

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).”

Commencement Information

I1 Sch. 2 para. 1 in force at 6.4.2005, see art. 1

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).”

Commencement Information

I2 Sch. 2 para. 2 in force at 6.4.2005, see art. 1

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,

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- (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.”.

Commencement Information

I3 Sch. 2 para. 3 in force at 6.4.2005, see [art. 1](#)

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.”.

Commencement Information

I4 Sch. 2 para. 4 in force at 6.4.2005, see [art. 1](#)

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.”.

Commencement Information

I5 Sch. 2 para. 5 in force at 6.4.2005, see art. 1

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

Commencement Information

I6 Sch. 2 para. 6 in force at 6.4.2005, see art. 1

7. At the end of rule C.4(3) insert—

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

Commencement Information

I7 Sch. 2 para. 7 in force at 6.4.2005, see art. 1

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.”.

Commencement Information

I8 Sch. 2 para. 8 in force at 6.4.2005, see art. 1

9. After rule C.7 insert—

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“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

C.9. 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.”.

Commencement Information

I9 Sch. 2 para. 9 in force at 6.4.2005, see **art. 1**

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.”.

Commencement Information

I10 Sch. 2 para. 10 in force at 6.4.2005, see **art. 1**

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.”.

Commencement Information

III Sch. 2 para. 11 in force at 6.4.2005, see **art. 1**

- 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),

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- (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.”.

Commencement Information

I12 Sch. 2 para. 12 in force at 6.4.2005, see [art. 1](#)

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).”.

Commencement Information

I13 Sch. 2 para. 13 in force at 6.4.2005, see [art. 1](#)

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,

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- (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.”.

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Commencement Information

I14 Sch. 2 para. 14 in force at 6.4.2005, see **art. 1**

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.”.

Commencement Information

I15 Sch. 2 para. 15 in force at 6.4.2005, see **art. 1**

Status:

Point in time view as at 06/04/2005.

Changes to legislation:

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