

SCHEDULE 1

ARRANGEMENT OF RULES

PART J

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

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(1) (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(2)), 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.

(1) 1870 c. 23.

(2) 1948 c. 58.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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
- (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⁽³⁾ (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.

(3) 1993 c. 48.