

**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(a) hereby makes the following Order:

*Preliminary*

**Citation and commencement and interpretation**

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

**Establishment of the Armed Forces Pension Scheme 2005**

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”.

(2) But that Scheme has effect—

- (a) for the period beginning with 6th April 2005 and ending with 5th April 2006 with the modifications specified in Schedule 2 to this Order,
- (b) for the period before section 1 of the Civil Partnership Act 2004(b) comes into force in relation to England and Wales with the omission of references to civil partners and civil partnerships, and
- (c) for the period before Chapter 5 of Part 4 of the Pension Schemes Act 1993(c) comes into force in relation to England and Wales with the omission of references to that Chapter, rights under it and members to whom it applies as such.

**Amendments of the Armed Forces Pension Scheme 2005**

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

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(a) 2004 c. 32.

(b) 2004 c. 33.

(c) 1993 c. 48. Chapter 5 is inserted by section 264 of the Pensions Act 2004 (c. 35).

(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<sup>(a)</sup> (see section 124 of that Act).

#### **Amendments of other regulations**

**4.**—(1) Regulation 1(2) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997<sup>(b)</sup> 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”.

Signed by authority of the Secretary of State for Defence

*Ivor Caplin*  
Under Secretary of State  
Ministry of Defence

8th March 2005

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(a) 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).

(b) S.I. 1997/785.

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PART A  
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**A.1 Interpretation: general**

- (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(a), 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;
  - “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(b),
    - (b) the Army Pensions Warrant 1977(c), and
    - (c) Orders and regulations made under section 2 of the Air Force (Constitution) Act 1917(d),or any instrument amending or replacing any of those instruments;
  - “AFPS 1975 transferee” has the meaning given in rule K.1(2);
  - “assumed pay” has the meaning given by rule A.3(1);
  - “contributions equivalent premium” has the same meaning as in the Pension Schemes Act 1993 (see section 55(2)(e));
  - “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;
  - “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);

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(a) 1978 c. 30.

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

(c) which is available from Her Majesty’s Stationery Office.

(d) 1917 c. 51.

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

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

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

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

“occupational pension scheme” has the meaning given in section 1 of the 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(d);

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

“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(f);

“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(g);

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

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

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

“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 has been approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988(k) or provisionally approved under section 655(5) of that Act;

“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;

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(a) 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).

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

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

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

(e) 1978 c. 44.

(f) S.I. 2002/2788.

(g) 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).

(h) 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).

(i) 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).

(j) 1999 c. 30.

(k) 1988 c. 1.

“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);

“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(a);

“retirement annuity contract” means a retirement annuity contract approved by the Commissioners of the Board of Inland Revenue under section 620 or 621 of the Income and Corporation Taxes Act 1988;

“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;

“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;

“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(b));

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

“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(d).

(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.

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

(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.

## **A.3 Meaning of “assumed pay”**

(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”.

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(a) 1996 c. 14.

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

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

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

- (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 paternity 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.

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

(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.

(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, for the purposes of that paragraph his pensionable earnings for each day during that period when he is so treated include the assumed pay for that day.

#### **A.5 Adjustments for inflation in determining final pensionable earnings**

(1) For the purpose of determining a person’s final pensionable earnings under rule A.4, the amount of pensionable earnings, as determined in accordance with rule A.4(2) to (4) where appropriate, for any day falling in a tax year earlier than the tax year in which his reckonable service ends is adjusted for inflation.

(2) The reference in paragraph (1) to adjusting for inflation the amount of pensionable earnings for a day are 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(a) on the day following that on which the member’s reckonable service ends if the pension—

- (a) were eligible to be so increased, and
- (b) had come into payment on the first day of the next tax year after the tax year in which the day falls.

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

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**

(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,

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(a) 1971 c. 56.

- (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, and
- (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.

(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).

#### **A.8 Reckonable service**

(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, and
- (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.

This paragraph is subject to paragraph (2) 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.

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

(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**

(1) 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.

(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.

## PART B MEMBERSHIP

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

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—
  - (i) the Royal Irish Regiment (Part Time), or
  - (ii) in the case of a Nepalese person recruited in Nepal, 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(a),
- (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), and
- (c) he is not prevented by rule B.2 (persons with other pension arrangements).

### **B.2 Persons with other pension arrangements**

(1) 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.

### **B.3 Joining the Scheme on starting service**

(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.

(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**

(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, after consultation with the Scheme medical adviser, 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.

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(a) 1980 c. 9.

(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.

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

- (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.

### **PART C CONTRIBUTIONS**

#### *Buying Added Years*

#### **C.1 Member's option to pay contributions to increase service**

(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) 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.

(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.

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

(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**

(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,
  - (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—

$$\frac{PP - NRS}{PP}$$

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

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

- (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(a)),
- (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), or
- (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.

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

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.

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

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

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

- (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(a) (short service refund lump sum charge) by virtue of the repayment.
- (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**

### **RETIREMENT BENEFITS**

#### *Entitlement to Benefits*

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

- (1) The general rule is that a member is entitled to a pension for life and a lump sum if the member ceases to be in service by virtue of which he is eligible to be an active member of the Scheme at or after reaching pension age.
- (2) The pension and the lump sum become payable immediately on the member ceasing to be in service.

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(a) 2004 c. 12.

(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.

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

(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 and either—

- (a) he has at least two years' qualifying service, or
- (b) he was formerly entitled to rights under a personal pension scheme or a retirement annuity contract in respect of which a transfer value payment has 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.

(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.

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

(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.

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

- (a) immediately on the pension credit member attaining 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
- (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.

#### **D.4 Early payment of pensions with actuarial reduction**

(1) A member who is not entitled to immediate payment of a pension under D.1, D.2 or D.3 apart from this rule may opt for immediate payment of a reduced pension and lump sum under rule D.2 or D.3 if the member has reached the relevant age and paragraph (2) or (3) applies.

In this paragraph "the relevant age" means—

- (a) in the case of a pension credit member, 60, and
- (b) otherwise, 55.

(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 pension is derived from pension credit rights, and
- (b) the pension sharing order from which the rights derive has taken effect.

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

This is subject to paragraph (5).

(5) 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, the weekly rate of the pension immediately payable in respect of that service (after taking into account any option exercised under rule D.10) must not be less than that guaranteed minimum, multiplied by such factor as is indicated in tables provided by the Scheme actuary for a person of the member's age and sex at the date on which the pension becomes payable.

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

(7) 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.

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

(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—

- (a) after consultation with the Scheme medical adviser, the Secretary of State is of the opinion that the member has suffered a permanent breakdown in health involving incapacity for any full-time employment, and
- (b) the member either—
  - (i) has at least two years' qualifying service, or
  - (ii) was formerly entitled to rights under a personal pension scheme or a retirement annuity contract in respect of which a transfer value payment has been accepted by the Scheme under Part F (transfers).

(2) For the purpose of these Rules a member's breakdown in health is "permanent" if, in the opinion of the Secretary of State, after consultation with the Scheme medical adviser, 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, after consultation with the Scheme medical adviser, 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.

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

(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—

- (a) in the opinion of the Secretary of State, after consultation with the scheme medical adviser, the member has suffered a breakdown in health as a result of which his capacity for gainful employment is significantly impaired, and
- (b) the member either—
  - (i) has at least two years' qualifying service, or
  - (ii) was formerly entitled to rights under a personal pension scheme or a retirement annuity contract in respect of which a transfer value payment has 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.

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

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

(a) in the opinion of the Secretary of State, after consultation with the Scheme medical adviser and, if the Scheme medical adviser requests a further opinion, with such other person as is consulted in pursuance of that request, the member has suffered a permanent breakdown in health involving incapacity for any full-time employment (see rule D.5(2) and (3)),

(b) the member either—

(i) has at least two years' qualifying service, or

(ii) was formerly entitled to rights under a personal pension scheme or a retirement annuity contract in respect of which a transfer value payment has 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.

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

(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(a) (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.

(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, after consultation with the Scheme medical adviser, 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), after consultation with the Scheme medical adviser, 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

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(a) S.I. 2005/437.

(b) the member meets the condition in rule D.5(1)(b),  
then 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.

(7) If—

- (a) on any review under paragraph (4), after consultation with the Scheme medical adviser, the Secretary of State is of the opinion that—
  - (i) the member has suffered such a breakdown as is mentioned in paragraph (4)(a), but
  - (ii) 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, and
- (b) the member meets the condition in rule D.5(1)(b),

then rule D.5 applies as from the date on which the review was requested, and accordingly the member is entitled to a lump sum under that rule equal to 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 and to a pension under rule D.5 payable from that date.

(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, after consultation with the Scheme medical adviser, 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), after consultation with the Scheme medical adviser, 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
- (b) the member meets the condition in rule D.6(1)(b),

then rule D.6 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 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), after consultation with the Scheme medical adviser, 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
- (b) the member meets the condition in rule D.6(1)(b),

then rule D.6 applies as from the date on which the review was requested, 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.

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

- (1) This rule applies if—
  - (a) a member is entitled to a pension under rule D.5, D.6 or D.7, and
  - (b) 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, after consultation with the Scheme medical adviser, the Secretary of State is of the opinion—
  - (a) that the member has not suffered such a breakdown as is mentioned in D.5(1)(a), but
  - (b) 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, after consultation with the Scheme medical adviser, 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, after consultation with the Scheme medical adviser, 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.

#### *Options to Change Benefits*

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

(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 an increase in the amount of pension payable to himself or to any other person under these Rules.

(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.

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

(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 if, after consultation with the Scheme medical adviser, the Secretary of State is satisfied that the member has a life-expectancy of less than 12 months.

(2) Where a 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.

(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).

(4) 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 the pension in question, paragraphs (1) to (3) only apply to so much of the pension as exceeds that guaranteed minimum.

(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.

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

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

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**

(1) Where regulation 7(5) of the Pension Sharing (Pension Credit Benefit) Regulations 2000(a) (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(b) (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**

(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 one-half of the member's annual pension (before any exercise of the option under rule D.10: option to exchange lump sum for pension).

(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.

(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.

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

(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

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(a) S.I. 2000/1054.

(b) Section 68A is inserted by section 36 of the Welfare Reform and Pensions Act 1999 (c. 30).

- (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) after consultation with the Scheme medical adviser, the Secretary of State is satisfied that at the date on which the member makes the declaration the member is in good health.

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

- (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>(a)</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.**

- (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

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(a) 1993 c. 48.

(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—

(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(a) (“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 Official Secrets Acts 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.

## PART E

### DEATH BENEFITS

#### *Pensions for Adult Dependants*

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

(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).

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(a) 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).

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

(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,
- (b) the person and the member were not prevented from marrying (or would not have been so prevented apart from both being of the same sex), and
- (c) either the person was financially dependent on the member or the person and the member were financially interdependent.

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

(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).

(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)—

- (a) if the pension is payable to a civil partner, N for the purposes of rule D.5(4) is calculated on the basis that reckonable service within rule A.8(1)(a) only counts if and to the extent that it relates to service after 5th April 1988, and
- (b) reckonable service exceeding  $37 \frac{1}{3}$  years does not count.

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

(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) 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)—

- (a) if the pension is payable to a civil partner, reckonable service within rule A.8(1)(a) only counts if and to the extent that it relates to service after 5th April 1988, and
- (b) reckonable service exceeding  $37 \frac{1}{3}$  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).

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

(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)—

- (a) if the pension is payable to a civil partner—
  - (i) in a case within paragraph (1)(a) or (b), reckonable service within rule A.8(1)(a) only counts if and to the extent that it relates to service after 5th April 1988, and
  - (ii) in a case within paragraph (1)(c), N for the purposes of rule D.5(4) or D.6(2) is calculated on the basis that reckonable service within rule A.8(1)(a) only counts if and to the extent that it relates to service after that date, and
- (b) reckonable service exceeding  $37 \frac{1}{3}$  years does not count.

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

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

(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.

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

(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  $37 \frac{1}{3}$  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  $37 \frac{1}{3}$  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**

(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"**

(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.

(4) Condition C is that the person is unable to engage in gainful employment because of physical or mental disability from which the person began to suffer before the age of 23.

(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.

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

(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—

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

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**

(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**

(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.

(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 (disregarding rules D.10, E.6 and 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.

#### **E.13 Children born after the member's death**

(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**

(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*

#### **E.15 Death of a member: lump sum benefit**

(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) any person who is entitled to a pension under rule E.1 or to whom a pension may be awarded under rule E.2, or
  - (c) 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
    - (ii) after the member's pension has been commuted under rule J.8 (commutation of small pensions).
- (4) Any lump sum that is paid under this rule must be paid before the end of the period of two years beginning with the day on which the member died.

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

- (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**

- (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**

- (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**

(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**

(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**

(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.

(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.

## *General Provisions*

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

- (1) This rule applies where the deceased member was a pension debit member.
- (2) If the member was an active member—
  - (a) the 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**

- (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**

- (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**

(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**

- (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**

- (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**

(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 Official Secrets Acts offences) applies.

**PART F**  
**TRANSFERS**  
*Transfers Out*

**F.1 Right to transfer value payment**

- (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(a) (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.

**F.2 Applications for statements of entitlement**

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

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(a) Chapter 5 (sections 101AA to 101AI) is inserted by section 264 of the Pensions Act 2004 (c. 35).

(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**

(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—

- (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**

(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**

(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**

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**

(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 under any of the following kinds of scheme or arrangement to be accepted by the Scheme.

(2) They are—

- (a) another occupational pension scheme,
- (b) a personal pension scheme,
- (c) a retirement annuity contract, or
- (d) the Armed Forces Additional Voluntary Contributions Scheme.

(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.

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

(1) An application under rule F.7—

- (a) must be made in writing,

- (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment, and
- (c) must be made before the beginning of the period of one year ending with the date on which the member reaches pension benefit 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, the application under rule F.7—

- (a) must be made during the period of one year beginning with the day on which the member becomes eligible to be an active member, 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.

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

(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**

(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**

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  
RE-EMPLOYMENT

*Preliminary*

**G.1 Application of Part G**

- (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**

- (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
  - (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**

- (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, and
  - (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,

and so on.

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

(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 which ended before 6th April 2005.

(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.

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

(1) An option under rule G.3(2) may only be exercised before the end of the current service.

(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.

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

(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**

(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 ABATEMENT

### **H.1 Application of Part H**

- (1) This Part applies where a person who is a pensioner member or a deferred member of the Scheme—
  - (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(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”, and
  - (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”.

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

- (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.
- (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.

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

- (1) This rule applies where after the re-employed pensioner enters the new service the re-employed pensioner is re-employed in another post or his post is regraded.
- (2) Rule H.2 applies from the time of the re-employment or regrading as if the re-employed pensioner were entering the new service at that time, and the service before that time is disregarded.

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

- (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**

- (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.

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

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**

### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

#### *Claims for and Payment of Benefits*

#### **J.1 Claims for and payment of benefits**

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

- (a) that he is entitled to it, or
- (b) in the case of a benefit under rule 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**

(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**

(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(a).

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(a) 1826 c. 16.

*Pension Credit Members with two or more Pension Credits*

**J.4 Pension credit members with two or more entitlements**

- (1) If a pension credit member is entitled to two or more pension credits—
  - (a) benefits are payable to or in respect of the member under the Scheme as if he were two or more pension credit members, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable in respect of the one pension credit member), and
  - (b) the amounts of those benefits are determined accordingly.
- (2) If a pension credit member is also an active member, a deferred member or a pensioner member—
  - (a) benefits are payable to or in respect of the member under the Scheme as if he were two or more members (so that two or more pensions are payable to or in respect of the one member), and
  - (b) the amounts of those benefits are determined accordingly.

*Forfeiture*

**J.5 Forfeiture of benefits**

(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 Official Secrets Acts 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—
  - (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(a) (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(b)), 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.

**J.6 Events enabling forfeiture**

- (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 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

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(a) 1870 c. 23.  
(b) 1948 c. 58.

(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.

#### **J.7 Procedure, references etc.**

(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>(a)</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**

(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—
  - (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.

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(a) 1993 c. 48.

- (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<sup>(a)</sup>,
  - (b) by regulation 2 of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997<sup>(b)</sup>,
  - (c) by regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(c)</sup>, or
  - (d) by paragraph 7 of Schedule 29 to the Finance Act 2004<sup>(d)</sup> (which defines trivial commutation lump sums for the purposes of Part 1 of that Schedule).

### *Determination of Questions*

#### **J.9 Determination of questions**

Except as otherwise provided by these Rules, any question arising under the Scheme is to be determined by the Secretary of State.

### *Information, Evidence, Suspension etc.*

#### **J.10 Information and evidence**

- (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.

## PART K

### AFPS 1975 TRANSFEREES

#### *Preliminary*

#### **K.1 Application of Part K: meaning of “AFPS 1975 transferee”**

- (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**

- (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.

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(a) S.I. 1996/1172. Regulation 20 was amended by regulation 2(3) of S.I. 2000/2975. Regulation 60 was amended by regulation 4(12) of S.I. 1997/786.  
 (b) S.I. 1997/785.  
 (c) S.I. 2000/1054.  
 (d) 2004 c. 12.

(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**

(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**

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**

(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**

(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**

- (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**

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.

## SCHEDULE 2

Article 2(2)

### TEMPORARY MODIFICATIONS OF THE ARMED FORCES PENSION SCHEME 2005

1. At the end of rule A.4 insert—

“(5) This rule is subject to rule A.5A (Inland Revenue restrictions on final pensionable earnings).”
2. At the end of rule A.5 insert—

“(3) This rule is subject to rule A.5A (Inland Revenue restrictions on final pensionable earnings).”
3. After rule A.5 insert—

**“A.5A Inland Revenue restrictions on final pensionable earnings**

  - (1) In the case of a Class A member, if the calculation under rule A.4(1) produces an amount exceeding the permitted maximum, the excess is disregarded except to the extent that paragraph (2) applies.
  - (2) If the member is a Class A member with reckonable service within rule A.8(1)(d) or (f) (reckonable service the member is entitled to count as a result of a transfer in or his being an AFPS 1975 transferee), and either—
    - (a) paragraph 20 of Schedule 6 to the Finance Act 1989 did not apply to the member when he was a member of the scheme from which the transfer was accepted or, as the case may be, the AFPS 1975 and neither did any equivalent scheme provision, or
    - (b) that paragraph applied with the modification made by paragraph 5 of the Retirement Benefits Schemes (Continuation of Rights etc.) Regulations 1990 as respects benefits derived from service under another scheme (“earlier service”) or a scheme provision made equivalent provision,paragraph (1) does not apply in calculating any benefit to the extent that the benefit is calculated by reference to the reckonable service within rule A.8(1)(d) or, as the case may be, rule A.8(1)(f), or (in either case) so much of that reckonable service as is earlier service.
  - (3) For the purposes of these Rules—
    - (a) a member is a Class A member unless—
      - (i) he is to be treated as not being such a member under an agreement with the Commissioners of the Board of Inland Revenue because immediately before joining the Scheme he was an active member of another occupational pension scheme under the rules of which his benefits were not limited by reference to the permitted maximum,
      - (ii) he has continued to be an active member of the Scheme since he joined it or meets conditions A to C or condition D in relation to any period during which he was not such a member, and
      - (iii) he has elected not to be treated as a Class A member, and

(b) “permitted maximum”, in relation to a member, means the amount defined as such in section 590C(2) of the Income and Corporation Taxes Act 1988 for the tax year in which the member’s active membership period ends.

(4) Condition A is that during the period the person was on secondment or a posting to another employer.

(5) Condition B is that at the beginning of the period the person had a definite expectation that he would become an active member again when the secondment or posting ended.

(6) Condition C is that the person became an active member again at the end of the period.

(7) Condition D is that the period did not exceed one month and at the end of it he immediately became an active member again.”.

4. For rule B.2 substitute—

**“B.2 Persons with other pension arrangements**

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

(a) he belongs to the AFPS 1975, or

(b) subject to paragraph (2), he has a stakeholder pension scheme or a personal pension scheme,

in respect of that service.

(2) A stakeholder pension scheme or a personal pension scheme is disregarded for the purposes of this rule during any tax year in which the member is eligible to contribute to it and to the Scheme in accordance with section 632B of the Income and Corporation Taxes Act 1988.”.

5. In rule C.1 after paragraph (7) insert—

“(8) The contributions to be made under this rule may not exceed the maximum permitted under rule C.8 (Inland Revenue limits on contributions), and the benefits to which a member may become entitled as a result of making the payments may not exceed or differ from those that may be provided as a result of the making of such contributions by a retirement benefits scheme meeting the requirements for approval under section 592 of the Income and Corporation Taxes Act 1988.”.

6. In rule C.3(2)(b) after “C.1(6)” insert “or C.8”.

7. At the end of rule C.4(3) insert—

“This is subject to rule C.8 (Inland Revenue limits on contributions).”.

8. For rule C.7 substitute—

**“C.7 Repayment of contributions**

(1) The contributions made by a member under this Part are not repayable in any circumstances except where paragraph (2) or (4) applies.

(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), and

(c) he has not required a payment to be made in respect of him under Part F (transfers).

(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 598(2) of the Income and Corporation Taxes Act 1988 by virtue of the repayment.

(4) This paragraph applies where the contributions paid by a member under rule C.1 exceed those which may be paid.

(5) Where paragraph (4) applies, the member is entitled to be paid an amount equal to the excess, less an amount equal to the income tax payable under section 599A of the Income and Corporation Taxes Act 1988 by virtue of the repayment, together with compound interest.

(6) In this rule “compound interest” means interest at the sterling 3 month London interbank offered rate, with yearly rests.”.

9. After rule C.7 insert—

**“C.8 Inland Revenue limits on contributions**

The contributions made under this Part in any tax year in respect of a member’s pensionable earnings must not exceed the amount in respect of which the member is allowed a deduction for that year under section 594 of the Income and Corporation Taxes Act 1988 (tax relief for contributions to exempt statutory schemes).

**C.9 Scheme administrator’s duties where contributions made to AVC schemes etc.**

The Scheme administrator must comply with the requirements—

- (a) of regulation 5 of the Retirement Benefit Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993, and
- (b) so far as they concern a main scheme (as defined in regulation 2(1) of those Regulations), of regulation 6 of those Regulations.”.

**10. In rule D.11 after paragraph (5) insert—**

“(6) No deduction is to be made from any amount paid under this rule in respect of tax chargeable in respect of it under section 599 of the Income and Corporation Taxes Act 1988, and any such tax is to be paid by the Secretary of State.”.

**11. After rule D.17 insert—**

**“D.18 Inland Revenue limits on lump sums**

- (1) The lump sum paid to member under this Part may not exceed—
  - (a) in the case of a Class A member other than a pension debit member, the amount of the annual pension multiplied by 2.25 or, if it is greater, three-eighths of the member’s final pensionable earnings, multiplied by the lesser of—
    - (i) the member’s reckonable service in years, and
    - (ii) 40 years, and
  - (b) in the case of a pension debit member, the amount of the annual pension multiplied by 3.
- (2) In paragraph (1)(a) “the amount of the annual pension” means the amount of the annual pension to which the member would be entitled under this Part (calculated as at the time payment is first due) on the assumption that—
  - (a) the member had exercised the option under rule D.10 in respect of the whole of the lump sum, and
  - (b) no allocation was made under rule D.14.
- (3) In paragraph (1)(b) “the amount of the annual pension” means the amount of the annual pension to which the member would be entitled under this Part (calculated as at the time payment is first due) on the assumption that—
  - (a) no allocation was made under rule D.14, and
  - (b) if, in the relevant tax year the member met the modest earnings test, the pension debit was disregarded.
- (4) For the purposes of paragraph (3)—
  - (a) a member meets the modest earnings test in a tax year if in that year the member’s pensionable earnings to which section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn) applied do not exceed one quarter of the permitted maximum, as defined in section 590C(2) of that Act, for that year, and
  - (b) “the relevant tax year” means the tax year immediately before that in which the marriage in relation to which the pension sharing order in question was made ended.

**D.19 Inland Revenue limits: general**

(1) Notwithstanding any other provision of the Scheme, no benefits may be paid to a member under this Part if or to the extent that their payment would prejudice the registration of the Scheme as a relevant statutory scheme under section 611A(1)(b) of the Income and Corporation Taxes Act 1988.

(2) If the payment of benefits is restricted by virtue of paragraph (1) but the manner in which the restriction affects any particular benefit or benefits is not apparent from the rules relating to the restriction, the Secretary of State may determine the manner in which the restriction is to be given effect.”.

**12.—(1) Rule E.16 is amended as follows—**

**(2) In paragraph (1) for the second sentence substitute—**

“This is subject to paragraph (2) to (7).”.

**(3) After paragraph (5) insert—**

“(6) The amount of the lump sum is restricted as mentioned in paragraph (7) in the case of an active member—

- (a) who is a retained rights member, and
- (b) whose pensionable earnings in the first year in which he is an active member equalled or exceeded one quarter of the permitted maximum, as defined in section 590C(2) of the Income and Corporation Taxes Act 1988, for the tax year in which that first year ends.

(7) The amount of the lump sum must not exceed the greater of—

- (a) four times the member’s final pensionable earnings, less the value of his retained benefits, and
- (b) £5,000.

(8) A person is a retained rights member for the purposes of these Rules if he is entitled to, or has received, relevant benefits (as defined in section 611(1) of the Income and Corporation Taxes Act 1988) accrued under—

- (a) an approved scheme (as defined in section 612 of that Act),
- (b) a relevant statutory scheme (as defined in section 611A of that Act),
- (c) a fund to which section 608 of that Act applies,
- (d) a retirement benefits scheme (as defined in section 611 of that Act) accepted by the Commissioners of the Board of Inland Revenue as a scheme which corresponds as mentioned in section 596(2)(b) of that Act,
- (e) a contract or trust scheme approved under section 620 of that Act, or
- (f) a personal pension scheme.

(9) In these Rules “retained benefits”, in relation to a person who is a retained rights member, means the benefits by virtue of which he is such a member.

(10) For the purposes of paragraph (8)—

- (a) benefits that accrued under the Scheme are disregarded, and
- (b) relevant benefits are disregarded if—
  - (i) the member’s pensionable earnings in the first year in which he is an active member do not exceed one quarter of the permitted maximum, as defined in section 590C(2) of that Act, for the tax year in which that first year ends, or
  - (ii) in the case of lump sum benefits, they do not exceed £2,500.”.

13. In rule E.22 after paragraph (6) insert—

“(7) For the purposes of making any calculation required by this rule, rule E.29 (Inland Revenue limits: pensions) is disregarded, (but without prejudice to the application of that rule in determining the extent to which any amount payable under this Part apart from that rule is actually paid).”.

14. After rule E.28 insert—

**“E.29 Inland Revenue limits: pensions**

(1) No annual pension payable under this Part may exceed two thirds of the Revenue maximum.

(2) Where two or more pensions are payable under this Part in respect of a deceased member, the aggregate annual amount of them may not exceed the Revenue maximum.

(3) In paragraph (1) “the Revenue maximum” means—

- (a) in the case of a deceased active or deferred member, the amount of the annual pension that would have been payable to the member if on the date of death he had become entitled to a pension under rule D.5 (early payment of benefits: active members with permanent serious ill-health) and had exercised the option under rule D.10 (option to exchange lump sum for pension) in respect of the whole of the lump sum to which he would otherwise have been entitled,
- (b) in the case of a deceased pensioner member who exercised that option in respect of the whole of the lump sum to which he would otherwise have been entitled, the amount of the annual pension to which he was entitled at the date of death, and
- (c) in the case of a deceased pensioner member who did not exercise that option in respect of the whole of the lump sum to which he would otherwise have been entitled, the amount of the annual pension to which he would have been entitled at the date of death if he had done so.

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

(4) In the case of a pension debit member, the amount of the annual pension is determined without taking the pension debit into account if in the relevant tax year the member met the modest earnings test.

- (5) For the purposes of paragraph (4)—
- (a) a member meets the modest earnings test in a tax year if in that year—
- (i) in the case of a tax year before 2003–04, the member’s pensionable earnings to which section 203 of the Income and Corporation Taxes Act 1988 (PAYE) applied, and
- (ii) in the case of a tax year after 2002–03, the member’s pensionable earnings that are PAYE income for the year (within the meaning of section 683 of the Income Tax (Earnings and Pensions) Act 2003),
- do not exceed one quarter of the permitted maximum, as defined in section 590C(2) of the Income and Corporation Taxes Act 1988, for that year, and
- (b) “the relevant tax year” means the tax year immediately before that in which the marriage in relation to which the pension sharing order in question was made ended.
- (6) If the member was a retained rights member, the value of his retained benefits is disregarded in calculating the Revenue maximum.
- (7) If, apart from this paragraph, the aggregate annual amount of two or more pensions payable under this Part in respect of a deceased member would exceed the Revenue maximum, the annual amount of each of them is to be reduced by—

$$\frac{E \times P}{AP}$$

where—

**E** is the amount of the excess,

**P** is the annual amount of the pension in question, and

**AP** is the aggregate annual amount of the pensions.

**E.30 Inland Revenue limits: general**

(1) Notwithstanding any other provision of the Scheme, no benefits may be paid under this Part to any person in respect of a member if or to the extent that their payment would prejudice the registration of the Scheme as a relevant statutory scheme under section 611A(1)(b) of the Income and Corporation Taxes Act 1988.

(2) If the payment of benefits is restricted by virtue of paragraph (1) but the manner in which the restriction affects any particular benefit or benefits is not apparent from the rules relating to the restriction, the Secretary of State may determine the manner in which the restriction is to be given effect.”.

**15.—**(1) Rule J.8 is amended as follows—

(2) In paragraph (5) in the definition of “the commutation requirements” for paragraph (d) substitute—

“(d) by the Commissioners of the Board of Inland Revenue in connection with the approval of retirement benefit schemes under Part 14 of the Income and Corporation Taxes Act 1988.”.

(3) After paragraph (5) insert—

“(6) A deduction is to be made from any amount paid under this rule for the amount of tax chargeable in respect of it under section 599 of the Income and Corporation Taxes Act 1988.

This is subject to paragraph (7).

(7) If—

(a) rule D.17 (guaranteed minimum pensions etc.), or

(b) rule E.28 (guaranteed minimum pensions for surviving spouses),

applies to the commuted pension, a deduction may only be made under paragraph (6) in respect of tax on so much of the amount paid under this rule as exceeds the guaranteed minimum.”.

## 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 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.