which the member is entitled to count any reckonable service under the Scheme by reference to which the accrued rights subject to the transfer are calculated.

F.6 Effect of transfers-out

If a transfer value payment is made under this Part in respect of a person's rights under this Scheme, those rights are extinguished.

Transfers in

F.7 Right to apply for acceptance of transfer value payment from another scheme etc

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

(2) Paragraph (1) does not apply to rights that are directly attributable to a pension credit.

F.8 procedure for applications under rule F.7

(1) An application under rule F.7—

- (a) must be made in writing;
- (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment; and
- (c) subject to paragraph (2), must be made before the member reaches pension benefit age.

(2) In the case of a transfer value payment to be made under the public sector transfer arrangements or to which paragraph (3) applies, the application under rule F.7—

- (a) in the case of a transfer value payment to be made under the public sector transfer arrangements, must be made during the period of one year beginning with the day on which the member becomes eligible to be an active member;
- (b) in the case of a transfer value payment to which paragraph (3) applies, must be made during the period of one year beginning with the relevant day, unless paragraph (4) applies; and
- (c) must be received by the Scheme administrator before the applicant reaches the age which is the normal pension age under the Scheme by which the transfer value payment is to be made.

(3) This paragraph applies to—

- (a) a transfer value payment from a personal pension scheme; or
- (b) a transfer value payment relating only to voluntary contribution rights.

(4) This paragraph applies in the case of a transfer value payment within paragraph (3)(b) (“the relevant payment”) if—

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

(5) In this rule—

“relevant date” means the day on which the applicant becomes eligible to be an active member of the scheme or 6th April 2006, whichever is the later; and

“voluntary contribution rights” means rights under an occupational pension scheme that derive from voluntary contributions made by the applicant.

F.9 Acceptance of transfer value payments

(1) This rule applies where a member applies under rule F.7 for acceptance of a transfer value payment from another scheme.

(2) Subject to paragraph (4) where an application is made by a member under rule F.7, the Scheme administrator may accept the transfer value payment if such conditions as the Defence Council may require are met.

(3) If the Scheme administrator accepts the payment, the member is entitled to count the appropriate period of reckonable service for the purposes of the Scheme.

(4) Subject to paragraph (5) the Scheme administrator may not accept a transfer value payment if—

- (a) it would be applied in whole or in part in respect of the member’s or the member’s spouse’s or civil partner’s entitlement to a guaranteed minimum pension; and
- (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the Scheme actuary for the purposes of this paragraph.

(5) Paragraph (4) does not apply if the payment is made under the public sector transfer arrangements.

(6) In paragraph (3) “the appropriate period” means the period calculated in accordance with rule F.10.

F.10 Calculation of transferred-in reckonable service

(1) Subject to paragraph (3), the period of reckonable service that a member is entitled to count under rule F.9(3) is calculated as at the date on which the transfer payment is received by the Scheme and in accordance with guidance and tables provided by the Scheme actuary for the purpose.

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

- (a) two months after the application under rule F.7 is received, or
- (b) the date on which the transfer value payment is received,

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

(3) If the transfer value payment is accepted under the public sector transfer arrangements, the period the member is entitled to count is calculated—

- (a) in accordance with those arrangements; and

- (b) by reference to the guidance and tables provided by the Scheme actuary for the purposes of this paragraph, that are in use on the date that is used by the transferring scheme for calculating the transfer value payment.

F.11 Public sector transfer arrangements

This Part applies in the case of a transfer to which the public sector transfer arrangements apply as it applies in other cases, except to the extent that—

- (a) any provision in this Part provides otherwise; or
- (b) the arrangements themselves make different provision.

PART G

Abatement

G.1 Abatement of pensions on giving further service

(1) Where a pensioner member of the Scheme gives further pensionable service, any pension in payment under this Scheme shall be abated in accordance with this rule.

(2) The pension shall be abated by the amount that the pension when added together with the basic pay for that pensioner member's full-time reserve service exceeds the amount of annual pay the member was entitled to on the last day of full-time service, adjusted for inflation.

(3) The reference in paragraph (2) to adjusting for inflation the amount of annual pay is a reference to increasing it by the same amount as an annual pension of the same amount would have been increased under the 1971 Act on the day following the last day of regular service if the pension were eligible to be so increased and had come into payment on the day following the last day of full-time reserve service.

G.2 Effect of change of rank

(1) This rule applies where a member's rank, post or commitment changes during the period of further full-time reserve service.

(2) Rule G.1 applies from the date of the change in rank, post or commitment as if the member were entering the further service at that time, and the service before that time is disregarded.

G.3 General disregard of effect of abatement

In Part D of this Scheme (death benefits) references to the amount of the pension payable to a person are to be taken as references to the amount so payable apart from any reduction falling to be made under this Part.

PART H

Miscellaneous and Supplementary Provisions

H.1 Claims and payment of benefits

(1) Notwithstanding any rule of this Scheme according to which any benefit becomes payable at any specified time, no benefit becomes payable under the Scheme unless the person to whom it would be payable has declared—

- (a) that he is entitled to it; or
- (b) in the case of a benefit under rule D.7 that the person on whose behalf it is payable to is so entitled.

(2) If a declaration under paragraph (1) in respect of a pension is made after such a specified time, the person is only entitled to payment of the pension in respect of the period beginning with that time and ending with the date on which he makes the declaration if the Scheme administrator consents.

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

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

H.2 False statements etc about ill-health

Where a pension under C.5, C.6 or C7 has been awarded to a member and it subsequently appears to the Defence Council that the member made a false declaration about their health or deliberately suppressed a material fact that was relevant to the award, the Defence Council may cease paying the pension, withhold the whole or part of the pension, or recover any payment made under the award.

H.3 Non-assignability

(1) Subject to rule D.8 (16) (payments in respect of children under 18), every benefit to which a person is entitled under the Scheme is payable to or for his benefit.

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

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

Pension Credit Members with Two or More Pension Credits

H.4 Pension credit members with two or more entitlements

(1) If a pension credit member is entitled to two or more pension credits—

(a) benefits are payable to or in respect of the member under the Scheme as if he were two or more pension credit members, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable in respect of the one pension credit member); and

(b) the amounts of those benefits are determined accordingly.

(2) If a pension credit member is also an active member, a deferred member or a pensioner member—

(a) benefits are payable to or in respect of the member under the Scheme as if he were two or more members (so that two or more pensions are payable to or in respect of the one member); and

(b) the amounts of those benefits are determined accordingly.

Forfeiture

H.5 Forfeiture of benefits

(1) Subject to paragraphs (3) to (5), the Defence Council may withhold benefits payable under the Scheme in respect of a member to whom paragraph (1) of rule H.6 applies to such extent as the Defence Council consider appropriate.

(2) Subject to paragraph (4), the Defence Council may withhold pension benefits payable under Part D to a person to whom paragraph (2) of rule H.6 applies to such extent as the Defence Council consider appropriate; and if the whole of a person's benefits are so withheld that Part applies as if that person had predeceased the member.

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

(3) If the member has a guaranteed minimum under section 14 of the 1993 Act in relation to service by reference to which he is entitled to benefits under the Scheme, paragraph (1) only applies to so much of the member's pension as exceeds that guaranteed minimum, unless rule H.6(1)(a) (conviction of treason or Official Secrets Acts(a) offences) applies.

(4) In the case of a pension payable to the surviving spouse or civil partner of a member, paragraphs (1) and (2) are subject to rule D.17 (guaranteed minimum pensions for surviving spouses and civil partners).

(5) Where rule H.6(1)(c) (monetary obligations) applies—

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

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

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

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

H.6 Events enabling forfeiture

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

(a) is convicted of treason or of one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced—

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

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

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

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

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

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

(2) This paragraph applies to a person who is convicted of the murder or manslaughter of the member or any other offence which involves the unlawful killing of the member.

(3) In paragraph (2) "unlawful killing" includes unlawfully aiding, abetting, counselling or procuring the death.

H.7 Procedure, references etc

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

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

(a) the arrangements established for the resolution of disputes relating to the Scheme that are in force at the time the notification is given, and

(b) Part 10 of the 1993 Act (investigations: the Pensions Ombudsman),

in respect of any decision made under rule H.5.

(a) 1911 c. 28; 1920 c. 75; 1939 c. 121 and 1989 c. 6.

(3) If the Defence Council withholds benefits under rule H.5 in a case where rule H.6(1)(c) (monetary obligations) applies, the member must be given a certificate showing any amount withheld and the effect of its being withheld on the member's benefits under the Scheme.

Commutation of Small Pensions

H.8 Commutation of small pensions

(1) Where the annual rate of any of the pensions specified in paragraph (2) does not exceed the small pensions commutation maximum, the Scheme administrator may pay the person entitled to the pension a lump sum of such an amount as the Scheme actuary advises represents the capital value of the pension if—

- (a) that person consents; and
- (b) in a case where that person is a member and the pension is one which may not be less than his guaranteed minimum, the person has reached state pension age.

(2) The pensions are—

- (a) a pension to which a member is entitled under Part C (member benefits);
- (b) a pension payable to any person under Part D (death benefits) in respect of a particular member.

(3) If—

- (a) a member is entitled to more than one pension in respect of their pensionable service,
- (b) a person is entitled to more than one pension in respect of the same member, or
- (c) a pension credit member is entitled—
 - (i) to more than one pension under rule C.3, or
 - (ii) to one or more pensions within sub-paragraph (a) in addition to one or more pensions under rule C.3,

those pensions may only be commuted under this rule if they do not in aggregate exceed the amount that is permitted to be commuted under all the commutation requirements that apply in the circumstances in question.

(4) The payment of a lump sum under this rule in respect of a pension discharges all liabilities under this Scheme in respect of that pension.

(5) In this rule—

“the small pensions commutation maximum” means the amount that is permitted to be commuted, having regard to all the commutation requirements that apply in the circumstances in question; and

“the commutation requirements” means requirements permitting the commutation of small pensions that are imposed—

- (a) by regulation 19, 20 or 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996^(a);
- (b) by regulation 2 of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997^(b);
- (c) by regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000^(c); or
- (d) by paragraph 7 of Schedule 29 to the Finance Act 2004^(d) (which defines trivial commutation lump sums for the purposes of Part 1 of that Schedule).

(a) S.I. 1996/1172. Regulation 20 was amended by regulation 2(3) of S.I. 2000/2975. Regulation 60 was amended by regulation 4(12) of S.I. 1997/786.

(b) S.I. 1997/785.

(c) S.I. 2000/1054.

(d) 2004 c. 12.

Determination of Questions

H.9 Determination of questions

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

(2) But in determining any such question the Defence Council may consult with such persons as are considered appropriate to advise in relation to the question and, in particular, in forming an opinion about any question relating to the health of any person for the purposes of Part C, the Defence Council may consult the Scheme medical adviser.

Information and Evidence

H.10 Information and evidence

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

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

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

Charges

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

(1) This rule applies if—

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

(2) Where this rule applies—

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

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

H.12 Deduction of special lump sum death benefits charge

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Reserve Forces Act 1996 (c. 14) and they restate the Full-Time Reserve Service Pension Scheme 1997 which was previously contained in the Army Pensions Warrant 1977 (now cancelled).

Regulation 1 provides that the Regulations come into force on 6th April 2010.

Regulation 2 re-states the Scheme and provides that it is to be known as “the Full-Time Reserve Service Pension Scheme 1997”. It introduces Schedule 1 to the Regulations where the rules of the Scheme are set out.

The rules are divided into lettered Parts dealing with different aspects of the scheme.

Part A sets out definitional matters. In particular, it defines the expressions, “pension rank”, “qualifying service” and “reckonable service” that are used in the provisions relating to entitlement to and calculation of benefits under the Scheme.

Part B sets out the conditions that must be met for a person to be eligible to join the Scheme, and deals with leaving and rejoining it.

Part C deals with the pensions and lump sum benefits which members become entitled to on retirement. The rules in Part C set out the entitlements for those who retire on or after reaching 55 or and those who retire before 55 or 60 and those who retire on ill-health grounds. It also deals with the early payment of benefits to deferred members with serious ill health conditions and sets out the benefits payable to pension credit members.

Part D sets out the benefits that are payable on the death of a member. It provides for pensions to be payable to surviving spouses, civil partners and eligible children. Widowers of deceased female service personnel are entitled to a pension in respect of the service of the deceased which occurred on or after 1st October 1987. This reflects that survivors’ benefits for female personnel began to be payable from October 1987.

Where a widow or a civil partner of a deceased member, before reaching state benefit age, remarries, forms a new civil partnership lives with another person as if they were man or wife or as if they were civil partners the pension will cease to be payable. Where a widow or a civil partner enters into one of these relationships after reaching state benefit age the pension payable will be reduced to a guaranteed minimum.

The Defence Council has the discretion to restore a pension which has ceased to be paid where it considers it should be restored for reasons of hardship.

Part E deals with further service and sets out the circumstances in which different periods of service which took place before 6th April 2005 can be aggregated for the purposes of calculating pension benefits.

Part F deals with members’ rights under the Scheme to have a transfer payment paid by the Scheme into another scheme, and the right of a member to have a transfer payment from another scheme accepted by the Scheme so that he is entitled to count further reckonable service in the Scheme. (The rights to transfers out supplement the members’ rights under the Pension Schemes Act 1993 (c. 48).).

Part G deals with the abatement of pensions under the Scheme in certain circumstances where pensioners are re-engaged in service that entitles them to re-enter the Scheme.

Part H contains miscellaneous and supplementary provisions, for example, relating to claims for and payment of benefits, the forfeiture of benefits in certain circumstances, the commutation of small pensions and the information and evidence that may be required by the Scheme.