

## SCHEDULE 1

### ARRANGEMENT OF RULES

## 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,

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- (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(1).

#### *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.

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(1) 1826 c. 16.

(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<sup>(2)</sup> (under which forfeiture is required in cases of treason, subject to whole or partial restoration under section 70(2) of the Criminal Justice Act 1948<sup>(3)</sup>), or

(b) so far as it has effect in relation to benefits under the Scheme, section 24 of the Chelsea and Kilmainham Hospitals Act 1826.

## **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—

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(2) 1870 c. 23.

(3) 1948 c. 58.

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- (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>(4)</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.
- (5) In this rule—

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(4) 1993 c. 48.

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“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>(5)</sup>,
- (b) by regulation 2 of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997<sup>(6)</sup>,
- (c) by regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(7)</sup>, or
- (d) by paragraph 7 of Schedule 29 to the Finance Act 2004<sup>(8)</sup> (which defines trivial commutation lump sums for the purposes of Part 1 of that Schedule).

#### *Determination of Questions*

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

**J.9.** 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.

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(5) 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.

(6) S.I. 1997/785.

(7) S.I. 2000/1054.

(8) 2004 c. 12.