

STATUTORY INSTRUMENTS

**2005 No. 438**

**PENSIONS**

**The Armed Forces Pension Scheme Order 2005**

*Made* - - - - 8th March 2005  
*Laid before Parliament* 14th March 2005  
*Coming into force* - - 6th April 2005

The Secretary of State for Defence, in exercise of the powers conferred upon him by sections 1(1) and (3), 3 and 10(2), (3) and (4) of the Armed Forces (Pensions and Compensation) Act 2004<sup>(1)</sup> hereby makes the following Order:

*Preliminary*

**Citation and commencement and interpretation** **U.K.**

1. This Order may be cited as the Armed Forces Pension Scheme Order 2005 and comes into force on 6th April 2005.

**Commencement Information**

**II** [Art. 1](#) in force at 6.4.2005, see [art. 1](#)

**Establishment of the Armed Forces Pension Scheme 2005** **U.K.**

2.—(1) The Scheme set out in Schedule 1 to this Order has effect and is to be known as “the Armed Forces Pension Scheme 2005”.

<sup>F1</sup>(2) .....

**Textual Amendments**

**F1** [Art. 2\(2\)](#) revoked (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006](#) (S.I. 2006/717), art. 1(2), [Sch.](#)

(1) 2004 c. 32.

### Commencement Information

**I2** [Art. 2](#) in force at 6.4.2005, see [art. 1](#)

### Amendments of the Armed Forces Pension Scheme 2005 **U.K.**

**3.**—(1) For the purposes of section 3(2) of the Armed Forces (Pensions and Compensation) Act 2004, so far as it applies to the Armed Forces Pension Scheme 2005, the consent requirements are as follows.

(2) The Secretary of State may not make a modification of the Scheme which would or might adversely affect any entitlement, accrued rights or pension credit rights of any member acquired before the power to modify the Scheme is exercised unless—

- (a) he has taken the steps specified in paragraphs (3) to (5) and obtained the written consent of the member, or
- (b) paragraph (6) applies.

(3) The Secretary of State must give written notice to the member that it is proposed to modify the Scheme in a manner which will or might adversely affect an entitlement, accrued rights or pension credit rights of the member that have been acquired before the modification is to take effect.

(4) The notice must—

- (a) set out the modifications proposed to be made which would or might adversely affect any such entitlement or rights, and
- (b) contain an explanation of their effects.

(5) The notice must contain a statement that the modifications will not affect any such entitlement or rights unless—

- (a) the member has consented in writing to the modifications, or
- (b) paragraph (6) applies.

(6) This paragraph applies if—

- (a) the Secretary of State has sent two copies of the notice to the member’s last known address, the second being sent at least 2 months after the first, and
- (b) no response has been received from the member to either of the notices before the end of the period of one month beginning with the date on which the second was sent.

(7) In this regulation “accrued rights”, “entitlement”, “member” and “pension credit rights” have the same meaning as in Part 1 of the Pensions Act 1995(2) (see section 124 of that Act).

### Commencement Information

**I3** [Art. 3](#) in force at 6.4.2005, see [art. 1](#)

### Amendments of other regulations **U.K.**

**4.**—(1) Regulation 1(2) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(3) is amended as follows.

(2) At the end of the definition of “Armed Forces Pension Scheme” insert the words “or section 1(1) of the Armed Forces (Pensions and Compensation) Act 2004”.

(2) [1995 c. 26](#). The definition of “pension credit rights” in subsection (1) of section 124 and subsection (2A) of that section were inserted by paragraph 61 of Schedule 12 to the Welfare Reform and Pensions Act [1999 \(c. 30\)](#).

(3) S.I. [1997/785](#).

**Commencement Information**

**I4** [Art. 4](#) in force at 6.4.2005, see [art. 1](#)

**[<sup>F2</sup>Closure of Scheme and transitional provision U.K.]**

5.—(1) Schedule 2 (Transitional Provision) has effect.

(2) After 31st March 2015, the Scheme is closed to new members except where provided for in Schedule 2.]

**Textual Amendments**

**F2** [Art. 5](#) inserted (1.4.2015) by [The Armed Forces \(Transitional Provisions\) Pensions Regulations 2015 \(S.I. 2015/568\)](#), regs. 1(2), **10**

**[<sup>F3</sup>Schedule 3: Remediable Service U.K.]**

6. Schedule 3 (remediable service) makes provision in relation to remediable service.]

**Textual Amendments**

**F3** [Art. 6](#) inserted (1.10.2023) by [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), regs. 1(b), **7**

Signed by authority of the Secretary of State for Defence

8th March 2005

*Ivor Caplin*  
Under Secretary of State Ministry of Defence

SCHEDULE 1 **U.K.**

Article 2(1)

ARRANGEMENT OF RULES  
THE ARMED FORCES PENSION SCHEME 2005**Commencement Information****I5** [Sch. 1](#) in force at 6.4.2005, see [art. 1](#)PART A **U.K.**

## INTERPRETATION ETC.

**A.1 Interpretation: general** **U.K.**

- (1) This Part applies for the interpretation of the Scheme.
- (2) The rules of the Scheme are to be construed without reference to any other scheme applicable to the armed forces (except where they refer to the application of another such scheme).
- (3) Without prejudice to section 23 of the Interpretation Act 1978<sup>(4)</sup>, that Act applies for the interpretation of the rules of the Scheme as it applies to an Act of Parliament.
- (4) In the rules of the Scheme, unless the context otherwise requires, the following expressions have the following meanings—
- “active member” has the meaning given in section 124(1) of the Pensions Act 1995 and, except where the context otherwise requires, refers to membership of the Scheme, (but see paragraphs (5) and (6));
- “active membership period” is to be read in accordance with rule A.6;
- <sup>F4</sup>  
...
- “the AFPS 1975” means the occupational pension scheme arrangements, other than the Scheme, that are open to members of the armed forces and set out in—
- (a) Orders in Council made under section 3 of the Naval and Marine Pay and Pensions Act 1865<sup>(5)</sup>,
- (b) the Army Pensions Warrant 1977<sup>(6)</sup>, and
- (c) Orders and regulations made under section 2 of the Air Force (Constitution) Act 1917<sup>(7)</sup>, or any instrument amending or replacing any of those instruments;
- “AFPS 1975 transferee” has the meaning given in rule K.1(2);
- [<sup>F5</sup>“AFPS 2015” means the scheme established by the Armed Forces Pension Regulations 2014;]
- [<sup>F6</sup>“AFRS 2020” means the Scheme established by the Armed Forces Redundancy Scheme Order 2020;]
- “assumed pay” has the meaning given by rule A.3(1);

(4) 1978 c. 30.

(5) 1865 c. 73; section 3 was amended by the Armed Forces (Pensions and Compensation) Act 2004, section 4.

(6) which is available from Her Majesty's Stationery Office.

(7) 1917 c. 51.

“contributions equivalent premium” has the same meaning as in the Pension Schemes Act 1993 (see section 55(2)(8));

“deferred member” has the meaning given in section 124(1) of the Pensions Act 1995 and, except where the context requires otherwise, refers to membership of the Scheme, (but see paragraph (5));

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

“employment” includes an office or appointment, and related expressions are to be read accordingly;

“final pensionable earnings” has the meaning given in rule A.4;

[<sup>F7</sup>“fixed protection member” has the meaning given in rule B.6;]

[<sup>F8</sup>“flexible service” means one or both of the following types of service—

- (a) part-time service;
- (b) restricted separation service,

and references to a member serving on flexible terms must be construed accordingly;]

[<sup>F9</sup>“gratuity-earning service” means service on a short service commission on terms providing that the person serving is not eligible to be a member of this Scheme or the AFPS 1975, but will be eligible for the payment of a gratuity on leaving service, subject to the satisfactory completion of that person’s service;]

“the guarantee date” has the meaning given in rule F.2(2);

“the guaranteed cash equivalent transfer value payment” has the meaning given in rule F.3(2);

“guaranteed minimum” means the guaranteed minimum as defined in sections 14 and 17 of the Pension Schemes Act 1993(9) (minimum pensions for earners, widows and widowers)—

- (a) as increased in accordance with the requirements of section 109 of that Act(10) (annual increase of minimum pensions), and
- (b) in a case where a reduction has been made under section 15A of that Act(11) (reduction of guaranteed minimum in consequence of pension debit), as reduced in accordance with that section;

[<sup>F10</sup>“Gurkha Pension Scheme transferee” has the meaning given in rule L.1(3);]

“member”, in relation to the Scheme, means an active member, a deferred member, [<sup>F11</sup>a fixed protection member,] a pensioner member or a pension credit member;

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

“ordinary adoption leave” means leave which, in the opinion of the Secretary of State, corresponds to ordinary adoption leave within the meaning of section 75A of the Employment Rights Act 1996(12);

“ordinary maternity leave” means leave which, in the opinion of the Secretary of State, corresponds—

- (a) in relation to any period before 22nd August 1996, to leave under section 33 of the Employment Protection (Consolidation) Act 1978(13), and

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(8) Subsection (2) was inserted in section 55 by section 141(1) of the Pensions Act 1995 (c. 26).

(9) 1993 c. 48. Section 17 is amended by paragraph 1 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c. 19).

(10) Section 109 is amended by section 55 of the Pensions Act 1995 (c. 26).

(11) Section 15A is inserted by section 32(3) of the Welfare Reform and Pensions Act 1999 (c. 30).

(12) 1996 c. 18. Section 75A is inserted by section 3 of the Employment Act 2002 (c. 22).

(13) 1978 c. 44.

*Changes to legislation:* There are currently no known outstanding effects for the  
The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

(b) in relation to any period after 21st August 1996, to leave under section 71 of the Employment Rights Act 1996;

[<sup>F8</sup>“part-time service” means—

(a) for enlisted members, a period of service where the member is serving in accordance with an arrangement provided for in regulations made under section 329(2)(ha) of the Armed Forces Act 2006;

(b) for members who are officers, a period of service on equivalent terms of service;]

[<sup>F12</sup>“<sup>F13</sup>... paternity leave” means leave which, in the opinion of the Secretary of State, corresponds to paternity leave within the meaning of regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002;]

<sup>F14</sup>...

“pay period”, in relation to a person, means a period by reference to which the person’s earnings in the service by virtue of which he is eligible for membership of the Scheme are payable;

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

“pension age” means the age of 55;

“pension benefit age” means the age of 65;

“pension credit” has the meaning given in section 124(1) of the Pensions Act 1995(**14**);

“pension credit member” has the meaning given in section 124(1) of the Pensions Act 1995(**15**);

“pension credit rights” has the meaning given in section 124(1) of the Pensions Act 1995(**16**);

“pension debit” means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999(**17**);

“pension debit member” means a member of the Scheme whose benefits or future benefits under the Scheme have been reduced under section 31 of the Welfare Reform and Pensions Act 1999 (reduction under pension sharing order following divorce or nullity of marriage), whether before or after he became a member of the Scheme;

“pensioner member” has the meaning given in section 124(1) of the Pensions Act 1995 and, except where the context otherwise requires, refers to membership of the Scheme (but see paragraphs (6) and (7));

“pension sharing order” means any provision or order specified in section 28 of the Welfare Reform and Pensions Act 1999;

“personal pension scheme” means a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 which [<sup>F15</sup>is registered under section 153 of the Finance Act 2004 (registration of pension schemes)];

[<sup>F6</sup>“PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022;]

“public sector transfer arrangements” means arrangements recognised by the Secretary of State 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.7;

(14) The definition of “pension credit” was inserted in section 124(1) by paragraph 61 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30).

(15) The definition of “pension credit member” was inserted in section 124(1) by paragraph 61 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30).

(16) The definition of “pension credit rights” was inserted in section 124(1) by paragraph 61 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30).

(17) 1999 c. 30.

“reckonable service” is to be read in accordance with rule A.8;

“re-employed active member” has the meaning given by rule G.1(3);

[<sup>F6</sup>“remediable service” has the meaning given in section 1 of PSPJOA 2022, and refers to service in an employment or office that is pensionable service under the Scheme, whether or not by virtue of section 2(1) of PSPJOA 2022;]

[<sup>F6</sup>“remedy member” means a member with remediable service;]

“the Reserve Forces Pension Scheme” means the occupational pension scheme established by regulations made by the Defence Council, in exercise of the powers conferred on them by sections 4(2) and 8(1)(a) of the Reserve Forces Act 1996(18);

[<sup>F8</sup>“restricted separation service” means—

- (a) for enlisted members, a period of service where the member is serving in accordance with an arrangement which does not restrict the member’s service in a particular area but does make it subject to other geographic restrictions provided for in regulations made under section 329(2)(i) of the Armed Forces Act 2006;
- (b) for members who are officers, a period of service on equivalent terms of service;]

[<sup>F16</sup> ...

“the Scheme” means the Armed Forces Pension Scheme 2005;

“the Scheme actuary” means the actuary appointed by the Secretary of State for the time being to provide a consulting service on actuarial matters relevant to the Scheme;

“the Scheme administrator”, in relation to a member or a function, means the person responsible for the day to day administration of the Scheme in relation to the member or in respect of the function;

[<sup>F6</sup>“Scheme manager” means the Secretary of State;]

“the Scheme medical adviser” means the medical adviser appointed by the Secretary of State for the time being to provide a consulting service on medical matters relevant to the Scheme;

[<sup>F8</sup>“service reduction percentage” has the meaning given in rule A.2A;]

[<sup>F17</sup>“shared parental leave” means leave under section 75E or 75G of the Employment Rights Act 1996 [<sup>F18</sup>, or Articles 107E or 107G of the Employment Rights (Northern Ireland) Order 1996.];]

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

“these Rules” means the rules of the Scheme set out in this Schedule;

“stakeholder pension scheme” means a scheme which is a stakeholder pension scheme for the purposes of Part 1 of the Welfare Reform and Pensions Act 1999 (see section 1 of that Act(19));

“state pension age” means pensionable age, as defined in section 181(1) of the Pension Schemes Act 1993(20);

“weekly rate”, in relation to a guaranteed minimum pension, has the same meaning as in regulation 55(1) of the Occupational Pension Schemes (Contracting-out) Regulations 1996(21).

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(18) 1996 c. 14.

(19) Section 1 is amended by section 285 of the Pensions Act 2004 (c. 35).

(20) The definition of “pensionable age” is inserted by paragraph 17 of Schedule 4 to the Pensions Act 1995 (c. 26).

(21) S.I. 1996/1172. Regulation 55(1) is amended by regulation 4(11) of S.I. 1997/786.

**Changes to legislation:** There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

(5) In determining whether a person who is an active member or a pensioner member of the Scheme is also a deferred member of it, the fact that he is an active member or a pensioner member and his rights as such are to be disregarded.

(6) In determining whether a person who is an active member of the Scheme is also a pensioner member of it, the fact that he is an active member and his rights as such are to be disregarded.

(7) In determining whether a person is a pensioner member of the Scheme, the fact that he is not entitled to payment of pension because of Part H (abatement) is to be disregarded.

#### Textual Amendments

- F4** Words in Sch. 1 rule A.1(4) omitted (5.4.2015) by virtue of The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(3), **15(2)(a)(i)** (with art. 35(1))
- F5** Words in Sch. 1 rule A.1 inserted (1.4.2015) by The Armed Forces (Transitional Provisions) Pensions Regulations 2015 (S.I. 2015/568), regs. 1(2), **11**
- F6** Words in Sch. 1 rule A.1(4) inserted (1.10.2023) by The Armed Forces Pensions (Remediable Service) Regulations 2023 (S.I. 2023/998), regs. 1(b), **8(2)**
- F7** Words in rule A.1 inserted (10.1.2012) by The Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (S.I. 2011/3013), arts. 1, **10(a)**
- F8** Words in Sch. 1 rule A.1(4) inserted (1.4.2019) by The Armed Forces Pension Schemes and Early Departure Payments Schemes (Amendments Relating to Flexible Working and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/1111), regs. 1(3), **2(2)**
- F9** Words in Sch. 1 rule A.1 inserted (6.4.2009) by The Armed Forces Pension Scheme etc. (Amendment) Order 2009 (S.I. 2009/544), arts. 1(1), **8(3)**
- F10** Words in Sch. 1 rule A.1(4) inserted (1.10.2007) by The Armed Forces (Gurkha Pensions) Order 2007 (S.I. 2007/2608), arts. 1(1), **3(2)**
- F11** Words in rule A.1 inserted (10.1.2012) by The Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (S.I. 2011/3013), arts. 1, **10(b)**
- F12** Words in rule A.1(4) inserted (27.6.2011) by The Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (S.I. 2011/1364), arts. 1(1), **2(2)(b)**
- F13** Word in Sch. 1 rule A.1(4) omitted (5.4.2015) by virtue of The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(3), **15(2)(a)(ii)** (with art. 35(1))
- F14** Words in rule A.1(4) omitted (27.6.2011) by virtue of The Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (S.I. 2011/1364), arts. 1(1), **2(2)(a)**
- F15** Words in Sch. 1 rule A.1(4) substituted (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **11(3)(a)**
- F16** Words in Sch. 1 rule A.1(4) revoked (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), 11(3)(b), **Sch.**
- F17** Words in Sch. 1 rule A.1(4) inserted (31.12.2014) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(2), **15(2)(a)(iii)**
- F18** Words in Sch. 1 rule A.1(4) inserted (N.I.) (15.3.2015) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order (Northern Ireland) 2015 (S.R. 2015/146), arts. 1(2), **14(2)(a)**

#### A.2 Meaning of “pensionable earnings” **U.K.**

(1) In these Rules “pensionable earnings”, in relation to a person who is a member, means—



- (a) basic pay in the service by virtue of which the person is a member for a person of his rank and seniority, and
- (b) any other amount if and to the extent that the Secretary of State has determined that it is to be treated as pensionable earnings.

This is subject to paragraph (3).

- (2) Accordingly, subject to paragraph (1)(b), “pensionable earnings” does not include—
  - (a) any allowances,
  - (b) any additional amounts payable in respect of particular qualifications or duties, the location of service or the conditions in which service is temporarily performed, or
  - (c) without prejudice to paragraphs (a) and (b), any additional amounts payable to medical or dental officers as such.
- (3) “Pensionable earnings” does not include any description of payment that the Secretary of State has determined is not to be treated as pensionable earnings, unless it is expressly provided to the member on the basis that it is pensionable.

#### [<sup>F19</sup>Meaning of “service reduction percentage” U.K.]

**A.2A.**—(1) In these Rules, the “service reduction percentage” in respect of a period of flexible service is given by the formula, expressed as a percentage—

$(A-B)/A$

Where—

*A* is the basic pay which the member would have received in respect of that period of flexible service had the member not been serving on flexible terms;

*B* is the basic pay received by the member in respect of that period of flexible service.

(2) For the purposes of the Scheme, a period of flexible service ends and another begins when any change in the service reduction percentage occurs.]

#### Textual Amendments

**F19** Sch. 1 rule A.2A inserted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), 2(3)

#### A.3 Meaning of “assumed pay” U.K.]

(1) In the circumstances specified in paragraph (2) 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 Secretary of State considers appropriate; and in these Rules the amounts a member is treated as receiving or as having received under this paragraph are referred to as “assumed pay”.

- (2) The circumstances 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 his service although the member is paid for the service by that employer,
  - (b) is receiving statutory maternity pay,
  - (c) is on ordinary maternity leave,

- (d) is on <sup>F20</sup>... paternity leave,  
<sup>F21</sup>(dd) is on paid shared parental leave;]  
 (e) is on ordinary adoption leave, or  
 (f) is on unpaid leave for a period which the Secretary of State has agreed can count as reckonable service.

#### Textual Amendments

- F20** Words in Sch. 1 rule A.3(2)(d) omitted (5.4.2015) by virtue of [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **15(3)** (with art. 35(1))
- F21** Sch. 1 rule A.3(2)(dd) inserted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **15(4)**

#### A.4 Meaning of “final pensionable earnings” **U.K.**

(1) In these Rules “final pensionable earnings”, in relation to a member, means the greatest amount that is the member’s total pensionable earnings for 365 consecutive days falling within the period of 3 years ending with the last day of his reckonable service.

<sup>F22</sup>(1A) Where a member served on flexible terms during any part of the period of 3 years mentioned in paragraph (1), the member’s final pensionable earnings are calculated as though the member had not served on flexible terms for that period.]

(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 3 years mentioned in paragraph (1), 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 his 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 3 years mentioned in paragraph (1) or the period mentioned in paragraph (2) the member is treated under rule A.3(1) as receiving assumed pay, or would be if he were a member of the Scheme throughout that period, <sup>F23</sup>for the purposes of those paragraphs] his pensionable earnings for each day during that period when he is so treated include the assumed pay for that day.

#### Textual Amendments

- F22** Sch. 1 rule A.4(1A) inserted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(4)**
- F23** Words in Sch. 1 rule A.4(4) substituted (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **12(1)**

### **Inflation adjustments in determining final pensionable earnings** U.K.

(1) For the purpose of determining which is the greatest amount mentioned in rule A.4(1), the amount of pensionable earnings, as determined in accordance with rule A.4, 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 Pensions (Increase) Act 1971 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.]

#### **Textual Amendments**

**F24** Sch. 1 rule A.5 substituted (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), 7

### **A.6 Active membership period** U.K.

In these Rules references to a person's active membership period, in relation to the Scheme or to another scheme, are to—

- (a) the period during which the person has been an active member of the Scheme or, as the case may be, that 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.7 Qualifying service** U.K.

(1) In these Rules references to a member's qualifying service, in relation to the Scheme, are references to the aggregate of the following periods—

- (a) the period during which the member is in service in respect of which he—
  - (i) receives earnings that are pensionable earnings for the purposes of the Scheme, or
  - (ii) is treated under rule A.3 as receiving assumed pay,
- (b) any period for which the member is in service to which rule C.6 applies (secondment to NATO or the UN etc.),
- (c) in the case of a member who exercises an option under rule G.3 or G.4 for an earlier period of service to be aggregated, the qualifying service he is entitled to count as a result,<sup>F25</sup>...
- (d) in the case of an AFPS 1975 transferee, the qualifying service he is entitled to count under the Scheme under rules K.3 to K.5.<sup>F26</sup>...
- <sup>F27</sup>(e) in the case of a Gurkha Pension Scheme transferee, the qualifying service the member is entitled to count under the Scheme under rule L.4 or L.5<sup>F28</sup>,]
- <sup>F29</sup>(f) in the case of a person whose service was gratuity-earning service before its terms were changed and who meets the condition in paragraph (1A), that period of gratuity-earning service, and

- (g) in the case of a person who was paid a gratuity on the satisfactory completion of gratuity-earning service and has repaid that gratuity together with interest at the Bank of England base rate, calculated on a monthly basis, from the day after the last day of service in respect of which the gratuity was awarded to the day before the date of re-entry within the period of one year of becoming an active member of this Scheme, that completed service.

(1A) The condition referred to in paragraph (1)(f) and rule A.8(1)(h) is that the person has surrendered all rights to a gratuity in respect of the gratuity-earning service in consideration for which the person becomes eligible for membership of this Scheme.]

(2) In the case of a person in respect of whom a transfer value in respect of his rights under another occupational pension scheme has been accepted under Part F (transfers), any period during which the person was an active member in any scheme in respect of which those rights accrued counts as qualifying service for the purposes of rules D.2(1)(a), D.5(1)(b), D.6(1)(b) and D.7(1)(b) (entitlement to pensions).

#### Textual Amendments

- F25** Word in Sch. 1 rule A.7(1) omitted (1.10.2007) by virtue of [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(3)(a)**
- F26** Word in Sch. 1 rule A.7(1)(d) omitted (6.4.2009) by virtue of [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **8(1)(a)**
- F27** Sch. 1 rule A.7(1)(e) inserted (1.10.2007) by [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(3)(b)**
- F28** Sch. 1 rule A.7(1)(e): comma substituted for full stop (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **8(1)(b)**
- F29** Sch. 1 rules A.7(1)(f), (g), (1A) inserted (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **8(1)(c)**

#### A.8 Reckonable service **U.K.**

(1) In these Rules 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 he—
- (i) receives earnings that are pensionable earnings for the purposes of the Scheme, or
  - (ii) is treated under rule A.3 as receiving assumed pay,
- (b) any additional period the member is entitled to count as reckonable service under rule C.3 (effect of making contributions),
- (c) any additional period the member is entitled to count under rule C.6 (purchase of added years for members seconded to NATO or the UN etc.),
- (d) in the case of a person in respect of whom a transfer value in respect of his rights under another pension arrangement has been accepted under Part F (transfers), the reckonable service he is entitled to count as a result of the transfer,
- (e) in the case of a member who exercises an option under rule G.3 or G.4 for an earlier period of service to be aggregated, the reckonable service he is entitled to count as a result, <sup>F30</sup>...
- (f) in the case of an AFPS 1975 transferee, the reckonable service he is entitled to count under the Scheme under rules K.3 to K.5. <sup>F31</sup>...
- [<sup>F32</sup>(g) in the case of a Gurkha Pension Scheme transferee, the reckonable service the member is entitled to count under the Scheme under rule L.4 or L.5 [<sup>F33</sup>,]]

- [<sup>F34</sup>(h) in the case of a person whose service was gratuity-earning service before its terms were changed and the person meets the condition in rule A.7(1A), that period of gratuity-earning service, and
- (i) in the case of a person who was paid a gratuity on the satisfactory completion of gratuity-earning service (as so defined) and has repaid that gratuity together with interest at the Bank of England base rate, calculated on a monthly basis, from the day after the last day of service in respect of which the gratuity was awarded to the day before the date of re-entry within the period of one year of becoming an active member of this Scheme, that completed service.]

This paragraph is subject to [<sup>F35</sup>paragraphs (2) and (3)] and to Part G (see, in particular, rule G.2).

(2) The reckonable service of a member may not exceed 40 years and to the extent that any rule requires any assumptions to be made as a result of which that limit would be exceeded it is to be disregarded.

[<sup>F36</sup>(3) Where a member has served on flexible terms, the reckonable service the member is entitled to count for each period of such service is reduced by the service reduction percentage applicable to that period of flexible service.]

[<sup>F37</sup>(4) Where a remedy member has made a section 6 election within the meaning of paragraph 8(1)(a) or a section 10 election within the meaning of paragraph 11(1)(a) of Schedule 3 (remediable service), the remedy member's remediable service is not treated as reckonable service for the purposes of this Scheme.]

#### Textual Amendments

- F30** Word in Sch. 1 rule A.8(1) omitted (1.10.2007) by virtue of [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(4)(a)**
- F31** Word in Sch. 1 rule A.8(1)(f) omitted (6.4.2009) by virtue of [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **8(2)(a)**
- F32** Sch. 1 rule A.8(1)(g) inserted (1.10.2007) by [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(4)(b)**
- F33** Sch. 1 rule A.8(1)(g): comma substituted for full stop (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **8(2)(b)**
- F34** Sch. 1 rule A.8(1)(h)(i) inserted (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **8(2)(c)**
- F35** Words in Sch. 1 rule A.8(1) substituted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(5)(a)**
- F36** Sch. 1 rule A.8(3) inserted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(5)(b)**
- F37** Words in Sch. 1 rule A.8(4) inserted (1.10.2023) by [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), regs. 1(b), **8(3)**

#### A.9 Calculation of periods of membership or service etc **U.K.**

(1) 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.

This is subject to paragraph (2).

(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 these Rules, 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.10 Disregard of short breaks in service** **U.K.**

(1) <sup>[F38]</sup>Subject to paragraph (1A), if] an active member—

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

(b) after a period not exceeding 6 months rejoins the armed forces in such a capacity,

the reckonable service and qualifying service for the earlier service and for the later service is treated as a single period of service for all purposes.

<sup>[F39]</sup>(1A) Where an active member meets the conditions in paragraph (1)(a) and (b) and rejoins at a lower rank than the substantive rank held at the end of the earlier service, the member may opt for paragraph (1) to apply, such option may be exercised at any time during the later service. ]

(2) If an active member—

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

(b) after a period not exceeding 6 months becomes such a member again,

the reckonable service and qualifying service for the earlier period of active membership and for the later period of such membership is treated as a single period of service 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 service.

<sup>[F40]</sup>(4) Paragraph (1A) does not apply if before the time when the condition in paragraph (1)(b) is met, a pension has come into payment for the earlier period of service.]

#### **Textual Amendments**

**F38** Words in Sch. 1 rule A.10(1) substituted (6.4.2009) by The Armed Forces Pension Scheme etc. (Amendment) Order 2009 (S.I. 2009/544), arts. 1(1), **9(1)(a)**

**F39** Sch. 1 rule A.10(1A) inserted (6.4.2009) by The Armed Forces Pension Scheme etc. (Amendment) Order 2009 (S.I. 2009/544), arts. 1(1), **9(1)(b)**

**F40** Sch. 1 rule A.10(4) inserted (6.4.2009) by The Armed Forces Pension Scheme etc. (Amendment) Order 2009 (S.I. 2009/544), arts. 1(1), **9(1)(c)**

## **PART B** **U.K.**

### **MEMBERSHIP**

#### **B.1 Eligibility: general** **U.K.**

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

A person is eligible to be an active member of the Scheme if—

- (a) he is in service as a member of the armed forces other than—
  - <sup>F41</sup>(i) .....
  - (ii) in the case of [<sup>F42</sup>an active member of the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949)], the Brigade of Gurkhas,  
including service to which he is recalled under Part 7 of the Reserve Forces Act 1996 or under the Reserve Forces Act 1980(22),
- (b) either—
  - (i) that service begins on or after 6th April 2005, or
  - (ii) he has opted to join the Scheme under Part K (AFPS 1975 transferees) [<sup>F43</sup>or Part L (Gurkha Pension Scheme transferees)], and
- (c) he is not prevented by rule B.2 (persons with other pension arrangements).

**Textual Amendments**

- F41** Sch. 1 rule B.1(a)(i) omitted (1.10.2007) by virtue of [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(5)(a)**
- F42** Words in Sch. 1 rule B.1(a)(ii) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **12(1)**
- F43** Words in Sch. 1 rule B.1(b)(ii) inserted (1.10.2007) by [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(5)(b)**

**B.2 Persons with other pension arrangements** **U.K.**

(1) [<sup>F44</sup>Except as otherwise provided in these rules,] a person is not eligible to be an active member of the Scheme in respect of his service if he belongs to the AFPS 1975 or any other occupational pension scheme in respect of that service.

(2) For the purposes of paragraph (1), a person is only taken to belong to another occupational pension scheme in respect of his service if the person who is the employer in relation to that scheme is making contributions to it in respect of that service.

**Textual Amendments**

- F44** Words in Sch. 1 rule B.2(1) inserted (1.10.2007) by [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(6)**

**B.3 Joining the Scheme on starting service** **U.K.**

(1) A person who is eligible to be an active member of the Scheme because of service beginning on or after 6th April 2005 is treated as becoming such a member on the day when the service begins.

(2) Paragraph (1) does not apply if, before the end of the period of 3 months beginning with the day when the service begins or such longer period, if any, as the Secretary of State considers appropriate, the person opts not to belong to the Scheme.

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(22) 1980 c. 9.

(3) The option may only be exercised by notice in writing in such form as the Secretary of State requires.

(4) For the purposes of this rule, the option is treated as having been exercised on the date on which it is received by the Scheme administrator or the commanding officer responsible for general day to day administration connected with the service of the person exercising the option.

(5) If a person to whom paragraph (2) applies has paid any contributions under the Scheme, the contributions must be repaid to him.

(6) Paragraph (5) does not require the payment to the person of any additional amount which becomes payable by him in respect of national insurance contributions because he has not after all been a member of the Scheme during any period.

#### **B.4 Joining the Scheme after service begins** **U.K.**

(1) A person who is not an active member of the Scheme but is eligible to be one may opt to become such a member at any time before he attains pension age.

Paragraph (1) is subject to paragraphs (2) to (4).

(2) The option may only be exercised by the person giving notice in writing in such form as the Secretary of State requires.

(3) An option has no effect unless before that notice is given—

(a) the person exercising the option—

(i) makes a declaration about the state of his health in such form as the Secretary of State requires and,

(ii) if required, provides at his own expense such evidence relating to his health as the Secretary of State requests, and

(b) the Secretary of State, <sup>F45</sup>... is satisfied that at the date on which the member makes the declaration the member is in good health.

(4) A person who has exercised the option under paragraph (1) may not exercise it again during the service by virtue of which he was eligible to exercise it.

(5) For the purposes of this rule, the option is treated as having been exercised on the date on which it is received by the Scheme administrator or, if it is sent to the commanding officer responsible for general day to day administration connected with the service of the person exercising the option, by or on behalf of that officer.

#### **Textual Amendments**

**F45** Words in [Sch. 1 rule B.4\(3\)\(b\)](#) omitted (6.4.2009) by virtue of [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **12(2)**

#### **B.5 Leaving the Scheme** **U.K.**

(1) A person who is 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 Secretary of State requires.

(3) A member who exercises the option ceases to be an active member at the beginning of—

(a) the first pay period beginning on or after the date on which the option is exercised, or

(b) if the Secretary of State considers that period inappropriate, such later pay period as he considers appropriate.



[<sup>F46</sup>**Fixed Protection Members** U.K.]

**B.6.**—(1) “Fixed protection member” means a person who—

- (a) is a member of the armed forces; and
- (b) has ceased to be an active member as described in rule B.4 for the reasons set out in paragraph (2).

(2) The reasons referred to in paragraph (1)(b) are that the member has given notice to an officer of Her Majesty’s Revenue and Customs of their intention to rely upon the lifetime allowance transitional protection afforded by paragraph 14 of Schedule 18 to the Finance Act 2011.

(3) Service as a fixed protection member is not pensionable service, qualifying service or reckonable service.

(4) Rules A.1(5) and (6), D.5, D.6, D.11, D.14, E.1, E.2, E.3, E.10, E.16, E.22, E.25, and E.27 are to be construed as if the references to “active member” also apply to a fixed protection member.]

**Textual Amendments**

**F46** Rule B.6 inserted (10.1.2012) by [The Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011](#) (S.I. 2011/3013), arts. 1, **11**

**PART C** U.K.

**CONTRIBUTIONS**

*Buying Added Years*

**C.1 Member’s option to pay contributions to increase service** U.K.

(1) An active member may opt to make periodical contributions to the Scheme during the contractual option period to increase his reckonable service by an additional period.

This is subject to rule C.5 (restriction on pension debit members making contributions).

(2) The option may only be exercised by notice in writing to the Scheme administrator in such form as the Secretary of State requires.

(3) A member may exercise the option under paragraph (1) more than once.

(4) If a member exercises the option under paragraph (1), the contributions are payable by deduction from his earnings—

- (a) for so much of the member’s next relevant pay period as begins with the member’s birthday, and
- (b) for all subsequent pay periods beginning during the contractual option period.

This is subject to rules C.2 (cancellation of options) and C.4(1) (absence from work).

(5) [<sup>F47</sup>Subject to paragraphs (5A) and (6), if a member] exercises the option under paragraph (1)

- (a) the contributions payable are expressed as a percentage of his pensionable earnings for the time being, and
- (b) the additional period of reckonable service that may be counted as a result of opting to pay contributions at that rate is such period as is indicated in tables issued by the Secretary of

State, after consultation with the Scheme actuary, for a person of the member's age at the date on which he makes his first payment.

[<sup>F48</sup>(5A) Subject to paragraph (6), where a member who has exercised the option under paragraph (1) is serving on flexible terms—

- (a) the member may, for the period of that flexible service, pay the same amount of contributions as would be payable if the member was not serving on flexible terms; and
- (b) if the member does not pay the contributions under sub-paragraph (a), the member may opt, within the period of 365 days beginning with the first day after the period of flexible service has ended, to pay the difference between the amount of contributions the member would have paid under sub-paragraph (a) and the contributions actually paid—
  - (i) by such instalments as the member may agree with the Scheme administrator; or
  - (ii) by lump sum.]

(6) A member may not make periodical contributions of less than 0.01%, or more than 15%, of his pensionable earnings for the time being.

(7) In this rule—

“the contractual option period”, in relation to an option under paragraph (1), means the period whilst the member remains an active member or such shorter period as may be specified in the option; and

“the member's next relevant pay period” means the pay period in which the member's next birthday after the Scheme administrator receives the member's application to exercise the option under paragraph (1) falls.

#### Textual Amendments

- F47** Words in Sch. 1 rule C.1(5) substituted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(6)(a)**
- F48** Sch. 1 rule C.1(5A) inserted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(6)(b)**

### C.2 Cancellation of options **U.K.**

(1) A member who has exercised an option under rule C.1(1) may cancel it by giving the Scheme administrator notice in writing.

(2) If a member cancels such an option, the periodical contributions cease to be payable in respect of his pensionable earnings for the first pay period the Scheme administrator considers appropriate that begins on or after the date on which the Scheme administrator receives the notice.

### C.3 Effect of making contributions **U.K.**

(1) If a member who has exercised an option under rule C.1(1) pays all the contributions required under the option, his reckonable service is increased by the whole of the additional period covered by the option (“the contractual added years”).

(2) If—

- (a) a member pays some but not all of those contributions,
- (b) because of rule C.1(6) the rate at which a member pays contributions under the option is reduced below the rate at which they would otherwise be payable,

- [<sup>F49</sup>(ba) a member has served on flexible terms during any part of the contractual option period,]  
(c) during any part of the period while he is paying contributions the member is on unpaid leave for a period which does not count as reckonable service, or  
(d) more than one of sub-paragraphs (a) to (c) apply,

his reckonable service is increased as follows.

- (3) For each contribution paid at the rate originally required under the contract the increase is—

$$\frac{CAY}{N}$$

where—

**CAY** is the contractual added years, and

**N** is the total number of contributions the member was originally required to pay.

This is subject to paragraph (5).

- (4) For each contribution paid at a reduced rate the increase is—

$$\frac{CAY \times RR}{N \times CR}$$

where—

**CAY** is the contractual added years,

**N** is the total number of contributions the member was originally required to pay,

**RR** is the reduced rate, and

**CR** is the rate at which the contribution would be payable under the contract apart from the reduction.

This is subject to paragraph (5).

(5) Where, during any pay period (“**PP**”) that is part of the period taken into account for the calculation under paragraph (3) or (4), the member is on unpaid leave for a period which does not count as reckonable service (“**NRS**”), then for that pay period the period of increase is the period of increase as calculated under that paragraph, multiplied by—

$$\frac{PP \times NRS}{PP}$$

where

**PP** and **NRS** are the number of days in the periods in question.

- [<sup>F50</sup>(6) Where the member has served on flexible terms during the contractual option period—  
(a) for the purposes of paragraph (3), a contribution paid under rule C.1(5A)(a) or (b) is treated as a contribution paid at the rate originally required under the contract,  
(b) for the purposes of paragraph (4), a contribution paid under rule C.1(5)(a) in respect of a period of flexible service where the member has not opted to pay the difference under rule C.1(5A)(b) is treated as a contribution paid at a reduced rate.]

- [<sup>F50</sup>(7) In this rule, “the contractual option period” has the meaning given by rule C.1(7).]

#### Textual Amendments

- F49** Sch. 1 rule C.3(2)(ba) inserted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(7)(a)**

**F50** Sch. 1 rules C.3(6)(7) inserted (1.4.2019) by The Armed Forces Pension Schemes and Early Departure Payments Schemes (Amendments Relating to Flexible Working and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/1111), regs. 1(3), **2(7)(b)**

#### C.4 Absence from work **U.K.**

(1) If a member who has exercised an option under rule C.1(1) has a period of absence from work, the member may—

- (a) cease to pay the contributions payable under the option, or
- (b) pay the same amounts of contributions as would be payable if he were receiving pensionable earnings at the full rate.

This is subject to paragraphs (2) and (3).

(2) Paragraph (1)(b) does not apply during—

- (a) any period of paid maternity absence (as defined in paragraph 5(3) of Schedule 5 to the Social Security Act 1989<sup>(23)</sup>),
- (b) any period of paid paternity leave (as defined in paragraph 5A(4) of that Schedule),
- (c) any period of paid adoption leave (as defined in paragraph 5B(4) of that Schedule),<sup>F51</sup> ...
- [<sup>F52</sup>(cc) any period of paid shared parental leave (as defined in paragraph 5C(4) of that Schedule),]
- (d) any period of paid family leave (as defined in paragraph 6(4) of that Schedule);

and accordingly the member may pay contributions on the member's actual pay in respect of that period.

(3) If contributions are payable under paragraph (1)(b), the member may opt to pay the contributions after absence or leave has ended—

- (a) by such instalments as the member may agree with the Scheme administrator, or
- (b) by lump sum.

#### Textual Amendments

**F51** Word in Sch. 1 rule C.4(2)(c) omitted (31.12.2014) by virtue of The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(2), **15(5)(a)**

**F52** Sch. 1 rule C.4(2)(cc) inserted (31.12.2014) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(2), **15(5)(b)**

#### C.5 Restriction on pension debit members making contributions **U.K.**

**C.5.** A pension debit member may not opt under rule C.1 to make contributions to the Scheme so as to replace any rights debited to him as a consequence of a pension sharing order with any rights which he would not have been able to acquire (in addition to the debited rights) had the order not been made.

#### C.6 Purchase of added years for members seconded to NATO or the UN etc **U.K.**

(1) This rule applies if an active member is seconded during any period—

<sup>(23)</sup> 1989 c. 24. Paragraphs 5A and 5B are inserted in Schedule 5 by section 265(1) of the Pensions Act 2004 (c. 35).

- (a) to the United Nations or the North Atlantic Treaty Organisation, or
- (b) under arrangements with any other organisation or person under which persons who are in service as a result of which they are eligible to belong to the Scheme are seconded into other service.

(2) If at the end of that period the member resumes service in the armed forces in which he is an active member of the Scheme, he may opt to make a single lump sum contribution to the Scheme to increase his reckonable service by an additional period equal to the length of his secondment.

(3) The option may only be exercised by notice in writing to the Scheme administrator in such form as the Secretary of State requires.

(4) If a member exercises the option under paragraph (2) and pays a contribution equal to the aggregate amount of—

- (a) any contributions returned to him by the pension arrangement to which he belonged in respect of his service during the secondment, and
- (b) any lump sum paid to him on leaving the organisation or to the person to whom he was seconded as a severance payment,

the member is entitled to count the period of his secondment as reckonable service.

(5) If the aggregate amount mentioned in paragraph (4) is less than the amount determined by the Scheme actuary to be the amount required to be paid in order to increase the member's reckonable service by the period of his secondment, the Secretary of State must make a contribution to the Scheme equal to the difference.

#### *Repayment of Contributions*

### **C.7 Repayment of contributions** **U.K.**

(1) The contributions made by a member under this Part are not repayable in any circumstances except if—

- (a) paragraph (2) applies, or
- (b) Chapter 5 of Part 4 of the Pension Schemes Act 1993 (early leavers: cash transfer sums and contribution refunds) applies and the payment is made in accordance with that Chapter.

(2) This paragraph applies where—

- (a) an active member who is not a pensioner member ceases to be an active member of the Scheme and is not entitled to the immediate payment of a pension,
- (b) he does not fall within rule D.2(1)(a) or (b),
- (c) he has not required a payment to be made in respect of him under Part F (transfers), and
- (d) Chapter 5 of Part 4 of the Pension Schemes Act 1993 (early leavers: cash transfer sums and contribution refunds) does not apply.

(3) Where paragraph (2) applies, the former member is entitled to be paid an amount equal to the sum of the contributions made by him under this Part, less—

- (a) the amount of any contributions equivalent premium paid in respect of the member, and
- (b) an amount equal to the income tax payable under section 205 of the Finance Act 2004<sup>(24)</sup> (short service refund lump sum charge) by virtue of the repayment.

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(24) 2004 c. 12.

(4) Where paragraph (1)(b) applies, the former member is entitled to be paid the amount to which he is entitled under Chapter 5 of Part 4 of the Pension Schemes Act 1993, less the sum of the amounts mentioned in paragraph (3)(a) and (b).

## PART D U.K.

### RETIREMENT BENEFITS

#### *Entitlement to Benefits*

#### **D.1 Retirement after reaching pension age U.K.**

[<sup>F53</sup>(1) The general rule is that a member is entitled to a pension for life and a lump sum if—

- (a) in the case of a member other than a fixed protection member, the member ceases to be in pensionable service at or after reaching pension age; or
- (b) in the case of a fixed protection member, the member ceases to be in service at or after reaching pension 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 rule is calculated by multiplying one seventieth of the member's final pensionable earnings by the member's reckonable service, expressed as a number of years.

(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.

(5) This rule does not apply to pensions derived from pension credit rights.

#### **Textual Amendments**

**F53** Rule D.1(1) substituted (10.1.2012) by [The Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/3013\)](#), arts. 1, 12

#### **D.2 Retirement before reaching pension age U.K.**

(1) A member who ceases to be in service by virtue of which he is eligible to be an active member of the Scheme before reaching pension age is entitled to a pension for life and a lump sum if the member attains pension benefit age [<sup>F54</sup>or, in the case of a member who is within paragraph (7) of this rule, the member attains pension age] and either—

- (a) he has at least two years' qualifying service, or
- (b) he [<sup>F55</sup>is entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (basic principles as to short service benefit) because of a transfer value payment having been accepted] by the Scheme under Part F (transfers).

(2) The pension and the lump sum become payable immediately on the member attaining pension benefit age [<sup>F56</sup>or, in the case of a member who is within paragraph (7) of this rule, attaining pension age].

(3) The amount of the annual pension payable under this rule is calculated by multiplying one seventieth of the member's final pensionable earnings by the member's reckonable service, expressed as a number of years.

(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.

(5) This rule does not apply to pensions derived from pension credit rights.

[<sup>F57</sup>(6) For the application of this rule in the case of certain Gurkha Pension Scheme transferees, see rules L.5 and L.7(1).]

[<sup>F58</sup>(7) A member is within this paragraph if the member satisfies the following two conditions—

- (a) the first condition is that the member has attained at least 54 years and 274 days of age but not yet the pension age; and
- (b) the second condition is that the Scheme administrator is satisfied that the member intends either—
  - (i) to enter civilian employment which would not be available if the member continued in service until pension age; or
  - (ii) to undertake a course of full time education, or a training course, which starts before the time at which the member reaches pension age.]

#### Textual Amendments

- F54** Words in rule D.2(1) inserted (27.6.2011) by [The Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/1364\)](#), arts. 1(1), **2(4)(a)**
- F55** Words in Sch. 1 rule D.2(1)(b) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **11(1)**
- F56** Words in rule D.2(2) inserted (27.6.2011) by [The Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/1364\)](#), arts. 1(1), **2(4)(b)**
- F57** Sch. 1 rule D.2(6) inserted (1.10.2007) by [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(7)**
- F58** Rule D.2(7) inserted (27.6.2011) by [The Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/1364\)](#), arts. 1(1), **2(4)(c)**

### D.3 Pension credit members' pensions **U.K.**

(1) The general rule is that a pension credit member is entitled to a pension for life and a lump sum derived from the member's pension credit rights.

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

[<sup>F59</sup>(3) The pension and any lump sum become payable—

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

(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 Welfare Reform and Pensions Act 1999.

(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

*Changes to legislation:* There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

- (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.

[<sup>F60</sup>(6) If a pension credit member exercises the option under rule D.4, the Secretary of State must be reasonably satisfied that the total value of the benefits payable by virtue of its exercise is at least equal to the amount described in regulation 11 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (value of alternatives to pension credit benefit).]

**Textual Amendments**

**F59** Rule D.3(3) substituted (27.6.2011) by [The Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/1364\)](#), arts. 1(1), **2(5)**

**F60** Rule D.3(6) inserted (27.6.2011) by [The Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/1364\)](#), arts. 1(1), **2(6)**

**Early payment of pensions with actuarial reduction** U.K.

(1) A member who is not entitled to immediate payment of a pension under rule D.1, D.2 or [<sup>F62</sup>D.3] may opt for immediate payment of a reduced pension and lump sum if the member has reached pension age and either paragraph (2) or paragraph (3) applies.

(2) This paragraph applies if the member—

- (a) meets the condition in rule D.2(1)(a) or (b); and
- (b) has ceased to be in service that qualifies him to belong to the Scheme.

(3) This paragraph applies if—

- (a) the member is a pension credit member; [<sup>F63</sup>and]

[<sup>F64</sup>(b) the pension sharing order from which the pension credit rights derive has taken effect.]

<sup>F65</sup>(c) . . . . .

(4) If a member exercises the option under this rule, the amount of the annual pension to which the member becomes entitled is first calculated as mentioned in rule D.2(3) or D.3(5) and then that amount is reduced by such amount as the Secretary of State determines after consulting the Scheme actuary.

(5) If a member exercises the option under this rule, the amount of the lump sum to which the member becomes entitled is first calculated as mentioned in rule D.2(4) or D.3(5) and then that amount is reduced by such amount as the Secretary of State determines after consulting the Scheme actuary.

(6) The option under this rule may only be exercised by notice in writing to the Scheme administrator in such form as the Secretary of State requires.]

**Textual Amendments**

**F61** Sch. 1 rule D.4 substituted (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **11**

**F62** Word in rule D.4(1) substituted (27.6.2011) by [The Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/1364\)](#), arts. 1(1), **2(7)**

**F63** Word in rule D.4(3)(a) inserted (27.6.2011) by [The Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/1364\)](#), arts. 1(1), **2(8)(a)**



- F64** Rule D.4(3)(b) substituted (27.6.2011) by The Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (S.I. 2011/1364), arts. 1(1), **2(8)(b)**
- F65** Rule D.4(3)(c) omitted (27.6.2011) by virtue of The Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (S.I. 2011/1364), arts. 1(1), **2(8)(c)**

## **D.5 Early payment of benefits: active members with permanent serious ill-health** **U.K.**

(1) An active member who ceases to be in service by virtue of which he is eligible to be an active member of the Scheme is entitled to immediate payment of a pension and a lump sum before reaching pension age if—

- <sup>F66</sup>(a) in the opinion of the Secretary of State the member has suffered a permanent breakdown in health involving incapacity for any full-time employment,
- (aa) the Secretary of State has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on his occupation because of physical or mental impairment, and]
- (b) the member either—
- (i) has at least two years' qualifying service, or
- (ii) <sup>F67</sup>is entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (basic principles as to short service benefit) because of a transfer value payment having been accepted] by the Scheme under Part F (transfers).

(2) <sup>F68</sup>For the purposes of this rule and rule D.8] a member's breakdown in health is "permanent" if, in the opinion of the Secretary of State, <sup>F69</sup>... it will continue at least until the member reaches pension age.

(3) For the purpose of these Rules a member's breakdown in health involves incapacity for any full-time employment if, in the opinion of the Secretary of State, <sup>F69</sup>... as a result of the breakdown the member is incapable of any gainful full-time employment.

(4) The amount of the annual pension payable under this rule is calculated by multiplying one seventieth of the member's final pensionable earnings by **N**.

- (5) For the purposes of paragraph (4), **N** is equal to the greater of—
- (a) the sum of the member's reckonable service and half of the further reckonable service which he would have been able to count under the Scheme if he had remained an active member from the date he ceased to be such a member until pension age (both expressed as a number of years), and
- (b) 20.

(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.

<sup>F70</sup>(7) For the application of this rule in the case of certain Gurkha Pension Scheme transferees, see rules L.5 and L.7(1).]

### **Textual Amendments**

- F66** Sch. 1 rules D.5(1)(a)(aa) substituted for Sch. 1 rule D.5(1)(a) (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **4(1)**
- F67** Words in Sch. 1 rule D.5(1)(b)(ii) substituted (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **11(1)**
- F68** Words in Sch. 1 rule D.5(2) substituted (6.4.2009) by The Armed Forces Pension Scheme etc. (Amendment) Order 2009 (S.I. 2009/544), arts. 1(1), **12(3)**

- F69** Words in Sch. 1 rules D.5(2), (3) revoked (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), 6(3)(a), **Sch.**
- F70** Sch. 1 rule D.5(7) inserted (1.10.2007) by [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(8)**

#### **D.6 Early payment of benefits: active members with significant impairment of capacity for gainful employment** **U.K.**

(1) An active member who ceases to be in service by virtue of which he is eligible to be an active member of the Scheme is entitled to immediate payment of a pension and a lump sum before reaching pension age if—

- [<sup>F71</sup>(a) in the opinion of the Secretary of State the member has suffered a breakdown in health as a result of which his capacity for gainful employment is significantly impaired,
- (aa) the Secretary of State has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on his occupation because of physical or mental impairment, and]
- (b) the member either—
- (i) has at least two years' qualifying service, or
- (ii) [<sup>F72</sup>is entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (basic principles as to short service benefit) because of a transfer value payment having been accepted] by the Scheme under Part F (transfers), and
- (c) the member is not entitled to a pension under rule D.5.(1).

(2) The amount of the annual pension payable under this rule is calculated by multiplying one seventieth of the member's final pensionable earnings by **N**.

(3) For the purposes of paragraph (2), **N** is equal to the sum of the member's reckonable service and one-third of the further reckonable service which he would have been able to count under the Scheme if he had remained an active member from the date he ceased to be such a member until pension age (both expressed as a number of years).

(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.

[<sup>F73</sup>(5) For the application of this rule in the case of certain Gurkha Pension Scheme transferees, see rules L.5 and L.7(1).]

#### **Textual Amendments**

- F71** Sch. 1 rules D.6(1)(a)(aa) substituted for Sch. 1 rule D.6(1)(a) (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **4(2)**
- F72** Words in Sch. 1 rule D.6(1)(b)(ii) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **11(1)**
- F73** Sch. 1 rule D.6(5) inserted (1.10.2007) by [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(9)**

#### **D.7 Early payment of benefits: deferred members with permanent serious ill-health** **U.K.**

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

- [<sup>F74</sup>(a) in the opinion of the Secretary of State the member has suffered a permanent breakdown in health involving incapacity for any full-time employment [<sup>F75</sup>(see rule D.5(3) and paragraph (4) below),]
- (aa) the Secretary of State has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on his occupation because of physical or mental impairment, and]
- (b) the member either—
- (i) has at least two years' qualifying service, or
- (ii) [<sup>F76</sup>is entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (basic principles as to short service benefit) because of a transfer value payment having been accepted] by the Scheme under Part F (transfers), and
- (c) the member makes a claim for immediate 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 calculated by multiplying one seventieth of the member's final pensionable earnings by the length of the member's reckonable service, expressed as a number of years.

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

[<sup>F77</sup>(4) For the purposes of this Rule a member's breakdown in health is "permanent" if, in the opinion of the Secretary of State, it will continue at least until the member reaches pension benefit age.]

#### Textual Amendments

- F74** Sch. 1 rules D.7(1)(a)(aa) substituted for Sch. 1 rule D.7(1)(a) (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **4(3)**
- F75** Words in Sch. 1 rule D.7(1)(a) substituted (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **12(4)(a)**
- F76** Words in Sch. 1 rule D.7(1)(b)(ii) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **11(1)**
- F77** Sch. 1 rule D.7(4) inserted (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **12(4)(b)**

#### D.8 Member's requests for review of ill-health awards **U.K.**

- (1) This rule applies if a member—
- (a) is entitled to a pension under rule D.6, or
- (b) has received a lump sum under article 16 of the Armed Forces Early Departure Payments Scheme Order 2005(**25**) (lump sum awards: incapacity for armed forces service) ("article 16").
- (2) The member may request a review of his condition under this rule—
- (a) at any time before the fifth anniversary of the day on which the member became entitled to the pension or lump sum, or
- (b) after that time if in the opinion of the Secretary of State the circumstances are exceptional.
- (3) The request must be made by notice in writing in such form as the Secretary of State requires.

(25) S.I. 2005/437.

(4) If a member within paragraph (1)(a) requests a review of his condition under this rule, the Secretary of State must—

- (a) review the question whether the member has suffered a permanent breakdown in health involving incapacity for any employment (see rule D.5(2) and (3)), and
- (b) if, <sup>F78</sup>... he is of the opinion that he has suffered such a breakdown, determine whether—
  - (i) the member had suffered such a breakdown at the time when he became entitled to the pension under rule D.6, or
  - (ii) the condition by virtue of which he became so entitled has deteriorated so that he suffered such a breakdown later.

(5) If—

- (a) on any review under paragraph (4), <sup>F79</sup>... the Secretary of State is of the opinion that the member—
  - (i) has suffered such a breakdown as is mentioned in paragraph (4)(a), and
  - (ii) had done so at the time when he became entitled to the pension under rule D.6, and
- (b) the member meets the condition in rule D.5(1)(b),

then [<sup>F80</sup>the member's entitlement under rule D.6 ceases and] rule D.5 applies as if the conditions mentioned in that rule were met at the time the member ceased to be in service by virtue of which he was eligible to be an active member of the Scheme, and accordingly the member immediately becomes entitled to payment of such an amount as is specified in paragraph (6).

(6) The amount referred to in paragraph (5) is such an amount as represents the sum of—

- (a) the difference between the pension payments that have been made to the member under rule D.6 and those to which he was actually entitled under rule D.5, and
- (b) the difference between the lump sum paid to him under rule D.6 and the lump sum to which he was actually entitled under rule D.5.

[<sup>F81</sup>(7) If on any review under paragraph (4), the Secretary of State is of the opinion that—

- (a) the member has suffered such a breakdown as is mentioned in paragraph (4)(a), but
- (b) the condition by virtue of which he became entitled to the pension under rule D.6 has deteriorated so that he suffered such a breakdown later,

then the member's entitlement to a pension under rule D.6 ceases and the member is entitled to a pension calculated in accordance with paragraph (7A) from the date on which the review was requested.

(7A) The pension to which a member is entitled under paragraph (7) shall consist of—

- (a) a pension calculated under rule D.5, and
- (b) an increase in that pension by an amount equivalent to the amount that a pension would be increased if the option to exchange a lump sum under rule D.10 were exercised where the amount of the lump sum exchanged is the difference between the lump sum paid to the member under rule D.6 and the lump sum which the member would have received had the member been entitled to it under rule D.5.]

(8) If a member within paragraph (1)(b) requests a review of his condition under this rule, the Secretary of State must—

- (a) review the question whether the member has suffered a breakdown in health as a result of which his capacity for gainful employment is significantly impaired, and
- (b) if, <sup>F82</sup>... he is of the opinion that the member has suffered such a breakdown, determine whether—

- (i) the member had suffered such a breakdown at the time when he became entitled to payment of the lump sum under article 16, or
- (ii) the condition by virtue of which he became so entitled has deteriorated so that he suffered such a breakdown later.

(9) If—

(a) on any review under paragraph (8), <sup>F83</sup>... the Secretary of State is of the opinion that the member—

- (i) has suffered such a breakdown as is mentioned in paragraph (8)(a), and
- (ii) had done so at the time when he became entitled to payment of the lump sum under article 16, and

<sup>F84</sup>(b) the conditions in rule D.6(1)(aa) and (b) are met,]

then rule D.6 applies [<sup>F85</sup>from the time when the ill-health condition (as defined in paragraph 1 of Schedule 28 to the Finance Act 2004) is first met], and accordingly the member is entitled to a lump sum under that rule and to a pension under that rule payable from that time (subject to paragraph (12)).

(10) If—

(a) on any review under paragraph (8), <sup>F83</sup>... the Secretary of State is of the opinion that—

- (i) the member has suffered such a breakdown as is mentioned in paragraph (8)(a), but
- (ii) the condition by virtue of which he became entitled to payment of the lump sum under article 16 has deteriorated so that he suffered such a breakdown later, and

<sup>F86</sup>(b) the conditions in rule D.6(1)(aa) and (b) are met,]

then rule D.6 applies [<sup>F87</sup>from the date when the ill-health condition (as defined in paragraph 1 of Schedule 28 to the Finance Act 2004) is first met], and accordingly the member is entitled to a lump sum under that rule and to a pension under that rule payable from that date (subject to paragraph (12)).

(11) If paragraph (9) or (10) applies and the lump sum paid to the member under article 16 was less than the lump sum to which he is entitled under rule D.6, the lump sum to which the member is so entitled is a lump sum equal to the difference.

(12) If paragraph (9) or (10) applies and the lump sum paid to the member under article 16 exceeded the lump sum to which he is entitled under rule D.6, then the member is not entitled to a lump sum under D.6 and the excess must be repaid.

#### Textual Amendments

**F78** Words in Sch. 1 rule D.8(4)(b) revoked (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), 6(3)(b), Sch.

**F79** Words in Sch. 1 rule D.8(5)(a) revoked (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), 6(3)(b), Sch.

**F80** Words in Sch. 1 rule D.8(5) inserted (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), 4(4)(a)

**F81** Sch. 1 rules D.8(7)(7A) substituted for Sch. 1 rule D.8(7) (6.4.2009) by The Armed Forces Pension Scheme etc. (Amendment) Order 2009 (S.I. 2009/544), arts. 1(1), 12(5)

**F82** Words in Sch. 1 rule D.8(8)(b) revoked (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), 6(3)(b), Sch.

**F83** Words in Sch. 1 rules D.8(9), (10) revoked (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), 6(3)(b), Sch.

**Changes to legislation:** There are currently no known outstanding effects for the *The Armed Forces Pension Scheme Order 2005*. (See end of Document for details)

- F84** Sch. 1 rule D.8(9)(b) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **4(4)(b)**
- F85** Words in Sch. 1 rule D.8(9) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **4(4)(c)**
- F86** Sch. 1 rule D.8(10)(b) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **4(4)(b)**
- F87** Words in Sch. 1 rule D.8(10) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **4(4)(d)**

## D.9 Secretary of State’s power to review ill-health awards **U.K.**

- (1) This rule applies if—
- a member is entitled to a pension under rule D.5, D.6 or D.7, and
  - it appears to the Secretary of State that there is evidence that he would not be of the same opinion as to the member’s condition if he reconsidered the question as the opinion by virtue of which the entitlement arose.
- (2) The Secretary of State may review the member’s condition under this rule.
- (3) If, on a review under this rule in the case of a member who is entitled to a pension under rule D.5, <sup>F88</sup>... the Secretary of State is of the opinion—
- that the member has not suffered such a breakdown as is mentioned in D.5(1)(a), but
  - that the member meets the condition in rule D.6(1)(a),

the Secretary of State may determine that the member is to cease to be entitled to a pension under rule D.5 and to become entitled to a pension under rule D.6 at the end of the day on which the determination is made.

(4) If, on a review under this rule in the case of a member who is entitled to a pension under rule D.6, <sup>F88</sup>... the Secretary of State is not of the opinion mentioned in paragraph (1)(a) of that rule, the Secretary of State may determine that the member is to cease to be entitled to a pension under rule D.6 at the end of the day on which the determination is made.

(5) If, on a review under this rule in the case of a member who is entitled to a pension under rule D.7, <sup>F88</sup>... the Secretary of State is not of the opinion mentioned in paragraph (1)(a) of that rule, the Secretary of State may determine that the member is to cease to be entitled to a pension under that rule at the end of the day on which the determination is made.

### Textual Amendments

- F88** Words in Sch. 1 rules D.9(3), (4), (5) revoked (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), 6(3)(c), **Sch.**

## *Options to Change Benefits*

### D.10 Option to exchange lump sum for pension **U.K.**

- (1) A member may opt to exchange the whole or any part of the lump sum to which he would otherwise be entitled under this Part for <sup>F89</sup>an increase—
- in the amount of pension payable to himself under these Rules, or
  - in the amount of pension payable to himself and to any other person under these Rules as a result of his membership of the Scheme.]

**Changes to legislation:** There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

(2) Where a member so opts, the pension in respect of which he exercises the option is to be increased as from the date it is otherwise payable by so much as in the opinion of the Scheme Actuary is equivalent in value to the amount of the whole or, as the case may be, the relevant part of the lump sum in question.

(3) A member who has exercised the option under paragraph (1) ceases to be entitled to payment of so much of the lump sum as is affected by the option.

(4) Paragraph (3) applies whether or not the pension that is to be increased as a result of the option actually becomes payable.

(5) The option under this rule may only be exercised by giving notice in writing to the Scheme administrator, in such form as the Secretary of State requires, during the period of 6 months ending with the day on which the person becomes entitled to the lump sum in question.

(6) For the purposes of this rule, the option is treated as having been exercised on the date on which it is received by the Scheme administrator.

**Textual Amendments**

**F89** Words in Sch. 1 rule D.10(1) substituted (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **12(6)**

**D.11 Option for members in serious ill-health to exchange whole pension for lump sum** **U.K.**

(1) Before a pension becomes payable to an active member, a deferred member or a pension credit member under this Part or at the time when a pension becomes payable under rule D.5 (early payment of benefits: serious ill-health), the member may opt to exchange the whole pension for a lump sum [<sup>F90</sup>if the Secretary of State—

- (a) is satisfied that the member is expected to live for less than one year, and
- (b) has received evidence from a registered medical practitioner that that is the case.]

(2) Where [<sup>F91</sup>an active member or a deferred member] so opts, he is to be paid as soon as is reasonably practicable an amount equal to the amount of the annual pension, multiplied by 5.

[<sup>F92</sup>(2A) Where a pension credit member so opts, he is to be paid as soon as is reasonably practicable an amount that in the opinion of the Scheme actuary is equivalent to the value of his pension credit rights.]

(3) In paragraph (2) “the amount of the annual pension” means the amount of the annual pension to which the member would be entitled under this Part apart from the option, calculated as at the time payment would otherwise first be due (but disregarding any service that the member might have accrued if he had continued in service until that time).

<sup>F93</sup>(4) .....

(5) The option under this rule may only be exercised by notice in writing to the Scheme administrator in such form as the Secretary of State requires.

**Textual Amendments**

**F90** Words in Sch. 1 rule D.11(1) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **5(2)**

**F91** Words in Sch. 1 rule D.11(2) substituted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **5(3)**

- F92** Sch. 1 rule D.11(2A) inserted (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **5(4)**
- F93** Sch. 1 rule D.11(4) omitted (6.4.2009) by virtue of The Armed Forces Pension Scheme etc. (Amendment) Order 2009 (S.I. 2009/544), arts. 1(1), **12(7)**

### *Pension Debit Members and Pension Credit Members*

#### **D.12 Reduction in pension debit member's benefits** **U.K.**

##### **D.12**

The benefits to which a pension debit member is entitled under this Part are subject to the reduction to be made under section 31 of the Welfare Reform and Pensions Act 1999 (reduction of benefit).

#### **D.13 Pension credit member's rights** **U.K.**

(1) Where regulation 7(5) of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(26)</sup> (early or deferred retirement) applies, the Secretary of State must be reasonably satisfied that the requirements of that regulation have been met.

(2) Section 68A(2)(a) of the Pension Schemes Act 1993<sup>(27)</sup> (safeguarded rights) applies to the safeguarded rights of pension credit members.

(3) Benefits that are attributable to a pension credit may not be aggregated with any other benefits to which the pension credit member is entitled under the Scheme.

### *Allocation*

#### **D.14 Election to allocate pension** **U.K.**

(1) An active member or deferred member may elect to allocate a part of the member's annual pension under the Scheme to the member's spouse or civil partner or a person who in the opinion of the Secretary of State meets one of the conditions specified in paragraph (2).

(2) The conditions are—

- (a) that the person is financially wholly or mainly dependent on the member, or
- (b) that the member and the person are financially interdependent.

(3) But no election may be made in respect of a pension payable under rule D.5, D.6 or D.7.

(4) The member may not elect to allocate more than [<sup>F94</sup>the permitted percentage] of the member's annual pension (before any exercise of the option under rule D.10: option to exchange lump sum for pension).

[<sup>F95</sup>(4A) In paragraph (4) "the permitted percentage" means 37.5% or such lower percentage as appears to the Scheme administrator to be capable of being allocated under this rule without risking that a part of the pension to which any person becomes entitled on the death of the member after 75 does not qualify as a dependants' scheme pension for the purposes of section 167 of the Finance Act 2004 (the pension death benefit rules) (see paragraphs 16 to 16B of Schedule 28 to that Act).]

(5) If a member wishes to allocate pension to two or more persons—

- (a) he must make a separate election in respect of each of the persons, and
- (b) the limit under paragraph (4) applies to the aggregate amount allocated.

<sup>(26)</sup> S.I. 2000/1054.

<sup>(27)</sup> Section 68A is inserted by section 36 of the Welfare Reform and Pensions Act 1999 (c. 30).



(6) If the member is entitled to a guaranteed minimum pension, the member may not elect to allocate more than the amount by which the member's annual pension (before any exercise of the option under rule D.10) exceeds that guaranteed minimum, multiplied by such factor as is indicated for a person of the member's description in tables provided by the Scheme actuary.

(7) If—

- (a) an election does not comply with paragraph (4) or (6), or
- (b) taken together the member's elections do not so comply,

the Scheme administrator may treat the election or, as the case may be, each of the elections, as allocating such smaller amount as would result in the election, or the elections taken together, so complying.

#### Textual Amendments

- F94** Words in Sch. 1 rule D.14(4) substituted (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **8(1)**
- F95** Sch. 1 rule D.14(4A) inserted (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **8(2)**

#### D.15 Procedure for election under rule D.14 **U.K.**

(1) An election under rule D.14 may only be made on or before the date advised to the member by the Scheme administrator ("the closing date").

(2) A member may at any time on or before the closing date—

- (a) revoke an election under that rule, or
- (b) amend such an election by altering the amount allocated by it.

(3) An election under that rule and any revocation or amendment of such an election must be made in writing in such form as the Secretary of State requires and be lodged with the Scheme administrator.

(4) Subject to paragraphs (5) and (6), an election under rule D.14 takes effect on the closing date.

(5) The election has no effect if—

- (a) the member dies before that date,
- (b) it is in favour of a person who dies before that date, or
- (c) the Secretary of State is not satisfied that at the time when the election is made that person is a person within rule D.14(1).

(6) The election has no effect unless—

- (a) before the closing date the member has made a declaration about the state of his health in such form and, if required, has provided such evidence relating to his health, as the Secretary of State has requested, and
- (b) <sup>F96</sup>... the Secretary of State is satisfied that at the date on which the member makes the declaration the member is in good health.

#### Textual Amendments

- F96** Words in Sch. 1 rule D.15(6)(b) revoked (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), 6(3)(d), **Sch.**

#### **D.16 Effect of allocation** **U.K.**

(1) Where an election under rule D.14 for the allocation of a member's pension to another person ("the beneficiary") has taken effect—

- (a) the member's pension is reduced accordingly (even if the beneficiary predeceases the member), and
- (b) if the beneficiary survives the member, on the member's death the beneficiary becomes entitled to the payment of a pension for life of such amount as the Secretary of State may determine, after consultation with the Scheme actuary, having regard—
  - (i) to the amount of the allocation to the beneficiary, and
  - (ii) to the beneficiary's age and sex.

(2) But the Secretary of State may withhold payment from the beneficiary if paragraph (3), (4) or (5) applies.

(3) This paragraph applies if—

- (a) the member dies before the expiry of the period of two years beginning with the date on which the election takes effect, and
- (b) the Secretary of State is satisfied that the member made a false declaration about the state of his health in connection with making the election.

(4) This paragraph applies if the Secretary of State is of the opinion that the member made the election under duress.

(5) This paragraph applies if the Secretary of State is of the opinion that the member was mentally impaired at the time when he made the election and would not have made the election apart from the impairment.

(6) If the Secretary of State proposes to withhold payment under paragraph (2), he must notify the person in writing that he proposes to do so.

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

- (a) the arrangements established by the Secretary of State 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 Pension Schemes Act 1993<sup>(28)</sup> (investigations: the Pensions Ombudsman),

in respect of any decision made under paragraph (2).

(8) References in these Rules to pensions under this Part do not include pensions under this rule.

#### *Contracting-out Obligations (GMPs etc.)*

#### **D.17 Guaranteed minimum pensions etc** **U.K.**

(1) Paragraphs (2) to (5) apply where a member has a guaranteed minimum under section 14 of the Pension Schemes Act 1993 in relation to benefits under the Scheme.

(2) If apart from this rule—

- (a) no pension would be payable to the member under the Scheme, or
- (b) the weekly rate of the pension payable would be less than the guaranteed minimum,

a pension, the weekly rate of which is equal to the guaranteed minimum, is payable to the member for life from the date on which the member reaches state pension age.

(3) If—

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(28) 1993 c. 48.

- (a) when the member reaches state pension age he is still in employment (whether or not it is scheme employment), and
- (b) if it is not scheme employment, he consents to a postponement of his entitlement under paragraph (2),

paragraph (2) does not apply until he leaves employment.

This is subject to paragraph (4).

(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, he is entitled from the end of that period to so much of his pension under this Part as equals his guaranteed minimum, unless he consents to a further postponement of the entitlement.

(5) Where 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 Pension Schemes Act 1993.

(6) This paragraph applies where a person has ceased to be in employment that is contracted-out by reference to the Scheme, and either—

- (a) all his rights to benefits under the Scheme, except his rights in respect of his guaranteed minimum or his rights under section 9(2B) of the Pension Schemes Act 1993<sup>(29)</sup> (“his contracting-out rights”), have been transferred under Part F (transfers), or
- (b) he has no rights to benefits under the Scheme apart from his contracting-out rights.

(7) Where paragraph (6) applies—

- (a) from the date on which the person reaches state pension age he is entitled to a pension payable for life at a weekly rate equal to his guaranteed minimum, and
- (b) from the date on which he reaches pension age he is entitled to a lump sum and pension in respect of his rights under section 9(2B) of the Pension Schemes Act 1993.

(8) But a person falling within paragraph (6) is not to be regarded as a pensioner for the purposes of Part E (death benefits).

(9) This rule does not apply if—

- (a) the pension is forfeited in a case where rule J.6(1)(a) (conviction of treason or <sup>F97</sup>other national security] offences) applies, or
- (b) the pension is commuted under rule J.8 (commutation of small pensions) and the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 are met,

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

(10) In this rule “scheme employment”, in relation to a member, means service by virtue of which he is eligible to be an active member of the Scheme.

#### Textual Amendments

**F97** Words in [Sch. 1 rule D.17\(9\)\(a\)](#) substituted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Subordinate Legislation\) Regulations 2023 \(S.I. 2023/1267\)](#), [reg. 1\(2\)](#), [Sch. para. 10\(3\)\(a\)](#)

<sup>(29)</sup> Subsections (2) to (2C) are substituted for subsection (2) of section 9 by section 136(3) of the Pensions Act 1995 (c. 26); section 9(2B) is amended by paragraph 35(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

## PART E U.K.

### DEATH BENEFITS

#### *Pensions for Adult Dependants*

#### **E.1 Surviving spouses' and civil partners' pensions** U.K.

(1) If an active member, a deferred member or a pensioner member dies leaving a surviving spouse or civil partner, the surviving spouse or civil partner is entitled to a pension for life.

(2) Paragraph (1) does not apply if the member is an active member who would not have qualified for a pension under rule D.2 (retirement before reaching pension age) if his service had ceased on the date of death otherwise than by reason of death.

(3) The Secretary of State may withhold the pension—

- (a) where it would be payable to a surviving spouse, if the member and the surviving spouse married less than six 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 six months before the member's death.

(4) Paragraph (3) is subject to rule E.28 (guaranteed minimum pensions for surviving spouses).

[<sup>F98</sup>(5) Where a deceased active, deferred or pensioner member was—

- (a) a man or a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) at the time of the deceased member's death, the deceased member was married, and that marriage subsisted before the time when the certificate was issued,

the surviving spouse of the deceased member is to be treated for the purpose of these Rules as if the certificate had not been issued.]

#### **Textual Amendments**

**F98** Sch. 1 rule E.1(5) inserted (E.W.) (10.12.2014) by [The Marriage \(Same Sex Couples\) Act 2013 and Marriage and Civil Partnership \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2014 \(S.I. 2014/3061\)](#), art. 1(2), **Sch. 1 para. 15**; (S.) (16.12.2014) by [The Marriage \(Same Sex Couples\) Act 2013 and Marriage and Civil Partnership \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2014 \(S.I. 2014/3061\)](#), art. 1(3), **Sch. 2 para. 1(2)**

#### **E.2 Other adult dependants' pensions** U.K.

(1) If an active member, a deferred member or a pensioner member dies leaving a surviving adult dependant and no surviving spouse or civil partner, the Secretary of State may award the surviving adult dependant a pension for life.

(2) Paragraph (1) does not apply if the member is an active member who would not have qualified for a pension under rule D.2 (retirement before reaching pension age) if his service had ceased on the date of death otherwise than by reason of death.

(3) A person is a surviving adult dependant in relation to a member for the purposes of this rule if the person satisfies the Secretary of State that at the time of the member's death—

- (a) the person and the member were cohabiting as partners in an exclusive and substantial relationship,

**Textual Amendments**

- F99** Sch. 1 rule E.2(3)(b) substituted (E.W.) (13.3.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#), art. 1(2), **Sch. 1 para. 34**
- F100** Words in Sch. 1 rule E.2(3)(b)(ii) inserted (E.W) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), reg. 1(2), **Sch. 3 para. 108**

**E.3 Amount of pensions under rules E.1 and E.2: active members** **U.K.**

(1) This rule applies in the case of a deceased active member, other than an active member who would not have qualified for a pension under rule D.2 if his service had ceased on the date of death otherwise than by reason of death.

(2) The annual amount of the pension payable under rule E.1 (surviving spouses' and civil partners' pensions) and rule E.2 (other adult dependants' pensions) is the appropriate fraction of the member's final pensionable earnings multiplied by RS, where RS is the higher of—

- (a) N for the purposes of rule D.5(4) (early payment of benefits: active members with permanent serious ill-health) if the member had become entitled to a pension under rule D.5 on the date of death, and
- (b) the member's reckonable service at the date of death in years.

This is subject to paragraphs (4) and (6).

(3) The appropriate fraction is 1/112.

(4) If immediately before the member's death he was entitled to exercise the option under rule G.3 or G.4 (aggregation of service), then, unless paragraph (5) applies, these Rules apply as if the member had exercised that option before his death (and accordingly no amount is payable under rule E.4 in respect of the service that is aggregated).

[<sup>F101</sup>(4A) If immediately before the member's death he was entitled to exercise the option under rule A.10(1A), then unless paragraph (5) applies, these Rules apply as if the member had exercised that option before his death.]

(5) This paragraph applies if in the opinion of the Secretary of State the value of the benefits payable in respect of the member under these Rules would be greater if these Rules did not apply as if the member had exercised that option before his death.

(6) For the purposes of paragraph (2)—

- <sup>F102</sup>(a) .....
- (b) reckonable service exceeding 37 1/3 years does not count.

**Textual Amendments**

- F101** Sch. 1 rule E.3(4A) inserted (6.4.2009) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2009 \(S.I. 2009/544\)](#), arts. 1(1), **9(2)**
- F102** Sch. 1 rule E.3(6)(a) omitted (1.12.2018) by virtue of [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(2)(b), **2(8)**

**E.4 Amount of pensions under rules E.1 and E.2: deferred members** **U.K.**

(1) In the case of a deceased deferred member, the annual amount of a pension payable under rule E.1 (surviving spouses' and civil partners' pensions) or rule E.2 (other adult dependants' pensions)

*Changes to legislation:* There are currently no known outstanding effects for the *The Armed Forces Pension Scheme Order 2005*. (See end of Document for details)

is calculated by multiplying the appropriate fraction of the member’s final pensionable earnings by the member’s reckonable service at the date of death in years.

(2) The appropriate fraction is 1/112.

(3) For the purposes of paragraph (1)—

<sup>F103</sup>(a) . . . . .

(b) reckonable service exceeding 37 1/3 years does not count.

(4) This rule is subject to rule E.3(4) (no amount payable under this rule in certain cases where the member was both an active member and a deferred member).

**Textual Amendments**  
**F103** Sch. 1 rule E.4(3)(a) omitted (1.12.2018) by virtue of [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018](#) (S.I. 2018/1111), regs. 1(2)(b), **2(9)**

**E.5 Amount of pensions under rules E.1 and E.2: pensioner members** **U.K.**

(1) In the case of a deceased pensioner member, the annual amount of a pension payable under rule E.1 (surviving spouses' and civil partners' pensions) or rule E.2 (other adult dependants' pensions) is calculated by multiplying the appropriate fraction of the member’s final pensionable earnings—

- (a) if the member’s pension was calculated under rule D.1(3), D.2(3) or D.7(2), by the reckonable service mentioned in that rule,
- (b) if the member’s pension was calculated under rule D.4(4), by the reckonable service used for the first calculation mentioned in that rule, and
- (c) if the member’s pension was calculated under rule D.5(4) or D.6(2), by the figure that is N for the purposes of that rule.

This is subject to paragraph (3).

(2) The appropriate fraction is 1/112.

(3) For the purposes of paragraph (1)—

<sup>F104</sup>(a) . . . . .

(b) reckonable service exceeding 37 1/3 years does not count.

(4) This rule is subject to rule D.10 (member’s option to exchange lump sum for pension).

**Textual Amendments**  
**F104** Sch. 1 rule E.5(3)(a) omitted (1.12.2018) by virtue of [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018](#) (S.I. 2018/1111), regs. 1(2)(b), **2(10)**

**E.6 Reduction in pensions under rules E.1 and E.2 in cases of wide age disparity** **U.K.**

(1) Where on the death of a member a pension is payable under rule E.1 or E.2 to a person (“the beneficiary”) who is more than 12 years younger than the member, the amount of the pension calculated in accordance with rule E.3, E.4 or E.5 is reduced by the appropriate amount.

(2) That amount is the lesser of—

- (a) 50% of the pension so calculated, or

(b)  $2.5\% \times (N - 12)$  of the pension so calculated, where N is the number of whole years by which the beneficiary is younger than the member.

(3) This rule is subject to rule K.8 <sup>F105</sup> and rule L.7].

#### Textual Amendments

**F105** Words in Sch. 1 rule E.6(3) inserted (1.10.2007) by The Armed Forces (Gurkha Pensions) Order 2007 (S.I. 2007/2608), arts. 1(1), 3(10)

### E.7 Adult dependants entitled to two or more pensions under this Part **U.K.**

- (1) This rule applies if—
  - (a) pensions are payable to a person under rule E.1 or E.2 in respect of more than one deceased member, and
  - (b) the total reference service for the pensions exceeds the dependant's maximum.
- (2) In this rule “reference service” means—
  - (a) in the case of a pension calculated under rule E.3, the higher of the figures given by rule E.3(2)(a) and (b),
  - (b) in the case of a pension calculated under rule E.4, the figure by which the appropriate fraction of the member's final pensionable earnings is multiplied under rule E.4(1), and
  - (c) in the case of a pension calculated under rule E.5—
    - (i) if the member's pension was calculated under rule D.1(3), D.2(3) or D.7(2), the reckonable service mentioned in that rule,
    - (ii) if the member's pension was calculated under rule D.4(4), the reckonable service used for the first calculation mentioned in that rule, and
    - (iii) if the member's pension was calculated under rule D.5(4) or D.6(2), N for the purposes of that rule.
- (3) In this rule “the dependant's maximum” means—
  - (a) if none of the deceased members' reckonable service exceeded 35 years, 35 years,
  - (b) if one (and only one) of the deceased members' reckonable service exceeded 35 years, that member's reckonable service (but not exceeding 37 1/3 years), and
  - (c) if two or more of the deceased members' reckonable service exceeded 35 years, the reckonable service of the member with the greatest reckonable service (but not exceeding 37 1/3 years).
- (4) The total amount of the pensions payable as mentioned in paragraph (1) immediately after the death, excluding any amount that is attributable to any increase made as a result of rule D.10 (member's option to exchange lump sum for pension), must not exceed such amount as results from the pensions being calculated by reference to the dependant's maximum.
- (5) In determining the amount of each of the pensions so payable to arrive at that total amount, the reference service for the pensions is to be reduced in such a manner as results in the greatest total amount.
- (6) In determining for the purposes of the Scheme whether a pension is payable under rule E.1 or E.2, the fact that the amount of any pension that would otherwise be payable under that rule is reduced to nil as a result of this rule is to be disregarded.

*Pensions for Eligible Children*

**E.8 Surviving children’s pensions U.K.**

- (1) If a member dies leaving an eligible child, a pension is payable in respect of the child.
- (2) If the child ceases to be an eligible child after the date of death, the pension ceases to be payable unless and until the child becomes an eligible child again.
- (3) This rule is subject to—
  - (a) rule E.13 (children born after the member’s death), and
  - (b) rule E.14 (children entitled to three or more pensions).

**E.9 Meaning of “eligible child” U.K.**

- (1) In these Rules “eligible child”, in relation to a deceased member, means—
  - (a) a child of the member who meets any of conditions A to C, or
  - (b) any other child or young person who—
    - (i) meets any of those conditions, and
    - (ii) was financially dependent on the member at the date of death.
- (2) Condition A is that the person is aged under 18.
- (3) Condition B is that the person is in full-time education or vocational training and is aged under 23.
- [<sup>F106</sup>(4) Condition C is that, because of physical or mental impairment—
  - (a) the person is, in the opinion of the Scheme administrator, unable to engage in full-time gainful employment; and
  - (b) the person was dependent on the member at the date of the death.]
- <sup>F107</sup>(4A) . . . . .
- (5) A person who is aged under 19 on the date when he ceases to be in full-time education is treated as being in such education until the first of the following dates after he so ceases—
  - (a) the second Monday in January,
  - (b) the second Monday after Easter Monday,
  - (c) the second Monday in September,
  - (d) his 19th birthday,
  - (e) the date on which he becomes engaged full-time in gainful employment.
- (6) A person who at the date of a member’s death is aged under 23 and taking a break from full-time education or vocational training not exceeding 15 months is assumed to be continuing in such education or training during the break for the purpose of determining—
  - (a) whether the person is an eligible child at that date, and
  - (b) how many pensions are payable under rule E.8(1) immediately after that date.
- (7) A person who is prevented from continuing in full-time education or vocational training on account of ill-health is treated for the purposes of condition B and paragraph (5) as continuing to be in such education or training until he is no longer so prevented.
- (8) Paragraph (7) does not apply at any time when the person’s health is such that it is reasonable to assume that he will not be capable of undertaking any further education or training.



(9) Nothing in paragraph (6) or (7) requires a pension to be paid in respect of a person during the break in his education or training.

#### Textual Amendments

**F106** Rule E.9(4) substituted (27.6.2011) by The Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (S.I. 2011/1364), arts. 1(1), **2(9)(a)**

**F107** Rule E.9(4A) omitted (27.6.2011) by virtue of The Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (S.I. 2011/1364), arts. 1(1), **2(9)(b)**

### E.10 Amount of children's pension under rule E.8: active members **U.K.**

(1) This rule applies for determining in the case of a deceased active member the annual amount of a pension payable under rule E.8(1) (surviving children's pensions).

(2) The amount of such a pension is determined by reference to the amount ("the member's assumed pension") that is the annual pension to which the member would have been entitled under rule D.5 (early payment of benefits: active members with permanent serious ill-health) if he had become entitled to a pension under that rule on the date of death (see rule D.5(4) and (5)).

(3) If—

- (a) a pension is payable under rule E.1 or E.2 immediately after the date of the member's death, and
- (b) one pension is payable at that time under rule E.8(1),

the annual amount of the pension payable under rule E.8(1) is equal to one quarter of the member's assumed pension.

(4) If—

- (a) a pension is payable under rule E.1 or E.2 immediately after the date of the member's death, and
- (b) two or more pensions are payable at that time under rule E.8(1),

the annual amount of each pension payable under rule E.8(1) is equal to—

$$\frac{100}{100} \frac{SA}{100} \geq \frac{AP}{N}$$

where—

**SA** is the amount of the pension payable under rule E.1 or E.2 (disregarding rules D.10, E.6 and E.7), expressed as a percentage of the member's assumed pension,

**AP** is the member's assumed pension, and

**N** is the number of pensions payable under rule E.8(1).

(5) If—

- (a) no pension is payable under rule E.1 or E.2 immediately after the date of the member's death, and
- (b) one, two or three pensions are payable at that time under rule E.8(1),

the annual amount of each pension payable under rule E.8(1) is equal to one third of the member's assumed pension.

(6) If—

- (a) no pension is payable under rule E.1 or E.2 immediately after the date of the member's death, and

(b) four or more pensions are payable at that time under rule E.8(1),  
the annual amount of each pension payable under rule E.8(1) is equal to the member's assumed pension, divided by the number of pensions payable under that rule.

(7) If—

- (a) immediately before the member's death he was entitled to exercise the option under rule G.3 or G.4 (aggregation of service),
- (b) no pension is payable under rule E.1 or E.2, and
- (c) the cost condition is met (see paragraph (8)),

these Rules apply as if the member had exercised that option before his death.

(8) The cost condition is that in the opinion of the Secretary of State the total cost of providing benefits in respect of the member under the Scheme and the AFPS 1975 would have been greater if he had exercised that option than if he had not (apart from paragraph (7)).

(9) In forming an opinion for the purposes of paragraph (8), the Secretary of State must—

- (a) assume that in the case of each child in respect of whom a pension is payable under rule E.8(1), or under the AFPS 1975 by virtue of any entitlement in respect of the member as a deferred member of the AFPS 1975, the pension will be payable for the period of 5 years or, if longer, until the child reaches 18, and
- (b) disregard the effect of the Pensions (Increase) Act 1971 in respect of any period after the date of death.

(10) If—

- (a) a pension is payable under rule E.8(1) 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 E.1 or E.2 immediately after the date of the member's death, and
- (c) the pension under rule E.1 or E.2 ceases to be payable,

the annual amount of the pension payable under rule E.8(1) in respect of the child for any period after the date on which the pension under rule E.1 or E.2 ceases to be payable is calculated in accordance with paragraphs (5) to (9) as if no pension had been payable under rule E.1 or E.2 immediately after the date of the member's death.

### **E.11 Amount of children's pension under rule E.8: deferred members** **U.K.**

(1) This rule applies for determining in the case of a deceased deferred member the annual amount of a pension payable under rule E.8(1) (surviving children's pensions).

(2) The amount of such a pension is determined by reference to the annual pension to which the member would have been entitled under rule D.2, on the assumption that the pension had become payable on the date of death ("the member's deferred pension").

(3) If—

- (a) a pension is payable under rule E.1 or E.2 immediately after the date of the member's death, and
- (b) one pension is payable at that time under rule E.8(1),

the annual amount of that pension is equal to one quarter of the member's deferred pension.

(4) If—

- (a) a pension is payable under rule E.1 or E.2 immediately after the date of the member's death, and
- (b) two or more pensions are payable at that time under rule E.8(1),

the annual amount of each pension is equal to—

$$\frac{100 - SA}{100} \times \frac{DP}{N}$$

where—

**SA** is the amount of the pension payable under rule E.1 or E.2 (disregarding rules D.10, E.6 and E.7), expressed as a percentage of the member's deferred pension,

**DP** is the member's deferred pension, and

**N** is the number of pensions payable under rule E.8(1).

(5) If—

(a) no pension is payable under rule E.1 or E.2 immediately after the date of the member's death, and

(b) one, two or three pensions are payable at that time under rule E.8(1),

the annual amount of each pension is equal to one third of the member's deferred pension.

(6) If—

(a) no pension is payable under rule E.1 or E.2 immediately after the date of the member's death, and

(b) four or more pensions are payable at that time under rule E.8(1),

the annual amount of each pension is equal to the member's deferred pension, divided by the number of pensions payable under rule E.8(1).

(7) If—

(a) a pension is payable under rule E.8(1) 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 E.1 or E.2 immediately after the date of the member's death, and

(c) the pension under rule E.1 or E.2 ceases to be payable,

the annual amount of the pension payable under rule E.8(1) in respect of the child for any period after the date on which the pension under rule E.1 or E.2 ceases to be payable is calculated in accordance with paragraph (5) or (6) as if no pension had been payable under rule E.1 or E.2 immediately after the date of the member's death.

## **E.12 Amount of children's pension under rule E.8: pensioner members** **U.K.**

(1) This rule applies for determining in the case of a deceased pensioner member the annual amount of a pension payable under rule E.8(1) (surviving children's pensions).

(2) The amount of such a pension is determined by reference to the annual pension to which the member was entitled on the date of death ("the member's pension"), except that—

(a) in a case where the member's pension was increased under rule D.10 (option to exchange lump sum for pension), the member's pension is taken for this purpose to exclude so much of the pension as is attributable to that increase, and

(b) where that option was exercised so as to increase the pension under rule E.8(1), this rule is without prejudice to that increase.

(3) If—

(a) a pension is payable under rule E.1 or E.2 immediately after the date of the member's death, and

(b) one pension is payable at that time under rule E.8(1),

the annual amount of that pension is equal to one quarter of the member's pension.

**Changes to legislation:** There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

(4) If—

- (a) a pension is payable under rule E.1 or E.2 immediately after the date of the member’s death, and
- (b) two or more pensions are payable at that time under rule E.8(1),

the annual amount of each pension is equal to—

$$\frac{100 - SA}{100} \times \frac{P}{N}$$

where—

**SA** is the amount of the pension payable under rule E.1 or E.2 [<sup>F108</sup>(disregarding any increase or reduction made by virtue of rule D.10, D.16, E.6 or E.7)], expressed as a percentage of the member’s pension,

**P** is the member’s pension, and

**N** is the number of pensions payable under rule E.8(1).

(5) If—

- (a) no pension is payable under rule E.1 or E.2 immediately after the date of the member’s death, and
- (b) one, two or three pensions are payable at that time under rule E.8(1),

the annual amount of each pension is equal to the one third of the member’s pension.

(6) If—

- (a) no pension is payable under rule E.1 or E.2 immediately after the date of the member’s death, and
- (b) four or more pensions are payable at that time under rule E.8(1),

the annual amount of each pension is equal to the member’s pension, divided by the number of pensions payable under rule E.8(1).

(7) If—

- (a) a pension is payable under rule E.8(1) 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 E.1 or E.2 immediately after the date of the member’s death, and
- (c) the pension under rule E.1 or E.2 ceases to be payable,

the annual amount of the pension payable under rule E.8(1) in respect of the child for any period after the date on which the pension under rule E.1 or E.2 ceases to be payable is calculated in accordance with paragraph (5) or (6) as if no pension had been payable under rule E.1 or E.2 immediately after the date of the member’s death.

**Textual Amendments**

**F108** Words in Sch. 1 rule E.12(4) substituted (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **8(3)**

**E.13 Children born after the member’s death** **U.K.**

(1) For the purposes of rule E.8(1), a member is only treated as leaving a child who is born after the member’s death if the child is born before the first anniversary of the member’s death.

(2) No pension is payable under that rule in respect of any period before the child’s birth.

(3) But a pension in respect of a child born after the member's death is treated as payable in respect of that period in determining the number of pensions payable immediately after the date of the member's death for the purposes of rules E.10(3), (4), (5) and (6), E.11(3), (4), (5) and (6) and E.12(3), (4), (5) and (6) (amount of children's pensions).

#### **E.14 Children entitled to three or more pensions** U.K.

(1) This rule applies if, apart from this rule, pensions would be payable in respect of the same child under rule E.8 as a result of the death of more than two members.

(2) Only the pensions payable as a result of the death of two of the members and which together result in the payment of the greatest annual amount in respect of the child are payable.

(3) Rule E.27(3) (under which benefits are payable in respect of dual capacity members under this Part as if two or more members of the kinds in question had died and the amounts payable are determined accordingly) does not apply for the purpose of determining for this rule the number of members as a result of whose deaths pensions are payable.

(4) But the amount of the pensions payable as the result of the death of any member to whom that rule applies are calculated in accordance with rule E.27 before applying paragraph (2).

#### *Lump Sum Death Benefits*

#### **Death of a member: lump sum benefit** U.K.

(1) If a member dies before reaching the age of 75, the Secretary of State may pay a lump sum to any of the following—

- (a) the person or persons nominated by the member in accordance with rule E.21;
- (b) if there is no person within sub-paragraph (a), to any person who is entitled to a pension under rule E.1 in respect of the member, or to whom a pension may be awarded under rule E.2 in respect of the member;
- (c) if there is no person within sub-paragraph (a) or (b), to any person who, but for the application of rule E.1(2) or rule E.2(2), would be so entitled or to whom a pension may be awarded; or
- (d) if there is no person within sub-paragraphs (a), (b) or (c), to the member's personal representatives.]

(2) If two or more persons have been so nominated and the Secretary of State decides to pay the lump sum to them—

- (a) the payment is to be made to them in such proportions as the member has specified in the nomination, or
- (b) if no proportions are so specified, in such proportions as the Secretary of State considers appropriate.

(3) This rule does not apply if—

- (a) the member is—
  - (i) a pensioner member, or
  - (ii) a pension credit member who dies after any benefits attributable to his pension credit have become payable, and
- (b) the death takes place—
  - (i) more than five years after the member's pension becomes payable, or

**Changes to legislation:** There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

- (ii) after the member's pension has been commuted under rule J.8 (commutation of small pensions).

[<sup>F110</sup>(4) A lump sum paid under this rule may not be paid more than two years after the day on which the Scheme administrator first knew, or could reasonably be expected to have known, of the member's death.]

[<sup>F111</sup>(5) The annual amount of pension paid to a person under this Part shall be increased by such amount as the Defence Council, after consulting with the Scheme actuary, may determine, if—

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

#### Textual Amendments

**F109** Rule E.15(1) substituted (10.1.2012) by [The Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/3013\)](#), arts. 1, **13(1)**

**F110** Rule E.15(4) substituted (10.1.2012) by [The Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/3013\)](#), arts. 1, **13(2)**

**F111** Rule E.15(5) inserted (10.1.2012) by [The Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 \(Amendment\) Order 2011 \(S.I. 2011/3013\)](#), arts. 1, **13(3)**

#### E.16 Amount of lump sum benefit under rule E.15: active members **U.K.**

(1) In the case of an active member, the amount of the lump sum payable under rule E.15 (death of a member: lump sum benefit) is equal to the member's final pensionable earnings, multiplied by four.

This is subject to paragraphs (2) to (5).

(2) If—

- (a) the member was both an active member and a deferred member, and
- (b) the amount payable under rule E.17 is greater than the amount payable under paragraph (1),

the amount payable under rule E.17 is payable instead of the amount specified in paragraph (1).

(3) If the member was both an active member and a pensioner member, the amount payable under paragraph (1) is reduced by the amount of the lump sum paid to the member under rule D.1, D.2, D.4, D.5, D.6 or D.7.

(4) If the member was both an active member of the Scheme and a pensioner member of the AFPS 1975 (or would have been apart from any abatement of his pension under the terms of that Scheme), paragraph (3) and rule E.18 apply as if he were a pensioner member of the Scheme (and accordingly the amount payable under paragraph (1), reduced in accordance with paragraph (3), is payable instead of the amount under rule E.18(3)).

(5) If a lump sum is payable in respect of the member under the AFPS 1975 by virtue of any entitlement in respect of the member as a deferred member of that Scheme, the amount specified in paragraph (1) or, as the case may be, paragraph (2) is only payable if and to the extent that it exceeds the aggregate amount of any lump sum payments made to or in respect of him under the AFPS 1975.

### **E.17 Amount of lump sum benefit under rule E.15: deferred members** U.K.

(1) In the case of a deceased deferred member, the amount of the lump sum payable under rule E.15 (death of a member: lump sum benefit) is equal to the amount of the lump sum to which the member would have become entitled under rule D.2 if the member had become entitled to a lump sum under that rule on the date of death.

But this is subject to paragraphs (2) and (3).

(2) If the member was both a deferred member and an active member, the amount payable under rule E.16 is payable instead of the amount under paragraph (1) unless the amount under paragraph (1) is greater.

(3) If a lump sum is payable in respect of the member under the AFPS 1975 by virtue of any entitlement in respect of the member as a deferred member of the AFPS 1975, the amount specified in paragraph (1) is only payable if and to the extent that it exceeds the aggregate amount of any lump sum payments made to or in respect of him under the AFPS 1975.

### **E.18 Amount of lump sum benefit under rule E.15: pensioner members** U.K.

(1) In the case of a deceased pensioner member, the amount of the lump sum payable under rule E.15 (death of a member: lump sum benefit) is equal to—

**A – B**

where—

**A** is the amount of the pension that would have been payable to the member during so much of the period of five years beginning with the date on which the pension became payable as falls after the date of death, and

**B** is the amount of any lump sum paid to the member under rule D.1, D.2, D.4, D.5, D.6 or D.7.

(2) Any increases in the pension which might have become payable after the date of death are disregarded for the purposes of paragraph (1).

(3) If the member was both a pensioner member and an active member, the amount payable under rule E.16 is payable instead of the amount under paragraph (1).

### **E.19 Amount of lump sum benefit under rule E.15: pension credit members** U.K.

(1) In the case of a pension credit member who dies before any benefits derived from his pension credit have become payable, the amount of the lump sum payable under rule E.15 (death of a member: lump sum benefit) is calculated by multiplying by 3 the amount of the annual pension that would have been payable to him under rule D.3 if that pension had become payable to him on the date of his death.

(2) In the case of a pension credit member who dies after the pension under rule D.3 becomes payable, the amount of the lump sum payable under rule E.15 (death of a member: lump sum benefit) is equal to—

**A – B**

where—

**A** is the amount of the pension that would have been payable to the member during so much of the period of five years beginning with the date on which the pension became payable as falls after the date of death, and

**B** is the amount of any lump sum paid to the member under rule D.3 or D.4.

(3) Any increases in the pension which might have become payable after the date of death are disregarded for the purposes of paragraph (2).

**E.20 Members affected by court orders to former spouses and civil partners on death** **U.K.**

(1) This rule applies where on a member's death the Secretary of State is required under a court order to pay any part of any amount payable under rule E.15 to the member's former spouse or civil partner.

(2) Where this rule applies the amount payable under that rule is determined as if no such order had been made, and then this Part applies as if the amount payable under rule E.15 were reduced by the amount payable under the court order.

**E.21 Nominations for lump sum death benefits** **U.K.**

(1) For the purposes of rule E.15 (death of a member: lump sum benefits)—

- (a) a member may nominate one or more persons, and
- (b) if he nominates two or more persons, he may specify in the nomination the proportions of the payment he wishes each of them to receive.

(2) The member must make his nomination by notice in writing to the Scheme administrator in such form as the Secretary of State may require or is willing to accept.

(3) A member may revoke or alter a nomination by a further notice in writing to the Scheme administrator in such form as the Secretary of State may require or is willing to accept.

[<sup>F112</sup>(3A) This rule is subject to paragraph 62 of Schedule 3 (remediable service).]

(4) The nomination of a person is invalid—

- (a) if—
  - (i) the person nominated is an individual who was the spouse or civil partner of the member at the date the nomination was made and is not the spouse or civil partner of the member immediately before the member's death, and
  - (ii) the member did not confirm the nomination by notice in writing to the Scheme administrator after the marriage or civil partnership ended, or
- (b) if the person nominated is an individual who predeceases the member.

(5) If a person nominated is convicted of the offence of murder or manslaughter of the member, the person's nomination is to be treated as invalid from the member's death.

(6) If a person nominated is convicted of any other offence of which the unlawful killing or wounding of the member is an element, the Secretary of State may determine that the nomination is to be treated as invalid from the member's death.

[<sup>F113</sup>(7) Where the member marries or enters into a civil partnership on or after 1st December 2018, any existing nomination ceases to have effect from the date of the marriage or civil partnership.]

**Textual Amendments**

**F112** Sch. 1 rule E.21(3A) inserted (1.10.2023) by [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), regs. 1(b), **8(4)**

**F113** Sch. 1 rule E.21(7) inserted (1.12.2018) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(2)(b), **2(11)**



## General Provisions

### E.22 Pension debit members **U.K.**

- (1) This rule applies where the deceased member was a pension debit member.
- (2) If the member was an active member—
  - (a) the pension payable under rule E.1 (surviving spouses' and civil partners' pensions) or rule E.2 (other adult dependants' pensions) is calculated as mentioned in paragraph (3),
  - (b) the amount payable under rule E.8(1) by virtue of rule E.10 (surviving children's pensions)—
    - (i) is first calculated as if the member were not a pension debit member (in particular, in determining the amount of the member's assumed pension or annual pension for the purposes of rule E.10(2)), and
    - (ii) is then subject to any reduction required under section 31 of the Welfare Reform and Pensions Act 1999 ("section 31"), and
  - (c) the lump sum payable under rule E.15 (death of a member: lump sum benefit) is calculated under rule E.16.
- (3) The pension is first calculated under rule E.3 as if the member were not a pension debit member, and then it is reduced in the same proportion as the member's assumed pension would have been reduced under that section if he had been entitled to it on the date of death.
- (4) If the member was a deferred member—
  - (a) the amount of the pension payable under rule E.1 or E.2 is calculated by reference to the amount of the pension to which the member would have been entitled after any reduction under section 31, and
  - (b) the amount payable under rule E.8(1) by virtue of rule E.11—
    - (i) is first calculated as if the member were not a pension debit member (in particular, in determining the amount of the annual pension referred to in rule E.11(2)), and
    - (ii) is then subject to any reduction required under section 31.
- (5) If the member was a pensioner member—
  - (a) the amount of the pension payable under rule E.1 or E.2 is calculated by reference to the amount of the pension to which the member was entitled (after the reduction under section 31), and
  - (b) the amount payable under rule E.8(1) by virtue of rule E.12—
    - (i) is first calculated as if the member were not a pension debit member (in particular, in determining the amount of the annual pension referred to in rule E.12(2) to which the member was entitled), and
    - (ii) is then subject to any reduction required under section 31.
- (6) The effect of any option under rule D.10 (option to exchange lump sum for pension) to increase any pension is to be disregarded in determining the amount payable under paragraph (5) in the first instance; then the option is to be taken into account so far as it increases the amount of the pension so payable.

### E.23 Dependants' pensions: suspension and recovery **U.K.**

- (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 Secretary of State 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 Secretary of State may—
  - (a) cease paying the pension, and
  - (b) recover any payment made under the award.
- (3) Paragraph (2) does not affect the Secretary of State's right to recover a payment or overpayment in any case where he considers it appropriate to do so.

#### **E.24 Recovery of lump sum payments made to nominee** **U.K.**

- (1) Where—
  - (a) payment is made to a person under rule E.15 (death of a member: lump sum benefit) because of the person's nomination by a member, and
  - (b) the person's nomination is subsequently found to be invalid under rule E.21(4) or (5),the Secretary of State may recover the payment.
- (2) Paragraph (1) does not affect the Secretary of State's right to recover a payment or overpayment in any case where he considers it appropriate to do so.

#### **E.25 Provisional awards of children's pensions: later adjustments** **U.K.**

- (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) The Secretary of State 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 Secretary of State's right to recover a payment or overpayment in any case where he considers it appropriate to do so.

#### **E.26 Payments under this Part** **U.K.**

- (1) A pension under this Part is payable from the day after the date of the death of the member.
- (2) Payment of a lump sum payable under this Part must be made before the expiry of the period of two years beginning with that date.
- (3) A pension payable under this Part in respect of an eligible child aged under 18 must be paid—
  - (a) if the child is in the care of the member's surviving spouse or civil partner or a person who is the member's surviving adult dependant for the purposes of rule E.2, to the surviving spouse or civil partner or the adult dependant, and
  - (b) in any other case, to the child's guardian,unless the Secretary of State directs otherwise.

### **E.27 Dual capacity membership** U.K.

- (1) This rule applies where the deceased member was—
  - (a) a member of the Scheme of two or more of the kinds specified in paragraph (2), or
  - (b) a member of the Scheme and a member of the AFPS 1975.
- (2) They are—
  - (a) an active member,
  - (b) a deferred member,
  - (c) a pensioner member, and
  - (d) a pension credit member.
- (3) Where paragraph (1)(a) applies, the general rule is that—
  - (a) benefits are payable in respect of the member under this Part as if two or more members of the kinds in question had died (so that two or more pensions or lump sums are payable in respect of the one deceased member), and
  - (b) the amounts payable are determined accordingly.
- (4) But that general rule is subject to—
  - (a) rule E.3(4) and E.4(4) (adult dependants' pension where the member was both an active member and a deferred member),
  - (b) rule E.14(3) and (4) (children entitled to three or more pensions),
  - (c) rules E.16(2) and E.17(2) (amount of lump sum where the member was both an active member and a deferred member), and
  - (d) rule E.16(3) and E.18(3) (amount of lump sum where the member was both an active member and a pensioner member).
- (5) Where paragraph (1)(b) applies, the general rule is that benefits are payable in respect of the member under this Part regardless of the member's membership of the AFPS 1975.
- (6) But that general rule is subject to rules E.16(4) and (5) and E.17(3) (amount of lump sum where member was both a member of the Scheme and a member of the AFPS 1975).

### **E.28 Guaranteed minimum pensions for surviving spouses** U.K.

- (1) This rule applies where the surviving spouse of a deceased active, deferred or pensioner member has a guaranteed minimum under section 17 of the Pension Schemes Act 1993 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 under this Part, 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 for life.
- (3) Paragraph (2) does not apply if the pension is forfeited in a case where rule J.6(1)(a) (conviction of treason or <sup>F114</sup>other national security] offences) applies.

### Textual Amendments

**F114** Words in Sch. 1 rule E.28(3) substituted (20.12.2023) by The National Security Act 2023 (Consequential Amendments of Subordinate Legislation) Regulations 2023 (S.I. 2023/1267), reg. 1(2), **Sch. para. 10(3)(b)**

## PART F **U.K.**

### TRANSFERS

#### *Transfers Out*

#### **F.1 Right to transfer value payment **U.K.****

(1) This Part supplements the rights conferred under Chapter 4 of Part 4 of the Pension Schemes Act 1993 (transfer values).

(2) This Part is without prejudice to that Chapter or Chapter 5 of that Part<sup>(30)</sup> (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 him 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 or a contribution refund in accordance with that Chapter.

(4) Subject to the provisions of this Part, any other former active member, other than a pensioner member, is entitled to require such a payment as if rights under Chapter 4 of Part 4 of the Pension Schemes Act 1993 had accrued to or in respect of him by reference to the reckonable service he is entitled to count under the Scheme (and references in this Part to his accrued rights or benefits are to be read accordingly).

(5) Paragraph (4) does not apply if the former member is entitled under rule C.7 to repayment of the contributions he has paid during the period of service ending with his ceasing to be an active member or acquires a right to a contribution refund under Chapter 5 of Part 4 of the Pension Schemes Act 1993.

(6) Paragraphs (3) and (4) do not apply to rights that are directly attributable to a pension credit.

[<sup>F115</sup>(7) For the application of paragraph (4) in the case of certain Gurkha Pension Scheme transferees, see rule L.7(4).]

### Textual Amendments

**F115** Sch. 1 rule F.1(7) inserted (1.10.2007) by The Armed Forces (Gurkha Pensions) Order 2007 (S.I. 2007/2608), arts. 1(1), **3(11)**

<sup>(30)</sup> Chapter 5 (sections 101AA to 101AI) is inserted by section 264 of the Pensions Act 2004 (c. 35).

## **F.2 Applications for statements of entitlement** **U.K.**

(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 these Rules, "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.

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

- (3) 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 (not exceeding six months beginning with that date) 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.

(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.

## **F.3 Applications for transfer value payments** **U.K.**

(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)).

In these Rules 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) six months after that date, or
- (b) if it is earlier, the date on which the member reaches pension benefit age.

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

(5) An application by a person who is entitled to apply for a guaranteed cash equivalent transfer value payment under Chapter 4 of Part 4 of the Pension Schemes Act 1993 may only be made before—

*Changes to legislation: There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)*

- (a) the beginning of the period of one year ending with the date on which the member reaches pension benefit age, or
- (b) the end of the period of 6 months beginning with the day after that on which the member's pensionable service ends,

whichever is the later.

This is subject to paragraph (7).

(6) An application by a person who is not entitled to apply for a guaranteed cash equivalent transfer value payment under Chapter 4 of Part 4 of the Pension Schemes Act 1993 may only be made before the expiry of the period of one year beginning with the day on which the applicant ceases to be an active member of the Scheme.

This does not apply if paragraph (7) applies to the application.

(7) An application for a transfer value payment to be made under the public sector transfer arrangements may only be made—

- (a) 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, and
- (b) before the member reaches pension benefit age.

(8) The Secretary of State may direct that any time limit applying to an application under paragraph (1) should be extended if he considers it 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 the notice is given.

(10) If the payment is made later than six 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 one per cent. above the sterling 3 month London interbank offered rate.

#### **F.4 Ways in which transfer value payments may be applied U.K.**

(1) A member may only require the Secretary of State to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 95 of the Pension Schemes Act 1993 (whether or not he is entitled to a guaranteed cash equivalent transfer value payment under that Act).

(2) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (3) applies.

(3) The benefits attributable to—

- (a) the member's accrued rights to a guaranteed minimum pension, or
- (b) the member's accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the guaranteed cash equivalent transfer value payment if section 96(2) of the Pension Schemes Act 1993 applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member's other rights).

**F.5 Calculating amounts of transfer value payments** **U.K.**

(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated in accordance with guidance and tables provided by the Scheme actuary to the Secretary of State for use at the guarantee date.

This is subject to paragraphs (3) and (6).

(2) In preparing those tables the Scheme actuary must use such factors as he considers appropriate, having regard to section 97 of the Pension Schemes Act 1993 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).

(3) If the amount calculated in accordance with paragraph (1) is less than the minimum transfer value, the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value instead.

This is subject to paragraph (6).

(4) In paragraph (3) “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 he is entitled to count any reckonable service under the Scheme by reference to which the accrued rights subject to the transfer are calculated.

(5) The payments are—

- (a) any transfer value payments that have been made to the Scheme in respect of him,
- (b) any contributions paid by him under Part C, and
- (c) in the case of an AFPS 1975 transferee, any payments made before 6th April 2006 for the purchase of added years under the AFPS 1975.

(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 (1) 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.

**F.6 Effect of transfers-out** **U.K.**

**F.6.** Where a transfer value payment is made under this Part in respect of a person’s rights under the Scheme, those rights are extinguished.

*Transfers In*

**F.7 Right to apply for acceptance of transfer value payment from another scheme** **U.K.**

(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 him <sup>F116</sup>under any scheme or arrangement to which a transfer value payment may be made under Chapter 4 of Part 4 of the Pension Schemes Act 1993 (transfer values)] to be accepted by the Scheme.

<sup>F117</sup>(2) .....

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

(4) Paragraph (1) only applies in the case of a transfer from the Armed Forces Additional Voluntary Contributions Scheme if the Secretary of State considers that the amount to which the member is entitled under that Scheme is insufficient for the purchase of an annuity for the member.

(5) Paragraph (1) does not apply if the member is on unpaid leave that does not count as reckonable service.

#### Textual Amendments

**F116** Words in Sch. 1 rule F.7(1) substituted (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **11(2)(a)**

**F117** Sch. 1 rule F.7(2) revoked (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), 11(2)(b), **Sch.**

#### F.8 Procedure for applications under rule F.7 **U.K.**

(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) must be made before the beginning of the period of one year ending with the date on which the member reaches pension <sup>F118</sup> ... age.

But sub-paragraph (c) is subject to paragraph (2).

(2) In the case of a transfer value payment to be made under the public sector transfer arrangements [<sup>F119</sup>or to which paragraph (3) applies], the application under rule F.7—

- <sup>F120</sup>(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,
  - (aa) 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]
  - (b) 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.

<sup>F121</sup>(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 article—

“occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993,

“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.]

#### **Textual Amendments**

- F118** Word in rule F.8(1)(c) omitted (27.6.2011) by virtue of The Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (S.I. 2011/1364), arts. 1(1), **2(11)**
- F119** Words in Sch. 1 rule F.8(2) inserted (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **9(a)**
- F120** Sch. 1 rules F.8(2)(a)(aa) substituted for Sch. 1 rule F.8(2)(a) (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **9(b)**
- F121** Sch. 1 rules F.8(3)-(5) added (6.4.2006) by The Armed Forces Pension Scheme etc. (Amendment) Order 2006 (S.I. 2006/717), arts. 1(2), **9(c)**

### **F.9 Acceptance of transfer value payments** **U.K.**

(1) Where an application is duly made by a member under rule F.7, the Scheme administrator may accept the transfer value payment if such conditions as the Secretary of State may require are met, unless paragraph (4) applies.

(2) 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.

(3) In paragraph (2) “the appropriate period” means the period calculated in accordance with rule F.10.

(4) 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 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.

### **F.10 Calculation of transferred-in reckonable service** **U.K.**

(1) The period of reckonable service that a member is entitled to count under rule F.9(2) 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.

This is subject to paragraph (3).

(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 Government 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.

*Miscellaneous Provisions*

**F.11 Public sector transfer arrangements** **U.K.**

**F.11.** 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** **U.K.**

**RE-EMPLOYMENT**

*Preliminary*

**G.1 Application of Part G** **U.K.**

- (1) This Part applies to persons who—
  - (a) have been active members of the AFPS 1975 or the Scheme,
  - (b) have ceased to be in service by virtue of which they are eligible to belong to the Scheme, and
  - (c) begin to be in such service again on or after 6th April 2005.
- (2) But paragraph (1) does not apply where rule A.10(1) (disregard of short breaks in service) applies.
- (3) In these Rules an active member of the Scheme to whom this Part applies is referred to as a “re-employed active member”.
- (4) In this Part, in relation to any re-employed active member—
  - (a) the service referred to in paragraph (1)(b) is referred to as “the earlier service”, and
  - (b) the service referred to in paragraph (1)(c) is referred to as “the current service”.
- (5) Certain rules in this Part also apply to members who opted to cease to be active members and then became such members again (see rule G.6: application of rule G.3 to members who opted to leave the Scheme).

*Treatment of Separate Periods of Service: Options to Aggregate*

**G.2 General rule: periods of service treated separately** **U.K.**

- (1) The general rule is that—
  - (a) the reckonable service and qualifying service that a re-employed active member was entitled to count immediately before becoming an active member in the current service are disregarded in determining rights in respect of his current service, and

**Changes to legislation:** There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

- (b) the reckonable service and qualifying service that a re-employed active member is entitled to count as a result of his membership in the current service are disregarded in determining rights in respect of his earlier service.
- (2) That general rule is subject to the following provisions of this Part (and see also rule A.10: disregard of short breaks in service).

### **G.3 Option to aggregate earlier membership: previous members of the Scheme** **U.K.**

(1) This rule applies in the case of a re-employed active member who immediately before becoming an active member in the current service was entitled under these Rules to count reckonable service and qualifying service.

- (2) The member may opt for that service—
  - (a) to be aggregated with the reckonable service and qualifying service that he is entitled to count as a result of his membership of the Scheme in the current service for the purpose of determining rights under the Scheme in respect of that membership, and
  - (b) to be disregarded for all other purposes of the Scheme.

This is subject to the paragraphs (3) and (4) and rule G.5.

(3) If the reckonable service and qualifying service mentioned in paragraph (1) is service in respect of two or more earlier periods of membership, the member may only exercise the option under paragraph (2) in relation to the reckonable service and qualifying service in respect of the later of those periods (or, if there are more than two, the latest of them).

- (4) But in paragraph (3) the reference to the later or latest of those periods includes—
  - (a) any period (“the earlier aggregated period”) in respect of which the member has previously exercised the option under paragraph (2) or rule G.4 or an option under rule K.5 if he had the right to exercise that option because of his being a member in that later or latest period of service, <sup>F122</sup> ...
  - (b) any period earlier than the earlier aggregated period in respect of which the member previously exercised such an option if he had the right to exercise that option because of his being a member in the earlier aggregated period, [<sup>F123</sup>and
  - (c) in a case where the later or latest of those periods began in accordance with rule L.4 (or an earlier period included in the later or latest period by virtue of sub-paragraph (a) or (b) did so), any period that the member is entitled to count under that rule,]

and so on.

#### **Textual Amendments**

**F122** Word in Sch. 1 rule G.3(4) omitted (1.10.2007) by virtue of [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(12)(a)**

**F123** Sch. 1 rule G.3(4)(c) and word inserted (1.10.2007) by [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), **3(12)(b)**

### **G.4 Option to aggregate earlier membership: previous members of the AFPS 1975** **U.K.**

(1) This rule applies in the case of a re-employed active member to whom rule G.3 does not apply who was awarded a preserved pension and lump sum under the AFPS 1975 in respect of qualifying and reckonable service <sup>F124</sup> ....

[<sup>F125</sup>(1A) This rule also applies in the case of a member to whom rule G.3 does not apply who was awarded a preserved pension and lump sum under the AFPS 1975 in respect of qualifying and

reckonable service, and who left service on or after 1st January 2012 and before 16th December 2013 without having exercised an option under this rule.]

(2) The member may opt for the qualifying and reckonable service in respect of which the member was awarded the preserved pension—

- (a) to be aggregated with the reckonable service and qualifying service that he is entitled to count as a result of his membership of the Scheme in the current service for the purpose of determining rights under the Scheme in respect of that membership, and
- (b) to be disregarded for all other purposes.

This is subject to paragraphs (3) and (4) and rule G.5.

(3) If the member was awarded two or more preserved pensions under the AFPS 1975, the member may only exercise the option under paragraph (2) in relation to the service to which the later or, if there are more than two, the latest of the awards relates.

(4) If—

- (a) the award under the AFPS 1975 of a member who exercises an option under this rule is subject to a pension debit, and
- (b) in the opinion of the Scheme administrator it is necessary for the purpose of giving effect to the pension debit for some or all of the benefits to which the pension member is entitled under the Scheme as a result of exercising the option to be taken in a different form from that in which he would otherwise be entitled to take them,

the Scheme administrator may, after taking advice from the Scheme actuary, make such modifications to the member's rights as to the form of those benefits as he considers necessary for that purpose.

[<sup>F126</sup>(5) Where a person whose period of AFPS 1975 service ended on or after 6th April 2005 has exercised an option under this rule in accordance with the procedure set out in rule G.5(2), that option is to be regarded as valid.]

#### Textual Amendments

**F124** Words in Sch. 1 rule G.4(1) omitted (17.12.2014) by virtue of The Armed Forces Pension Scheme and Armed Forces Early Departure Payments Scheme (Amendment) Order 2014 (S.I. 2014/2958), arts. 1(2), **3(1)**

**F125** Sch. 1 rule G.4(1A) inserted (17.12.2014) by The Armed Forces Pension Scheme and Armed Forces Early Departure Payments Scheme (Amendment) Order 2014 (S.I. 2014/2958), arts. 1(2), **3(2)**

**F126** Sch. 1 rule G.4(5) inserted (17.12.2014) by The Armed Forces Pension Scheme and Armed Forces Early Departure Payments Scheme (Amendment) Order 2014 (S.I. 2014/2958), arts. 1(2), **3(3)**

#### G.5 Procedure for exercising options under rules G.3 and G.4 **U.K.**

(1) An option under rule G.3(2) may only be exercised before the end of the current service [<sup>F127</sup>, subject to paragraph (3)].

(2) An option under rule G.3(2) or rule G.4(2) may only be exercised by notice in writing to the Scheme administrator in such form as the Secretary of State requires.

[<sup>F128</sup>(3) Where—

- (a) the member has remediable service, and
- (b) the period of service of which the remediable service formed part ended before an immediate choice decision or a deferred choice decision within the meaning of Schedule 3 had been made in relation to the remediable service,

the option under rule G.3(2) or G.4(2) may be exercised when the immediate choice decision or a deferred choice decision is made, whether or not the member is an active member at the time the relevant decision is made.]

#### Textual Amendments

**F127** Words in Sch. 1 rule G.5(1) inserted (1.10.2023) by [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), regs. 1(b), **8(5)(a)**

**F128** Sch. 1 rule G.5(3) inserted (1.10.2023) by [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), regs. 1(b), **8(5)(b)**

### G.6 Application of rule G.3 to members who opted to leave Scheme **U.K.**

(1) Rule G.3 applies to a member who, having been an active member of the Scheme, opted to cease to be such a member whilst continuing to be in service by virtue of which he is eligible to belong to the Scheme as it applies to a member who ceases to be in such service.

(2) In relation to such a person this Part applies as if the member—

(a) had ceased to be in such service when he ceased to be an active member by virtue of the option, and

(b) had begun to be in such service again at the time when he becomes an active member again; and references to a re-employed active member, the earlier service and the current service are to be read accordingly.

(3) This rule applies subject to rule A.10(2) (disregard of short breaks in service).

### G.7 Re-employment after ill-health awards **U.K.**

(1) This rule applies if—

(a) a re-employed active member has received benefits under rule D.5 or D.6, and

(b) the enhancement period exceeds the period beginning with the day on which his early retirement began (“the first retirement day”) and ending with the day before his current service began.

(2) In this rule “the enhancement period” means—

(a) in the case of a member who has received a pension under rule D.5, the amount by which N years exceeds the reckonable service he was entitled to count when he became entitled to the pension under that rule, where N has the meaning given in rule D.5(5), and

(b) in the case of a member who has received a pension under rule D.6, one-third of the further reckonable service referred to in rule D.6(3).

(3) The re-employed member’s current service counts as reckonable service for the purposes of the Scheme only in so far as it is service after the time when the period since the beginning of the first retirement day equals the enhancement period.

**PART H U.K.****ABATEMENT****H.1 Application of Part H U.K.**

(1) This Part applies where a person who is a pensioner member or a deferred member of the Scheme [<sup>F129</sup>(whether or not they are also a pensioner member of the AFPS 2015)]—

- (a) is re-engaged in service by virtue of which he is eligible to belong to the Scheme, or
- (b) is re-engaged in service by virtue of which he is eligible for membership of the Reserve Forces Pension Scheme [<sup>F130</sup>or
- (c) is re-engaged in service by virtue of which the person is eligible for membership of the AFPS 2015,]

(whether or not he is an active member in that service).

(2) In this Part—

- (a) a person to whom this Part applies is referred to as a “re-employed pensioner”,
- (b) the service that has terminated and in respect of which the pension is or will be payable and the service that he enters on re-employment are referred to respectively as the “old service” and “new service”, <sup>F131</sup>...
- (c) the pension to which he is or will become entitled in respect of the old service is referred to as the “old service pension” [<sup>F132</sup>and
- (d) where sub-paragraph (1)(c) applies, the “old service pension” includes any AFPS 2015 pension.]

[<sup>F133</sup>(3) This Part is subject to paragraph 61 of Schedule 3 (remediable service).]

**Textual Amendments**

**F129** Words in Sch. 1 rule H.1(1) inserted (1.4.2015) by [The Armed Forces \(Transitional Provisions\) Pensions Regulations 2015 \(S.I. 2015/568\)](#), regs. 1(2), **12(a)**

**F130** Sch. 1 rule H.1(1)(c) and word inserted (1.4.2015) by [The Armed Forces \(Transitional Provisions\) Pensions Regulations 2015 \(S.I. 2015/568\)](#), regs. 1(2), **12(b)**

**F131** Word in Sch. 1 rule H.1(2) omitted (1.4.2015) by virtue of [The Armed Forces \(Transitional Provisions\) Pensions Regulations 2015 \(S.I. 2015/568\)](#), regs. 1(2), **12(c)**

**F132** Sch. 1 rule H.1(2)(d) and word inserted (1.4.2015) by [The Armed Forces \(Transitional Provisions\) Pensions Regulations 2015 \(S.I. 2015/568\)](#), regs. 1(2), **12(d)**

**F133** Sch. 1 rule H.1(3) inserted (1.10.2023) by [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), regs. 1(b), **8(6)**

**H.2 Abatement of pensions on re-employment: general rules U.K.**

(1) If—

- (a) the annual rate of the basic pay payable to the re-employed pensioner as at the last day of his old service (“the old rate”), exceeds the amount of the annual rate of the basic pay payable to him at the time he enters the new service (“the new rate”), and
- (b) the annual rate of the old service pension to which he is entitled at the time of entering the new service or, if he is a deferred member, at the time when he becomes entitled to payment of the pension, is greater than the amount of that excess,

the annual rate of the old service pension as at that time is reduced by such amount (“the reduction amount”) as is necessary so that it is equal to the amount of that excess as at that time.

[<sup>F134</sup>(1A) For the purposes of paragraph (1), where the re-employed pensioner was serving on flexible terms on the last day of the re-employed pensioner’s old service, the old rate is calculated as though the re-employed pensioner had not been serving on flexible terms on that day.]

(2) If the new rate equals or exceeds the old rate, the re-employed pensioner is not entitled to payment of the old service pension during the new service.

(3) Where paragraph (1) applies, the annual rate of the old service pension continues to be reduced during the new service by the reduction amount regardless of any increase in the annual rate of the old service pension made after the time when the member is re-employed, or, if he is a deferred member, after the time he becomes entitled to payment of the pension.

(4) In the case of a re-employed pensioner who exercises the option under rule D.10 (option to exchange lump sum for pension) in relation to the old service pension, any increase of the pension as a result of the exercise of the option is disregarded for the purposes of this Part.

#### Textual Amendments

**F134** Sch. 1 rule H.2(1A) inserted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(12)**

### H.3 Abatement of pensions: effect of changes after re-employment **U.K.**

[<sup>F135</sup>(1) This rule applies each time one of the following events (“the re-employment event”) occurs after the re-employed pensioner enters the new service—

- (a) the re-employed pensioner is re-employed in another post;
- (b) the post in which the re-employed pensioner has been re-employed is regraded;
- (c) the re-employed pensioner commences a period of service on flexible terms, including where the re-employed pensioner resumes a period of such service following a period in which that service was suspended; or
- (d) the re-employed pensioner’s period of flexible service is varied, suspended for more than 30 consecutive days or terminated.]

(2) Rule H.2 applies from the time of the [<sup>F136</sup>re-employment event] as if the re-employed pensioner were entering the new service at that time, and the service before that time is disregarded.

#### Textual Amendments

**F135** Sch. 1 rule H.3(1) substituted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(13)(a)**

**F136** Words in Sch. 1 rule H.3(2) substituted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(13)(b)**

#### **H.4 Special rule about annual rate of pay in old service in cases of entitlement to two or more pensions** **U.K.**

(1) This rule applies where the re-employed pensioner is entitled, or apart from this Part would be entitled, to the payment of two or more pensions in respect of old service, (including cases where, in addition to being entitled to one or more pensions under the Scheme, the re-employed pensioner is entitled to one or more pensions under the AFPS 1975).

(2) If two or more of the pensions relate to service that ended before the re-employed pensioner's pension age, in the application of rules H.2 and H.3 to each of those pensions the annual rate of the basic pay payable to the re-employed pensioner at the time he left his old service is taken to be whichever of those annual rates is the greater or greatest.

#### **H.5 Adjustment of basic pay in old service** **U.K.**

(1) If the re-employed pensioner's new service does not begin immediately after the old service ceases, for the purposes of this Part the annual rate of the basic pay payable to the re-employed pensioner at the time he left his old service is taken to be the adjusted annual rate.

(2) In paragraph (1) "the adjusted annual rate" means the actual annual rate of the basic pay so payable, increased by the same amount, if any, as a pension would have been increased under the Pensions (Increase) Act 1971 by the day on which the new service began if—

- (a) it came into payment on the day after the old service ceased, and
- (b) it was payable at an annual rate equal to that actual annual rate,
- (c) it was eligible to be increased under that Act.

[<sup>F137</sup>(3) For the purposes of this rule, where the re-employed pensioner was serving on flexible terms on the last day of the re-employed pensioner's old service, the annual rate of the basic pay payable to the re-employed pensioner is calculated as though the re-employed pensioner had not been serving on flexible terms on that day.]

#### **Textual Amendments**

**F137** Sch. 1 rule H.5(3) inserted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **2(14)**

#### **H.6 General disregard of effect of abatement** **U.K.**

**H.6.** In Part E of these Rules 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 J U.K.

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### *Claims for and Payment of Benefits*

##### **J.1 Claims for and payment of benefits U.K.**

(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 E.8, that the person on whose behalf it is payable to him 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—

- (a) in a case where that period does not exceed one year, the Scheme administrator consents, and
- (b) in a case where that period exceeds one year, the Secretary of State consents.

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

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

(5) If—

- (a) according to any rule of the Scheme a benefit becomes payable at a specified time, but
- (b) as a result of paragraph (1) it becomes payable at a later time, being a time more than one month after that specified time,

the person to whom it is payable is entitled to interest on the amount that becomes so payable.

(6) The interest is payable in respect of the period beginning with the specified time and ending with that later time, at the sterling 3 month London interbank offered rate, with yearly rests.

(7) This rule is disregarded in determining for the purposes of any other provision of these Rules whether a person is entitled to a pension at any time or whether a pension becomes payable immediately.

##### **J.2 False statements etc. about ill-health U.K.**

(1) This rule applies where—

- (a) a pension under D.5, D.6 or D.7 has been awarded to a member, and
- (b) subsequently it appears to the Secretary of State that the member made a false declaration about his health or deliberately suppressed a material fact that was relevant to the award.

(2) The Secretary of State may—

- (a) cease paying the pension,
- (b) withhold the whole or part of the pension, or
- (c) recover any payment made under the award.

### **J.3 Non-assignability** **U.K.**

- (1) Every benefit to which a person is entitled under the Scheme is payable to or for his benefit. This is subject to rule E.26(3) (payments in respect of children under 18).
- (2) No such 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<sup>(31)</sup>.

#### *Pension Credit Members with two or more Pension Credits*

### **J.4 Pension credit members with two or more entitlements** **U.K.**

- (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*

### **J.5 Forfeiture of benefits** **U.K.**

- (1) The Secretary of State may withhold benefits payable under the Scheme in respect of a member to whom paragraph (1) of rule J.6 applies to such extent as the Secretary of State considers appropriate.

This is subject to paragraphs (3) to (4).

- (2) The Secretary of State may withhold pension benefits payable under Part E to a person to whom paragraph (2) of rule J.6 applies to such extent as the Secretary of State considers appropriate; and if the whole of a person's benefits are so withheld that Part applies as if that person had predeceased the member.

This is subject to paragraph (4).

- (3) If the member has a guaranteed minimum under section 14 of the Pension Schemes Act 1993 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 J.6(1)(a) (conviction of treason or [<sup>F138</sup>other national security] offences) applies.

- (4) In the case of a pension payable to the surviving spouse of a member, paragraphs (1) and (2) are subject to rule E.28 (guaranteed minimum pensions for surviving spouses).

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

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<sup>(31)</sup> 1826 c. 16.

- (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,
  - (b) only benefits to which the member himself is entitled may be withheld, and
  - (c) the benefits withheld must not exceed the amount of the monetary obligation or, if less, the value of the person’s entitlement or the accrued right in question (as determined under section 93(2) of the Pensions Act 1995).
- (6) This rule is without prejudice to—
- (a) section 2 of the Forfeiture Act 1870<sup>(32)</sup> (under which forfeiture is required in cases of treason, subject to whole or partial restoration under section 70(2) of the Criminal Justice Act 1948<sup>(33)</sup>), or
  - (b) so far as it has effect in relation to benefits under the Scheme, section 24 of the Chelsea and Kilmainham Hospitals Act 1826.

#### Textual Amendments

**F138** Words in Sch. 1 rule J.5(3) substituted (20.12.2023) by The National Security Act 2023 (Consequential Amendments of Subordinate Legislation) Regulations 2023 (S.I. 2023/1267), reg. 1(2), Sch. para. 10(3) (c)

## J.6 Events enabling forfeiture **U.K.**

- (1) This paragraph applies to a member who is an active member, a deferred member or a pensioner member if he—
- (a) is convicted of treason or of one or more offences under the Official Secrets Acts 1911 to 1989 <sup>[<sup>F139</sup></sup>, or under section 18 of, or listed in section 33(3)(a) of, the National Security Act 2023,] for which the member has been sentenced on the same occasion—
    - (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 the service that qualifies the member to belong to the Scheme which the Secretary of State 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, and
    - (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.

<sup>(32)</sup> 1870 c. 23.

<sup>(33)</sup> 1948 c. 58.

### Textual Amendments

**F139** Words in Sch. 1 rule J.6(1)(a) inserted (20.12.2023) by The National Security Act 2023 (Consequential Amendments of Subordinate Legislation) Regulations 2023 (S.I. 2023/1267), reg. 1(2), Sch. para. 10(2)

### J.7 Procedure, references etc **U.K.**

- (1) If the Secretary of State proposes to withhold a person's benefits under rule J.5, he must notify the person in writing that he proposes to do so.
- (2) Such a notification must give the person information about rights under—
- (a) the arrangements established by the Secretary of State 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 Pension Schemes Act 1993<sup>(34)</sup> (investigations: the Pensions Ombudsman), in respect of any decision made under rule J.5.
- (3) If the Secretary of State withholds benefits under rule J.5 in a case where rule J.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 his benefits under the Scheme.
- (4) The Secretary of State—
- (a) may refer the question whether benefits of a person to whom rule J.6(2) applies should be withheld to the Social Security Commissioner, and
  - (b) must refer that question if the person to whom that rule applies or an eligible child of the member requests him to do so.

### *Commutation of Small Pensions*

### J.8 Commutation of small pensions **U.K.**

- (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, he has reached state pension age.
- (2) The pensions are—
- (a) a pension to which a member is entitled under Part D,
  - (b) a pension payable to any person under Part E (death benefits) in respect of a particular member.
- (3) If—
- (a) a member is entitled to more than one pension in respect of the service by virtue of which he is eligible for membership of the Scheme, or
  - (b) a person is entitled to more than one pension in respect of the same member and the same service of the member, or
  - (c) a pension credit member is entitled—

<sup>(34)</sup> 1993 c. 48.

- (i) to more than one pension under rule D.3, or
- (ii) to one or more pensions within sub-paragraph (a) in addition to one or more pensions under rule D.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 these Rules 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(35),
- (b) by regulation 2 of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(36),
- (c) by regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000(37), or
- (d) by paragraph 7 of Schedule 29 to the Finance Act 2004(38) (which defines trivial commutation lump sums for the purposes of Part 1 of that Schedule).

#### *Determination of Questions*

### **J.9 Determination of questions** **U.K.**

[<sup>F140</sup>(1)] Except as otherwise provided by these Rules, any question arising under the Scheme is to be determined by the Secretary of State.

[<sup>F141</sup>(2) But in determining any such question the Secretary of State may consult with such persons as he considers appropriate to advise him about the question and, in particular, in forming an opinion about any question relating to the health of any person for the purposes of Part D, he may consult the Scheme medical adviser.]

#### **Textual Amendments**

**F140** Sch. 1 rule J.9(1): Sch. 1 rule J.9 renumbered as Sch. 1 rule J.9(1) (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **6(1)**

**F141** Sch. 1 rule J.9(2) inserted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **6(2)**

(35) 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.

(36) S.I. 1997/785.

(37) S.I. 2000/1054.

(38) 2004 c. 12.

*Information, Evidence, Suspension etc.*

**J.10 Information and evidence** **U.K.**

(1) The Secretary of State may require any person who is receiving a pension under the Scheme to provide him with 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 Secretary of State may withhold the whole or any part of any benefits payable under the Scheme in respect of the person.

*<sup>F142</sup>Payment and deduction of tax*

**Textual Amendments**

**F142** Sch. 1 J.11-J.13 and heading inserted (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), arts. 1(2), **10(1)**

**Payment on behalf of members of lifetime allowance charge** **U.K.**

**J.11.**—(1) A member may request the person who is the scheme administrator for the purposes of section 217 of the Finance Act 2004 (“the administrator”) to pay on his behalf any amount that is payable by way of the lifetime allowance charge under section 214 of that Act when—

- (a) an event that is a benefit crystallisation event listed in the table in section 216(1) of that Act occurs in relation to him, and
- (b) the member and the administrator are jointly and severally liable to the charge in respect of the event.

(2) Such a request may only be made by notice in writing given before the event occurs.

(3) The administrator may only comply with such a request if the member pays him the amount in question on or before the date on which the event occurs.

**Reduction of benefits and transfer values where lifetime allowance charge payable** **U.K.**

**J.12.**—(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,
- (b) the member and the person who is the scheme administrator for the purposes of section 217 of that Act (“the administrator”) are jointly and severally liable to the charge in respect of the event, and
- (c) no request has been duly made under rule J.11 in relation to the event or, if such a request has been made, the administrator is prevented from complying with it by paragraph (3) of that rule.

(2) Where this rule applies—

- (a) the 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.

### **Deduction of special lump sum death benefits charge** U.K.

**J.13** 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.)

## **PART K** U.K.

### **AFPS 1975 TRANSFEREES**

#### *Preliminary*

#### **K.1 Application of Part K: meaning of “AFPS 1975 transferee”** U.K.

(1) This Part makes provision in relation to persons who—

- (a) are active members of the AFPS 1975 immediately before 6th April 2005, and
- (b) opt to become members of the Scheme on the basis set out in this Part.

(2) In these Rules a member of the Scheme to whom this Part applies is referred to as an “AFPS 1975 transferee”.

(3) If an AFPS 1975 transferee becomes a re-employed active member, this Part does not apply in relation to his service after he does so unless the break in service immediately before such re-employment does not exceed six months.

#### **K.2 Options for AFPS 1975 members to join the Scheme under Part K** U.K.

(1) A person who—

- (a) would be eligible to join the Scheme by virtue of his service if he met the condition in rule B.1(b)(i) (which requires that the person’s service begins on or after 6th April 2005), and
- (b) immediately before that date was an active member of the AFPS 1975 by virtue of that service,

may opt to join the Scheme under the terms of this Part, unless he has been re-employed in the service by virtue of which he is eligible to belong to the Scheme on or after reaching pension age.

(2) The option may only be exercised by giving notice in writing to the Scheme administrator in such form as the Secretary of State requires on or before 31st March 2006 or such later date as the Secretary of State may determine is appropriate in the case of any particular member.

(3) For this purpose the notice is treated as having been given on the date on which it is received by the Scheme administrator.

(4) The option has effect on 6th April 2006 and is irrevocable unless paragraph (5) applies.

(5) This paragraph applies if the Secretary of State gives notice in writing to the person stating that the person may revoke his option by giving notice in writing that he wishes to do so to the

Secretary of State before the expiry of the period of 3 months beginning with the date on which the notice is given by the Secretary of State.

(6) Where a person revokes his option in accordance with paragraph (5), these Rules apply as if he had never opted to join the Scheme.

#### *Transfer of Service from the AFPS 1975*

### **K.3 Service credited from the AFPS 1975** U.K.

(1) On becoming an AFPS 1975 transferee, a member becomes entitled to count under the Scheme—

- (a) a period of qualifying service equal in length to the period of qualifying service which the member was entitled to count under the AFPS 1975 (but not exceeding 35 years), and
- (b) a period of reckonable service equal in length to the period of reckonable service which the member was entitled to count under the AFPS 1975 (but not exceeding 35 years).

This is subject to rules K.4 (treatment of added years: contributions paid before 6th April 2006) and K.5 (treatment of preserved awards).

(2) For the purposes of paragraph (1) the qualifying and reckonable service that the member was entitled to count under the AFPS 1975 is taken to include the qualifying and reckonable service that the member would be entitled to count under the AFPS 1975 if he were entitled to count—

- (a) any service before the age of 21 as an officer, and
- (b) any service before the age of 18 otherwise than as an officer.

### **K.4 Treatment of added years: contributions paid before 6th April 2006** U.K.

**K.4.** For the purposes of rule K.3, the reckonable service of a member who—

- (a) has bought added years of pension credit under the AFPS 1975, or
- (b) is buying them under a contract which is in force on 5th April 2006,

is calculated as if he were leaving the AFPS 1975 on that date.

### **K.5 Treatment of preserved awards** U.K.

(1) This rule applies where a member who is an AFPS 1975 transferee—

- (a) has been awarded a preserved pension and lump sum under the terms of the AFPS 1975 in respect of service which ended before the beginning of the service which is current on 5th April 2006, and
- (b) neither the pension nor the lump sum has been brought into payment by that date.

For this purpose, a pension is treated as being in payment if it would be apart from abatement under the AFPS 1975.

(2) Rule K.3 does not apply to the qualifying and reckonable service in respect of which the member was awarded the preserved pension, unless when the member exercises the option under rule K.2(1) (option to join the Scheme under the terms of this Part) he opts for it to do so.

(3) If the member has been awarded two or more preserved pensions in respect of which paragraph (1) applies, he may only exercise the option under paragraph (2) in respect of the latest award.

(4) An option under paragraph (2) may only be exercised by giving notice in writing to the Scheme administrator in such form as the Secretary of State requires.



#### **K.6 Transfers in: transitional provision** U.K.

- (1) This rule applies where—
- (a) a member applied in writing for the AFPS 1975 to accept a transfer value payment in respect of him,
  - (b) the member is an AFPS 1975 transferee, and
  - (c) the transfer value payment is received on or after 6th April 2006.
- (2) Part F applies as if the member had applied under rule F.7 for the Scheme to accept the payment.

#### **K.7 Pension debit members** U.K.

- (1) This rule applies where—
- (a) on becoming a member of the Scheme an AFPS 1975 transferee is a pension debit member, and
  - (b) in the opinion of the Scheme administrator it is necessary for the purpose of giving effect to the pension sharing order to which the member's rights are subject for some or all of the benefits to which the pension member is entitled under the Scheme to be taken in a different form from that in which he would otherwise be entitled to take them.
- (2) The Scheme administrator may, after taking advice from the Scheme actuary, make such modifications to the member's rights as to the form of those benefits as he considers necessary for that purpose.

#### **K.8 Disapplication of rule E.6** U.K.

**K.8.** Rule E.6 (reduction in pensions under rules E.1 and E.2 in cases of wide age disparity) does not apply to a pension payable under rule E.1 in the case of a member who was an AFPS 1975 transferee if the member had been the spouse or civil partner of the person to whom the pension is payable continuously since before 6th April 2006 until the member's death.

## <sup>F143</sup>PART L U.K.

### GURKHA PENSION SCHEME TRANSFEREES

#### **Textual Amendments**

**F143** Sch. 1 Pt. L inserted (1.10.2007) by [The Armed Forces \(Gurkha Pensions\) Order 2007 \(S.I. 2007/2608\)](#), arts. 1(1), 2

#### **Application of Part L: meaning of “Gurkha Pension Scheme transferee”** U.K.

- L.1.**—(1) This Part makes provision in relation to persons who—
- (a) are active members or pensioner members of the Gurkha Pension Scheme on 1st October 2007 or were active members of that Scheme on 6th April 2006, and
  - (b) opt to become members of the Scheme on the basis set out in this Part.
- (2) In this Part—

**Changes to legislation:** There are currently no known outstanding effects for the *The Armed Forces Pension Scheme Order 2005*. (See end of Document for details)

- (a) references to the Gurkha Pension Scheme are references to the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949), and
  - (b) references to a Gurkha ill-health pensioner are to a pensioner member of the Gurkha Pension Scheme who is entitled to a pension under that Scheme by virtue of a health condition corresponding to such a condition as is mentioned in rule D.5(1)(a) or D.6(1)(a).
- (3) In these Rules any reference to a “Gurkha Pension Scheme transferee” is a reference to a person who has become a member of the Scheme as the result of this Part.

### **Option for active members of Gurkha Pension Scheme to join the Scheme** **U.K.**

**L.2.**—(1) A person who—

- (a) would be eligible to join the Scheme by virtue of the person’s service in the Brigade of Gurkhas if the person met the condition in rule B.1(b)(i) (which requires that the person’s service begins on or after 6th April 2005),
- (b) meets the condition specified in paragraph (2), and
- (c) has opted to become an active member of the Scheme under the terms of this Part,

is eligible to become such a member under those terms.

(2) The condition referred to in paragraph (1)(b) is that the person has been an active member of the Gurkha Pension Scheme for a period beginning on or after 1st July 1997 and ending with 30 September 2007.

(4) The option must have been exercised by giving notice in writing to the Scheme administrator in such form as the Secretary of State requires on or before 30th September 2007 or such later date as the Secretary of State considers appropriate.

(5) For this purpose the notice is treated as having been given on the date on which it was received by the Scheme administrator.

(6) The option has effect on 1st October 2007 and is irrevocable unless paragraph (7) applies.

(7) This paragraph applies if the Secretary of State gives notice in writing to the person stating that the person may revoke the option by giving notice in writing of the revocation to the Secretary of State before the expiry of the period of 3 months beginning with the date on which the notice is given by the Secretary of State.

(8) If a person revokes an option in accordance with paragraph (7), these Rules apply as if the person had never exercised the option.

### **Option for former active members of Gurkha Pension Scheme to join the Scheme** **U.K.**

**L.3.**—(1) A person who—

- (a) would have been eligible on 6th April 2006 to join the Scheme by virtue of the person’s service in the Brigade of Gurkhas if the person—
  - (i) had met the condition in rule B.1(b)(i) (which requires that the person’s service begins on or after 6th April 2005), and
  - (ii) had not been an active member of the Gurkha Pension Scheme on that date, and
- (b) meets condition A and either condition B or condition C,

may opt to become a member of the Scheme under the terms of this Part.

(2) Condition A is that the person was an active member of the Gurkha Pension Scheme for a period—

- (a) beginning on or after 1st July 1997, and

- (b) ending with a date falling within the period beginning with 6th April 2006 and ending with 30 September 2007.
- (3) Condition B is that the person became a pensioner member of the Gurkha Pension Scheme on or before 30 September 2007.
- (4) Condition C is that the period mentioned in paragraph (2) during which the person was an active member of the Gurkha Pension Scheme was not less than two years and the person ceased to be an active member of that Scheme at the end of it.
- (5) The option may only be exercised by giving notice in writing to the Scheme administrator on or before the closing date.
- (6) For this purpose—
- (a) the notice is treated as having been given on the date on which it is received by the Scheme administrator in such form as the Secretary of State requires, and
  - (b) the closing date is 31st January 2008, unless the Secretary of State considers that a later date is appropriate and has specified that date in a notice in writing given to the Scheme administrator not later than 31st January 2008, in which case it is the date so specified.
- (7) The option takes effect—
- (a) if on the day after the closing date the person exercising the option—
    - (i) is a pensioner member of the Gurkha Pension Scheme other than a Gurkha ill-health pensioner<sup>F144</sup>, or a prescribed pensioner], and
    - (ii) has not reached the age of 65,  
on the day on which the person reaches the age of 65, and
  - (b) otherwise, on the day after the closing date.
- <sup>F145</sup>(7A) In paragraph (7) “prescribed pensioner” means a pensioner member of the Gurkha Pension Scheme who—
- (a) is eligible to become a member of the Scheme under this Part; and
  - (b) on becoming a member, would become entitled to payments under articles 8 to 10 of the Armed Forces Early Departure Payments Scheme Order 2005 (eligibility, entitlement and amount of early departure payments).]
- (8) The option is irrevocable unless paragraph (9) applies.
- (9) This paragraph applies if the Secretary of State gives notice in writing to the person stating that the person may revoke the option by giving notice in writing of the revocation to the Secretary of State before the expiry of the period of 3 months beginning with the date on which the notice is given by the Secretary of State.
- (10) If a person revokes an option in accordance with paragraph (9), these Rules apply as if the person had never exercised the option.

#### Textual Amendments

**F144** Words in Sch. 1 rule L.3(7)(a)(i) inserted (29.2.2008) by [The Armed Forces \(Gurkha Pensions\) \(Amendment\) Order 2008 \(S.I. 2008/229\)](#), arts. 1, **2(2)(a)**

**F145** Sch. 1 rule L.3(7A) inserted (29.2.2008) by [The Armed Forces \(Gurkha Pensions\) \(Amendment\) Order 2008 \(S.I. 2008/229\)](#), arts. 1, **2(2)(b)**

### **Effect of exercising option under rule L.2 (Gurkha active transferees) U.K.**

**L.4.**—(1) This rule applies if a person has duly exercised the option under rule L.2 and accordingly is eligible to become an active member of the Scheme under the terms of this Part.

(2) The person becomes an active member of the Scheme on 1st October 2007 in respect of the service that the person is in on that day in the Brigade of Gurkhas.

(3) The member becomes entitled to count under the Scheme—

(a) a period of qualifying service equal in length to the period of qualifying service which the member was entitled to count under the Gurkha Pension Scheme on 30th September 2007 (but not exceeding 35 years), and

(b) a period of reckonable service equal in length to the sum of—

(i) the period of reckonable service which the member was entitled to count under the Gurkha Pension Scheme on that date in respect of service on or after 1st July 1997, and

(ii) if the member's service in the Brigade of Gurkhas began before 1st July 1997, the additional period specified in paragraph (4), (5) or (6) in the case of a person of the member's rank on 1st October 2007.

(4) The additional period referred to in paragraph (3)(b)(ii) in the case of a person who is an officer on 1st October 2007 is the following percentage of so much of the member's service as falls before that date—

(a) in the case of a member then holding the rank of lieutenant, 27%,

(b) in the case of a member then holding the rank of captain, 28%, and

(c) in the case of a member then holding the rank of major, 23%.

(5) The additional period referred to in paragraph (3)(b)(ii) in the case of a person who is not an officer on 1st October 2007 and joined the Brigade of Gurkhas before 1st October 1993 is the following percentage of so much of the member's service as falls before 1st October 2007—

(a) in the case of a member holding the rank of rifleman or lance corporal on 1st October 2007, 36%,

(b) in the case of a member then holding the rank of corporal, 30%,

(c) in the case of a member then holding the rank of sergeant, 29%,

(d) in the case of a member then holding the rank of staff sergeant or warrant officer 2, 27%, and

(e) in the case of a member then holding the rank of warrant officer 1, 26%.

(6) The additional period referred to in paragraph (3)(b)(ii) in the case of a person who is not an officer on 1st October 2007 and joined the Brigade of Gurkhas on or after 1st October 1993 is a period equal to so much of the member's service as falls before 1st October 2007.

(7) In the case of a member who joined the Brigade of Gurkhas before reaching the age of 17—

(a) for the purposes of paragraph (3)(a) and (b)(i) the qualifying and reckonable service that the member was entitled to count under the Gurkha Pension Scheme on 30th September 2007 is taken to include the qualifying and reckonable service that the member would then have been entitled to count under that Scheme if the member had then been entitled to count service before reaching the age of 17 ("pre-17 service"), and

(b) for the purposes of paragraph (3)(b)(ii) and (4) to (6), the same regard must be had to the member's pre-17 service, as to the member's later service.

### Effect of exercising option under rule L.3 (former active Gurkhas) **U.K.**

**L.5.**—(1) This rule applies if a person duly exercises the option under rule L.3.

- (2) On the effective option date the person becomes entitled to count under the Scheme—
  - (a) a period of qualifying service equal in length to the period of qualifying service which the member was entitled to count under the Gurkha Pension Scheme immediately before that date (but not exceeding 35 years), and
  - (b) such period of reckonable service as the Secretary of State considers appropriate, after consultation with the Scheme actuary.
- (3) On the effective option date—
  - (a) the person is treated for the purposes of Part D as if the person had ceased to be in service by virtue of which he was eligible to be an active member of the Scheme before reaching pension age (but subject to rule L.7(1)),
  - (b) if immediately before that date the person was a Gurkha ill-health pensioner by virtue of a health condition corresponding to such a condition as is mentioned in rule D.5(1)(a), the person is treated as if he fell within rule D.5(1) (but subject to rule L.7(1)), and
  - (c) if immediately before that date the person was a Gurkha ill-health pensioner by virtue of a health condition corresponding to such a condition as is mentioned in rule D.6(1)(a), the person is treated as if he fell within rule D.6(1) (but subject to rule L.7(1)).
- (4) Accordingly, on the effective option date—
  - (a) if immediately before that date the person was a pensioner member of the Gurkha Pension Scheme, the person becomes a pensioner member of the Scheme,
  - (b) if immediately before that date the person was a pensioner member of the Gurkha Pension Scheme but not a Gurkha ill-health pensioner, the person becomes entitled to an annual pension under rule D.2, subject to the provisions of the Scheme,
  - (c) if immediately before that date the person was a Gurkha ill-health pensioner by virtue of a health condition corresponding to such a condition as is mentioned in rule D.5(1)(a), the person becomes entitled to an annual pension under rule D.5, subject to the provisions of the Scheme,
  - (d) if immediately before that date the person was a Gurkha ill-health pensioner by virtue of a health condition corresponding to such a condition as is mentioned in rule D.6(1)(a), the person becomes entitled to an annual pension under rule D.6, subject to the provisions of the Scheme, and
  - (e) if immediately before that date the person was not a pensioner member of the Gurkha Pension Scheme, the person becomes a deferred member of the Scheme and (assuming that he reaches the age of 65) will become entitled to an annual pension under rule D.2, subject to the provisions of the Scheme.
- (5) In determining the appropriate period of reckonable service for a member under paragraph (2)(b), the Secretary of State must have regard to—
  - (a) the member's circumstances and marital or civil partnership status,
  - (b) the rights under the Gurkha Pension Scheme that the member would have enjoyed had the member not exercised the option under rule L.3,
  - (c) the payments that have been made to the member under that Scheme by way of pension or lump sum or will be made by the time the member reaches the age of 65, assuming that the member does so, and

(d) the period of reckonable service that the member would have been entitled to count under rule L.4 if the member had become an active member on 1st October 2007 having exercised the option under rule L.2.

(6) If a person who has duly exercised the option under rule L.3 and was not a pensioner member of the Gurkha Pension Scheme dies before reaching the age of 65, these Rules apply as if the person had reached the age of 65 on the date of death.

(7) In this rule “the effective option date” means the date on which the option takes effect (see rule L.3(7)).

### **Pension debit members** **U.K.**

**L.6.**—(1) This rule applies if—

- (a) on becoming a member of the Scheme a Gurkha Pension Scheme transferee is a pension debit member, and
- (b) in the opinion of the Scheme administrator it is necessary for the purpose of giving effect to the pension sharing order to which the member’s rights are subject for some or all of the benefits to which the pension member is entitled under the Scheme to be taken in a different form from that in which the member would otherwise be entitled to take them.

(2) The Scheme administrator may, after taking advice from the Scheme actuary, make such modifications to the member’s rights as to the form of those benefits as the Scheme administrator considers necessary for that purpose.

### **Modifications of Scheme rules in case of Gurkha Pension Scheme transferees** **U.K.**

**L.7.**—(1) A Gurkha Pension Scheme transferee who was a pensioner member of the Gurkha Pension Scheme is not entitled to the payment of a lump sum under rule D.2, D.5 or D.6.

(2) Rule E.6 (reduction in pensions under rules E.1 and E.2 in cases of wide age disparity) does not apply to a pension payable under rule E.1 in the case of a member who was a Gurkha Pension Scheme transferee if the member had been the spouse or civil partner of the person to whom the pension is payable continuously since before the relevant date until the member’s death.

(3) In paragraph (2) “the relevant date” means—

- (a) in the case of a member who became an active member as a result of exercising the option under rule L.2, 1st October 2007, and
- (b) in the case of a member who became a member as a result of exercising the option under rule L.3, the date on which that option took effect (see rule L.3(7)).

(4) Rule F.1(4) (right to transfer payment) applies as if a Gurkha Pension Scheme transferee who was not a pensioner member of the Gurkha Pension Scheme was a former active member of this Scheme.]

## TEMPORARY MODIFICATIONS OF THE ARMED FORCES PENSION SCHEME 2005

### **Textual Amendments**

**F146** Sch. 2 revoked (6.4.2006) by [The Armed Forces Pension Scheme etc. \(Amendment\) Order 2006 \(S.I. 2006/717\)](#), art. 1(2), **Sch.**

**Changes to legislation:** There are currently no known outstanding effects for the  
The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

- F146 **1.** .....
- 2.** .....
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- 14.** .....
- 15.** .....

[<sup>F147</sup>SCHEDULE 2 U.K.

Transitional Provision

**Textual Amendments**

F147 Sch. 2 inserted (1.4.2015) by The Armed Forces (Transitional Provisions) Pensions Regulations 2015 (S.I. 2015/568), reg. 1(2), Sch. 2

PART 1 U.K.

Interpretation

**Interpretation U.K.**

**1.** In this Schedule—

“AFPS 2005” means the Armed Forces Pension Scheme 2005;

“AFPS 2015” means the scheme established by the AFP Regulations 2014;

“AFP Regulations 2014” means the Armed Forces Pension Regulations 2014;

“continuity of service” in relation to a transition member has the meaning given in paragraph 2;

“club transfer” means a transfer to or from the AFPS 2005 under the club transfer arrangements;

“club transfer arrangements” means arrangements approved by the manager of the AFPS 2015 as providing reciprocal arrangements between that scheme, any connected scheme and

**Changes to legislation:** There are currently no known outstanding effects for the *The Armed Forces Pension Scheme Order 2005*. (See end of Document for details)

other registered occupational pension schemes for making and receiving club transfer value payments;

“club transfer value” in relation to an amount of accrued earned pension under the AFPS 2015, the AFPS 2005 or under another club scheme, means an amount calculated by the manager of the AFPS 2015—

- (a) in accordance with the club transfer arrangements; and
- (b) by reference to the guidance and tables provided by the Government Actuary for this purpose that are in use on the date used for the calculation;

“connected scheme” means another statutory pension scheme that is connected with the AFPS 2005 within the meaning of section 4(6) of the 2013 Act;

[<sup>F148</sup>“flexible service” has the meaning given in rule A.1(4) of Schedule 1;]

“full protection member” has the meaning given in Part 2;

[<sup>F148</sup>“part-time service” has the meaning given in rule A.1(4) of Schedule 1;]

“pensionable public service” means pensionable service under an existing scheme or a public body pension scheme;

“protection period” has the meaning given in paragraph 10;

[<sup>F148</sup>“restricted separation service” has the meaning given in rule A.1(4) of Schedule 1;]

“scheme employment” has the meaning given in regulation 13 of the AFP Regulations 2014;

[<sup>F148</sup>“service reduction percentage” has the meaning given in rule A.2A of Schedule 1;]

[<sup>F149</sup>“transition date” in relation to a transition member means—

- (a) where the member has remediable service in a Scheme within the meaning of section 1 of PSPJOA 2022 (whether or not by virtue of section 2(1) of PSPJOA 2022), 1st April 2022;
- (b) in any other case, 1st April 2015;]

“transition member” means a person—

- (a) who is a member of AFPS 2005 by virtue of their pensionable service under the AFPS 2005 before the transition date; and
- (b) who is also a member of the AFPS 2015 by virtue of their pensionable service under that scheme;

“the 2013 Act” means the Public Service Pensions Act 2013;

“transfer payment” means payment of a transfer value; and

“transfer value” has the meaning given in Part 8 of the AFP Regulations 2014.

#### Textual Amendments

**F148** Words in Sch. 2 para. 1 inserted (1.4.2019) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(3), **3(2)**

**F149** Words in Sch. 2 para. 1 substituted (1.10.2023) by [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), regs. 1(b), **9(2)**



### **Meaning of “continuity of service” U.K.**

2.—(1) For the purposes of this Schedule, a transition member (T) has continuity of service between pensionable service in the AFPS 2005 and pensionable service in the AFPS 2015 (“continuity of service”) unless T has a gap in service exceeding 5 years which—

- (a) begins on or before T’s transition date; and
- (b) ends on the day on which T becomes an active member of the AFPS 2015.

(2) For the purpose of sub-paragraph (1), during the period starting with T’s transition date, T is not on a gap in service while T is in service which is pensionable under an existing scheme, a public body pension scheme or a scheme under section 1 of the 2013 Act.

### **Commencement of active membership of the AFPS 2015 for a transition member U.K.**

3.—(1) A person who is a transition member on entering pensionable service under the AFPS 2015 who does not have continuity of service becomes an active member of the AFPS 2015 on the day the person begins pensionable service in a scheme employment.

(2) A person who is a transition member on entering pensionable service under the AFPS 2015 who has continuity of service (T) becomes an active member of the AFPS 2015—

- (a) if T is in pensionable service in a scheme employment on their transition date, on that date; or
- (b) if T is not in pensionable service in a scheme employment on their transition date, on the date T enters pensionable service in a scheme employment after that date.

## **PART 2 U.K.**

### **Exception to section 18(1) of the 2013 Act: full protection members of the AFPS 2005**

### **Meaning of “conditional full protection member of the AFPS 2005” U.K.**

4.—(1) For the purpose of this Part a person (P) is a conditional full protection member of the AFPS 2005 on a given date if on that date—

- (a) P is in service in respect of which P is eligible to be a member of the AFPS 2005; or
- (b) P is on a gap in service not exceeding 5 years.

(2) For the purpose of sub-paragraph (1), after 31st March 2015 P is not on a gap in service while P is in pensionable public service.

### **Meaning of “conditional full protection member of an existing scheme” U.K.**

5.—(1) For the purpose of this Part a person (P) is a conditional full protection member of an existing scheme on a given date if on that date—

- (a) P is in pensionable service under that scheme;
- (b) P is in service in respect of which P is eligible to be a member of an armed forces or reserve forces pension scheme; or
- (c) P is on a gap in service not exceeding 5 years.

(2) For the purpose of sub-paragraph (1), after the closing date for the existing scheme, P is not on a gap in service while P is in pensionable public service.

(3) In sub-paragraph (2), the closing date for the existing scheme means the date referred to in section 18(4)(a) or (b) of the 2013 Act as applicable.

### **Meaning of “conditional full protection member of a public body pension scheme”** **U.K.**

6.—(1) For the purpose of this Part a person (P) is a conditional full protection member of a public body pension scheme on a given date if on that date —

- (a) P is in pensionable service under that scheme; or
- (b) P is on a gap in service not exceeding 5 years.

(2) For the purpose of sub-paragraph (1), after the closing date for the public body pension scheme, P is not on a gap in service while P is in pensionable public service.

(3) In sub-paragraph (2), the closing date for the public body pension scheme means the date determined under section 31(2) of the 2013 Act by the public authority responsible for that scheme.

### **Full protection members of the AFPS 2005** **U.K.**

7.—(1) A person (P) to whom either of paragraphs 8 or 9 applies is a full protection member of the AFPS 2005.

[<sup>F150</sup>(2) P ceases to be a full protection member of the AFPS 2005 at the end of whichever of the following days occurs first—

- (a) the day on which P ceases to be in pensionable service under that scheme unless sub-paragraph (3) or (4) applies; or
- (b) 31st March 2022.]

(3) This sub-paragraph applies if—

- (a) P returns to service which is pensionable under the AFPS 2005 from service which is pensionable under an existing scheme or a public body pension scheme; and
- (b) P would have been a fully protected member of that existing scheme or public body pension scheme had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the AFPS 2005.

(4) This sub-paragraph applies if—

- (a) P returns to service which is pensionable under the AFPS 2005 otherwise than from service which is pensionable under an existing scheme or a public body pension scheme; and
- (b) P returns to service which is pensionable under the AFPS 2005 after a gap in service not exceeding 5 years.

(5) In this paragraph—

“exception means”—

- (a) in relation to an existing scheme, an exception under section 18(5) of the 2013 Act provided for in the scheme regulations for that scheme; and
- (b) in relation to a public body pension scheme, an exception under section 31(4) of the 2013 Act provided for by the public authority responsible for that scheme; and

“fully protected member” of an existing scheme or a public body pension scheme means a person in respect of whom an exception applies, which exception is one to which section 18(6) of the 2013 Act (or that section as applied by section 31(4) applies) for the purposes of that scheme.

(6) For the purpose of paragraph (4)(b), after 31st March 2015 P is not on a gap in service while P is in service which is pensionable under an existing scheme or a public body pension scheme.

**Changes to legislation:** There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

**Textual Amendments**

**F150** Sch. 2 para. 7(2) substituted (1.4.2022) by [The Armed Forces Pensions \(Amendment\) Regulations 2022](#) (S.I. 2022/323), regs. 1(2), **3(2)(b)**

**Members of the AFPS 2005 on 31st March 2015** **U.K.**

- 8.—(1) This paragraph applies if sub-paragraph (2) or sub-paragraph (3) applies—
- (2) This sub-paragraph applies if—
- (a) P was a conditional full protection member of the AFPS 2005 on 31st March 2015 and on 31st March 2012; <sup>F151</sup> ...
  - (b) <sup>F151</sup> .....
- (3) This sub-paragraph applies if—
- (a) P was a conditional full protection member of an existing scheme or a public body pension scheme on 31st March 2012;
  - (b) P was a conditional full protection member of the AFPS 05 on 31st March 2015; <sup>F152</sup> ...
  - (c) <sup>F152</sup> .....

**Textual Amendments**

**F151** Sch. 2 para. 8(2)(b) and word omitted (1.10.2023) by virtue of [The Armed Forces Pensions \(Remediable Service\) Regulations 2023](#) (S.I. 2023/998), regs. 1(b), **9(3)(a)**

**F152** Sch. 2 para. 8(3)(c) and word omitted (1.10.2023) by virtue of [The Armed Forces Pensions \(Remediable Service\) Regulations 2023](#) (S.I. 2023/998), regs. 1(b), **9(3)(b)**

**Members of an existing scheme or a public body pension scheme** **U.K.**

- 9.—(1) This paragraph applies if—
- (a) P was a conditional full protection member of a public body pension scheme or an existing scheme other than the AFPS 2005 on the closing date for that scheme;
  - (b) P was a conditional full protection member of a public body pension scheme or an existing scheme (“P’s transitional scheme”) on 31st March 2012;
  - (c) P begins service which is pensionable under the AFPS 2005 not more than 5 years after leaving pensionable service under an existing scheme or a public body pension scheme; [<sup>F153</sup> and]
  - (d) [<sup>F154</sup> sub-paragraph (1A) applies or] P would have been—
    - (i) a full protection member of the existing scheme referred to in paragraph (c) had P re-entered pensionable service under that scheme on the date P begins service which is pensionable under the AFPS 2005; or
    - (ii) a fully protected member of the public body pension scheme referred to in paragraph (c) had P re-entered service which is pensionable under that scheme on the date P begins service which is pensionable under the AFPS 2005; <sup>F155</sup> ...
  - (e) <sup>F155</sup> .....

[<sup>F156</sup>(1A) This sub-paragraph applies if—

**Changes to legislation:** There are currently no known outstanding effects for the *The Armed Forces Pension Scheme Order 2005*. (See end of Document for details)

- (a) P was a full protection member of the existing scheme referred to in sub-paragraph (1)(c);
  - (b) P had ceased to be a full protection member of that scheme after leaving pensionable service under it; and
  - (c) the rules of that scheme made no provision for a person to re-enter pensionable service under the scheme.]
- (2) For the purposes of this paragraph—
- (a) the closing date for an existing scheme is the date referred to in section 18(4)(a) or (b) of the 2013 Act, as applicable;
  - (b) the closing date for a public body pension scheme is the date determined under section 31(2) of the 2013 Act by the public authority responsible for that scheme;
  - (c) “exception”, in relation to a public body pension scheme, means an exception under section 31(4) of the 2013 Act provided for by the public authority responsible for that scheme; and
  - (d) “fully protected member” of a public body pension scheme means a person in respect of whom an exception applies, which exception is one to which section 18(6) of the 2013 Act, as applied by section 31(4), applies for the purposes of that scheme.

#### Textual Amendments

- F153** Word in Sch. 2 para. 9(1)(c) inserted (1.10.2023) by [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), regs. 1(b), **9(4)(a)**
- F154** Words in Sch. 2 para. 9(1)(d) inserted (31.3.2022 with effect on and after 1.4.2015) by [The Armed Forces Pensions \(Amendment\) Regulations 2022 \(S.I. 2022/323\)](#), regs. 1(3)(b), **3(2)(c)(i)** (with reg. 3(3))
- F155** Sch. 2 para. 9(1)(e) and word omitted (1.10.2023) by virtue of [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), regs. 1(b), **9(4)(b)**
- F156** Sch. 2 para. 9(1A) inserted (31.3.2022 with effect on and after 1.4.2015) by [The Armed Forces Pensions \(Amendment\) Regulations 2022 \(S.I. 2022/323\)](#), regs. 1(3)(b), **3(2)(c)(ii)** (with reg. 3(3))

#### Exception for full protection member during protection period **U.K.**

**10.**—(1) The protection period for a person (P) who is a full protection member of the AFPS 2005 is the period which—

- (a) begins on 1st April 2015; and
  - (b) ends when P ceases to be a full protection member of the AFPS 2005.
- (2) During the protection period—
- (a) P is eligible to be in pensionable service under the AFPS 2005;
  - (b) section 18(1) of the 2013 Act does not apply in respect of that pensionable service; and
  - (c) benefits are to be provided under the AFPS 2005 to or in respect of P in relation to that pensionable service.

#### Full protection member not eligible to join the AFPS 2015 **U.K.**

**11.** While a person (P) is a full protection member of the AFPS 2005, P is not eligible to be an active member of the AFPS 2015.

## PART 3 U.K.

### Payment of ill-health benefits to transition members with continuity of service

#### **This Part not to apply to previous periods of service** U.K.

12. If a transition member has a period of earlier service within the meaning of rule G.1 (application of Part G) of the AFPS 2005, this Part does not apply to that earlier service except where the member exercises an option under rule G.3 (option to aggregate earlier membership: previous members of the Scheme) or rule G.4 (option to aggregate earlier membership: previous members of the AFPS 1975) to aggregate their earlier service with their current service.

#### **Transition members not to receive early ill-health benefits except in accordance with this Part** U.K.

13. A transition member with continuity of service is not to receive early benefits on ill-health retirement except as provided by this Part.

#### **Active transition member with permanent serious ill-health who leaves service before reaching age 55** U.K.

14.—(1) This paragraph applies in relation to a transition member with continuity of service (T) who—

- (a) meets the criteria for an ill-health pension (active member with permanent serious ill-health) under regulation 51 of the AFP Regulations 2014; and
- (b) leaves service before reaching age 55 and has not reached age 55.

(2) If this paragraph applies—

- (a) early benefits on permanent serious ill-health are not payable under the AFPS 2005; and
- (b) ill-health benefits (active member with permanent serious ill-health) are payable under the AFPS 2015 in accordance with this paragraph.

(3) The ill-health benefits payable under paragraph (2)(b) comprise benefits payable in respect of service before T's transition date and benefits payable in respect of service from T's transition date.

(4) The benefits payable in respect of service before T's transition date are calculated in accordance with rule D.5 (early payment of benefits: active members with permanent serious ill-health) of the AFPS 2005 but when calculating the rate of annual pension, the following is substituted for rule D.5(5)—

- (a) “(5) For the purposes of paragraph (4), N is equal to the sum of—
  - (i) the member's years of reckonable service in the AFPS 2005; and
  - (ii) X multiplied by Y.
- (b) In this paragraph, X is equal to the member's years of reckonable service in the AFPS 2005 divided by the total of the member's years of reckonable service in the AFPS 2005 and pensionable service in the AFPS 2015.
- (c) In this paragraph, Y is the greater of—
  - (i) half of the further reckonable service which the member would have been able to count under the AFPS 2005 if the member had remained an accruing member of that scheme from the date of the ill-health retirement until age 55; and
  - (ii) 20, minus the total of the member's years of reckonable service in the AFPS 2005 and years of pensionable service in the AFPS 2015.

*Changes to legislation: There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)*

[ For the purposes of calculating the member’s pensionable service in the AFPS <sup>F157</sup>(d) 2015 under this rule, any period of pensionable service which is also a period when the member has served on flexible terms is reduced by the service reduction percentage applicable to that period of service.”].

(5) The benefits payable in respect of service from T’s transition date are calculated in accordance with the AFP Regulations 2014 but when calculating the rate of annual pension, the following is substituted for regulation 54(2)(b) of the AFP Regulations 2014—

“(b) B is the sum of—

- (i) the member’s pensionable service under the Scheme; and
- (ii) X multiplied by N.

(c) In this paragraph, X is equal to the member’s years of pensionable service in the AFPS 2015 divided by the total of the member’s years of reckonable service in the AFPS 2005 and pensionable service in the AFPS 2015.

(d) In this paragraph, N is the greater of—

- (i) half of the further pensionable service which the member would have been able to count under the AFPS 2015 if the member had remained an accruing member of that scheme from the date of the ill-health retirement until age 60; and
- (ii) the lesser of—

(aa) 25 minus the total of the member’s years of reckonable service in the AFPS 2005 and pensionable service in the AFPS 2015; and

(bb) the further pensionable service which the member would have been able to count under the AFPS 2015 if the member had remained an accruing member of that scheme from the date of the ill-health retirement until age 60.

[ For the purposes of calculating the member’s pensionable service in the AFPS 2015 <sup>F158</sup>(e) under sub-paragraphs (b)(i), (c) and (d)(ii)(aa), any period of pensionable service which is also a period when the member has served on flexible terms is reduced by the service reduction percentage applicable to that period of service.”].

#### Textual Amendments

**F157** Words in Sch. 2 para. 14(4) inserted (1.4.2019) by The Armed Forces Pension Schemes and Early Departure Payments Schemes (Amendments Relating to Flexible Working and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/1111), regs. 1(3), **3(3)(a)**

**F158** Words in Sch. 2 para. 14(5) inserted (1.4.2019) by The Armed Forces Pension Schemes and Early Departure Payments Schemes (Amendments Relating to Flexible Working and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/1111), regs. 1(3), **3(3)(b)**

#### Transition member with permanent serious ill-health who reaches age 55 **U.K.**

**15.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who is receiving an ill-health pension (active members with permanent serious ill-health) in accordance with paragraph 14.

(2) On the day T reaches age 55—

- (a) of the benefits that were payable under paragraph 14(2)(b), the AFPS 2005 basic earned benefits cease to be payable under paragraph 14(2)(b) and instead become payable under the AFPS 2005; and

- (b) of the benefits that were payable under paragraph 14(2)(b), the AFPS 2005 permanent serious ill-health enhancement benefits continue to be payable under paragraph 14(2)(b).
- (3) For the purpose of this paragraph, subject to sub-paragraphs (4) and (5)—
  - (a) the “AFPS 2005 basic earned benefits” means the amount arrived at by multiplying one seventieth of T’s final pensionable earnings by T’s reckonable service in the AFPS 2005 expressed as number of years; and
  - (b) the “AFPS 2005 permanent serious ill-health enhancement benefits” means the benefits payable at paragraph 14(4) in respect of service before T’s transition date minus the AFPS 2005 basic earned benefits.
- (4) If T—
  - (a) has had their benefits reduced in accordance with rule D.12 (reduction in pension debit member’s benefits) of the AFPS 2005, that reduction is to be applied to the amount at paragraph (3)(a);
  - (b) has exercised an option under rule D.10 (option to exchange lump sum for pension) of the AFPS 2005, the amount at paragraph (3)(a) is to be increased by the amount of the additional pension resulting from that option;
  - (c) has had a deduction made to their benefit in accordance with rule J.13 (deduction of special lump sum death benefits charge) of the AFPS 2005, that deduction is to be applied to the amount at paragraph (3)(a);
  - (d) has had their benefits adjusted in accordance with section 237E (consequential benefit adjustment to be reasonable etc) of the Finance Act 2004, that adjustment is to be applied to the amount at paragraph (3)(a).
- (5) If the amount at paragraph 3(a), after having been adjusted where applicable under sub-paragraph (4), is a negative amount, the “AFPS 2005 basic earned benefits” are zero, and the “AFPS 2005 permanent serious ill-health enhancement benefits” means the benefits payable at paragraph 14(4).

**Active transition member who leaves service with permanent serious ill-health on or after reaching age 55 but before age 60 U.K.**

- 16.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who—
- (a) meets the criteria for an ill-health pension (active member with permanent serious ill-health) under regulation 51 of the AFP Regulations 2014; and
  - (b) leaves service on or after reaching age 55, but before reaching age 60.
- (2) Pension benefits are payable under rule D.1 (retirement after reaching pension age) of the AFPS 2005 in respect of service before T’s transition date.
- (3) Early benefits on permanent serious ill-health are payable under regulation 54 of the AFP Regulations 2014 in respect of service from T’s transition date but when calculating the rate of annual pension, regulation 54(2)(b) is amended as specified in paragraph 14(5).

**Active transition member with significant impairment of capacity for gainful employment who leaves service before reaching age 55 U.K.**

- 17.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who—
- (a) meets the criteria for an ill-health pension (active members with significant impairment of capacity for gainful employment) under regulation 52 of the AFP Regulations 2014; and

(b) has not reached age 55.

(2) If this paragraph applies—

(a) early benefits on significant incapacity for gainful employment are not payable under the AFPS 2005; and

(b) ill-health benefits (active members with significant impairment of capacity for gainful employment) are payable under the AFPS 2015 in accordance with this paragraph.

(3) The ill-health benefits payable under paragraph (2)(b) comprise benefits payable in respect of service before T’s transition date and benefits payable in respect of service from T’s transition date.

(4) The benefits payable in respect of service before T’s transition date are calculated in accordance with rule D.6 (early payment of benefits: active members with significant incapacity for gainful employment) of the AFPS 2005 but when calculating the rate of annual pension, the following is substituted for rule D.6(3)—

(a) “(3) For the purposes of paragraph (2), N is equal to the sum of—

(i) the member’s years of reckonable service in the AFPS 2005; and

(ii) X multiplied by Y; and

(b) In this paragraph, X is equal to the member’s years of reckonable service in the AFPS 2005 divided by the total of the member’s years of reckonable service in the AFPS 2005 and pensionable service in the AFPS 2015.

(c) In this paragraph, Y is one third of the further reckonable service which the member would have been able to count under the AFPS 2005 if the member had remained an accruing member of that scheme from the date of the ill-health retirement until age 55.

[ For the purposes of calculating the member’s pensionable service in the AFPS <sup>F159</sup>(d) 2015 under this rule, any period of pensionable service which is also a period when the member has served on flexible terms is reduced by the service reduction percentage applicable to that period of service.”].

(5) The benefits payable in respect of service from T’s transition date are calculated in accordance with the AFP Regulations 2014 but when calculating the rate of annual pension the following is substituted for regulation 55(2)(b)—

“(b) B is the sum of—

(i) the member’s pensionable service under the AFPS 2015 as calculated according to regulation 55(2)(a)(i) and (ii); and

(ii) X multiplied by N.

(c) In this paragraph, X is equal to the member’s years of pensionable service in the AFPS 2015 divided by the total of the member’s years of reckonable service in the AFPS 2005 and pensionable service in the AFPS 2015.

(d) In this paragraph, N is one third of the further pensionable service which the member would have been able to count under the AFPS 2015 if the member had remained an accruing member of that scheme from the date of the ill-health retirement until age 60.

[ For the purposes of calculating the member’s pensionable service in the AFPS 2015 <sup>F160</sup>(e) under sub-paragraphs (b)(i) and (c), any period of pensionable service which is also a period when the member has served on flexible terms is reduced by the service reduction percentage applicable to that period of service.”].



### Textual Amendments

- F159** Words in Sch. 2 para. 17(4) inserted (1.4.2019) by The Armed Forces Pension Schemes and Early Departure Payments Schemes (Amendments Relating to Flexible Working and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/1111), reg. 1(3), **3(4)(a)**
- F160** Words in Sch. 2 para. 17(5) inserted (1.4.2019) by The Armed Forces Pension Schemes and Early Departure Payments Schemes (Amendments Relating to Flexible Working and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/1111), reg. 1(3), **3(4)(b)**

### Transition member with significant impairment of capacity for gainful employment who reaches age 55 **U.K.**

**18.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who is receiving an ill-health pension (active members with significant impairment of capacity for gainful employment) in accordance with paragraph 17.

- (2) On the day T reaches age 55—
- of the benefits that were payable under paragraph 17(2)(b), the AFPS 2005 basic earned benefits cease to be payable under paragraph 17(2)(b) and instead become payable under the AFPS 2005; and
  - of the benefits that were payable under paragraph 17(2)(b), the AFPS 2005 significant incapacity ill-health enhancement benefits continue to be payable under paragraph 17(2)(b).
- (3) For the purpose of this paragraph, subject to sub-paragraphs (4) and (5)—
- the “AFPS 2005 basic earned benefits” means the amount arrived at by multiplying one seventieth of T’s final pensionable earnings by T’s reckonable service in the AFPS 2005 expressed as number of years; and
  - the “AFPS 2005 significant incapacity ill-health enhancement benefits” means the benefits payable at paragraph 17(4) in respect of service before T’s transition date minus the AFPS 2005 basic earned benefits.
- (4) If T—
- has had their benefits reduced in accordance with rule D.12 (reduction in pension debit member’s benefits) of the AFPS 2005, that reduction is to be applied to the amount at paragraph (3)(a);
  - has exercised an option under rule D.10 (option to exchange lump sum for pension) of the AFPS 2005, the amount at paragraph (3)(a) is to be increased by the amount of the additional pension resulting from that option;
  - has had a deduction made to their benefit in accordance with rule J.13 (deduction of special lump sum death benefits charge) of the AFPS 2005, that deduction is to be applied to the amount at paragraph (3)(a);
  - has had their benefits adjusted in accordance with section 237E (consequential benefit adjustment to be reasonable etc) of the Finance Act 2004, that adjustment is to be applied to the amount at paragraph (3)(a).
- (5) If the amount at paragraph 3(a), after having been adjusted where applicable under sub-paragraph (4), is a negative amount, the “AFPS 2005 basic earned benefits” are zero, and the “AFPS 2005 permanent serious ill-health enhancement benefits” means the benefits payable at paragraph 17(4).

**Active transition member who leaves service with significant incapacity for gainful employment on or after reaching age 55 but before reaching age 60 U.K.**

19.—(1) This paragraph applies in relation to a transition member with continuity of service (T) who—

- (a) meets the criteria for an ill-health pension (active members with significant impairment of capacity for gainful employment) under regulation 52 of the AFP Regulations 2014; and
- (b) leaves service on or after reaching age 55 but before reaching age 60.

(2) Pension benefits are payable under rule D.1 (retirement after reaching pension age) of the AFPS 2005 in respect of service before T's transition date.

(3) Early benefits on significant impairment of capacity for gainful employment are payable under regulation 55 of the AFP Regulations 2014 in respect of service from T's transition date but when calculating the rate of annual pension, regulation 55(2)(b) is amended as specified in paragraph 17(5).

**Deferred transition member with permanent serious ill-health who leaves service before reaching age 55 U.K.**

20.—(1) This paragraph applies in relation to a transition member with continuity of service (T) who—

- (a) meets the criteria for an ill-health pension (deferred member with permanent serious ill-health) under regulation 56 of the AFP Regulations 2014; and
- (b) leaves service before reaching age 55 and has not reached age 55.

(2) If this paragraph applies—

- (a) early benefits on permanent serious ill-health are not payable under the AFPS 2005; and
- (b) ill-health benefits (deferred member with permanent serious ill-health) are payable under the AFPS 2015 in accordance with this paragraph.

(3) The ill-health benefits payable under paragraph (2)(b) comprise benefits payable in respect of service before T's transition date and benefits payable in respect of service from T's transition date.

(4) The benefits payable in respect of service before T's transition date are calculated in accordance with rule D.7 (early payment of benefits: deferred members with permanent serious ill-health) of the AFPS 2005.

(5) The benefits payable in respect of service from T's transition date are calculated in accordance with regulation 56 of the AFP Regulations 2014.

**Deferred transition member with permanent serious ill-health who reaches age 55 U.K.**

21.—(1) This paragraph applies in relation to a transition member with continuity of service (T) who is receiving ill-health benefits (deferred members with permanent serious ill-health) in accordance with paragraph 20.

(2) On the day the member reaches age 55, the benefits that were payable under paragraph 20(2)(b) cease to be payable under paragraph 20(2)(b) and instead become payable under the AFPS 2005.

**Deferred transition member who meets criteria for permanent serious ill-health on or after reaching age 55 U.K.**

22.—(1) This paragraph applies in relation to a transition member with continuity of service (T) who is a deferred member of the AFPS 2015, who is age 55 or over, and who meets the criteria

for an ill-health pension (deferred member with permanent serious ill-health) in regulation 56 of the AFP Regulations 2014.

(2) Where the member is a deferred member of the AFPS 2005—

- (a) a pension is payable under rule D.7 of the AFPS 2005 in respect of service before T's transition date; and
- (b) a pension is payable under regulation 56 of the AFP Regulations 2014 in respect of service from T's transition date.

(3) Where the member is a pensioner member of the AFPS 2005 in receipt of a pension under AFPS 2005—

- (a) a pension continues to be payable under the AFPS 2005 in respect of service before T's transition date; and
- (b) a pension is payable under regulation 56 of the AFP Regulations 2014 in respect of service from T's transition date.

#### **Review of ill-health awards at request of member or Secretary of State** U.K.

**23.** Regulations 57 and 58 of the AFP Regulations 2014 apply to a transition member with continuity of service who is entitled under this Part to an ill-health award in respect of their service before 1st April 2015.

### PART 4 U.K.

Payment of death benefits in respect of transition members with continuity of service

#### **This Part not to apply to previous periods of service** U.K.

**24.** If a transition member has a period of earlier service within the meaning of rule G.1 (application of Part G) of the AFPS 2005, this Part does not apply to that earlier service except where the member exercises an option under rule G.3 (option to aggregate earlier membership: previous members of the Scheme) or rule G.4 (option to aggregate earlier membership: previous members of the AFPS 1975) to aggregate their earlier service with their current service

#### **Death benefits not to be paid in respect of transition members except in accordance with this Part** U.K.

**25.** Surviving adults' pensions, eligible child's pensions and lump sum death benefits are not to be paid in respect of transition members with continuity of service except as provided by this Part.

#### **Surviving adult's pension when transition member dies in service before reaching age 55** U.K.

**26.—(1)** This paragraph applies in relation to a transition member with continuity of service (T) who dies as an active member of the AFPS 2015 before reaching age 55 and for whom the conditions of regulation 65 (surviving spouses' and civil partners' pensions) or regulation 67 (other adult dependants' pensions) of the AFP Regulations 2014 apply.

(2) A pension for a surviving spouse, surviving civil partner or other adult dependant ("surviving adult dependant") is payable under the AFPS 2005 in respect of service before T's transition date.

(3) A pension for a surviving adult dependant is payable under the AFPS 2015 in respect of service from T's transition date.

(4) The pension payable in respect of service before T's transition date is calculated in accordance with the rules in Part E of the AFPS 2005 but when calculating the rate of annual pension in accordance with rule E.3 the references to rule D.5 are to rule D.5 with the amendment specified at paragraph 14(4).

(5) The pension payable in respect of service from T's transition date is calculated in accordance with the AFP Regulations 2014 but when calculating the rate of annual pension in accordance with regulation 70, the references in regulation 51 to regulation 54 are to be read as references to regulation 54 amended as specified in paragraph 14(5).

**Surviving adult dependant's pension when a transition member dies in service on or after reaching age 55** **U.K.**

**27.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who dies as an active member of AFPS 2015 on or after reaching age 55.

(2) A pension for a surviving adult dependant is payable under rule E.1 (surviving spouses' and civil partners' pensions) or rule E.2 (other adult dependants' pensions) of the AFPS 2005 in respect of service before T's transition date.

(3) A pension for a surviving adult dependant is payable under regulation 70 (annual rate of adult dependants' pensions payable on death of active member) of the AFP Regulations 2014 in respect of service from T's transition date.

(4) Where the death is before the transition member has reached age 60, regulation 70 is to be applied as if the references in regulation 51 to regulation 54 were to regulation 54 amended as specified in paragraph 14(5).

**Surviving adult dependant's pension when a transition member dies as a deferred or pensioner member before reaching age 55** **U.K.**

**28.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who dies as a deferred member or a pensioner member of the AFPS 2015 before reaching age 55 and for whom the conditions of regulation 65 (surviving spouses' and civil partners' pensions) or regulation 67 (other adult dependants' pensions) of the AFP Regulations 2014 apply.

(2) A pension for a surviving adult dependant is payable under the AFPS 2005 in respect of service before T's transition date.

(3) A pension for a surviving adult dependant is payable under the AFPS 2015 in respect of service from T's transition date.

(4) The pension payable in respect of service before T's transition date is calculated in accordance with the rules in Part E of the AFPS 2005, but—

- (a) where the pensioner member was in receipt of early benefits on permanent serious ill-health, when calculating the rate of annual pension in accordance with rule E.5 (amount of pensions under rules E.1 and E.2: pensioner members), the references to rule D.5 are to be read as referring to rule D.5 as amended as specified in paragraph 14(4); and
- (b) where the pensioner member was in receipt of early benefits on significant incapacity for gainful employment, when calculating the rate of annual pension in accordance with rule E.5, the references to rule D.6 are to be read as referring to rule D.6 amended as specified in paragraph 17(4).

(5) The pension payable in respect of service from T's transition date is calculated in accordance with the AFP Regulations 2014, but—

- (a) where the pensioner was in receipt of early benefits on permanent serious ill-health, when calculating the rate of annual pension in accordance with regulation 68 (annual rate of

adult dependants' pensions payable on death of pensioner member), the calculation of the member's retirement earned pension is to take account of the amendment in paragraph 14(5) to regulation 54; and

- (b) where the pensioner was in receipt of early benefits on significant incapacity for gainful employment, when calculating the rate of annual pension in accordance with regulation 68, the calculation of the member's retirement earned pension is to take account of the amendment in paragraph 17(5) to regulation 55.

**Surviving adult dependant's pension when a transition member dies as a deferred member or a pensioner member on or after reaching age 55** **U.K.**

**29.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who dies as a deferred member or a pensioner member of the AFPS 2015 on or after reaching age 55 and for whom the conditions of regulation 65 (surviving spouses' and civil partners' pensions) or regulation 67 (other adult dependants' pensions) of the AFP Regulations 2014 apply.

(2) In the case of a deferred member of the AFPS 2015—

- (a) a pension for a surviving adult dependant is payable under rules E.1 or E.2 and rule E.4 (amount of pensions under rules E.1 and E.2: deferred members) of the AFPS 2005, in the case of a deferred member of the AFPS 2005, or under rules E.1 or E.2 and rule E.5 (amount of pensions under rules E.1 and E.2: pensioner members), in the case of a pensioner member of the AFPS 2005, in respect of service before T's transition date; and
- (b) a pension for a surviving adult dependant is payable under regulations 65, 67 and 69 (annual rate of adult dependants' pensions payable on death of deferred member) of the AFP Regulations 2014 in respect of service from T's transition date.

(3) In the case of a pensioner member of the AFPS 2015—

- (a) the pension payable in respect of service before T's transition date is calculated in accordance with the rules in Part E of the AFPS 2005, but—
  - (i) where the pensioner member was in receipt of early benefits on permanent serious ill-health, when calculating the rate of annual pension in accordance with rule E.5, the references to rule D.5 are to be read as referring to rule D.5 amended as specified in paragraph 14(4); and
  - (ii) where the pensioner member was in receipt of early benefits on significant incapacity for gainful employment, when calculating the rate of annual pension in accordance with rule E.5, the references to rule D.6 are to be read as referring to rule D.6 amended as specified in paragraph 17(4).
- (b) the pension payable in respect of service from T's transition date is calculated in accordance with the AFP Regulations 2014, but—
  - (i) where the pensioner was in receipt of early benefits on permanent serious ill-health, when calculating the rate of annual pension in accordance with regulation 68 (annual rate of adult dependants' pensions payable on death of pensioner member), the calculation of the member's retirement earned pension is to take account of the amendment in paragraph 14(5) to regulation 54; and
  - (ii) where the pensioner was in receipt of early benefits on significant incapacity for gainful employment, when calculating the rate of annual pension in accordance with regulation 68, the calculation of the member's retirement earned pension is to take account of the amendment in paragraph 17(5) to regulation 55.

### **Eligible child's pension when a transition member dies in service before reaching age**

#### **55 U.K.**

**30.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who dies as an active member of the AFPS 2015 before reaching age 55 and for whom the conditions of regulation 72 (surviving children's pensions) of the AFP Regulations 2014 apply.

(2) A pension for an eligible child is payable under the AFPS 2005 in respect of service before T's transition date.

(3) A pension for an eligible child is payable under the AFPS 2015 in respect of service from T's transition date.

(4) The rate of annual pension payable in respect of service before T's transition date is calculated in accordance with rule E.10 (amount of children's pensions under rule E.8: active members) of the AFPS 2005, but applying rule D.5 with the substitution of rule D.5(5) that is specified in paragraph 14(4).

(5) The pension payable in respect of service from T's transition date is calculated in accordance with the AFP Regulations 2014 but when calculating the rate of annual pension in accordance with regulation 74 (annual rate of children's pensions), the calculation of the member's earned pension is to take account of the amendment in paragraph 14(5) to regulation 54.

### **Eligible child's pension when a transition member dies in service on or after reaching age**

#### **55 U.K.**

**31.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who dies as an active member of AFPS 2015 on or after reaching age 55 and for whom the conditions of regulation 72 (surviving children's pensions) of the AFP Regulations 2014 apply.

(2) A pension for an eligible child is payable under rule E.8 of the AFPS 2005 in respect of service before T's transition date.

(3) A pension for an eligible child is payable under regulation 74 (annual rate of children's pensions) of the AFP Regulations 2014 in respect of service from T's transition date.

(4) Where the death is before the transition member has reached age 60, the calculation of the member's earned pension is to take account of the amendment in paragraph 14(5) to regulation 54.

### **Eligible child's pension when a transition member dies as a deferred or pensioner member before reaching age 55**

#### **U.K.**

**32.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who dies as a deferred or pensioner member of the AFPS 2015 before reaching age 55 and for whom the conditions of regulation 72 (surviving children's pensions) of the AFP Regulations 2014 apply.

(2) A pension for an eligible child is payable under the AFPS 2005 in respect of service before T's transition date.

(3) A pension for an eligible child is payable under the AFPS 2015 in respect of service from T's transition date.

(4) The pension payable in respect of service before T's transition date is calculated in accordance with the rules in Part E of the AFPS 2005, but—

- (a) where the pensioner member was in receipt of early benefits on permanent serious ill-health, when calculating the rate of annual pension in accordance with rule E.5 (amount of pensions under rules E.1 and E.2: pensioner members), the references to rule D.5 are to be read as referring to rule D.5 as amended as specified in paragraph 14(4); and
- (b) where the pensioner member was in receipt of early benefits on significant incapacity for gainful employment, when calculating the rate of annual pension in accordance with rule

E.5 (amount of pensions under rules E.1 and E.2: pensioner members), the references to rule D.6 are to be read as referring to rule D.6 amended as specified in paragraph 17(4).

(5) The pension payable in respect of service from T's transition date is calculated in accordance with the AFP Regulations 2014, but—

- (a) where the pensioner was in receipt of early benefits on permanent serious ill-health, when calculating the rate of annual pension in accordance with regulation 74 (annual rate of children's pensions), the calculation of the member's earned pension is to take account of the amendment in paragraph 14(5) to regulation 54; and
- (b) where the pensioner was in receipt of early benefits on significant incapacity for gainful employment, when calculating the rate of annual pension in accordance with regulation 74, the calculation of the member's earned pension is to take account of the amendment in paragraph 17(5) to regulation 55.

**Eligible child's pension when a transition member dies as a deferred or pensioner member on or after reaching age 55 U.K.**

**33.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who dies as a deferred member or a pensioner member of the AFPS 2015 on or after reaching age 55 and for whom the conditions of regulation 72 (surviving children's pensions) of the AFP Regulations 2014 apply.

(2) In the case of a deferred member of the AFPS 2015—

- (a) a pension for an eligible child is payable under rule E.11 (amount of children's pension under rule E.8: deferred members) of the AFPS 2005 in the case of a deferred member of the AFPS 2005, or rule E.12 (amount of children's pension under rule E.8: pensioner members), in the case of a pensioner member of the AFPS 2005, in respect of service before T's transition date; and
- (b) a pension for an eligible child is payable under regulation 74 (annual rate of children's pensions) of the AFP Regulations 2014 in respect of service from T's transition date.

(3) In the case of a pensioner member of the AFPS 2015—

- (a) the pension payable in respect of service before T's transition date is calculated in accordance with the rules in Part E of the AFPS 2005, but—
  - (i) where the pensioner member was in receipt of early benefits on permanent serious ill-health, when calculating the rate of annual pension in accordance with rule E.11 or rule E.12 as the case may be, the references to rule D.5 are to be read as referring to rule D.5 as amended as specified in paragraph 14(4); and
  - (ii) where the pensioner member was in receipt of early benefits on significant incapacity for gainful employment, when calculating the rate of annual pension in accordance with rule E.11 or rule E.12 as the case may be, the references to rule D.6 are to be read as referring to rule D.6 amended as specified in paragraph 17(4).
- (b) the pension payable in respect of service from T's transition date is calculated in accordance with the AFP Regulations 2014, but—
  - (i) where the pensioner was in receipt of early benefits on permanent serious ill-health, when calculating the rate of annual pension in accordance with regulation 74, the calculation of the member's earned pension is to take account of the amendment in paragraph 14(5) to regulation 54; and
  - (ii) where the pensioner was in receipt of early benefits on significant incapacity for gainful employment, when calculating the rate of annual pension in accordance with regulation 74, the calculation of the member's earned pension is to take account of the amendment in paragraph 17(5) to regulation 55.

#### **Death of a transition member whilst in service: lump sum benefit** **U.K.**

**34.**—(1) This paragraph applies in relation to a transition member with continuity of service who dies as an active member of the AFPS 2015.

(2) On the death of the member—

- (a) a lump sum is payable under regulation 79 (lump sum amount payable on death of active member) of the AFP Regulations 2014; but
- (b) a lump sum is not payable under rule E.15 (death of a member: lump sum benefit) of the AFPS 2005.

#### **Death of a deferred transition member: lump sum benefit** **U.K.**

**35.**—(1) This paragraph applies in relation to a transition member with continuity of service who dies as a deferred member of the AFPS 2015.

(2) On death before reaching age 55—

- (a) if regulation 80 (lump sum amount payable on death of deferred member) of the AFP Regulations 2014 applies to the member, a lump sum death benefit is payable under those regulations; and
- (b) if the member is a deferred member of the AFPS 2005 and the conditions for payment of a lump sum benefit under rule E.15 (death of a member: lump sum benefit) and rule E.17 (amount of lump sum benefit under rule E.15: deferred members) of the AFPS 2005 are met, a lump sum death benefit equal to the sum that would have been payable under rule E.17 of the AFPS 2005 is payable under the AFPS 2015.

(3) On death on or after reaching age 55, where the member is also a deferred member of the AFPS 2005—

- (a) if regulation 80 of the AFP Regulations 2014 applies to the member, a lump sum death benefit is payable under those regulations; and
- (b) if the conditions for payment of a lump sum death benefit under rule E.15 and rule E.17 of the AFPS 2005 are met, a lump sum death benefit is payable under rule E.17 of the AFPS 2005.

(4) On death on or after reaching age 55, where the member is also a pensioner member of the AFPS 2005—

- (a) if regulation 80 of the AFP Regulations 2014 applies to the member, a lump sum death benefit is payable under those regulations; and
- (b) if the conditions for payment of a lump sum death benefit under rule E.15 and rule E.18 (amount of lump sum benefit under rule E.15: pensioner members) of the AFPS 2005 are met, a lump sum death benefit is payable under rule E.18 of the AFPS 2005.

#### **Death of a pensioner transition member before reaching age 55: lump sum benefit** **U.K.**

**36.**—(1) This paragraph applies in relation to a transition member with continuity of service who dies as a pensioner member of the AFPS 2015 before reaching age 55.

(2) If regulation 81 (lump sum amount payable on death of pensioner member) of the AFP Regulations 2014 applies to the member, a lump sum death benefit is payable under that regulation.

(3) If the member is a pensioner member of the AFPS 2005 and the conditions for payment of a lump sum benefit under rule E.15 (death of a member: lump sum benefit) and rule E.18 (amount of lump sum benefit under rule E.15: pensioner members) of the AFPS 2005 are met, a lump sum death benefit is not payable under rule E.18 of the AFPS 2005, but a lump sum equal to the sum that would have been paid under rule E.18 is payable under the AFPS 2015.



(4) If the member is a deferred member of the AFPS 2005 and the conditions for payment of a lump sum benefit under rule E.15 and rule E.17 (amount of lump sum benefit under rule E.15: deferred members) of the AFPS 2005 are met, a lump sum death benefit is not payable under rule E.17 of the AFPS 2005 but a lump sum equal to the sum that would have been paid under rule E.17 is payable under the AFPS 2015.

#### **Death of a pensioner transition member on or after reaching age 55: lump sum benefit** **U.K.**

**37.**—(1) This paragraph applies in relation to a transition member with continuity of service who dies as a pensioner member of the AFPS 2015 on or after reaching age 55.

(2) If regulation 81 (lump sum amount payable on death of pensioner member) of the AFP Regulations 2014 applies to the member, a lump sum death benefit is payable under that regulation.

(3) If the member is a pensioner member of the AFPS 2005 and the conditions for payment of a lump sum benefit under rule E.15 (death of a member: lump sum benefit) and rule E.18 (amount of lump sum benefit under rule E.15: pensioner members) of the AFPS 2005 are met, a lump sum death benefit is payable under rule E.18 of the AFPS 2005.

(4) If the member is a deferred member of the AFPS 2005 and the conditions for payment of a lump sum benefit under rule E.15 and rule E.17 (amount of lump sum benefit under rule E.15: deferred members) of the AFPS 2005 are met, a lump sum death benefit is payable under rule E.17 of the AFPS 2005.

## **PART 5** **U.K.**

### **Transitional provisions relating to the AFPS 2005**

#### **No benefits for service on or after member's transition date** **U.K.**

**38.** No benefits under the AFPS 2005 are to be provided to or in respect of a transition member in relation to that member's service on or after their transition date.

#### **Pensionable service under the AFPS 2005 for a transition member with continuity of service** **U.K.**

**39.**—(1) This paragraph applies in relation to a transition member with continuity of service (T) who is in pensionable service under the AFPS 2015.

(2) In determining whether T qualifies under the AFPS 2005 for retirement benefits (other than early benefits on ill-health), T's pensionable service under the AFPS 2005 terminates when T's pensionable service under the AFPS 2015 terminates.

#### **Final salary link for a transition member with continuity of service** **U.K.**

**40.**—(1) In calculating benefits payable under the AFPS 2005 to or in respect of a transition member with continuity of service (T), T's final pensionable earnings are determined by reference to Schedule 7 to the 2013 Act as if "final salary" were a reference to "final pensionable earnings".

<sup>[F161]</sup>(2) If a member's final pensionable earnings on leaving service as a member of AFPS 2015 are lower than the member's final pensionable earnings on their last day of reckonable service in the AFPS 2005, the member's final pensionable earnings are to be determined as if paragraph (1) of rule A.4 of the AFPS 2015 were replaced by the following—

*Changes to legislation:* There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

“(1) In these Rules, “final pensionable earnings”, in relation to a member, means the greatest amount that is the member’s total pensionable earnings for 365 consecutive days falling within the period beginning three years before their last day of reckonable service in the AFPS 2005.”]

**Textual Amendments**  
F161 Sch. 2 para. 40(2) substituted (1.12.2018) by [The Armed Forces Pension Schemes and Early Departure Payments Schemes \(Amendments Relating to Flexible Working and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1111\)](#), regs. 1(2)(c), 3(5)

**Secretary of State does not consider that the member has suffered a permanent breakdown of health involving incapacity for any full-time employment** U.K.

F162 41. ....

**Textual Amendments**  
F162 Sch. 2 para. 41 omitted (1.4.2022) by virtue of [The Armed Forces Pensions \(Amendment\) Regulations 2022 \(S.I. 2022/323\)](#), regs. 1(2), 3(2)(d)

**Deferred membership of the AFPS 2005** U.K.

42.—(1) A transition member with continuity of service (T) does not become a deferred member of the AFPS 2005 unless T becomes a deferred member of the AFPS 2015.

(2) If T opts out of the AFPS 2015 in relation to service in a scheme employment and T has at least 2 years’ qualifying service T becomes a deferred member of the AFPS 2005 in relation to that service.

(3) If T re-enters pensionable service under the AFPS 2015 after a gap in service not exceeding 5 years, T ceases to be a deferred member of the AFPS 2005.

**Qualifying for retirement benefits under the AFPS 2005** U.K.

43.—(1) In determining whether a transition member with continuity of service qualifies for retirement benefits under the AFPS 2005, the member’s qualifying service includes the total of—

- (a) the member’s qualifying service under the AFPS 2005; and
- (b) the member’s qualifying service under the AFPS 2015.

**Final salary link not to apply again to a pension in payment** U.K.

44. Where any element of pension under the AFPS 2005 which is in payment has been calculated by reference to Schedule 7 (final salary link) to the 2013 Act, that element of the pension is not recalculated by reference to Schedule 7 to the 2013 Act in consequence of a subsequent period of pensionable public service (as defined in paragraph 3 of Schedule 7 to the 2013 Act) unless the further period of pension is aggregated under the rules of the AFPS 2005.

## PART 6 U.K.

### Miscellaneous transitional provisions

#### **Nomination under the AFPS 2005 continues to have effect U.K.**

**45.**—(1) This paragraph applies if a transition member with continuity of service has not nominated a person under the AFP Regulations 2014 to receive a lump sum death benefit under the AFP Regulations 2014.

(2) An existing nomination has effect as if made under the AFP Regulations 2014 until the transition member makes a nomination under the AFP Regulations 2014.

(3) In this paragraph, “existing nomination” means a nomination which—

- (a) was made for the purpose of the AFPS 2005; and
- (b) as at T’s transition date, had effect under the AFPS 2005.

#### **Option to buy added years under the AFPS 2005 continues to have effect U.K.**

**46.**—(1) This paragraph applies if a transition member with continuity of service—

- (a) has exercised an option under rule C.1(1) (member’s option to pay contributions to increase service) before [<sup>F163</sup>the member’s transition date]; and
- (b) on [<sup>F163</sup>the member’s transition date], the contractual option period is extant.

(2) Periodical payments paid by the member in accordance with Part C of the AFPS 2005 [<sup>F164</sup>on or after the member’s transition date] and before the end of the contractual option period are valid for the purposes of Part C, and the contractual option period continues as if the member continued in pensionable service under the AFPS 2005.

#### **Textual Amendments**

**F163** Words in Sch. 2 para. 46(1) substituted (1.4.2022) by [The Armed Forces Pensions \(Amendment\) Regulations 2022 \(S.I. 2022/323\)](#), reg. 1(2), **3(2)(e)(i)**

**F164** Words in Sch. 2 para. 46(2) substituted (1.4.2022) by [The Armed Forces Pensions \(Amendment\) Regulations 2022 \(S.I. 2022/323\)](#), reg. 1(2), **3(2)(e)(ii)**

#### **Opting out of AFPS 2015 - contributions under the AFPS 2005 cease to be payable U.K.**

**47.** If a transition member with continuity of service opts out of the AFPS 2015 any periodical payments paid by the member in accordance with Part C of the AFPS 2005 cease to be payable.

#### **[<sup>F165</sup>Purchase of added years for members seconded to NATO or the UN etc U.K.]**

**47A.**—(1) This paragraph applies to a transition member with continuity of service (T) if on T’s transition date T is in qualifying service in accordance with rule A.7(1)(b) (qualifying service) of the AFPS 2005.

(2) For rule C.6 (purchase of added years for members seconded to NATO or the UN etc) of the AFPS 2005, substitute—

“**C.6.**—(1) This rule applies if an active member (T) is seconded during any period—

- (a) to the United Nations or the North Atlantic Treaty Organisation, or

**Changes to legislation:** There are currently no known outstanding effects for the *The Armed Forces Pension Scheme Order 2005*. (See end of Document for details)

- (b) under arrangements with any other organisation or person under which persons who are in service as a result of which they are eligible to belong to the Scheme are seconded into other service.
- (2) If at the end of that period T resumes service in the armed forces in which T is an active member of the Scheme, T may opt to make a single lump sum contribution to the Scheme to increase T's reckonable service by an additional period equal to the length of T's secondment before T's transition date.
- (3) The option may only be exercised if—
- (a) T has given notice in writing to the Scheme administrator in such form as the Secretary of State requires; and
- (b) T has also exercised an option under regulation 97 of the Armed Forces Pension Regulations 2014.
- (4) If T exercises the option under paragraph (2) and pays a contribution equal to the aggregate amount of—
- (a) any contributions returned to T by the pension arrangement to which T belonged in respect of T's service during the secondment, and
- (b) any lump sum paid to T on leaving the organisation or to the person to whom T was seconded as a severance payment,
- T is entitled to count the period of T's secondment before T's transition date as reckonable service.
- (5) If the aggregate amount mentioned in paragraph (4) is less than the amount determined by the Scheme actuary to be the amount required to be paid in order to increase T's reckonable service by the period of T's secondment before T's transition date, the Secretary of State must make a contribution to the Scheme equal to the difference.
- (6) If the aggregate amount mentioned in paragraph (4) exceeds the amount determined by the Scheme actuary in accordance with paragraph (5), the difference must be provided to the scheme administrator of the AFPS 2015.
- (7) In this rule, "transition date" has the meaning given in paragraph 1 of Schedule 2."}]

#### Textual Amendments

**F165** Sch. 2 para. 47A inserted (1.4.2022 with effect on and after 1.4.2015) by [The Armed Forces Pensions \(Amendment\) Regulations 2022 \(S.I. 2022/323\)](#), regs. 1(2), **3(2)(f)** (with reg. 3(3))

## PART 7 **U.K.**

### Transfer of final salary benefits

#### Acceptance of club transfer value payments and club transfers **U.K.**

**48.** That part of a club transfer value payment that relates to final salary benefit is to be paid into the AFPS 2005.

#### Member of the AFPS 2015 or the AFPS 2005 **U.K.**

**49.**—(1) This paragraph applies to a person who transfers final salary benefits into the AFPS 2005.

- (2) Unless the person is a full protection member of the AFPS 2005, the person—
- (a) becomes a member of the AFPS 2015; and
  - (b) is taken to be a transitional member with continuity of service.]

[<sup>F166</sup>Schedule 3 U.K.]

Article 6

## Remediable Service

### Textual Amendments

**F166** Sch. 3 inserted (1.10.2023) by [The Armed Forces Pensions \(Remediable Service\) Regulations 2023 \(S.I. 2023/998\)](#), reg. 1(b), [Sch. 2](#)

## Part 1 U.K.

### Introductory Provisions

#### Interpretation U.K.

1.—(1) In this Schedule—

“AFPS 2005” means the occupational pension Scheme established by Schedules 1 and 2 to this instrument and—

- (a) “AFPS 2005 benefits” means Scheme benefits under Schedules 1 and 2;
- (b) “AFPS 2005 service”, in relation to a member, means the member’s remediable service that is pensionable service under the AFPS 2005 (whether or not by virtue of section 2(1) of PSPJOA 2022;

“AFRS 2006” means the Armed Forces Redundancy Scheme 2006 established by the Armed Forces Redundancy Scheme Order 2006<sup>(28)</sup>;

“AFRS 2020” means the Armed Forces Redundancy Scheme 2020 established under the Schedule to the Armed Forces Redundancy Scheme Order 2020;

“EDP 2005 Order” means the Armed Forces Early Departure Payments Scheme Order 2005<sup>(29)</sup>;

“EDP 2005 Scheme” means the Scheme established in articles 8 to 13 of the EDP 2005 Order;

“PSP Directions 2022” means the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022;

“PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022;

“AFPS 1975 re-joiner” means a remedy member to whom paragraph 18 applies;

“armed forces pension scheme” means any Chapter 1 scheme under which service in the regular forces or the reserve forces is pensionable;

“Chapter 1 scheme” has the meaning given in section 33(1) of PSPJOA 2022;

<sup>(28)</sup> 1993 c. 48.

<sup>(29)</sup> Subsections (2) to (2C) are substituted for subsection (2) of section 9 by section 136(3) of the Pensions Act 1995 (c. 26); section 9(2B) is amended by paragraph 35(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

“deferred choice decision” has the meaning given in paragraph 13(1);

“deferred choice decision-maker” means the person who may make a deferred choice decision under paragraph 13(2);

“end of the section 6 election period”, in relation to an immediate choice member, has the meaning given in section 7(2) of PSPJOA 2022;

“end of the section 10 election period”, in relation to a deferred choice member, means the end of the day determined in accordance with—

(a) where the member is the deferred choice decision-maker, paragraph 14(2)(b);

(b) where a person other than the member is the deferred choice decision-maker, paragraph 15(2)(b);

“immediate choice decision” has the meaning given in paragraph 9(1);

“immediate choice decision-maker” means the person who may make an immediate choice decision under paragraph 9(2);

“legacy scheme”, in relation to a remedy member’s remediable service, means the AFPS 2005, and—

(a) “legacy scheme benefits” means AFPS 2005 benefits;

(b) “legacy scheme service”, in relation to a remedy member, means AFPS 2005 service;

“member” means an active, deferred, deceased or pensioner member of a pension scheme;

“non-discrimination rule” has the meaning given in section 25(8) of PSPJOA 2022, and references to a relevant breach of a non-discrimination rule are to be read in accordance with section 25(9) of that Act;

“opted-out service election” has the meaning given in paragraph 7(1);

“reformed scheme” means the AFPS 2015, and “reformed scheme benefits” means new scheme benefits under that Scheme;

“relevant amount” has the meaning given in section 26(3) of PSPJOA 2022;

“remediable service”, in relation to a remedy member, means the member’s remediable service in an employment or office that is pensionable service under the AFPS 2005 (whether or not by virtue of section 2(1) of PSPJOA 2022);

“remedy member” means a member with remediable service;

“remedy period” means the period beginning with 1st April 2015 and ending with 31st March 2022;

“Scheme manager” has the meaning given in rule A.1(4) of Schedule 1 and, for the purposes of this Schedule, references to the Scheme manager include the Scheme administrator;

“Scheme manager” means the Secretary of State;

“section 6 election” has the meaning given in paragraph 9(1)(a);

“section 10 election” has the meaning given in paragraph 13(1)(a).

(2) In this Schedule, a “deferred choice member” means a remedy member who—

(a) immediately before 1st October 2023 was not entitled to the present payment of a pension under this Scheme (whether or not that pension was abated), the amount of which was determined (to any extent) by reference to the member’s remediable service;

(b) on or after 1st October 2023, is an eligible person within the meaning of paragraph 7 of the Schedule to the AFRS 2020 in relation to that service.

(3) In this Schedule, an “immediate choice member” means a remedy member who, immediately before 1st October 2023, was—

- (a) entitled to the present payment of a pension under this Scheme (whether or not that pension was abated), the amount of which was determined (to any extent) by reference to the member's remediable service;
- (b) a deceased member;
- (c) an eligible person within the meaning of article 4 of the AFRS 2006 or paragraph 7 of the Schedule to the AFRS 2020 in relation to that service.

(4) A deferred choice member is a relevant member of the Scheme for the purposes of section 10 of PSPJOA 2022.

(5) An immediate choice member is a relevant member of the Scheme for the purposes of section 6 of PSPJOA 2022.

**2.—(1)** For the purposes of this Schedule, a reference in PSPJOA 2022 to section 2(1) of that Act coming into force is to be understood as a reference to that section coming into force in relation to the armed forces pension Schemes.

(2) A term used in this Schedule which—

- (a) is defined in, or for the purposes of, a provision in Chapter 1 of Part 1 of PSPJOA 2022, and
- (b) is not defined differently in this Schedule,

has the meaning given in, or for the purposes of, that provision.

(3) A term used in this Schedule which—

- (a) is defined in Schedules 1 or 2 to this instrument or the AFP Regulations 2014 (“the relevant Schemes”), and
- (b) is not defined differently—
  - (i) in this Schedule, or
  - (ii) in, or for the purposes of, a provision in Chapter 1 of Part 1 of PSPJOA 2022,has, in relation to the relevant Schemes, the meaning given in those Schemes.

(4) In this Schedule, a reference to a provision of the PSP Directions 2022 is a reference to that provision as amended from time to time.

**3.—(1)** For the purposes of sections 9(1)(b) and 13(1)(b) of PSPJOA 2022, the other Chapter 1 legacy scheme is the EDP 2005 Scheme, and—

- (a) where the member makes an immediate choice decision under this Schedule, that decision has effect in relation to any benefits payable under the EDP 2005 Scheme in relation to the member's remediable service;
- (b) where the member makes a deferred choice decision under this Schedule, that decision has effect in relation to any benefits payable under the EDP 2005 Scheme in relation to the member's remediable service.

(2) In this Schedule, a reference to—

- (a) an immediate choice member of the EDP 2005 Scheme means an immediate choice member within the meaning of paragraph 1(2)(b) of the Schedule to the EDP 2005 Order;
- (b) a deferred choice member of the EDP 2005 Scheme means a deferred choice member within the meaning of paragraph 1(2)(a) of the Schedule to the EDP 2005 Order;
- (c) an immediate choice decision under the Schedule to the EDP 2005 Order is a reference to an immediate choice decision under paragraph 7(1) of the Schedule to the EDP 2005 Order;

- (d) a deferred choice decision under the Schedule to the EDP 2005 Order is a reference to a deferred choice decision under paragraph 10(1) of the Schedule to the EDP 2005 Order.
- 4. For the purposes of this Scheme, section 14 of PSPJOA 2022 applies as if—
  - (a) in section 14(2) the words “immediately before the coming into force of section 2(1)” were omitted;
  - (b) in section 14(7)(b) the words “or section 10” were inserted after “section 6”.

## Part 2 **U.K.**

### Remediable Service Statements

#### Requirements relating to remediable service statements **U.K.**

5.—(1) The Scheme manager must provide a remediable service statement in respect of remedy member (“M”) in accordance with—

- (a) section 29 of PSPJOA 2022,
- (b) any Treasury directions made under section 29(6) of that Act, and
- (c) this paragraph.
- (2) The Scheme manager must provide a remediable service statement in respect of M—
  - (a) before the relevant date;
  - (b) where M is, in relation to their remediable service, for the time being—
    - (i) an active member, at least once in each year ending with the anniversary of the relevant date;
    - (ii) a deferred member, within three months of receipt of a written request by the member, where such request is received after the relevant date;
  - (c) where M is a deferred choice member, as soon as is reasonably practicable following receipt of notification—
    - (i) that M intends to claim benefits in relation to their remediable service, or
    - (ii) that M has died.
- (3) Where—
  - (a) a remediable service statement has been provided to M under sub-paragraph (2)(a), and
  - (b) M dies before the end of the section 6 election period before making a decision under paragraph 9(1),

the Scheme manager must provide a remediable service statement in respect of M as soon as reasonably practicable and, for the purposes of section 7(2)(a) of PSPJOA, the remediable service statement provided to M under sub-paragraph (2)(a) is treated as though it had never been provided.

- (4) The remediable service statement must be provided—
  - (a) to M, or
  - (b) where M is deceased, to the person who is for the time being the eligible decision-maker in relation to M’s remediable service under Part 10 (unless the eligible decision-maker is the Scheme manager).
- (5) The remediable service statement must include—
  - (a) information about the form and manner in which required information must be communicated to the Scheme manager;



- (b) where M is an immediate choice member, information about the irrevocability of an immediate choice decision;
  - (c) where M is a deferred choice member, information about the revocability (or otherwise) of a deferred choice decision.
- (6) For further provision about—
- (a) what a remediable service statement must include, see—
    - (i) section 29(5) of PSPJOA 2022;
    - (ii) direction 20(1) of the PSP Directions 2022;
  - (b) when a remediable service statement must be combined with a benefit information statement provided under section 14 of the Public Service Pensions Act 2013, see direction 20(2) of the PSP Directions 2022.

## Part 3 **U.K.**

### Decisions about the treatment of remediable service

#### Chapter 1 **U.K.**

#### Opted-out Service

#### **Application and interpretation of Chapter 1 **U.K.****

6.—(1) This Chapter applies to and in respect of a member (“M”) with opted-out service in an employment or office in relation to the legacy scheme.

(2) In this Chapter—

“opted-out service decision-maker” means the person who may make an opted-out service election in accordance with paragraph 7(2);

“relevant opted-out service” means the service referred to in sub-paragraph (1).

#### **Election in relation to relevant opted-out service **U.K.****

7.—(1) An election (an “opted-out service election”) may be made in relation to M’s relevant opted-out service in accordance with this Part and section 5 of PSPJOA 2022.

(2) An opted-out service election may be made—

(a) by M, or

(b) where M is deceased, by the eligible decision-maker specified in Part 10.

(3) Where a person other than the Scheme manager is the opted-out service decision-maker, an opted-out service election may only be made after the Scheme manager determines an application which is—

(a) made by, or in relation to, M,

(b) in a form and manner determined by the Scheme manager,

(c) received by the Scheme manager within twelve months of the date on which the Scheme manager notified M of their right to make the application, and

(d) accompanied by such information—

(i) which is within the person’s possession, or

(ii) which the person may reasonably be expected to obtain,

that the Scheme manager may by written notice require the person to provide in relation to the decision which caused the service in question to become opted-out service.

(4) As soon as is reasonably practicable after receipt of an application, the Scheme manager must—

- (a) determine whether an opted-out service election may be made in relation to M’s opted out service, and
- (b) notify the person who made the application whether such an opted-out service election may be made.

(5) Where the Scheme manager is the opted-out service decision-maker, the Scheme manager must, as soon as is reasonably practicable after determining that they are the opted-out service decision-maker, determine whether to make an opted-out service election in relation to M.

(6) The Scheme manager must refuse an application where the decision by virtue of which M’s service became opted-out service was not made pursuant to a relevant breach of a non-discrimination rule.

(7) An opted-out service election to be made by—

- (a) a person other than the Scheme manager is made when the person confirms that an opted-out service election is to be made following receipt of the notification mentioned in subparagraph (4)(b);
- (b) the Scheme manager is made at the time determined by the Scheme manager.

(8) See section 5(2) to (4) of PSPJOA 2022 about the effect, timing and irrevocability of an opted-out service election.

## Chapter 2 **U.K.**

### Immediate choice decision for reformed scheme or legacy scheme benefits

#### Application of Chapter 2 **U.K.**

**8.** This Chapter applies in respect of the remediable service of an immediate choice member (“M”) who has not already made an immediate choice decision or a deferred choice decision under the Schedule to the EDP 2005 Order in relation to that service.

#### Immediate choice decision for reformed scheme or legacy scheme benefits: general **U.K.**

**9.—(1)** A decision (an “immediate choice decision”) may be made in accordance with this Chapter—

- (a) to make an election (a “section 6 election”) by virtue of section 6 of PSPJOA 2022 in relation to M’s remediable service, or
  - (b) that no section 6 election is to be made in relation to that service.
- (2) An immediate choice decision may be made—
- (a) by M, or
  - (b) where M is deceased, by the eligible decision-maker specified in Part 10.
- (3) An immediate choice decision made by—
- (a) a person other than the Scheme manager is made when it is received by the Scheme manager in a form and manner determined by the Scheme manager;
  - (b) the Scheme manager is made at the time determined by the Scheme manager.

(4) An immediate choice decision may only be made before the end of the section 6 election period<sup>(30)</sup>.

(5) An immediate choice decision is irrevocable.

(6) An immediate choice decision to make a section 6 election takes effect as a section 6 election (see sections 6(5) and (7), 7(1)(b) and 9 of PSPJOA 2022 about the effect of a section 6 election).

(7) Where—

(a) immediately before 1st October 2023, M has remediable service in the reformed scheme (“reformed scheme service,”), and

(b) an immediate choice decision is made that no section 6 election is to be made in relation to M’s remediable service,

section 6(4) of PSPJOA 2022 does not apply in relation to M’s reformed scheme service (and, accordingly, section 2(1) of PSPJOA 2022 has effect in relation to M’s reformed scheme service for the purposes mentioned in section 2(3)(b) of that Act from the time the immediate choice decision is made).

(8) The following provisions of PSPJOA 2022 have effect in relation to a decision that no section 6 election is to be made as they have effect in relation to a section 6 election—

(a) section 6(7) (section 6 election has effect in respect of all remediable service in the employment or office);

(b) section 7(1)(b) (provision about when a section 6 election is to be treated as having taken effect);

(c) section 9 (provision about persons with remediable service in more than one Chapter 1 legacy scheme).

### **Immediate choice decision: additional requirements** **U.K.**

**10.**—(1) This paragraph applies where the immediate choice decision-maker (“D”) is a person other than the Scheme manager.

(2) An immediate choice decision may not be made unless a remediable service statement has been provided to D in accordance with paragraph 5(2)(a), or, where paragraph (3) applies, in accordance with paragraph 5(3).

(3) Where—

(a) a remediable service statement has been provided to M in accordance with paragraph 5(2)(a), and

(b) M dies before making an immediate choice decision under paragraph 9,

the section 6 election period is treated as though it had never begun in relation to M.

(4) An immediate choice decision is to be treated as having been made only if D provides the information specified in any written request from the Scheme manager that is—

(a) information in D’s possession, or

(b) information which D can reasonably be expected to obtain.

### **Immediate choice decision: deemed election** **U.K.**

**11.** Where—

(a) the end of the section 6 election period in relation to M has passed, and

(b) no immediate choice decision has been made,

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<sup>(30)</sup> Chapter 5 (sections 101AA to 101AI) is inserted by section 264 of the Pensions Act 2004 (c. 35).

the Scheme manager may, if it seems reasonable in all the circumstances of the case, treat an immediate choice election as having been made in relation to M's remediable service immediately before the end of the section 6 election period.

### Chapter 3 **U.K.**

#### Deferred choice decision for reformed scheme or legacy scheme benefits

#### **Application of Chapter 3** **U.K.**

**12.** This Chapter applies in respect of the remediable service of a deferred choice member ("M") who has not already made—

- (a) an immediate choice decision under Chapter 2,
- (b) an immediate choice decision under the Schedule to the EDP 2005 Order, or
- (c) a deferred choice decision under the Schedule to the EDP 2005 Order

in relation to that service.

#### **Deferred choice decision for reformed scheme or legacy scheme benefits: general** **U.K.**

**13.—(1)** A decision (a "deferred choice decision") may be made—

- (a) to make an election (a "section 10 election") by virtue of section 10 of PSPJOA 2022 in relation to M's remediable service, or
- (b) that no section 10 election is to be made in relation to that service.

(2) A deferred choice decision may be made—

- (a) by M, or
- (b) where M is deceased, by the eligible decision-maker specified in Part 10.

(3) A deferred choice decision—

- (a) to be made by a person other than the Scheme manager is made when it is received by the Scheme manager in a form and manner determined by the Scheme manager;
- (b) to be made by the Scheme manager is made at a time determined by the Scheme manager.

(4) A deferred choice decision may only be made before the end of the section 10 election period.

(5) A deferred choice decision to make a section 10 election takes effect as a section 10 election (see sections 10(4) and (5), 11(3)(b), (4) and (7) and 13 of PSPJOA 2022 about the effect of a section 10 election).

(6) Where the deferred choice decision is that no section 10 election is to be made, the benefits payable to or in respect of M, so far as they are determined by reference to M's remediable service, are legacy scheme benefits.

(7) The following provisions of PSPJOA 2022 have effect in relation to a decision that no section 10 election is to be made as they have effect in relation to a section 10 election—

- (a) section 10(5) (section 10 election has effect in respect of all remediable service in the employment or office);
- (b) section 11(3)(b), (4) and (7) (provision about when a section 10 election take effect, and the effect of lapse or revocation of a section 10 election);
- (c) section 13 (persons with remediable service in more than one Chapter 1 legacy scheme).

#### **Deferred choice decision to be made by M** **U.K.**

**14.—(1)** This paragraph applies where M is the deferred choice decision-maker.

- (2) A deferred choice decision may only be made during the period—
- (a) beginning on the date a remediable service statement is issued under paragraph 5(2)(c)(i), and
  - (b) ending—
    - (i) at the end of the day 6 months after the day the remediable service statement mentioned in paragraph (a) was issued, or
    - (ii) subject to sub-paragraph (4), at the end of such other day as the Scheme manager considers reasonable in all the circumstances.
- (3) The end of the period during which a deferred choice decision may be made must not be more than one year before the day on which it is reasonably expected that legacy scheme benefits would become payable to or in respect of M.
- (4) A deferred choice decision made by M may be revoked—
- (a) at any time before the cancellation deadline, and
  - (b) by M communicating to the Scheme manager notice of the revocation in a form and manner determined by the Scheme manager.
- (5) Where the Scheme manager receives, before the cancellation deadline, notice that M has died—
- (a) any deferred choice decision made by M lapses, and
  - (b) any period that has begun (whether or not it has also ended) in accordance with sub-paragraph (2) is to be treated as if it had never begun (or ended).
- (6) In sub-paragraphs (4) and (5), “the cancellation deadline” means—
- (a) the beginning of the day one calendar month before the day (“the payment day”) on which the first payment under the Scheme is due to be made in relation to M’s remediable service, or
  - (b) such later time before the payment day as the Scheme manager considers reasonable in all the circumstances.

**Deferred choice decision to be made by a person other than M** **U.K.**

**15.**—(1) This paragraph applies where a person other than M is the deferred choice decision-maker.

- (2) A deferred choice decision may only be made during the period—
- (a) beginning on the date a remediable service statement is issued under paragraph 5(2)(c)(ii), and
  - (b) ending—
    - (i) at the end of the day 6 months after that date,
    - (ii) except where the Scheme manager is the deferred choice decision-maker, at such later time as the Scheme manager considers reasonable in all the circumstances, or
    - (iii) immediately after a deferred choice decision is made, if earlier than the time which applies under sub-paragraph (i) or (ii).
- (3) A deferred choice decision made by a person other than M is irrevocable.

**Deferred choice election: deemed section 10 election** **U.K.**

- 16.** Where—
- (a) the end of the section 10 election period in relation to M has passed, and

(b) no deferred choice decision has been made,

the Scheme manager may, if it seems reasonable in all the circumstances of the case, treat a section 10 election as having been made in relation to M's remediable service immediately before the end of the section 10 election period.

#### **Deferred choice decision: additional requirements** **U.K.**

17. Where the deferred choice decision-maker ("D") is a person other than the Scheme manager, a deferred choice decision is to be treated as having been made only if D provides the information specified in any written request from the Scheme manager that is—

- (a) information in D's possession, or
- (b) information which D can reasonably be expected to obtain.

## Part 4 **U.K.**

### Provision about AFPS 1975 Re-joiners

#### **Application and Interpretation of this Part** **U.K.**

18.—(1) This Part applies to or in respect of a remedy member ("R")—

- (a) who has at least one previous period of pensionable service in the AFPS 1975 ("earlier service") which ended before or during the remedy period,
- (b) who entered into further pensionable service, which was remediable service, under the AFPS 2015 ("re-joiner service") during the remedy period,
- (c) where, in relation to that re-joiner service met the criteria to be a transition member with continuity of service in relation to the earlier period of service under paragraph 2 of Schedule 3 to the AFPS 1975 at the point the pension under paragraph (d) came into payment,
- (d) where, immediately before 1st October 2023, a pension under paragraphs 15 to 17, 23 to 36 or 39 to 42A of Schedule 3 of the AFPS 1975 was in payment in respect of R's re-joiner service, and
- (e) where the relevant Chapter 1 legacy scheme under which R's re-joiner service is pensionable is this Scheme.

(2) References in this Part to R's earlier service are to the qualifying and reckonable service under the AFPS 1975 in respect of which the pension in paragraph (1)(d) is payable.

#### **Effect of a section 6 election** **U.K.**

19.—(1) This paragraph applies where an immediate choice decision under paragraph 9(1)(a) (a section 6 election) is made in respect of R's remediable service.

(2) For the purposes of calculating the benefits payable to, or in respect of, R in relation to R's re-joiner service—

- (a) R is treated as though they were a transition member with continuity of service within the meaning of paragraph 2 of Schedule 3 to the AFPS 1975, and
- (b) Chapter 3 of Part 7 of Schedule 4 to the AFPS 1975 (remediable service) applies for the purposes of determining benefits payable in respect of R's re-joiner service.

(3) The section 6 election is treated as a notice under rule G.4(2) of Schedule 1 to aggregate R's earlier service under the AFPS 1975 with R's remediable service in this Scheme.

(4) Where a pension is payable to R under this paragraph and R dies, the provisions of this Part apply in relation to any benefits that may be payable following R's death.

## Part 5 **U.K.**

### Provision about divorce and dissolution arrangements

#### Chapter 1 **U.K.**

##### Pension Credit and Debit Members

###### *Section 1*

###### *Application and Interpretation of Chapter 1*

#### **Application and interpretation of Chapter 1 **U.K.****

**20.**—(1) This Chapter applies in relation to—

- (a) a pension credit member (“C”),
- (b) the corresponding pension debit member (“D”), and
- (c) the pension sharing order by virtue of which C became a pension credit member in relation to D's remediable service (the “relevant pension sharing order”).

(2) In this Chapter—

“appropriate amount” means an amount calculated for the purposes of section 29(1) of WRPA 1999;

“cash equivalent” means an amount calculated in accordance with regulations made under section 30 of WRPA 1999;

“corresponding pension debit member” means a member of this Scheme with remediable service (whether or not by virtue of section 2(1) of PSPJOA 2022) whose benefits, or future benefits, under the Scheme are subject to a pension debit;

“legacy remediable appropriate amount” means the appropriate amount in relation to D's remediable relevant benefits, determined as if those remediable relevant benefits had been secured in this Scheme immediately before the transfer day;

“pension credit account” means a pension credit member account in this Scheme or the reformed scheme by virtue of the relevant pension sharing order;

“pension credit member” means a member of this Scheme who has rights under the Scheme—

- (a) which are attributable (directly or indirectly) to a pension credit,
- (b) which arise by virtue of a pension sharing order with a transfer day on or after 1st April 2015, and
- (c) the value of which was determined (to any extent) by reference to the value of benefits payable in respect of the remediable service of another member;

“pension information” means information provided by the Scheme manager under regulations 2, 3 or 4 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000;

“pension sharing order” means the order or provision by virtue of which section 29 of WRPA 1999 applies in relation to a pension credit member and the corresponding pension debit member;

**Changes to legislation:** There are currently no known outstanding effects for the *The Armed Forces Pension Scheme Order 2005*. (See end of Document for details)

“reformed remediable appropriate amount” means the appropriate amount in relation to D’s remediable relevant benefits, determined as if those remediable relevant benefits had been secured in the reformed scheme immediately before the transfer day;

“remediable relevant benefits” means the benefits or future benefits described in section 29(4) and (5) of WRPA 1999 to which D is entitled by virtue of remediable shareable rights;

“remediable shareable rights” means D’s shareable rights secured by virtue of D’s remediable service during the period beginning on 1st April 2015 and ending on the earlier of—

- (a) the day before the transfer day, or
- (b) the last day of D’s remediable service;

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

“transfer day” means the day on which the relevant pension sharing order takes effect;

“valuation day” has the meaning given in section 29(7) of WRPA 1999.

(3) In this Chapter, where the Scheme manager is required to determine an amount, this must be done—

- (a) as soon as reasonably practicable, and
- (b) with regard to the advice of the Scheme actuary.

(4) In this Chapter, a reference to benefits secured in “this Scheme” or the “legacy scheme”, means benefits secured under the rules in Schedules 1 and 2 to this instrument.

## *Section 2*

### *Pension sharing orders: information provided before 1st October 2023*

#### **Application and interpretation of Section 2** U.K.

**21.** This Section applies where the most recent pension information in respect of D’s remediable service was provided by the Scheme manager before 1st October 2023.

#### **Information before 1st October 2023: unprotected member, AFPS 2005 only** U.K.

**22.**—(1) This paragraph applies where—

- (a) D was a transition member with continuity of service on or before 31st March 2022, and
- (b) the relevant pension sharing order applies only to shareable rights under this Scheme, or to shareable rights under this Scheme and any other Chapter 1 legacy schemes.

(2) For the purposes of determining the pension debit under section 29(1)(a) of WRPA 1999 or the pension credit under section 29(1)(b) of WRPA 1999, D’s shareable rights do not include any rights secured by pensionable service on or after 1st April 2015.

#### **Information and transfer day before 1st October 2023: protected members** U.K.

**23.**—(1) This paragraph applies—

- (a) where D was a full protection member of this Scheme before 1st April 2022,
- (b) where the transfer day in relation to a relevant pension sharing order was before 1st October 2023, and
- (c) whether or not C has a pension credit account in the reformed scheme under the relevant pension sharing order.

(2) The Scheme manager must determine—



- (a) the initial appropriate amount;
  - (b) the remediable appropriate amount.
- (3) The “initial appropriate amount” means the appropriate amount determined for the purposes of section 29(2) or (3) of WRPA 1999 in relation to D’s remediable shareable rights in this Scheme.
- (4) The remediable appropriate amount is the greater of—
- (a) the initial appropriate amount;
  - (b) the reformed remediable appropriate amount.
- (5) Where the remediable appropriate amount is greater than the initial appropriate amount, C’s pension credit account is subject to an adjustment (a “remediable credit adjustment”) equal to the difference.
- (6) The Scheme manager must, as soon as reasonably practicable, provide C with a statement setting out—
- (a) the initial appropriate amount,
  - (b) the reformed remediable appropriate amount,
  - (c) the remediable appropriate amount,
  - (d) the remediable credit adjustment, if any, and
  - (e) where paragraph 26(4) applies in relation to C, an explanation of the request that may be made in accordance with paragraph 26(5) and the consequences of making, or not making, such a request.
- (7) In determining the remediable appropriate amount for the purposes of sub-paragraph (4), the percentage value for the purposes of section 29(2) WRPA 1999 is the percentage specified in the relevant pension sharing order in relation to this Scheme.
- (8) Where the relevant pension sharing order specifies an amount to be transferred, the Scheme manager must—
- (a) calculate the percentage (the “implied percentage”) that the amount to be transferred represented of the cash equivalent, on the valuation day, of all D’s shareable rights under this Scheme immediately before the transfer day;
  - (b) determine the reformed remediable appropriate amount for the purposes of section 29(3) of WRPA 1999 by applying the implied percentage to the cash equivalent, on the valuation day, of the remediable relevant benefits as if they had been secured in the reformed scheme.

**Information and transfer day before 1st October 2023: unprotected members** **U.K.**

- 24.—**(1) This paragraph applies where—
- (a) D was a transition member with continuity of service before 1st April 2022,
  - (b) the transfer day in relation to a relevant pension sharing order was before 1st October 2023, and
  - (c) C has a pension credit account in the reformed scheme under the relevant pension sharing order.
- (2) The Scheme manager must determine—
- (a) the initial appropriate amount;
  - (b) the remediable appropriate amount.
- (3) The “initial appropriate amount” means the appropriate amount determined, on the valuation day, for the purposes of section 29(2) or (3) of WRPA 1999 in relation to D’s remediable shareable rights on the transfer day in the reformed scheme.

- (4) The remediable appropriate amount is the greater of—
- (a) the legacy remediable appropriate amount;
  - (b) the initial appropriate amount.
- (5) Where the remediable appropriate amount is greater than the initial appropriate amount, C's pension credit account is subject to an adjustment (a "remediable credit adjustment") equal to the difference.
- (6) The Scheme manager must, as soon as reasonably practicable, provide C with a statement setting out—
- (a) the initial appropriate amount,
  - (b) the legacy remediable appropriate amount,
  - (c) the remediable appropriate amount,
  - (d) the remediable credit adjustment, if any, and
  - (e) where paragraph 26(4) applies in relation to C, an explanation of the request that may be made in accordance with paragraph 26(5) and the consequences of making, or not making, such a request.
- (7) In determining the legacy remediable appropriate amount for the purposes of subparagraph (4), the percentage value for the purposes of section 29(2) WRPA 1999 is the percentage value specified in the relevant pension sharing order in relation to the reformed scheme.
- (8) Where the relevant pension sharing order specifies an amount to be transferred, the Scheme manager must—
- (a) calculate the percentage (the "implied percentage") that the amount to be transferred represented of the cash equivalent of D's shareable rights under the reformed scheme on the valuation day;
  - (b) determine the legacy remediable appropriate amount for the purposes of section 29(3) of WRPA 1999 by applying the implied percentage to the cash equivalent of the remediable relevant benefits on the valuation day as if they had been secured in this Scheme.

**Information before 1st October 2023: transfer day after 1st October U.K.**

- 25.—**(1) This paragraph applies—
- (a) where the transfer day in relation to a relevant pension sharing order is on or after 1st October 2023, and
  - (b) whether or not the relevant pension sharing order also makes provision in relation to the reformed scheme for an appropriate amount to be transferred to C.
- (2) The Scheme manager must determine the remediable appropriate amount.
- (3) The remediable appropriate amount is the greater of the following amounts—
- (a) the legacy remediable appropriate amount;
  - (b) the reformed remediable appropriate amount.
- (4) The Scheme manager must transfer the legacy remediable appropriate amount to C's pension credit account in this Scheme.
- (5) Where the remediable appropriate amount is greater than the legacy remediable appropriate amount, C's pension credit account is subject to an adjustment (a "remediable credit adjustment") equal to the difference.
- (6) The Scheme manager must, as soon as reasonably practicable, provide C with a statement setting out—

- (a) the legacy remediable appropriate amount,
  - (b) the reformed remediable appropriate amount,
  - (c) the remediable appropriate amount,
  - (d) the remediable credit adjustment, if any, and
  - (e) where paragraph 26(4) applies in relation to C, an explanation of the request that may be made in accordance with paragraph 26(5) and the consequences of making, or not making, such a request.
- (7) In determining the remediable appropriate amount for the purposes of sub-paragraph (4), the percentage value for the purposes of section 29(2) WRPA 1999 is—
- (a) where the relevant pension sharing order specifies a percentage value in relation to this Scheme only, that percentage value;
  - (b) where the relevant pension sharing order specifies different percentage values in relation to this Scheme and the reformed scheme, the percentage value that is specified for the pension Scheme under which remediable relevant benefits were accrued, disregarding the effect of section 2(1) of PSPJOA 2022.
- (8) Where the relevant pension sharing order specifies an amount to be transferred, the Scheme manager must—
- (a) calculate the percentage (the “implied percentage”) that the initial appropriate amount represented of the cash equivalent of D’s shareable rights on the valuation day—
    - (i) as if they had been secured in this Scheme, where D was a full protection member before 1st April 2022, or
    - (ii) as if they had been secured in the reformed scheme, where D was a transition member with continuity of service before 1st April 2022;
  - (b) determine the legacy remediable appropriate amount for the purposes of section 29(3) of WRPA 1999 by applying the implied percentage to the cash equivalent of the remediable relevant benefits as if they had been secured in this Scheme on the valuation day;
  - (c) determine the reformed remediable appropriate amount for the purposes of section 29(3) of WRPA 1999 by applying the implied percentage to the cash equivalent of the remediable relevant benefits as if they had been secured in the reformed scheme on the valuation day.

**Information provided before 1st October 2023: applying a remediable credit adjustment U.K.**

**26.**—(1) This paragraph applies where C’s pension credit account is subject to a remediable credit adjustment in accordance with paragraphs 23(5), 24(5) or 25(5).

(2) The Scheme manager must adjust C’s pension credit account by an amount equal to the remediable credit adjustment.

(3) An adjustment made under sub-paragraph (2) has effect as if it had been made on the transfer day.

(4) Where C has a pension credit in the reformed scheme by virtue of the relevant pension sharing order, C may request that the value of the remediable credit adjustment is instead credited to C’s pension credit account in the reformed scheme.

(5) A request under sub-paragraph (4) must—

- (a) be made by C in writing to the Scheme manager,
- (b) be in a form determined by the Scheme manager,
- (c) unambiguously identify C’s pension credit account in the reformed pension scheme, and

- (d) be received by the Scheme manager by—
  - (i) the end of the day twelve months after the date on which the statement required by paragraphs 23(6), 24(6) or 25(6) was sent to C, or
  - (ii) the end of such later day that the Scheme manager considers reasonable in all the circumstances.
- (6) A request made in accordance with sub-paragraph (5) is irrevocable.
- (7) Section 14(3) to (6) of PSPJOA 2022 applies in relation to C as it applies in relation to a member described in section 14(1) as if—
  - (a) a reference to D’s remediable service in an employment or office were a reference to C’s pension credit;
  - (b) a reference to the effect, if any, of sections 2(1) and 6(4) were a reference to the effect, if any, of this paragraph;
  - (c) the term “operative time” means the time at which the adjustment mentioned in sub-paragraph (2) is made (disregarding sub-paragraph (3)).

**Information provided before 1st October 2023: immediate choice – pension debit information** **U.K.**

- 27.**—(1) This paragraph applies where D is an immediate choice member of this Scheme or of the EDP 2005 Scheme where—
- (a) D’s remediable relevant benefits under this Scheme are subject to a pension debit by virtue of a relevant pension sharing order,
  - (b) an immediate choice decision has not been made or treated as made under this Schedule or the Schedule to the EDP 2005 Order in relation to D’s remediable service, and
  - (c) paragraph 22 does not apply.
- (2) The Scheme manager must determine the appropriate amount under section 29(1)(a) of WRPA 1999 in relation to D’s remediable relevant benefits—
- (a) as if those remediable relevant benefits had been secured in this Scheme on the transfer day (“legacy remediable reduction amount”), and
  - (b) as if those remediable relevant benefits had been secured in the reformed scheme on the transfer day (“reformed remediable reduction amount”).
- (3) For the purposes of sub-paragraph (2) the Scheme manager must have regard to—
- (a) the remediable relevant benefits on the valuation day as if they had been remediable relevant benefits secured—
    - (i) in this Scheme on the transfer day, for sub-paragraph (2)(a);
    - (ii) in the reformed scheme on the transfer day, for sub-paragraph (2)(b),
  - (b) the percentage value or the amount to be transferred specified in the relevant pension sharing order in relation to the pension Scheme in which remediable relevant benefits were accrued, disregarding the effect of section 2(1) of PSPJOA 2022, and
  - (c) the provisions of sections 29 and 31 of WRPA 1999.

**Information provided before 1st October 2023: immediate choice – pension debit adjustment** **U.K.**

- 28.**—(1) This paragraph applies where—
- (a) D was an immediate choice member to whom paragraph 27 applied, and

- (b) an immediate choice decision is subsequently made or treated as made under this Schedule or the Schedule to the EDP 2005 Order in relation to D's remediable service.

(2) The Scheme manager must adjust D's pension account in respect of D's remediable relevant benefits so that it is subject to a debit of the reformed remediable reduction amount where an immediate choice decision is made or treated as having been made in relation to D's remediable service under—

- (a) paragraph 9(1)(a) of this Schedule, or
- (b) paragraph 7(1)(a) of the Schedule to the EDP 2005 Order.

(3) The Scheme manager must adjust D's pension account in respect of D's remediable relevant benefits so that it is subject to a debit of the legacy remediable reduction amount where an immediate choice decision is made or treated as having been made in relation to D's remediable service under—

- (a) paragraph 9(1)(b) of this Schedule, or
- (b) paragraph 7(1)(b) of the Schedule to the EDP 2005 Order.

**Information provided before 1st October 2023: deferred choice – pension debit U.K.**

**29.**—(1) This paragraph applies where D is a deferred choice member of this Scheme where—

- (a) D's remediable relevant benefits under this Scheme are subject to a pension debit by virtue of a relevant pension sharing order,
- (b) a deferred choice decision has not been made or treated as made under this Schedule or the Schedule to the EDP 2005 Order in relation to D's remediable service, and
- (c) paragraph 22 does not apply.

(2) The Scheme manager must determine the appropriate amount under section 29(1)(a) of WRPA 1999 in relation to D's remediable relevant benefits—

- (a) as if those remediable relevant benefits had been secured in this Scheme on the transfer day ("legacy remediable reduction amount"), and
- (b) as if those remediable relevant benefits had been secured in the reformed scheme on the transfer day ("reformed remediable reduction amount").

(3) The Scheme manager must adjust D's pension account so that it is subject to a debit of the legacy remediable reduction amount in respect of D's remediable relevant benefits.

(4) For the purposes of sub-paragraph (2) the Scheme manager must have regard to—

- (a) the remediable relevant benefits on the valuation day as if they had been remediable relevant benefits secured—
  - (i) in this Scheme on the transfer day, for sub-paragraph (2)(a);
  - (ii) in the reformed scheme on the transfer day, for sub-paragraph (2)(b),
- (b) the percentage value or the amount to be transferred specified in the relevant pension sharing order in relation to the pension scheme in which remediable relevant benefits were accrued, disregarding the effect of section 2(1) of PSPJOA 2022, and
- (c) the provisions of sections 29 and 31 of WRPA 1999.

**Information provided before 1st October 2023: deferred choice member – pension debit adjustment U.K.**

**30.**—(1) This paragraph applies where—

- (a) D was a deferred choice member to whom paragraph 29 applied, and

- (b) a deferred choice decision is subsequently made or treated as made under this Schedule or the Schedule to the EDP 2005 Order in relation to D's remediable service.
- (2) The Scheme manager must adjust D's pension account in respect of D's remediable relevant benefits so that it is subject to a debit of the reformed remediable reduction amount determined under paragraph 29 where a deferred choice decision is made or treated as having been made in relation to D's remediable service under—
  - (a) paragraph 13(1)(a) of this Schedule;
  - (b) paragraph 10(1)(a) of the Schedule to the EDP 2005 Order.
- (3) An adjustment under sub-paragraph (2) above takes effect as if it had been made on the transfer day.

### Section 3

#### Information provided on or after 1st October 2023

#### **Application and interpretation of Section 3** U.K.

**31.** This Section applies where, on or after 1st October 2023, the Scheme manager provides pension information in respect of D's remediable service.

#### **Information provided on or after 1st October 2023: pension information** U.K.

**32.—**(1) This paragraph applies where no immediate choice decision or deferred choice decision under the provisions of this Schedule or the Schedule to the EDP 2005 Order has been made in relation to D's remediable service before the Scheme manager provided the pension information.

- (2) For the purpose of providing the pension information, the Scheme manager must determine—
  - (a) the cash equivalent of D's remediable rights as if those remediable rights were secured in this Scheme, and
  - (b) the cash equivalent of those rights as if they were secured in the reformed scheme.

(3) The value of D's remediable rights for the purposes of section 23 of WRPA 1999 is the greater of those rights.

#### **Information provided on or after 1st October 2023: calculation of pension credits** U.K.

**33.—**(1) This paragraph applies where the Scheme manager must determine an appropriate amount for the purposes of section 29 of WRPA 1999.

- (2) For the purpose of calculating the appropriate amount, the Scheme manager must determine—
  - (a) the cash equivalent of D's remediable relevant benefits on the valuation day as if those remediable relevant benefits were in this Scheme ("the legacy scheme cash equivalent"), and
  - (b) the cash equivalent of those benefits on the valuation day as if they were in the reformed scheme ("the reformed scheme cash equivalent").
- (3) For the purpose of calculating the pension credit, the Scheme manager must use the greater of—
  - (a) the legacy scheme cash equivalent;
  - (b) the reformed scheme cash equivalent.

### **Information provided on or after 1st October 2023: pension debit** U.K.

34.—(1) This paragraph applies where—

- (a) where an appropriate amount must be determined for the purposes of section 29(1)(a) of WRPA 1999, and
- (b) no immediate choice decision under paragraph 9(1)(a) or deferred choice decision under paragraph 13(1)(a) has been made or treated as being made in relation to D’s remediable service under this Schedule or similar provisions in the Schedule to the EDP 2005 Order.

(2) The Scheme manager must determine the appropriate amount in relation to D’s remediable relevant benefits—

- (a) as if those remediable relevant benefits had been secured in this Scheme on the transfer day (“legacy remediable reduction amount”), and
- (b) as if those remediable relevant benefits had been secured in the reformed scheme on the transfer day (“reformed remediable reduction amount”).

(3) Where D is a deferred choice member, the Scheme manager must adjust D’s remediable relevant benefits by the legacy remediable reduction amount.

(4) An adjustment under sub-paragraph (3) takes effect as if it had been on the transfer day.

### **Information provided on or after 1st October 2023: pension debit adjustment** U.K.

35.—(1) This paragraph applies where—

- (a) D’s remediable relevant benefits are subject to a pension debit by virtue of a relevant pension sharing order, and
- (b) an immediate choice decision under paragraph 9(1)(a) or a deferred choice decision under paragraph 13(1)(a) is made or treated as being made under this Schedule or the relevant provisions of the Schedule to the EDP 2005 Order in relation to D’s remediable service.

(2) The Scheme manager must determine the appropriate amount under section 29(1)(a) of WRPA 1999 in relation to D’s remediable relevant benefits as if those remediable relevant benefits had been secured in the reformed scheme on the transfer day.

(3) The Scheme manager must adjust D’s pension account to reflect the appropriate amount determined under sub-paragraph (2) in respect of D’s remediable relevant benefits.

(4) An adjustment under sub-paragraph (3) takes effect as if it had been on the transfer day.

(5) For the purposes of sub-paragraph (2), the Scheme manager must have regard to—

- (a) the remediable relevant benefits on the valuation day as if they had been remediable relevant benefits secured in the reformed scheme on the transfer day,
- (b) the percentage value or the amount to be transferred specified in the relevant pension sharing order, and
- (c) the provisions of sections 29 and 31 of WRPA 1999.

## Chapter 2 U.K.

Arrangements on divorce, annulment or dissolution other than a pension sharing order

### **Arrangements other than a pension sharing order: calculating the value of pension benefits** U.K.

36.—(1) This paragraph applies where—

*Changes to legislation:* There are currently no known outstanding effects for the  
The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

- (a) the value of the remediable rights of a member (“M”) must be determined for the purpose of proceedings connected to M’s divorce, annulment or the dissolution of M’s civil partnership,
  - (b) the divorce, annulment or dissolution is to take effect—
    - (i) on or after 1st October 2023, and
    - (ii) before the earlier of—
      - (aa) a decision taking effect in relation to M’s remediable service, or
      - (bb) the end of the relevant election period, and
  - (c) the value of M’s remediable rights is not to be subject to a pension sharing order.
- (2) The value of M’s remediable rights for the purpose of the proceedings is the greater of those rights valued by the Scheme manager, having regard to the advice of the Scheme actuary, as if they were—
- (a) secured in M’s legacy scheme, or
  - (b) secured in the reformed scheme.
- (3) In this paragraph—
- “decision” means an immediate choice decision or a deferred choice decision;
- “pension sharing order” means an order or provision which attracts section 29 of WRPA 1999 in relation to M’s remediable rights;
- “relevant election period” means, where M is—
- (a) a deferred choice member, the section 10 election period in relation to M;
  - (b) an immediate choice pensioner member, the section 6 election period in relation to M;
- “remediable rights” means the rights secured by virtue of M’s remediable service.

## Part 6 U.K.

### Voluntary Contributions

#### Chapter 1 U.K.

##### General

#### Application of this Part U.K.

37. This Part applies to a remedy member (“M”) who—
- (a) is not a deceased member, and
  - (b) was, immediately before 1st April 2022, not a full protection member of the AFPS 2005 within the meaning of Part 2 of Schedule 2.

#### Chapter 2 U.K.

##### Remedial arrangements to pay voluntary contributions to the legacy scheme

#### Remedial arrangements: additional reckonable service U.K.

38.—(1) M may enter into a remedial voluntary contributions arrangement to pay contributions for additional reckonable service in accordance with rule C.1 (member’s option to pay contributions to increase service) of Schedule 1.



- (2) M may only enter into such an arrangement—
- (a) if the Scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule, M would, during the period of M's remediable service, have entered into the same or a similar arrangement,
  - (b) before—
    - (i) the end of the period of one year beginning with the day on which a remediable service statement is first provided to M, or
    - (ii) such later time as the Scheme manager considers reasonable in all the circumstances, and
  - (c) after an application made in accordance with paragraph 39 is approved by the Scheme manager.
- (3) Additional reckonable service purchased under rule C.1 (whether or not by virtue of this paragraph) is not remediable service under section 1 of PSPJOA 2022.

**Remedial arrangements: general** **U.K.**

- 39.**—(1) An application is made in accordance with this paragraph where—
- (a) it is in writing in a form and manner determined by the Scheme manager,
  - (b) it is accompanied by any information the Scheme manager reasonably requires to be provided for the purposes of—
    - (i) determining the matters mentioned in paragraph 38(2)(a);
    - (ii) complying with any requirements of the relevant rules in Part C of Schedule 1, and
  - (c) it is received by the Scheme manager—
    - (i) before the end of the period of 12 months beginning with the day on which a remediable service statement is first provided to M, or
    - (ii) such later time as the Scheme manager considers reasonable in all the circumstances.
- (2) The Scheme manager may treat an approved application made in accordance with subparagraph (1) as if it were a notice under rule C.1(2) of Schedule 1.
- (3) Where M enters into a remedial voluntary contributions arrangement, M owes to the Scheme manager an amount equal to—
- (a) the aggregate of the voluntary contributions which M would have owed had M entered into the remedial voluntary contributions arrangement at the time M would have entered into the same or a similar arrangement but for a relevant breach of a non-discrimination rule, less
  - (b) tax relief amounts calculated in accordance with direction 12(2) to (7) of the PSP Directions 2022.
- (4) Where a determination is made in accordance with direction 12(6) of the PSP Directions 2022, the following apply—
- (a) direction 12(8) (provision of explanation);
  - (b) direction 12(9) and (10) (appeals).
- (5) A remedial voluntary contributions arrangement entered into under this Chapter does not breach rule C.1(6) of Schedule 1 where the remedial voluntary contributions due under that arrangement in respect of any tax year would not have breached that rule had the remedial voluntary contributions been paid in that tax year.

## Chapter 3 **U.K.**

### Secondment/Loan

#### **Purchase of additional reckonable service in respect of period on loan **U.K.****

**40.**—(1) This paragraph applies where M has exercised both an option under rule C.6 (purchase of added years for members seconded to NATO or the UN etc) of Schedule 1 to this instrument and an option to preserve an entitlement to earned pension under regulation 97 of the AFP Regulations 2014 (members seconded to NATO or the UN etc) and—

- (a) both options were exercised on or before 30th September 2023,
- (b) the lump sum payable under C.6 is paid by M to the Scheme, and
- (c) any contribution under rule C6(4), calculated as at the date the option was exercised, is paid.

(2) Any entitlement to earned pension benefits in relation to M's remediable service preserved by the exercise of the option under regulation 97 of the AFP Regulations 2014 is extinguished, and that period of remediable service is treated as additional reckonable service under rule C.6 of Schedule 1.

(3) No liability for an additional contribution from the member or the Secretary of State arises as a result of the coming into force of section 2(1) of the 2022 Act.

(4) Additional reckonable service under rule C.6 (whether or not by virtue of this Schedule) is treated as remediable service within the meaning of section 1 of PSPJOA 2022 (and Chapter 1 of Part 1 of that Act, together with the provisions of this Schedule, apply accordingly).

## Part 7 **U.K.**

### Transfers

#### Chapter 1 **U.K.**

##### General

#### **Interpretation of Part 7 **U.K.****

**41.**—(1) In this Part—

“public sector transfer arrangements” has the meaning given in rule A.1(4) of Schedule 1;

“receiving scheme”, in relation to a remediable value, means the scheme to which the remediable value was, or is to be, paid;

“reformed public service pension scheme” means—

- (a) a Chapter 1 scheme;
- (b) a judicial scheme within the meaning of section 70(1) of PSPJOA 2022;
- (c) a local government scheme within the meaning of section 86(1) of PSPJOA 2022;

“remediable benefits” means the benefits payable to or in respect of a remedy member in relation to that member's remediable service;

“remediable club transfer value”, in relation to a member, means the payment or acceptance by the Scheme manager of a transfer value under Part F of Schedule 1 in accordance with the public sector transfer arrangements, in so far as the transfer value relates to the member's remediable rights;

“remediable rights”, in relation to a member, means the member’s rights to benefits under a reformed public service pension Scheme secured by virtue of the member’s remediable service;

“remediable transfer value”, in relation to a member, means the payment or acceptance by the Scheme manager of a transfer value under Part F of Schedule 1 which is not a remediable club transfer value;

“remediable value” means a remediable club transfer value or a remediable transfer value;

“sending scheme”, in relation to a remediable value, means the scheme which paid, or is to pay, the remediable value.

(2) Where a provision of this Part requires the Scheme manager to calculate a club transfer value or a transfer value (including a remediable club transfer value or a remediable transfer value) in relation to rights secured in a pension scheme, that value is to be calculated in accordance with—

- (a) the provisions of the pension scheme which apply to the calculation of values of that type, and
- (b) the guidance and tables provided for the purpose of calculating such values that were, or are, in use on the date used for the original calculation.

(3) For the purposes of this Part, any rule or condition in Part F of Schedule 1 or the public sector transfer arrangements relating to the time within which a transfer value payment must be made or accepted that would otherwise prevent any payments being made or accepted under this Part, is treated as complied with or met.

### **Transferred out remediable service statements** U.K.

**42.** Where a remedy member has transferred any rights in respect of remediable service out of the Scheme, the Scheme manager must provide a transferred out remediable service statement in accordance with direction 6(2) to (4) of the PSP Directions 2022 (and direction 6(4) applies as if the reference to “any provision made by virtue of section 29(1) of PSPJOA 2022” were a reference to paragraph 5).

## Chapter 2 U.K.

### Transfers on a cash equivalent basis

#### Section 4

#### *Transfers before 1st October 2023*

### **Transfers out before 1st October 2023** U.K.

**43.—**(1) This paragraph applies in relation to a member (“M”) in respect of whom the Scheme manager paid a remediable transfer value before 1st October 2023.

(2) The Scheme manager, having regard to the advice of the Scheme actuary, must calculate the transfer value of M’s remediable rights as if they were secured in—

- (a) this Scheme;
- (b) the reformed scheme.

(3) The Scheme manager must notify the receiving scheme of the results of the calculation mentioned in sub-paragraph (2).

(4) Where—

- (a) the greater of the amounts calculated under sub-paragraph (2) (“x”) is greater than
- (b) the amount of the remediable transfer value (“y”) paid before 1st October 2023,

the Scheme manager must take reasonable steps to pay the receiving scheme an amount (“the remediable amount”) equal to  $x - y$ .

(5) A payment made under sub-paragraph (4) is subject to the same conditions as the remediable transfer value.

(6) Where—

- (a) paragraph (4) applies, and
- (b) the scheme manager, having taken reasonable steps, is unable to make the payment required by that paragraph,

the scheme manager owes M or, where M is deceased, M’s personal representatives an amount by way of compensation equal to  $x - y$  (“the compensatable amount”) reduced in accordance with paragraph (7).

(7) Where, if the remediable amount was paid immediately after the requirement to pay it arose, the payment—

- (a) would be a payment described in regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009<sup>(31)</sup> (“the 2009 Regulations”) as if regulation 6(1)(a) of those Regulations were omitted, the remediable amount is to be reduced by the amount equal to the income tax that would be chargeable on it as if regulation 3(b) of the 2009 Regulations applied to it;
- (b) would not be a payment so described, the remediable amount is to be reduced by an amount equal to the income tax that would be charged on the amount if it were taxed as pension income under Part 9 of the Income Tax (Earnings and Pensions) Act 2003.

#### **Transfers in before 1st April 2022** U.K.

44.—(1) This paragraph applies in relation to each remediable transfer value in respect of a member (“M”) which was accepted by the Scheme manager during the remedy period.

(2) The Scheme manager, having regard to the advice of the Scheme actuary, must determine M’s remediable benefits as if the remediable transfer value together with any payment accepted under sub-paragraph (3) were applied in respect of rights in—

- (a) this Scheme;
- (b) the reformed scheme.

(3) Where the sending scheme was a reformed public service pension scheme, the Scheme manager may accept an additional payment representing an adjustment—

- (a) in respect of the remediable rights to which the remediable transfer value relates, and
- (b) which is made by the sending scheme pursuant to, or to provision made under, PSPJOA 2022.

(4) A payment accepted under sub-paragraph (3) is to be used for the purpose of determining M’s remediable benefits on the same terms as the remediable transfer value.

#### *Section 5*

#### *Transfers on or after 1st October 2023*

#### **Application of Section 5** U.K.

45. This Section applies in respect of a member (“M”) who is—

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(31) 1826 c. 16.

- (a) a deferred choice member, and no pension benefits have become payable in relation to M's remediable service under the AFPS 2005, or
- (b) an immediate choice member, where—
  - (i) the end of the section 6 election period has not passed in relation to M, and
  - (ii) no immediate choice decision under this Schedule or the Schedule to the EDP 2005 Order has been made in relation to M's remediable service.

### **Transfers out on or after 1st October 2023** U.K.

**46.**—(1) This paragraph applies to a remediable transfer value to be paid in relation to M by the Scheme manager on or after 1st October 2023.

(2) The Scheme manager, having regard to the advice of the Scheme actuary, must calculate the transfer value of M's remediable rights as if those rights had been in—

- (a) this Scheme;
- (b) the reformed scheme.

(3) The amount of the remediable transfer value is the greater of the amounts calculated under sub-paragraph (2).

## Chapter 3 U.K.

### Transfers on a club basis

#### Section 6

#### *Club transfers before 1st October 2023*

### **Club transfers out before 1st October 2023** U.K.

**47.**—(1) This paragraph applies in relation to a member ("M") in respect of whom the Scheme manager paid a remediable club transfer value before 1st October 2023.

(2) The Scheme manager must calculate the following amounts—

- (a) the transfer value of M's rights under the Scheme, in accordance with the public sector transfer arrangements, as if M's remediable rights had been secured in this Scheme;
- (b) the club transfer value of M's rights under the Scheme as if M's remediable rights had been secured in the reformed scheme.

(3) The Scheme manager must provide to the receiving scheme the result of the calculations mentioned in sub-paragraph (2).

(4) Where the receiving scheme is a local government scheme (within the meaning of section 86(1) of PSPJOA 2022), and—

- (a) the greater of the amounts calculated under sub-paragraph (2) ("x") is greater than
- (b) the amount of the remediable transfer value ("y"),

the Scheme manager must pay the receiving scheme an amount equal to  $x - y$ .

(5) A payment made under sub-paragraph (4) is subject to the same conditions as the remediable club transfer value.

### **Club transfers in before 1st October 2023** U.K.

**48.**—(1) This paragraph applies in relation to each remediable club transfer value in respect of a member ("M") which was accepted by the Scheme manager before 1st October 2023.

(2) The Scheme manager may accept an adjustment in the value of a remediable club transfer value—

- (a) in respect of the remediable rights to which the remediable club transfer value relates, and
- (b) which is made by the sending scheme pursuant to, or to provision made under, PSPJOA 2022.

(3) An adjustment accepted under sub-paragraph (2) is to be used for the purpose of determining M's remediable benefits on the same terms as the remediable club transfer value mentioned in sub-paragraph (1).

(4) The Scheme manager must determine M's remediable benefits as if the remediable club transfer value together with any adjustment accepted under sub-paragraph (2) were applied in respect of rights in—

- (a) this Scheme;
- (b) the reformed scheme.

#### *Section 7*

#### *Club transfers on or after 1st October 2023*

#### **Application of Section 7** **U.K.**

**49.** This Section applies in respect of a deferred choice member (“M”) where no pension benefits have become payable in relation to M's remediable service under the AFPS 2005.

#### **Club transfers out on or after 1st October 2023** **U.K.**

**50.**—(1) This paragraph applies in relation to a remediable club transfer value to be paid by the Scheme manager on or after 1st October 2023.

(2) The Scheme manager must calculate the following amounts—

- (a) the transfer value of M's rights under the Scheme, in accordance with the public sector transfer arrangements, as if M's remediable rights had been secured in the legacy scheme;
- (b) the club transfer value of M's rights under the Scheme as if M's remediable rights had been secured in the reformed scheme.

(3) The amount of the remediable club transfer value is the greater of the amounts calculated under sub-paragraph (2).

(4) The Scheme manager must provide to the receiving scheme the result of the calculations mentioned in sub-paragraph (2).

#### **Club transfers in on or after 1st October 2023** **U.K.**

**51.**—(1) This paragraph applies in relation to a remediable club transfer value which is accepted by the Scheme manager on or after 1st October 2023.

(2) The Scheme manager must determine M's remediable benefits as if the remediable club transfer value were applied in respect of rights in—

- (a) this Scheme;
- (b) the reformed scheme.

## Chapter 4 **U.K.**

### Transfers to and from the AFPS 2015

#### **Transfers out before 1st October 2023: AFPS 2015 **U.K.****

**52.**—(1) This paragraph applies where—

- (a) the Scheme manager for the reformed scheme paid a remediable transfer value in respect of a remedy member (“M”) before 1st October 2023, and
- (b) M’s remediable service is pensionable service under this Scheme by virtue of section 2(1) of PSPJOA 2022.

(2) The remediable transfer value in sub-paragraph (1)(a)—

- (a) is not, and is treated as never having been, paid by the reformed scheme, and
- (b) is treated as being, and as always having been, paid by this Scheme.

(3) In particular, paragraph (1) has effect—

- (a) for the purposes of determining which Scheme is (or at any time was) required to pay benefits to, or in respect of, the remediable transfer value in sub-paragraph (1)(a), and
- (b) for all other purposes.

(4) Paragraph 43 applies to a remediable transfer value which is treated as paid from this Scheme under this paragraph.

#### **Transfers in before 1st October 2023: AFPS 2015 **U.K.****

**53.**—(1) This paragraph applies where—

- (a) the Scheme manager for the reformed scheme accepted a remediable transfer value in respect of a remedy member (“M”) during the period of M’s remediable service, and
- (b) M’s remediable service is pensionable under this Scheme by virtue of section 2(1) of PSPJOA 2022.

(2) The remediable transfer value in sub-paragraph (1)(a)—

- (a) is not, and is treated as never having been, accepted into the reformed scheme, and
- (b) is treated as being, and as always having been, accepted into this Scheme.

(3) Paragraph (1) has effect—

- (a) for the purposes of determining which Scheme is (or at any time was) required to pay benefits to, or in respect of, the remediable transfer value in sub-paragraph (1)(a), and
- (b) subject to paragraph 55, for all other purposes.

(4) Paragraph 44 applies to a remediable transfer value which is treated as accepted into this Scheme under this paragraph.

#### **Club Transfers in before 1st October 2023: AFPS 2015 **U.K.****

**54.**—(1) This paragraph applies where, before 1st October 2023—

- (a) the Scheme manager for the reformed scheme accepted a remediable club transfer value in respect of a remedy member (“M”), and
- (b) M’s remediable service is pensionable under this Scheme by virtue of section 2(1) of PSPJOA 2022.

(2) The remediable club transfer value in sub-paragraph (1)(a)—

- (a) is not, and is treated as never having been, accepted into the reformed scheme, and
  - (b) is treated as being, and as always having been, accepted into this Scheme.
- (3) Paragraph (1) has effect—
- (a) for the purposes of determining which Scheme is (or at any time was) required to pay benefits to, or in respect of, the remediable transfer value in sub-paragraph (1)(a), and
  - (b) subject to paragraph 55, for all other purposes.
- (4) Paragraph 48 applies to a remediable club transfer value which is treated as accepted into this Scheme under this paragraph.

## Chapter 5 **U.K.**

### Treatment of transferred in remediable rights

#### **Treatment of rights secured by virtue of transferred in remediable rights **U.K.****

**55.**—(1) This paragraph applies where the Scheme manager has accepted a remediable value in relation to a remedy member (“M”).

(2) Sub-paragraph (3) applies where the Scheme manager has accepted payments to which paragraphs 53 or 54 apply.

(3) The Scheme manager must confer rights to benefits under Part F of Schedule 1 in relation to the remediable value that are equivalent to the rights that would have been secured if the remediable value had been transferred into this Scheme in the same relevant pension year in which the remedy period transfer value was accepted by the Scheme manager of the reformed scheme.

(4) Sub-paragraph (5) applies where—

- (a) the benefits payable to or in respect of M’s remediable service are reformed scheme benefits by virtue of an immediate choice decision under paragraph 9(1)(a) or a deferred choice decision under paragraph 13(1)(a) (including, in either case, a deemed election), and
- (b) the rights to benefits payable in relation to M’s remediable value would otherwise be legacy scheme benefits.

(5) Where this paragraph applies, the Scheme manager must—

- (a) have regard to the advice of the Scheme actuary where the remediable value is a remediable transfer value under paragraphs 44 or 53, together with any payment accepted under paragraph 44(3);
- (b) vary the value of those rights so that they are of an equivalent value to rights M would have secured under the reformed scheme if the remediable value had been transferred into that Scheme in the same relevant pension year that the remediable value was accepted.

(6) In this Chapter—

- (a) “relevant pension year” has the meaning given by direction 5(16)(c)(i) of the PSP Directions 2022.

#### **Benefits already paid in relation to transferred in remediable rights **U.K.****

**56.**—(1) Sub-paragraph (2) applies in relation to any benefits (“the paid benefits”) that the reformed scheme has at any time paid to a person (“P”) so far as—

- (a) they are calculated by reference to a remediable value, and
- (b) they are benefits that, as a result of paragraphs 53(2)(a) or 54(2)(a), P was not entitled to receive from the reformed scheme.



- (2) The paid benefits are to be treated for all purposes—
  - (a) as not having been paid to P by the reformed scheme, but
  - (b) as having been paid to P instead by this Scheme.

### **Pension benefits and lump sum benefits in relation to a remediable value** U.K.

57.—(1) This paragraph applies in relation to any benefits that have been paid in relation to a remediable value accepted in relation to an immediate choice member (“M”).

- (2) Where, at the operative time—
  - (a) the aggregate of benefits that (after taking into account the effect, if any, of paragraph 56) have been paid under the legacy scheme to any person (“the beneficiary”) in respect of the remediable value, exceeds
  - (b) the aggregate of the benefits to which (after taking into account the effect, if any, of paragraphs 53, 54 and 55 in relation to the rights) the beneficiary is entitled under the Scheme in respect of the remediable value,

the beneficiary must pay an amount equal to the difference to the Scheme.

- (3) Where, at the operative time—
  - (a) the amount mentioned in sub-paragraph (2)(a), is less than
  - (b) the amount mention in sub-paragraph (2)(b),

the Scheme manager must pay an amount equal to the difference to the beneficiary.

- (4) In this paragraph, “the operative time” means—
  - (a) if an immediate choice decision is made in relation to M’s remediable service, the time that the decision is made;
  - (b) otherwise, the end of the section 6 election period in relation to M.

## **Part 8** U.K.

### **Provision about special cases**

#### **Chapter 1** U.K.

##### **Child pensions in payment**

### **Protection of the amount of pension payable to an eligible child** U.K.

- 58.—(1) This paragraph applies where—
  - (a) a child pension is in payment to an eligible child (“E”) in respect of the remediable service of a deceased member (“M”),
  - (b) the eligible decision-maker specified in Part 10 makes an immediate choice decision or a deferred choice decision under the provisions of this Schedule or the Schedule to the EDP 2005 Order which would (disregarding this paragraph) result in a decrease in the rate of child pension payable to E in respect of M’s remediable service, and
  - (c) the eligible decision-maker does not live in the same household as E.
- (2) Where this paragraph applies—
  - (a) E does not owe the Scheme manager a liability under section 14(3) of PSPJOA 2022 in respect of the child pension, and

- (b) the rate of child pension continues to be the rate that was payable before the decision was made.
- (3) For the purposes of this paragraph—
  - (a) a child’s pension means—
    - (i) a pension under rule E.8 of Schedule 1;
    - (ii) a pension under regulation 72 of the AFP Regulations 2014.

## Chapter 2 **U.K.**

### Application of Schedule 2 (Transitional Provision for the AFPS 2005)

#### **Calculation of Benefits for remediable service: election for new Scheme benefits **U.K.****

**59.**—(1) This paragraph applies where a section 6 election or a section 10 election is made or treated as made in relation to a remedy member’s (“M”) remediable service under the provisions of this Schedule or the Schedule to the EDP 2005 Order.

(2) For the purposes of calculating the benefits due to, or in respect of, M in relation to their remediable service, M is treated though they were a transition member with continuity of service within the meaning of paragraph 2 of Schedule 2.

- (3) For these purposes—
  - (a) M’s transition date is taken to be 1st April 2015;
  - (b) the date on which M joined the AFPS 2015 is taken to be 1st April 2015, or if later, the date on which M first entered remediable service after that date;
  - (c) references to M’s pensionable service in the AFPS 2015 include M’s period of remediable service in the AFPS 2005;
  - (d) references to M’s reckonable service in the AFPS 2005 mean M’s reckonable service up to the end of 31st March 2015;
  - (e) where M died before 1st April 2022, references in the opening words of paragraphs 34, 35, 36 and 37 to M dying as a member of the AFPS 2015 include a case where M died as a member in pensionable service under the AFPS 2005 (whether or not by virtue of section 2(1) of PSPJOA 2022).

## Chapter 3 **U.K.**

### Abatement

#### **Abatement **U.K.****

- 60.**—(1) This paragraph applies—
  - (a) where an immediate choice decision or deferred choice decision is made in a case where the remedy member (“M”) is, or has been, re-engaged in new service within the meaning of rule H.1 of Schedule 1,
  - (b) as a result of that decision, the amount of M’s pension in respect of their remediable service has changed, and
  - (c) M’s pension is abated under Part H of Schedule 1.
- (2) The Scheme manager must—
  - (a) re-calculate the member’s old service pension, with effect from the date on which the member entered into the new service, and
  - (b) re-calculate the reduction amount under rule H.2.

(3) The pension which is reduced as a result of abatement does not include any amounts attributable to an immediate choice decision under paragraph 9(1)(a) or a deferred choice decision under paragraph 13(1)(a).

#### Chapter 4 **U.K.**

##### Death Benefits Nomination

#### **Nomination for Death Lump Sum Benefits** **U.K.**

**61.** Where a remedy member (“M”)—

- (a) had made a nomination under regulation 84 of the AFP Regulations 2014 before 1st October 2023, and
- (b) M did not subsequently make a nomination under rule E.21 of Schedule 1,

the nomination under regulation 84 of the AFP Regulations 2014 has effect as a nomination under rule E.21 of Schedule 1.

#### Chapter 5 **U.K.**

##### Medical and Dental Officers: AFPS 2005 Bonus Scheme

#### **MODO Bonus Scheme: effect of election for new Scheme benefits** **U.K.**

**62.**—(1) Where a remedy member (“M”)—

- (a) makes an immediate choice decision under paragraph 9(1)(a) or a deferred choice decision under paragraph 13(1)(a), and
- (b) had made a claim under the MODO Bonus Scheme in relation to a period which included their remediable service,

M must repay that proportion of any bonus payment which relates to M’s remediable service (“the overpaid bonus”) to the Scheme manager.

(2) The overpaid bonus is a relevant amount for the purposes of section 26(1)(b) of PSPJOA 2022 and Part 9 of this Schedule applies accordingly.

(3) In this paragraph—

“2014 DIN” means the Defence Information Notice, reference 2014DIN01-143 setting out the terms on which the MODO Bonus Scheme was closed to members who transitioned to the AFPS 2015, and the basis on which accrued rights to the bonus for service before the transition date would be calculated;

“MODO Bonus Scheme” means the scheme set out in the directed letter of 30th March 2006, entitled “Medical and Dental Officer (MO/DO) Bonuses”, setting out details of a bonus scheme for medical and dental officers who were, or were eligible to be, in pensionable service under the AFPS 2005, and amended by the 2014 DIN.

#### Chapter 6 **U.K.**

##### Scheme Pays

#### **Payment of annual allowance tax charge and provision of information** **U.K.**

**63.** Where a remedy member is unable to give an effective notice to the Scheme manager under section 237B(3) of FA 2004 in relation to an in-scope tax year (within the meaning of direction 7(7) of the PSP Directions 2022) because the time limit in section 237BA(2) has passed, direction 7(2) to (6) of the PSP Directions 2022 applies in relation to the remedy member.

## Part 9 **U.K.**

### Liabilities and payment

#### Chapter 1 **U.K.**

##### Application of Part 9

#### **Application of Chapters 1, 2 and 3 **U.K.****

**64.** Chapters 1, 2 and 3 apply in relation to a relevant amount owed in respect of the remediable service of a remedy member.

#### Chapter 2 **U.K.**

##### Interest, compensation and netting off

#### **Interest **U.K.****

**65.**—(1) The Scheme manager must calculate interest on a relevant amount described in direction 15 of the PSP Directions 2022 in accordance with the provisions of directions 14 and 15 which apply to that description of relevant amount.

(2) In relation to a relevant amount not described in direction 15 of the PSP Directions 2022, the Scheme manager must determine whether interest is paid and, if so, what rate of interest applies and how it is calculated.

(3) The following provisions of the PSP Directions 2022 apply in relation to a determination under sub-paragraph (2) as if it were a determination under direction 16(1) of those Directions—

- (a) direction 16(2) (provision of explanation);
- (b) direction 16(3) and (4) (appeals).

#### **Indirect compensation **U.K.****

**66.**—(1) This paragraph applies where pursuant to an application under paragraph 67, the Scheme manager determines that an immediate choice member (“M”) has incurred a compensatable loss that is a Part 4 tax loss (a “relevant loss”),

(2) M is not to be paid an amount under section 23 of PSPJOA 2022 by way of compensation in respect of the relevant loss.

(3) Instead, the amount of benefit payable under the Scheme is to be increased to reflect the amount of the relevant loss in such manner as determined by the Scheme manager in accordance with direction 10(2) to (4) of the PSP Directions 2022.

#### **Applications for compensation or indirect compensation **U.K.****

**67.**—(1) This paragraph applies in relation to—

- (a) the payment of a relevant amount by way of compensation under section 23(1) of PSPJOA 2022;
- (b) the increase of benefits by way of indirect compensation under paragraph 66.

(2) The relevant amount is not payable, or (as the case may be) the benefits are not to be increased, except where—

- (a) an application is made in accordance with direction 18(1) and (2) of the PSP Directions 2022,

- (b) the application is accompanied by such information that the Scheme manager may by written notice require the person making the application (“P”) to provide in relation to the proposed compensation which is—
    - (i) information within P’s possession, or
    - (ii) information which P may reasonably be expected to obtain, and
  - (c) the Scheme manager makes a determination in accordance with direction 18(3) of those Directions.
- (3) The following apply in relation to a determination under direction 18(3) of the PSP Directions 2022—
- (a) direction 18(4) (provision of explanation);
  - (b) direction 18(5) and (6) (appeals).

**Netting off U.K.**

- 68.**—(1) This paragraph applies where—
- (a) relevant amounts owed by and to a person (“P”) fall to be paid at the same time or similar times, and
  - (b) the Scheme manager has determined the interest (if any) that is to be paid on the relevant amounts in accordance with paragraph 65.
- (2) The Scheme manager may determine, in accordance with direction 19(2) to (5) of the PSP Directions 2022, that the relevant amounts (and any interest on them) must be aggregated and that the difference must be paid by P to the Scheme or (as the case may be) by the Scheme to P.
- (3) For the purposes of this paragraph, an amount owed by P under the rules of a relevant injury and compensation Scheme is treated as a relevant amount owed by P to this Scheme, where P’s liability arose by virtue of the operation of the provisions of Chapter 1 of Part 1 of PSPJOA 2022.
- (4) The following provisions of the PSP Directions 2022 apply in relation to a determination under sub-paragraph (2) as if it were a determination under direction 19(1) of those Directions—
- (a) direction 19(6) (provision of explanation);
  - (b) direction 19(7) and (8) (appeals).

**Chapter 3 U.K.**

**Reduction and waiver of liabilities**

**Power to reduce or waive amounts owed by a person to the Scheme manager U.K.**

- 69.**—(1) The Scheme manager may reduce or waive an amount owed by a person to the Scheme under—
- (a) section 14 of PSPJOA 2022, or
  - (b) this Schedule.
- (2) When reducing or waiving an amount under sub-paragraph (1), the Scheme manager must comply with the requirements set out in direction 4(1)(a) to (c) of PSP Directions 2022 (and the reference in direction 4(1)(c) to “any Scheme regulations made by virtue of section 26(1)(b) of PSPJOA 2022” is to be read as a reference to paragraph 71).

**Chapter 4** U.K.

## Payment of net liabilities

**Application of Chapter 4** U.K.

**70.** This Chapter applies in respect of a relevant amount (together with any interest on that relevant amount) owed after taking into account the effect, if any, of paragraphs 65 to 69 (a “net liability”).

**Payment of amounts owed to the Scheme manager** U.K.

- 71.**—(1) This paragraph applies where a person (“P”) owes a net liability to the Scheme manager.
- (2) The Scheme manager must send notice in writing to P setting out—
- (a) how the net liability has been calculated,
  - (b) an explanation of the circumstances in which the net liability may be reduced or waived under paragraph 69,
  - (c) when and how the net liability must be paid, and
  - (d) the consequences of not paying the net liability.
- (3) Where—
- (a) the Scheme manager has sent a notice under sub-paragraph (2), and
  - (b) the amount of the net liability is subsequently adjusted,
- the Scheme manager must send another notice in writing to P under sub-paragraph (2).
- (4) P must pay the amount of the net liability to the Scheme manager—
- (a) before the end of the period of six months beginning with the day after the day on which P receives the most recent notice under sub-paragraph (2), or
  - (b) in accordance with an agreement under sub-paragraph (5).
- (5) P and the Scheme manager may agree that the net liability is to be paid in part or in full—
- (a) by way of instalments, or
  - (b) by way of deductions from any benefits (including a lump sum benefit) to which P is entitled under an armed forces pension scheme.
- (6) P and the Scheme manager may agree to vary an agreement under sub-paragraph (5).
- (7) Where P does not pay any amount that falls due by virtue of sub-paragraph (4)(a) or an agreement under sub-paragraph (5), the Scheme manager may deduct such sums from benefits payable to P under an armed forces pension scheme as seem reasonable to the Scheme manager for the purpose of discharging P’s liability.

**Payment of amounts owed to a person** U.K.

- 72.**—(1) This paragraph applies where the Scheme manager owes a net liability to a person (“P”).
- (2) The Scheme manager must pay the amount of the net liability to P—
- (a) as soon as reasonably practicable after the Scheme manager determines the amount of the net liability, or
  - (b) where the Scheme manager requires P to provide information in accordance with sub-paragraph (3), as soon as reasonably practicable after receipt of that information.
- (3) Before paying the amount of a net liability owed to P, the Scheme manager may, by written notice given as soon as reasonably practicable after the Scheme manager determines the amount

of the net liability, require P to provide information in relation to the payment of the net liability which is—

- (a) information within P’s possession, or
- (b) information which P may reasonably be expected to obtain.

## Part 10 **U.K.**

### Eligible decision-makers for deceased members

#### **Application and Interpretation of this Part **U.K.****

**73.**—(1) This Part applies where a remedy member (“M”) has died and an eligible decision-maker is required to make a decision or election under this Schedule.

(2) In this Part—

“adult” means—

- (a) in England and Wales, and Northern Ireland, a person over the age of 18;
- (b) in Scotland, a person over the age of 16;

“beneficiary” means a person who has become entitled to receive any death benefit;

“child”, except in the term “eligible child”, means—

- (a) in England and Wales, and Northern Ireland, a person under the age of 18;
- (b) in Scotland, a person under the age of 16;

“death benefit” means a benefit payable under Part E of Schedule 1 or Part 6 of the AFP Regulations 2014 in relation to the death of a member;

“guardian” means a person with parental responsibility for a child, and where there is more than one person with parental responsibility for a child, the person with whom the child usually resides;

“personal representative” means the person or persons named in the—

- (a) Grant of Probate, or
- (b) Grant of Letters of Administration, or
- (c) Confirmation

issued in respect of M’s estate;

“surviving adult” means—

- (a) a surviving spouse,
- (b) a surviving civil partner, or
- (c) a surviving adult dependant within the meaning of regulation 67 of the AFP Regulations 2014.

(3) In this Part, a reference to—

- (a) a beneficiary is a reference to a beneficiary of death benefits in relation to M’s remediable service;
- (b) an eligible child is a reference to an eligible child of M;
- (c) a surviving adult is a reference to a surviving adult in relation to M.

**Sole beneficiary: an adult** U.K.

74. Where a person is—
- (a) the sole beneficiary, and
  - (b) an adult,

the eligible decision-maker is that person.

**Sole beneficiary: a child** U.K.

75. Where a person (“C”) is—
- (a) the sole beneficiary, and
  - (b) a child

the eligible decision-maker is C’s guardian.

**Sole beneficiary: M’s estate** U.K.

76. Where M’s estate is the sole beneficiary, the eligible decision-maker is—
- (a) M’s personal representative;
  - (b) where M has no personal representative, the Scheme manager.

**Sole beneficiary: a body** U.K.

77. Where a body (corporate or unincorporate) is the sole beneficiary, the eligible decision-maker is—

- (a) M’s personal representative, or
- (b) where M has no personal representative, the Scheme manager.

**Multiple beneficiaries: including a surviving adult** U.K.

78. Where—
- (a) two or more adults are the only beneficiaries, and
  - (b) one of those adults is a surviving adult (“A”),

the eligible decision-maker is A.

**Multiple beneficiaries: including adult eligible children** U.K.

- 79.—(1) Where—
- (a) two or more adults are the only beneficiaries,
  - (b) none of those adults is a surviving adult, and
  - (c) two or more of those adults are eligible children,

the eligible decision-maker is determined in accordance with sub-paragraph (2).

- (2) The eligible decision-maker is—
- (a) the person agreed upon by the adult eligible children, or
  - (b) the Scheme manager, where no decision about whether to make an election has been received by the Scheme manager by the day by which an election must, in accordance with this Schedule, be received by the Scheme manager.



**Multiple beneficiaries: nominated individuals only** U.K.

80.—(1) Where—

- (a) two or more adults (the “nominated adults”) are beneficiaries of a lump sum death benefit, and
- (b) none of the following are beneficiaries—
  - (i) a surviving adult, or
  - (ii) an eligible child (whether or not an adult),

the eligible decision-maker is determined in accordance with sub-paragraph (2).

(2) The eligible decision-maker is—

- (a) M’s personal representative;
  - (b) where M has no personal representative, the person agreed upon by the nominated adults;
  - (c) where—
    - (i) M has no personal representative, and
    - (ii) no decision about whether to make an election has been received by the Scheme manager by the day by which an election must, in accordance with this Schedule, be received by the Scheme manager,
- the Scheme manager.

**Multiple beneficiaries: non-adult eligible children** U.K.

81. Where the only beneficiaries are children, two or more of which are eligible children, the eligible decision-maker is—

- (a) where one person has parental responsibility for all the eligible children, that person;
- (b) otherwise—
  - (i) M’s personal representative, or
  - (ii) where M has no personal representative, the Scheme manager.

**Multiple beneficiaries: nominated children only** U.K.

82. Where the only beneficiaries of lump sum death benefits are two or more children who are not eligible children, the eligible decision-maker is—

- (a) where one person has parental responsibility for all the children, that person;
- (b) otherwise—
  - (i) M’s personal representative, or
  - (ii) where M has no personal representative, the Scheme manager.

**Multiple beneficiaries: one or more adults and one or more children** U.K.

83.—(1) Where the beneficiaries include one or more adults and one or more children—

- (a) M’s personal representative is the eligible decision-maker;
- (b) where M has no personal representative, and—
  - (i) one of the beneficiaries is a surviving adult, that surviving adult is the eligible decision-maker;
  - (ii) none of the beneficiaries is a surviving adult and—

**Changes to legislation:** There are currently no known outstanding effects for the *The Armed Forces Pension Scheme Order 2005*. (See end of Document for details)

- (aa) one or more of the beneficiaries is an eligible child, or
  - (bb) none of the beneficiaries is a surviving adult or an eligible child,
- the eligible decision-maker is determined in accordance with sub-paragraph (2).
- (2) Where sub-paragraph (1)(b)(ii) applies, and—
- (a) all relevant children are under 18 and—
    - (i) have, or had, the same guardian, the eligible decision-maker is that guardian;
    - (ii) do not, or did not, have the same guardian, the eligible decision-maker is the Scheme manager;
  - (b) all relevant children are 18 or over, the eligible decision-maker is—
    - (i) the person agreed upon by those relevant children, or
    - (ii) the Scheme manager, where no decision about whether to make an election has been received by the Scheme manager by the day by which an election must, in accordance with this Schedule, be received by the Scheme manager;
  - (c) one or more relevant children are under 18 and one or more of the relevant children are 18 or over, the eligible decision-maker is the person agreed upon by—
    - (i) the relevant children who are 18 or over, and
    - (ii) the guardian (or guardians) of the relevant children who are under 18.
- (3) In sub-paragraph (2), a relevant child is—
- (a) where sub-paragraph (1)(b)(ii)(aa) applies, an eligible child;
  - (b) where sub-paragraph (1)(b)(ii)(bb) applies, a person who—
    - (i) has never married or formed a civil partnership, and
    - (ii) meets any of conditions A, B or C as set out in regulation 73 of the AFP Regulations 2014.

#### Other cases **U.K.**

**84.** In any case not covered by paragraphs 74 to 83, the eligible decision-maker is the Scheme manager.]

### EXPLANATORY NOTE

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

This Order is made under the Armed Forces (Pensions and Compensation) Act 2004 (c. 32) and establishes a new pension scheme for the armed forces (“the Scheme”) for persons joining the armed forces on or after 6th April 2005 or in service immediately before that date and wishing to join the scheme.

Article 1 provides that the Order comes into force on 6th April 2005.

Article 2 establishes the Scheme and provides that it is to be known as “the Armed Forces Pension Scheme 2005”. It introduces Schedule 1 to the Order 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 and, in particular, gives the meaning of expressions like “final pensionable earnings” and “reckonable service” that are used in the provisions relating to entitlement to and calculation of benefits under the Scheme. It provides for a “pension age” of 55 (which is the age at which members still in service in the armed forces are entitled to a retirement pension) and a “pension benefit age” of 65 (which is the age at which members who left service before 55 become entitled to a retirement pension that has been preserved for them in the Scheme).

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

Part C enables members of the Scheme to make voluntary contributions to buy further reckonable service. (There is no obligation for members to make contributions under the Scheme.)

Part D deals with the pensions and lump sum benefits to which members become entitled on retirement. The rules in Part D set out different entitlements for those who retire on or after reaching 55, those who retire earlier, those who want earlier payment with actuarial reduction, those who retire with permanent serious ill-health or significant impairment of capacity for gainful employment, and pension credit members. They also enable ill-health pensions to be reviewed and members to exchange lump sums for higher pensions or allocate part of their pension to others.

Part E 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 other adult dependants and eligible children. It also provides for lump sums to be paid to nominees, adults to whom a pension is payable or personal representatives.

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).) There are special arrangements for those going to or from other public sector schemes.

Part G deals with members who have more than one period of service that counts for the Scheme because they are re-employed. As a general rule the rights relating to such separate periods of service are dealt with separately, but the member is given the option to aggregate earlier periods.

Part H deals with the abatement of pensions in certain circumstances where pensioners are re-engaged in service that entitles them to belong to the Scheme or the Reserve Forces Pension Scheme.

Part J 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.

Part K provides for the transfer of persons who belong to the pension arrangements applicable to regulars in the armed forces immediately before 6th April 2005 and opt on or before 31st March 2006 to join the Scheme on 6th April 2006. Such transferees can count all the reckonable service that was counted under the old arrangements as reckonable service in the Scheme. They can also count added years of reckonable service that they have bought under the old arrangements before 6th April 2006.

Article 2 also introduces Schedule 2 which makes modifications of the Scheme's rules for the period until 6th April 2006 when the arrangements relating to the approval of pension schemes for tax purposes change as a result of the coming into force of the relevant provisions of the Finance Act 2004 (c. 12). Article 2 provides for the Scheme's rules to be read as if references to civil partners and civil partnerships were omitted until section 1 of the Civil Partnership Act 2004 (c. 33) comes into force in England and Wales. It also provides for the Scheme's rules to be read with the omission of references to Chapter 5 of Part 4 of the Pension Schemes Act 1993 (early leavers: cash transfer sums and contributions refunds) until that Chapter comes into force.

Article 3 sets out the consent requirements for the Scheme for the purposes of section 3(2) of the Armed Forces (Pensions and Compensation) Act 2004. These are the requirements that must be met

**Changes to legislation:** There are currently no known outstanding effects for the  
The Armed Forces Pension Scheme Order 2005. (See end of Document for details)

before the Scheme may be modified in a way that would or might adversely affect any member's rights. It provides for notices to be given to members about proposals to make such modifications and for the modifications not to affect members unless they have consented or have not responded.

Article 4 makes a small consequential amendment in the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (S.I.1997/785).

A full regulatory impact assessment has not been produced on this instrument as it has no impact on the costs of business, charities or the voluntary sector.

**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces Pension Scheme Order 2005.