

SCHEDULE 1

ARRANGEMENT OF RULES

PART A

INTERPRETATION ETC.

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⁽¹⁾, 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⁽²⁾,

(b) the Army Pensions Warrant 1977⁽³⁾, and

(c) Orders and regulations made under section 2 of the Air Force (Constitution) Act 1917⁽⁴⁾, 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)⁽⁵⁾);

“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);

(1) 1978 c. 30.

(2) 1865 c. 73; section 3 was amended by the Armed Forces (Pensions and Compensation) Act 2004, section 4.

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

(4) 1917 c. 51.

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

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“guaranteed minimum” means the guaranteed minimum as defined in sections 14 and 17 of the Pension Schemes Act 1993**(6)** (minimum pensions for earners, widows and widowers)—

- (a) as increased in accordance with the requirements of section 109 of that Act**(7)** (annual increase of minimum pensions), and
- (b) in a case where a reduction has been made under section 15A of that Act**(8)** (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**(9)**;

“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**(10)**, 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**(11)**;

“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**(12)**;

“pension credit member” has the meaning given in section 124(1) of the Pensions Act 1995**(13)**;

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

“pension debit” means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999**(15)**;

(6) 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).

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

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

(9) 1996 c. 18. Section 75A is inserted by section 3 of the Employment Act 2002 (c. 22).

(10) 1978 c. 44.

(11) S.I.2002/2788.

(12) 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).

(13) 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).

(14) 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).

(15) 1999 c. 30.

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“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(16) 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;

“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(17);

“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(18));

“state pension age” means pensionable age, as defined in section 181(1) of the Pension Schemes Act 1993(19);

“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(20).

(16) 1988 c. 1.

(17) 1996 c. 14.

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

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

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

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(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”.

- (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(21) 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.

(21) 1971 c. 56.

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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,
- (b) any period for which the member is in service to which rule C.6 applies (secondment to NATO or the UNetc.),
- (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.