SCOTTISH STATUTORY INSTRUMENTS

2015 No. 143

The Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015

PART 2

Amendment of the Firefighters' Compensation Scheme (Scotland) Order 2006

General

2. Schedule 1 to the Firefighters' Compensation Scheme (Scotland) Order 2006(**1**) is amended in accordance with articles 3 to 15.

Amendment of Part 1 (interpretation)

3.—(1) Part 1 is amended as follows.

(2) In rule 2(1) (interpretation)—

(a) after the definition of "the 1992 Scheme", insert—

""active member of the 2015 Scheme" has the meaning given in regulation 19 (active membership) of the 2015 Regulations;

"active member's account" means the account established under regulation 31 (establishment of active member's account) of the 2015 Regulations;";

(b) after the definition of "the 2006 Scheme", insert—

""the 2015 Regulations" means the Firefighters' Pension Scheme (Scotland) Regulations 2015(**2**);

"the 2015 Scheme" means the Firefighters' Pension Scheme (Scotland) 2015 set out in the 2015 Regulations;";

(c) after the definitions of "EEA State", insert—

""eligible child's pension" has the meaning given in regulation 84 (eligible child's pension) of the 2015 Regulations;

"final pay" has the meaning given in regulation 93 (meaning of "final pay") of the 2015 Regulations;";

(d) after the definition of "injury", insert—

""member of the 2015 Scheme" has the same meaning as "member" in regulation 3 (interpretation) of the 2015 Regulations;";

(e) for the definition of "normal pension age", substitute—

(**1**) S.S.I. 2006/338.
(**2**) S.S.I. 2015/19.

""normal pension age", in relation to employees of a fire and rescue authority appointed on terms under which they are or may be required to engage in firefighting—

(a) in relation to the 1992 Scheme, means 55;

(b) in relation to the 2006 Scheme, means 60;

(c) in relation to the 2015 Scheme, means 60(**3**);";

(f) in the definition of "pensionable pay", at the end insert—

"(c) in relation to the 2015 Scheme, shall be construed in accordance with regulation 17 (pensionable pay) of the 2015 Regulations;

(d) in the case of a person who is not a member of any of these Schemes, shall be construed in accordance with rule 11 of this Part;";

(g) in the definition of "pensionable service", at the end insert—

"(c) in relation to the 2015 Scheme, means the continuous period of pensionable service, in relation to an active member's account for the scheme employment in respect of which the award under this scheme is payable and any of the following types of service that have been added to, or transferred to, that account—

(i) if applicable, any periods of pensionable service in relation to the 1992 Scheme or the 2006 Scheme that relates to the person's employment which is the same as, or most similar to, the employment in respect of which the award is payable;

(ii) if applicable, any periods of pensionable service relating to any transfer value payments accepted under Part 9 (transfers) of the 2015 Regulations in respect of the person's accrued rights under another occupational pension scheme;

(iii) if applicable, any periods of service relating to any pension account entries transferred in accordance with Chapter 4 of Part 4 of the 2015 Regulations; and

(iv) if applicable, any periods of service relating to an added pension account established under regulation 38 (establishment of added pension account) of the 2015 Regulations relating to the member's scheme employment in respect of which the award is payable, such periods of service are to be calculated in accordance with such guidance as is provided for the purpose by the Government Actuary;";

(h) for the definition of "relevant service", substitute—

""relevant service", except in rule 1 of Part 7 (servicemen) and rule 1 of Part 7A (reservists), means service which either was, or would have been, reckonable as pensionable service but for—

(a) an election under rule G3 of the 1992 Scheme;

(b) an election under rule 5 of Part 2 of the 2006 Scheme;

(c) the exercise of an option not to become an active member of the 2015 Scheme in accordance with Chapter 2 (pensionable service) of Part 3 of the 2015 Regulations;

(d) a failure to elect under—

(**3**) See section 10(2) of the Public Service Pensions Act 2013 (c.25).

(i) rule G2A(**4**) of the 1992 Scheme;

(ii) rule 4 of Part 11 of the 2006 Scheme; or

(iii) regulation 113(3) (contributions during child-related leave) of the 2015 Regulations; or

(e) a failure to exercise an option to become an active member of the 2015 Scheme in accordance with regulation 12 (opting into this scheme) of the 2015 Regulations;";

(i) after the definition of "retire", insert—

""scheme employment" has the meaning given in regulation 6 (scheme employment) of the 2015 Regulations;".

(3) In rule 11(1) (determining pensionable pay in certain cases)—

(a) after "the 2006 Scheme", where these words occur for the first time, insert "or the 2015 Scheme";

(b) for sub-paragraph (c), substitute—

"(c) regulation 17 of the 2015 Regulations in the case of a person who—

(i) exercised an option not to become an active member of the 2015 Scheme in accordance with Chapter 2 of Part 3 of the 2015 Regulations; or

(ii) did not exercise an option to become an active member of the 2015 Scheme in accordance with regulation 12 of the 2015 Regulations;

(d) rule 1 of Part 11 of the 2006 Scheme, where an election had been made at different times under the 1992 Scheme and the 2006 Scheme;

(e) except where sub-paragraph (d) applies, regulation 17 of the 2015 Regulations, in the case of a person who had at different times, in relation to all of the schemes (namely, the 1992 Scheme, the 2006 Scheme and the 2015 Scheme), or a combination of any two of them—

(i) made an election referred to in sub-paragraph (a) or sub–paragraph (b); or

(ii) exercised or not exercised an option referred to in sub- paragraph (c),

as the case may be.";

(c) after paragraph (3), insert—

"(3A) Where, in accordance with paragraph (1), the definition of pensionable pay is to be construed in the case of a person in accordance with the 2015 Scheme, the award must be calculated on the basis of the pay which would have been the final pay if he had not, in respect of sub-paragraph (c)(i), exercised an option; or in respect of sub-paragraph (c)(ii) failed to exercise an option.".

Amendment of Part 2 (injury awards and duty-related compensation)

4.—(1) Part 2 is amended as follows.

(2) In rule 3 (compensation for death or permanent incapacity while on duty), in paragraph (8), after "the 2006 Scheme" insert "or the 2015 Scheme".

(3) In rule 4 (commutation of small compensatory pensions), in paragraph (1)(b), after "the 2006 Scheme", insert "or regulation 105 of the 2015 Regulations".

(**4**) Rule G2A was inserted by S.S.I. 2004/385 and amended by S.I. 2005/566.

Amendment of Part 3 (awards on death: spouses and civil partners)

5.—(1) Part 3 is amended as follows.

(2) In rule 1 (special award for spouse or civil partner)—

(a) in paragraph (3)—

(i) for "or, as the case may be, the deceased's final pensionable pay", in each place where the words occur, substitute "or the deceased's final pensionable pay or final pay, as the case may be";

(ii) in sub-paragraph (a)(ii), after "ill health retirement)" insert "or regulation 65 of the 2015 Regulations";

(b) in paragraph (4), for "as the case may be, the deceased's final pensionable pay" substitute "the deceased's final pensionable pay or final pay, as the case may be".

(3) In rule 4 (limitation where spouse or civil partner is living apart), for paragraph (1A) substitute—

"(1A) Paragraph (1) does not apply to a person—

(a) who is a member of the 2006 Scheme;

(b) who first takes up employment with a fire and rescue authority on or after 6th April 2006 and is entitled to be a member of the 2006 Scheme, but elects not to pay pension contributions;

(c) who is a member of the 2015 Scheme; or

(d) who is eligible to be an active member of the 2015 Scheme and—

(i) exercises an option not to become an active member of that scheme in accordance with Chapter 2 of Part 3 of the 2015 Regulations; or

(ii) does not exercise an option to become an active member of that scheme in accordance with regulation 12 of the 2015 Regulations.".

(4) In rule 5 (effect of new relationship), for paragraph (3) substitute—

"(3) Paragraphs (1) and (2) do not apply to a person—

(a) who is a member of the 2006 Scheme;

(b) who first takes up employment with the fire and rescue authority on or after 6th April 2006 and is entitled to be a member of the 2006 Scheme, but elects not to pay pension contributions;

(c) who is a member of the 2015 Scheme; or

(d) who is eligible to be an active member of the 2015 Scheme and—

(i) exercises an option not to become an active member of that scheme in accordance with Chapter 2 of Part 3 of the 2015 Regulations; or

(ii) does not exercise an option to become an active member of that scheme in accordance with regulation 12 of the 2015 Regulations.".

(5) In rule 6 (amount of survivor's pension: special cases), for paragraph (1) substitute—

"(1) This rule applies in relation to a person—

(a) who is a member of the 2006 Scheme on the day on which the person dies;

(b) in respect of whom an election under rule 5(1) of Part 2 of the 2006 Scheme not to make pension contributions has effect on the day on which the person dies;

(c) who is a member of the 2015 Scheme on the day on which the person dies; or

(d) who is eligible to be an active member of the 2015 Scheme and—

(i) has exercised an option not to become an active member of that scheme in accordance with Chapter 2 of Part 3 of the 2015 Regulations which has effect on the day on which the person dies; or

(ii) has not exercised an option to become an active member of that scheme in accordance with regulation 12 of the 2015 Regulations on the day on which the person dies.".

Amendment of Part 5 (awards on death: additional provisions)

6. In Part 5, in rule 5 (increase of pensions and allowances during first 13 weeks)—

(a) at the end of paragraph (2)(b), omit "and";

(b) at the end of paragraph (2)(c), insert—

"and

(d) any eligible child's pension under the 2015 Regulations,";

(c) in paragraph (5), after "the 2006 Scheme", insert "or an eligible child's pension under the 2015 Regulations";

(d) in paragraph (7), after "the 2006 Scheme", insert "or the 2015 Scheme".

Amendment of Part 7 (servicemen)

7. In Part 7, in rule 2 (awards to servicemen), in paragraph (3)(b) after "the 2006 Scheme", insert "or the 2015 Scheme".

Amendment of Part 7A (reservists)

8.—(1) Part 7A is amended as follows.

(2) In rule 1 (interpretation of Part 7A), in paragraph (1)(a)(ii), after "the 2006 Scheme" insert "or the 2015 Scheme".

(3) In rule 2 (awards to reservists)—

(a) in paragraph (2), for "has effect", substitute, "and regulation 65 (entitlement to lower tier ill-health pension and higher tier ill-health pension) of the 2015 Regulations have effect".

(b) for paragraph (3)(a), substitute—

"(a) pay the reservist, instead of an ill-health pension under rule 2 of Part 3 of the 2006 Scheme or under regulation 65 of the 2015 Regulations, a pension at the rate of one twelfth of the reservist's final pensionable pay or final pay, as the case may be;".

(4) In rule 3 (awards on death of reservists), at the end of paragraph (2) insert "or increase any pension or eligible child's pension payable under Chapter 3 of Part 6 of the 2015 Regulations.".

Amendment of Part 8 (special cases)

9. In Part 8, in rule 2 (award for or in relation to a volunteer firefighter)—

(a) in paragraph (2), after "the 2006 Scheme", insert "or the 2015 Scheme";

(b) for paragraph (3), substitute—

"(3) The following provisions apply in relation to the awards to which a person, by virtue of paragraph (2), may be entitled—

(a) rules B7 (commutation), B9 (allocation) and B10 (limitation of commuted or allocated portion) of the 1992 Scheme;

(b) rule 9 (commutation: general) or rule 11 (allocation of pension) of Part 3 of the 2006 Scheme;

(c) regulation 109 (commutation of part of pension) or Chapter 6 (allocation of part of pension) of Part 5 of the 2015 Regulations.";

(c) for paragraph (4), substitute—

"(4) Subject to paragraph (4A)—

(a) a person to whom paragraph (1) applies shall be treated for the purposes of rule B3 (ill-health awards) of the 1992 Scheme as having been a regular firefighter falling within the description in paragraph (10) below; and rules B7 (commutation), B9 (allocation), B10 (limitation of commuted or allocated portion), K1 (review of ill-health and certain deferred pensions), K1A (consequences of review) and K3 (reduction of award in case of default) of the 1992 Scheme apply accordingly in relation to the awards to which the person is thus entitled;

(b) if a person to whom paragraph (1) applies—

(i) has become a member of the 2006 Scheme, rule 9 or 11 of Part 3 of the 2006 Scheme, rule 1 of Part 9 of that Scheme (review of ill-health pension) and rule 2 of that Part (consequences of review) shall apply accordingly in relation to the awards to which the person is thus entitled;

(ii) has become a member of the 2015 Scheme, regulation 109 (commutation of part of pension), Chapter 6 (allocation of part of pension) of Part 5, regulation 68 (review of ill-health award or early payment of retirement pension) and regulation 69 (consequences of review) of the 2015 Regulations shall apply accordingly in relation to the awards to which the person is thus entitled.";

(d) in paragraph (4A)—

(i) after "the 2006 Scheme", where these words occur for the first time, insert "or the 2015 Scheme";

(ii) after "ill-health retirement)", insert "or under regulation 65 (entitlement to lower tier ill-health pension and higher tier ill-health pension) of the 2015 Regulations".

Amendment of Part 9 (review, withdrawal and forfeiture of awards)

10. In Part 9, in rule 2 (reduction of award in case of default)—

(a) after paragraph (2)(b)(ii), insert—

"or

(iii) if the person is a member of the 2015 Scheme, that person's state pension age, or 65th birthday if that is higher(**5**),";

(b) in paragraph (3), after "the 2006 Scheme", insert "or Chapter 7 of Part 4 of the 2015 Regulations".

Amendment of Part 10 (payment of awards and financial provisions)

11.—(1) Part 10 is amended as follows.

(**5**) See section 10 of the Public Service Pensions Act 2013 (c.25) for meaning of "state pension age".

(2) In rule 3 (prevention of duplication)—

(a) in paragraph (1)(b), after "the 2006 Scheme" insert "or the 2015 Scheme";

(b) in paragraph (2)—

(i) in sub-paragraph (a), after "the 2006 Scheme" insert "or Chapter 6 of Part 5 of the 2015 Regulations";

(ii) in sub-paragraph (b), after "entitlement to pension)" insert, "or regulation 105 (entitlement to pension credit members' pension) of the 2015 Regulations";

(iii) in sub-paragraph (c), after "minimum pensions)" insert, "or regulation 166 (guaranteed minimum pension) of the 2015 Regulations";

(c) in paragraph (3) for "as the case may be, rule 4 of Part 13 of the 2006 Scheme" substitute "rule 4 of Part 13 of the 2006 Scheme, or regulation 8 (service in two or more scheme employments) and regulation 9 (application of Chapter 2 – Pensionable service) of the 2015 Regulations, as the case may be";

(d) in paragraph (4)(a), at the end. insert—

"or

(iii) under regulation 58 or 65 of the 2015 Regulations, a retirement pension or a lower tier ill-health pension or a higher tier ill-health pension;".

(3) In rule 4 (prevention of duplication: other injury awards)—

(a) in paragraph (1), after the definition of "Part 8 award", insert—

""regulation 65 award" means an entitlement to a lower tier ill-health pension or a higher tier ill-health pension under regulation 65 of the 2015 Regulations;";

(b) in paragraph (2)(b)(i), after "a rule 2 award,", insert "a regulation 65 award,";

(c) in paragraphs (3) and (4), for "or, as the case may be, the rule 2 award" in each place where the words occur substitute "or the rule 2 award or the regulation 65 award, as the case may be,".

(4) In rule 5 (prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters)—

(a) at the end of paragraph (3)(k), omit "and";

(b) after paragraph (3)(l), insert—

"(m) a surviving partner's pension under regulation 78, 79 or 80 of the 2015 Regulations;

(n) a surviving partner's bereavement pension under regulation 81 of the 2015 Regulations;

(o) an eligible child's pension under regulations 86, 87 or 88 of the 2015 Regulations;

(p) an eligible child's bereavement pension under regulation 92 of the 2015 Regulations;

(q) a lump sum payable on death under regulations 96 and 97 of the 2015 Regulations.".

Amendment of Schedule 1 (injury awards and duty-related compensation)

12.—(1) Schedule 1 is amended as follows.

(2) In Part 1 (calculation of awards for full-time service)—

(a) in paragraph 1, in the headings in the Table, for "or, as the case may be, final pensionable pay" in both places substitute ", final pensionable pay or final pay, as the case may be";

(b) after paragraph 1, insert—

"**1A.**—(1) In the event that an award becomes payable in respect of a qualifying injury sustained in the course of employment in relation to which a person is or is eligible to be an active member in the 2015 Scheme, relevant service, in the Table, means the total of—

(a) any relevant service in relation to the 2015 Scheme that relates to the person's scheme employment which is the same as, or most similar to, the scheme employment in respect of which the award is payable; and

(b) if applicable, any relevant service in relation to the 1992 Scheme or the 2006 Scheme that relates to the person's employment which is the same as, or most similar to, the employment in respect of which the award is payable.

(2) In the event that an award is payable to a person who is not an active member of the 2015 Scheme, or has elected not to make pension contributions under the 2006 Scheme or the 1992 Scheme, when calculating an award payable under this scheme, the person's 'relevant service' is determined according to the pension scheme the person would have been eligible to be a member of when the person sustained the qualifying injury.

(3) In sub-paragraph (2), "eligible to be a member" means a person's eligibility to be a member of any of the 1992 Scheme, the 2006 Scheme and the 2015 Scheme, pursuant to rule A3 (exclusive application to regular firefighters) of the 1992 Scheme, rule 1 of Part 2 of the 2006 Scheme or regulation 7 of, or Schedule 2 to, the 2015 Regulations, as the case may be.";

(c) in paragraph 2(1), after "the 2006 Scheme", insert "or regulation 65 of the 2015 Regulations";

(d) in paragraph 2(2), after "the 2006 Scheme"—

(i) where the words occur for the first time, insert "or the exercise of an option not to become an active member of the 2015 Scheme in accordance with Chapter 2 of Part 3 of the 2015 Regulations";

(ii) where the words occur for the second time, insert "or regulation 113(3) of the 2015 Regulations or failed to exercise an option to become an active member of the 2015 Scheme in accordance with regulation 12 of the 2015 Regulations";

(e) in paragraph 2(3)(a), after "the 2006 Scheme", insert "or regulation 109 (commutation of part of pension) or Chapter 6 (allocation of part of pension) of Part 5 of the 2015 Regulations".

(3) In Part 2 (calculation of awards for part-time service)—

(a) in paragraph 2(1), for "or, as the case may be, the final pensionable pay", substitute ", final pensionable pay or final pay, as the case may be";

(b) after paragraph 2(2), insert—

"(3) Where the person is or is eligible to be an active member in the 2015 Scheme, "relevant service" in B, C and D means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.".

(4) In Part 3 (calculation of awards for retained or volunteer service), in paragraph 1, for "paragraph 1 of Part 1", substitute "the Table in paragraph 1 of Part 1 of this Schedule";

Amendment of Schedule 2 (awards for spouses and civil partners)

13.—(1) Schedule 2 is amended as follows.

(2) In Part 1 (special pension)—

(a) in paragraph 1, for "or, as the case may be, final pensionable pay", substitute ", final pensionable pay or final pay, as the case may be";

(b) in paragraph 2—

(i) in sub-paragraph (1), for "or, as the case may be, the final pensionable pay", substitute ", the final pensionable pay or the final pay, as the case may be";

(ii) after sub-paragraph (2) insert—

"(3) Where the person is or is eligible to be an active member in the 2015 Scheme, "relevant service" in B, C and D means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.".

(c) after paragraph 3(2) insert—

"(3) Where the person is or is eligible to be an active member in the 2015 Scheme, "relevant service" in C means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.".

(3) In Part 2 (award for surviving spouse of post-retirement marriage where deceased a member of the 1992 scheme but not a member of the 2006 scheme), in paragraph 1(1)(b), after "2006 Scheme", insert "or the 2015 Scheme".

Amendment of Schedule 3 (awards on death: children)

14. In Part 1 (child's special allowance) of Schedule 3—

(a) in paragraph 1, for "or, as the case may be, the deceased's final pensionable pay", substitute ", the deceased's final pensionable pay or final pay, as the case may be";

(b) in paragraph 4(2), for "or, as the case may be, the deceased's final pensionable pay", substitute "the deceased's final pensionable pay or final pay, as the case may be,";

(c) in paragraph 5—

(i) the existing provision becomes sub-paragraph (1);

(ii) after sub-paragraph (1), insert—

"(2) Where the person is or is eligible to be an active member in the 2015 Scheme, "relevant service" in C means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.".

Amendment of Schedule 4 (awards on death: additional provisions)

15. In Part 1 (adult dependent relative's special pension) of Schedule 4—

(a) in paragraphs 1, 2 and 3, for "or, as the case may be, the deceased's final pensionable pay", in each place where the words occur, substitute "or the deceased's final pensionable pay or final pay, as the case may be".

(b) in paragraph 4—

(i) the existing provisions become sub-paragraph (1);

(ii) after "final pensionable pay", insert "or final pay";

(iii) before "relevant service", omit "his";

(iv) after sub-paragraph (1), insert—

"(2) Where the person is or is eligible to be an active member in the 2015 Scheme, "relevant service" in C means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.".