

ANNEX

The Firefighters' Pension Scheme (Northern Ireland) 2007

1. The following Scheme shall have effect.

PART A

GENERAL PROVISIONS AND RETIREMENT

Interpretation

1.—(1) Part I of Schedule 1 contains a glossary of expressions; in this Scheme any expression for which there is an entry in the first column of that Schedule has the meaning given against it in the second column or is to be construed in accordance with directions given against it in that column.

(2) Part II of Schedule 1 has effect for construing references in this Scheme to certain expressions related to the National Insurance and Social Security Acts and Orders.

Exclusive application to regular firefighters

2.—(1) Subject to paragraphs (3) to (5), this Scheme applies in relation to regular firefighters and their spouses or civil partners and dependants to the exclusion of pension provision under any enactment other than Article 10 of the Fire Services (Northern Ireland) Order 1984 and the Pension Schemes (Northern Ireland) Act 1993(1).

(2) In paragraph (1) “pension provision” means any provision for the payment of a pension, allowance or gratuity, on cessation of employment or on death, in respect of employment as a regular firefighter.

(3) A person who is not a member of the fire and rescue service but whose employment is, under article 3 or 4, treated for the purposes of this Scheme as employment as a regular firefighter is not a regular firefighter for the purposes of this article.

(4) Nothing in this article prevents provision being made by this Scheme in respect of pension credit members.

(5) This Scheme ceases to apply in relation to—

- (a) a person who takes up employment with the Board on or after 6th April 2006, subject to paragraph (6);
- (b) a person who, having made an election under article 59(1) not to pay pension contributions, cancels that election on or after 6th April 2006, subject to paragraph (7); and
- (c) the spouse, civil partner, eligible child or other dependant of such a person,

on the day on which a scheme, other than the Compensation Scheme, is brought into operation under paragraph 6 of Schedule 1 to the Fire and Rescue Services (Northern Ireland) Order 2006(2).

(6) Paragraph (5) shall not apply to a person who, immediately before taking up employment with the Board—

- (a) was employed by an English, Scottish or Welsh fire and rescue authority as a regular firefighter;
- (b) had been continuously employed by that authority since 5th April 2006 or earlier;

(1) 1993 c. 49

(2) S.I. 2006/1254 (N.I. 9).

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- (c) had not made an election not to pay pension contributions or, if such an election had been made, had cancelled the election not to pay contributions before 6th April 2006; and
 - (d) had not elected to join any other pension scheme maintained by that authority which would require a contribution of less than 11 per cent of his pensionable pay.
- (7) In the situation described in paragraph 2(5)(b), if—
- (a) a person has accrued pension rights prior to the making of an election not to pay pension contributions; and
 - (b) such person's pension contributions have not been refunded,
- this Scheme shall continue to apply solely in respect of those accrued pension rights.

Application to temporary employment connected with fire and rescue services

3.—(1) This article applies in the case of a person who has ceased to perform duties as a regular firefighter and has entered relevant employment.

(2) For the purposes of this article relevant employment is temporary employment, on duties connected with the provision of fire and rescue services—

- (a) as an instructor at the central training institution or any training centre maintained by the Secretary of State; or
- (b) as an inspector appointed under Article 50 of the Fire Services (Northern Ireland) Order 1984 or Article 55 of the Fire and Rescue Services (Northern Ireland) Order 2006 or under section 24 of the Fire Services Act 1947⁽³⁾ or section 28 of the Fire and Rescue Services Act 2004; or
- (c) in pursuance of arrangements made by the Secretary of State in connection with the training in firefighting of members of the armed forces of the Crown; or
- (d) in pursuance of arrangements made by the Secretary of State in connection with the training and organisation of firefighting forces in any country or territory outside the United Kingdom.

(3) Where this article applies the person's relevant employment shall be treated for the purposes of this Scheme as employment as a member of the fire and rescue service and this Scheme applies in relation to the relevant employment as if—

- (a) he were, and his duties were duties as, a regular firefighter;
- (b) his pay and rank were the same as they would have been had he not ceased to perform duties as a regular firefighter;
- (c) any reference to the fire and rescue service were a reference to the relevant employment;
- (d) articles 10, 11 and 90 were omitted; and
- (e) any reference to the Board were a reference to the Secretary of State.

Application to permanent employment as instructor

4.—(1) This article applies in the case of a person who has ceased to perform duties as a regular firefighter and has entered relevant employment.

(2) For the purposes of this article relevant employment is permanent employment, on duties connected with the provision of fire services, as an instructor at the central training institution or any training centre maintained by the Secretary of State.

(3) 1947 c.41

(3) Where this article applies the person's relevant employment shall be treated for the purposes of this Scheme as employment as a member of the fire and rescue service and this Scheme applies in relation to the relevant employment as if—

- (a) he were, and his duties were duties as, a regular firefighter;
- (b) any reference to the fire and rescue service were a reference to the relevant employment;
- (c) any reference to the Board were a reference to the Secretary of State; and
- (d) articles 10, 11 and 90 were omitted.

Reckoning of service for purposes of awards

5.—(1) For the purpose of calculating an award payable to or in respect of a member of the fire and rescue service by reference to any period in years (including a period of pensionable or other service) the period shall be reckoned as $(A + (B/365))$ years; where A is the number of completed years in the period, and B is the number of completed days in any remaining part of a year; and accordingly a part of a year which includes 29th February in a leap year and comprises 365 days, shall be treated as a whole year.

(2) Where, for the purpose of calculating an award payable to or in respect of a regular firefighter—

- (a) it is necessary to determine his pensionable service reckonable by reason of service or employment before or after a particular date (“the material date”); and
- (b) by virtue of the receipt by the Board of a transfer value, he is entitled to reckon a period of pensionable service (“the credited period”) by reason of service or employment for a period (“the previous employment period”) which includes that date,

the credited period counts as pensionable service reckonable by reason of service or employment before and after the material date in the same proportion as that between the parts of the previous employment period falling before and after the material date.

(3) In the case of a person who ceased to serve as a member of the fire brigade before 1st May 1975, Part III of Schedule 9 has effect and this article does not apply.

(4) Subject to article 24 and Part IV of Schedule 2, any period of service as a part-time member of the fire brigade shall be treated as service as a whole-time member of the fire brigade when calculating a person's pensionable service.

Aggregate pension contributions for purposes of awards

6.—(1) A regular firefighter's aggregate pension contributions comprise—

- (a) all payments made by him to the Board that fall within paragraph (2);
- (b) all payments made by him in accordance with article 46(4);
- (c) all contributions made by him in accordance with an election under article 58 (optional pension contributions during maternity and adoption leave),
- (d) all payments made by him in accordance with an election under article 62 (election to purchase increased benefits); and
- (e) if paragraph (3) applies, the amount of the notional award described in paragraph (4).

(2) The payments falling within this paragraph are payments under this Scheme or a previous Scheme that relate to a period of service which the regular firefighter is, or was immediately before electing under article 59 not to pay pension contributions, entitled to reckon as pensionable service and have not been refunded to him, including payments made—

- (a) by way of rateable deductions from pay;

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- (b) by way of such additional and further payments as were mentioned in Articles 51 to 53 of the 1973 Scheme; or
- (c) in accordance with such an undertaking as is mentioned in Part I of Schedule 6.

(3) This paragraph applies where the regular firefighter is, or was immediately before electing under article 59 not to pay pension contributions, entitled to reckon pensionable service by reason of a period of service or employment otherwise than as a regular firefighter (“the previous employment period”).

(4) The notional award mentioned in paragraph (1)(e) is the award by way of return of contributions or analogous payment that would have been made to him if, at the end of the previous employment period, he had voluntarily retired in circumstances entitling him to such an award under the applicable superannuation arrangements.

Disablement

7.—(1) References in this Scheme to a person’s being permanently disabled are references to his being disabled at the time when the question arises for decision and to his disablement being at that time likely to be permanent.

(2) In determining whether a disablement is permanent, the Board shall have regard to whether the disablement will continue until the person’s normal retirement age.

(3) Disablement means incapacity, occasioned by infirmity of mind or body, for the performance of duty, except that in relation to a child it means incapacity, so occasioned, to earn a living.

(4) Where a person has retired before becoming disabled and the date on which he becomes disabled cannot be ascertained, it shall be taken to be the date on which the claim that he is disabled is first made known to the Board.

Relevant service in the armed forces

8. References in this Scheme to relevant service in the armed forces are references to—
- (a) service specified in Schedule 1 to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(4) (“the 1951 Act”), other than service specified in paragraph 5(b) of that Schedule;
 - (b) part-time service under the National Service Act 1948(5), otherwise than pursuant to a training notice under that Act; and
 - (c) service for the purposes of training only performed by a person mentioned in paragraph 7 of Schedule 1 to the 1951 Act for a period shorter than 7 days.

Normal pension age

9. The normal pension age of employees of the Board appointed on terms under which they are or may be required to engage in fire-fighting is 55.

Compulsory retirement on grounds of efficiency

10. A regular firefighter who—
- (a) has attained the age of 50; and
 - (b) has, or but for an election under article 59 or a failure to make election under article 46(3) or 58 would have, completed 25 years’ pensionable service,

(4) 1951 c. 65

(5) 1948 c. 64

may be required by the Board to retire on the grounds that his retention in the fire and rescue service would not be in the general interests of its efficiency.

Compulsory retirement on grounds of disablement

11.—(1) Subject to paragraph (2), a regular firefighter may be required by the Board to retire on the date on which the Board determines that he ought to retire on the ground that he is permanently disabled.

(2) A retirement under this article is void if, on an appeal against the medical opinion on which the Board acted in determining that he ought to retire, the independent medical referee appointed under Schedule 8 decides that the appellant is not permanently disabled.

Effective date of retirement

12. For the purposes of this Scheme a member of the fire and rescue service shall be taken to retire immediately after his last day of service.

PART B

PERSONAL AWARDS

Ordinary pension

13.—(1) Subject to paragraph (2), this article applies to a regular firefighter who retires if he then—

- (a) has attained the age of 50; and
- (b) he is entitled to reckon at least 25 years' pensionable service; and
- (c) does not become entitled to an ill-health award under article 15.

(2) This article does not apply—

- (a) to a chief fire officer who retires before attaining the age of 55, unless his notice of retirement was given with the permission of the Board; or
- (b) where immediately before the person's retirement an election under article 59 not to pay pension contributions had effect.

(3) A person to whom this article applies becomes entitled on retiring to an ordinary pension calculated in accordance with Part I of Schedule 2.

Short service award

14.—(1) This article applies, unless immediately before his retirement an election under article 59 not to pay pension contributions had effect, to a regular firefighter who—

- (a) retires on or after normal pension age; and
- (b) is not entitled to any other pension or gratuity under this Part.

(2) A person to whom this article applies becomes entitled on retiring—

- (a) if he is entitled to reckon at least 2 years' pensionable service or if a transfer payment in respect of his rights under a personal pension scheme has been made to the scheme, to a short service pension calculated in accordance with Part II of Schedule 2; and
- (b) in any other case, to a short service lump sum of an amount equal to the aggregate of his pension contributions.

Ill-health award

15.—(1) This article applies to a regular firefighter who is required to retire under article 11 (compulsory retirement on grounds of disablement) unless, immediately before his retirement, an election under article 59 not to pay pension contributions had effect.

(2) A regular firefighter who is entitled—

- (a) to reckon at least 2 years' pensionable service; or
- (b) to an award under the Compensation Scheme,

becomes entitled on retiring—

- (i) where paragraph (3) applies, to a lower tier ill-health pension calculated in accordance with paragraph 2 or 3 (as the case may be) of Part III of Schedule 2,
- (ii) where paragraph (4) applies, to the pensions referred to in paragraph (5).

(3) This paragraph applies where, in the opinion of a qualified medical practitioner, obtained in accordance with article 65, the firefighter is capable of undertaking regular employment.

(4) This paragraph applies where, in the opinion of a qualified medical practitioner obtained in accordance with article 65, the firefighter is incapable of undertaking regular employment.

(5) The pensions are—

- (a) a lower tier ill-health pension calculated in accordance with paragraph 2 or 3 (as the case may be) of Part III of Schedule 2; and
- (b) a higher tier ill-health pension determined in accordance with paragraph 4 of that Part.

(6) A firefighter who is not entitled to a pension under paragraph (2), becomes entitled on retiring to a short service lump sum of an amount equal to the aggregate of his pension contributions.

(7) In paragraphs (3) and (4) “regular employment” means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of his capacity for employment arises.

Deferred pension

16.—(1) This article applies to a regular firefighter—

- (a) who is entitled to reckon at least 2 years' pensionable service; or
- (b) in respect of whom a transfer value attributable to his rights under a personal pension scheme has been paid into the scheme; or
- (c) who is entitled to reckon pensionable service by virtue of both service as a regular firefighter and of a period of other employment which together amount to 2 years or more; or
- (d) who has an earlier period of service as a regular firefighter which, disregarding breaks in service of not more than a month, is continuous and which, after deducting from it—
 - (i) any period during which an election under article 59 not to pay pension contributions had effect, and
 - (ii) any period of maternity or adoption leave which does not count as pensionable service as a result of article 47 or article 58

and aggregating the remainder with his pensionable service, amounts to 2 years or more.

(2) If a person to whom this article applies ceases to be a member of the fire and rescue service, or elects under article 59 not to pay pension contributions, in circumstances in which—

- (a) no transfer value or cash equivalent is payable in respect of him; and
- (b) he does not become entitled to any award under articles 13 to 15,

he becomes entitled to a deferred pension calculated in accordance with Part V of Schedule 2.

(3) If—

- (a) a person to whom, when he was a regular firefighter, this article applied has been awarded an ill-health pension under article 15; and
- (b) that pension is terminated under article 81 otherwise than on his re-deployment by the Board,

he becomes entitled to a deferred pension calculated in accordance with Part V of Schedule 2.

(4) A deferred pension becomes payable—

- (a) from the 60th birthday of the person entitled to it; or
- (b) from any earlier date on which he becomes permanently disabled for engaging in firefighting and performing any other duties appropriate to his former role as a firefighter, and no payment in respect of the pension shall be made for any earlier period.

(5) A person who under article 49(7)(b) relinquishes his entitlement to a deferred pension ceases to be entitled to it.

Repayment of aggregate pension contributions

17.—(1) This article applies to a regular firefighter, with less than 2 years' pensionable service, who ceases to be a regular member of the fire and rescue service or elects under article 59 not to pay pension contributions, in circumstances in which—

- (a) no transfer value or cash equivalent is payable in respect of him; and
- (b) he does not become entitled to any award under articles 13 to 16 or article 78.

(2) A person to whom this article applies becomes entitled to the repayment of his aggregate pension contributions.

(3) Where aggregate pension contributions are repaid under paragraph (2), the Board shall transfer from its Firefighters' Pension Fund to any other fund maintained by it an amount equal to the aggregate of the amounts that it has paid by way of employer's contributions under article 57(4) in respect of the firefighter concerned.

Commutation — general provision

18.—(1) This article applies to an ordinary, short service, ill-health or deferred pension under this Part; in relation to a deferred pension, it has effect as if references to retirement and to the date of retirement were references respectively to the pension becoming payable and to the date of its coming into payment.

(2) Subject to paragraph (3), a person entitled or prospectively entitled to a pension to which this article applies may commute for a lump sum a portion of the pension ("the commuted portion").

(3) A person who retires with an ill-health award may not commute any portion of a higher-tier ill-health pension.

(4) The lump sum is the actuarial equivalent of the commuted portion at the date of retirement, calculated from tables prepared by the Government Actuary.

(5) The commuted portion must not in any case exceed a quarter of the full amount of the pension.

(6) In the case of an ordinary pension, unless—

- (a) when the person retires he is entitled to reckon at least 30 years' pensionable service; or
- (b) he retires at normal pension age (see article 9 (normal pension age));

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the commuted portion must not be such that the lump sum exceeds two and a quarter times the full amount of the pension.

(7) The full amount of a pension is its amount as calculated under Part I, II, III or V of Schedule 2, disregarding any reduction under any other provision of this Scheme.

(8) In order to commute a portion of a pension a person must, not earlier than 4 months before his intended retirement nor later than the day before the pension comes into payment, give the Board written notice of commutation specifying the portion.

(9) Notice of commutation takes effect on the date of the person's retirement.

(10) When a person's notice of commutation takes effect the Board shall—

- (a) reduce the pension, as from the effective date, by the commuted portion; and
- (b) within three months of the date of his retirement, pay him the lump sum; but where payment of the pension had commenced before commutation, that sum shall be reduced by the difference between the aggregate payments made in respect of the pension and the aggregate payments that would have been made in respect of it if it had been reduced from the date of retirement.

(11) Where—

- (a) notice of commutation relating to an ill-health pension has taken effect; and
- (b) the pension is terminated under article 81; and
- (c) the person later becomes entitled to another pension, other than an injury pension, for the purposes of which he is entitled to reckon the period of pensionable service that was reckonable for the purposes of the ill-health pension;

the other pension shall be reduced by the amount by which the ill-health pension would have been reduced if it had not been terminated.

(12) Where paragraph (11)(c) applies and notice of commutation is given in respect of the other pension, the portion of it that may be commuted is reduced by the amount of the reduction under paragraph (11).

(13) For the purposes of this article no account shall be taken of any increase under article 69(3) or rule 2 or 3 or Part 7 of the Compensation Scheme in an award to a serviceman.

Commutation - small pensions

19.—(1) Where the amount of any pension payable under this Part to a person who has attained state pensionable age, together with any pension to which he is entitled under article 74 and any increase under the Pensions (Increase) Act (Northern Ireland) 1971(6), does not exceed the commutation limit specified for the purposes of Part I of Schedule 29 to the Finance Act 2004 (lump sum rule)(7).

(2) The amount of a lump sum under this article is the actuarial equivalent of the pension, calculated from tables prepared by the Government Actuary.

(3) Where a person is entitled to more than one pension, the pensions shall be treated as one for the purposes of this article.

Allocation

20.—(1) This article applies to an ordinary, short service, ill-health or deferred pension under this Part.

(6) 1971 c. 35(N.I)

(7) As to the lump sum rule *see* section 166 of the Finance Act 2004. As to the commutation limit *see* paragraph 7(4) of Part I of Schedule 29 to that Act.

(2) A person entitled or prospectively entitled to a pension to which this article applies may allocate a portion of the pension in favour of a beneficiary, that is to say—

- (a) his spouse or civil partner; or
- (b) some other person who the Board is satisfied is substantially dependent on him.

(3) A person who has allocated a portion of an ordinary pension may allocate a further portion of it—

- (a) in favour of the same beneficiary; or
- (b) if that beneficiary has died, in favour of some other beneficiary.

(4) No more than one third of a pension may be allocated under this article.

(5) In order to allocate a portion of a pension a person must give the Board written notice of allocation specifying—

- (a) the portion; and
- (b) the beneficiary,

and must have satisfied the Board of his good health.

(6) A person's notice of allocation, which may be sent by post, must be given before, but not earlier than two months before, the date on which he intends to retire.

(7) Where a person has complied with paragraphs (5) and (6) the Board shall forthwith notify him in writing that it has accepted the notice of allocation.

(8) A notice of allocation which has been accepted takes effect only if the person who gave it retires within 2 months of giving it.

(9) Where a notice of allocation has taken effect and the pension to which it relates has become payable, the pension shall, unless the beneficiary has died, be reduced by the allocated portion as from the date from which the pension is payable, and if the beneficiary survives the pensioner the Board shall, as from the pensioner's death, pay the beneficiary a pension which is the actuarial equivalent of the allocated portion.

(10) Where the beneficiary dies after a pension, which has been reduced under paragraph (9), becomes payable, that reduction shall cease from the date of the beneficiary's death.

(11) The actuarial equivalent shall be calculated from tables prepared by the Government Actuary and in force at the time when the notice took effect, which shall take account of the ages of the pensioner and the beneficiary at that time and separate calculations shall be made in respect of separate allocations.

(12) For the purposes of this article no account shall be taken of any increase under article 69(3) or rule 2 or 3 of Part 7 of the Compensation Scheme.

Limitation of commuted or allocated portion of pension

21. A person may not commute under article 18 or allocate under article 20—

- (a) so much of any pension that it becomes payable at a rate less than two thirds of the rate at which it would have been payable but for those articles and Parts VI and VII of Schedule 2; or
- (b) in the case of a deferred pension in relation to which, when it becomes payable, he has a guaranteed minimum, so much of the pension that its weekly amount, including any increase under the Pensions (Increase) Act (Northern Ireland) 1971, is then less than the guaranteed minimum.
- (c) For the purposes of this article no account shall be taken of any increase under article 69(3) or rule 2 or 3 of Part 7 of the Compensation Scheme in an award to a serviceman.

Deduction of tax and lifetime allowance charge

22. The Board shall deduct from any payment which is chargeable to tax, or subject to a lifetime allowance charge within the meaning of the Finance Act 2004⁽⁸⁾, the amount of tax charged or the amount of charge to be recovered.

Pension debit members

23. Where a pension debit member is entitled to an award under article 13, 14, 15 or 16—
- (a) the award is calculated by reference to the member's rights under this Scheme as reduced by virtue of Article 28 of the 1999 Order and in accordance with such tables and other guidance as are provided for the purpose by the Government Actuary, and
 - (b) articles 18 to 21 have effect accordingly.

Part-time members

24. Where a person is entitled to an award under this Part and some or all of his service, by virtue of which his pensionable service is reckonable, was part-time service, his award shall be calculated in accordance with Part IV of Schedule 2.

PART C**AWARDS ON DEATH — SPOUSES OR CIVIL PARTNERS****Spouse's or civil partner's ordinary pension**

25.—(1) This article applies where a person entitled to reckon at least 2 years' pensionable service dies, leaving a surviving spouse or civil partner—

- (a) while serving as a regular firefighter unless an election under article 59 not to pay pension contributions had effect at the time of his death; or
- (b) while in receipt of an ordinary, short service or ill-health pension; or
- (c) while in receipt of an injury pension under the Compensation Scheme, if he has been but no longer is in receipt both of that pension and of an ill-health pension; or
- (d) in consequence of an injury on account of which he retired from service as a regular firefighter with an ill-health gratuity, if he has not since had any period of such service.

(2) Where this article applies the surviving spouse or civil partner is entitled to an ordinary pension calculated, subject to Part I of Schedule 9 (Spouse's or civil partner's awards), in accordance with Part I of Schedule 3.

(3) The surviving civil partner is entitled to an ordinary pension of such amount as bears to the ordinary pension to which he would have been entitled had he been the deceased's surviving spouse (calculated in accordance with Part I of Schedule 3), the same proportion that the deceased's service after 5th April 1988 bears to the whole of his pensionable service.

Spouse's or civil partner's accrued pension

26.—(1) This article applies, whether or not the pension has come into payment, where a person entitled to a deferred pension dies leaving a surviving spouse or civil partner.

(8) See section 214 of the Finance Act 2004 (c.12).

(2) For the purposes of paragraph (1) a person shall be treated as entitled to a deferred pension if he would have been entitled to one but for its commutation under article 19.

(3) Where this article applies the surviving spouse or civil partner is entitled to an accrued pension calculated in accordance with Part II of Schedule 3.

Limitation award to surviving spouse or civil partner with reference to date of marriage or civil partnership

27.—(1) A surviving spouse or civil partner is not entitled to an ordinary pension under article 25 or an accrued pension under article 26 unless that person was married to, or had formed a civil partnership with, the deceased during a period before the deceased last ceased to be a regular firefighter.

(2) A surviving spouse or civil partner who but for paragraph (1) would be entitled to a pension mentioned in that paragraph is instead entitled to a pension calculated in accordance with Part III of Schedule 3.

(3) A surviving civil partner who, but for paragraph (1), would be entitled to a pension mentioned in that paragraph, is instead entitled to a pension of such amount as bears to the pension to which, under paragraph (2), he would have been entitled had he been the deceased's surviving spouse, the same proportion that the deceased's service after 5th April 1988 bears to the whole of his pensionable service.

Surviving spouse's or civil partner's requisite benefit and temporary pension

28.—(1) This article applies, with effect from 1st March 1992, where—

- (a) a person entitled to reckon less than 2 years' pensionable service who is or has been a regular firefighter and by whom pension contributions have at any time been payable under article 57 dies, leaving a surviving spouse or civil partner, after the beginning of the tax year in which he attained or would have attained state pensionable age; and
- (b) article 26 does not apply.

(2) Where this article applies the surviving spouse or civil partner is entitled—

- (a) in respect of the first 13 weeks following the death, to a temporary pension; and
- (b) after the last of those 13 weeks, to a requisite benefit pension.

(3) The weekly amount of the temporary pension is $A - B$ where:

A is the weekly amount, immediately before he died, of the deceased's pensionable pay or, as the case may be, his pension or pensions (including any increase under the Pensions (Increase) Act (Northern Ireland) 1971(9)); and

B is the weekly amount of any children's allowances payable in respect of his death.

(4) The requisite benefit pension shall be calculated—

- (a) in the case of a surviving spouse, in accordance with Part IV of Schedule 3; and
- (b) in the case of a surviving civil partner, in accordance with that Part subject to the substitution, in paragraphs 1 and 3, of "5th April 1988" for "5th April 1978".

(5) If—

- (a) the deceased died while serving as a regular firefighter; and
- (b) the amount of the capitalised value of the requisite benefit pension, as calculated by the Government Actuary, is less than that of his average pensionable pay,

(9) 1971 c. 35(N.I.)

the surviving spouse or civil partner is entitled to a gratuity equal to the difference between those amounts.

Surviving spouse's or civil partner's award where no other award payable

29.—(1) This article applies where—

- (a) a person by whom pension contributions have at any time been payable under article 57 dies, while serving as a regular firefighter, before the end of the tax year preceding that in which he would have attained state pensionable age; and
- (b) he leaves a spouse or a civil partner; and
- (c) articles 25, 26 and 28 do not apply.

(2) Where this article applies the surviving spouse or civil partner is entitled—

- (a) in respect of the first 13 weeks following the death, to a temporary pension calculated as if article 28(2)(a) and (3) had applied; and
- (b) to a lump sum of an amount equal to the deceased's average pensionable pay.

Limitation where spouses or civil partners living apart

30.—(1) A surviving spouse or civil partner who at the time of the death was living apart from the deceased is not entitled to any award under articles 25 and 26 to 29.

(2) Except where paragraph (3) applies, a surviving spouse or civil partner who but for paragraph (1) would be entitled to a pension under article 25 or 26 is entitled instead to a requisite benefit pension calculated in accordance with Part IV of Schedule 3.

(3) Where—

- (a) the surviving spouse or civil partner would but for paragraph (1) be entitled to a pension under article 25 or 26; and
- (b) at the time of the death the deceased was making relevant contributions, or was liable to do so by virtue of an agreement or of an order or decree of a competent court,

the surviving spouse or civil partner is entitled to a pension of the appropriate amount.

(4) Relevant contributions are contributions paid or payable—

- (a) for the support of the spouse or civil partner; or
- (b) to the spouse or civil partner for the support of a child of the spouse's or civil partner's,

the amount of which exceeds that of the requisite benefit pension that would otherwise be payable under paragraph (2).

(5) The appropriate amount is the lesser of—

- (a) the amount of a pension calculated in accordance with, as the case may be, article 25 or 26; and
- (b) the amount of the relevant contributions.

(6) The Board may determine that, for such period as it thinks fit, a pension under paragraph (2) or (3) shall be paid at an increased rate, not exceeding that of the pension which would have been payable but for paragraph (1).

(7) Where but for paragraph (1) the surviving spouse or civil partner would be entitled to a gratuity, the Board may decide that the gratuity be paid in whole or part.

Effect of remarriage or subsequent civil partnership

31.—(1) A person entitled to a pension under this Part who remarries or forms a subsequent civil partnership is not entitled to receive any payment on account of the pension in respect of any subsequent period; but if the marriage or civil partnership is dissolved or the other party dies the Board may pay the whole or any part of the pension for such period after the dissolution or death.

(2) Where a person entitled to a gratuity under this Part remarries or forms a subsequent civil partnership any part of the gratuity that has not already been paid (“the outstanding amount”) ceases to be payable; but if the marriage or civil partnership is dissolved or the other party to it dies the Board may pay the person the whole or any part of the outstanding amount.

Pension debit members

32.—(1) Where a pension debit member dies leaving a surviving spouse or civil partner, any award under article 25, 26, 27, 28, 29 or 30, and the pension under any of those articles by reference to which any payment under article 31 is made, is calculated by reference to the member’s rights under this Scheme as reduced by virtue of Article 28 of the 1999 Order and in accordance with such tables and other guidance as are provided for the purpose by the Government Actuary.

PART D

AWARDS ON DEATH — CHILDREN

Child’s ordinary allowance

33.—(1) This article applies where a person dies, leaving a child—

- (a) while serving as a regular firefighter unless an election under article 59 not to pay pension contributions had effect at the time of his death; or
- (b) while in receipt of an ordinary, short service or ill-health pension; or
- (c) while in receipt of an injury pension under the Compensation Scheme, if he has been but no longer is in receipt both of that pension and of an ill-health pension; or
- (d) in consequence of an injury on account of which he retired from service as a regular firefighter with an ill-health gratuity, if he has not since had any period of such service.

(2) Subject to article 35, where this article applies the child is entitled to an ordinary allowance calculated, subject to Part II of Schedule 9 (children’s awards), in accordance with Part I of Schedule 4.

Child’s accrued allowance

34.—(1) This article applies, whether or not the pension has come into payment, where a person entitled to a deferred pension dies leaving a child.

(2) Subject to article 35 where this article applies the child is entitled to an accrued allowance calculated in accordance with Part II of Schedule 4.

Child’s allowance or special gratuity — limitations

35.—(1) No allowance or gratuity under this Part shall be paid—

- (a) in respect of a child born on or after the relevant date who is not a child of a marriage that took place or of a civil partnership that was formed before that date; or

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- (b) by reason of his being a step-child, in respect of a child of a spouse whose marriage to the deceased took place or of a civil partner whose civil partnership with the deceased was formed on or after the relevant date; or
 - (c) by reason of his being substantially dependent on the deceased, in respect of a child who was not so dependent before the relevant date; or
 - (d) by reason of his being an adopted child, in respect of a child adopted on or after the relevant date; or
 - (e) except in the case of a legitimate or adopted child of the deceased, in respect of a child who was not substantially dependent on the deceased at the time of the death,
- the relevant date being in each case the date on which the deceased ceased to be a regular firefighter.

(2) No allowance under this Part shall be paid in respect of a person who—

- (a) has attained the age of 16 but has not attained the age of 17; and
- (b) is in full-time employment,

unless the employment constitutes full-time training of at least one year's duration for a trade, profession or calling ("full-time vocational training").

(3) No allowance under this Part shall be paid in respect of a person who has attained the age of 17 unless—

- (a) he is permanently disabled and one of the conditions in paragraph (4) is satisfied; or
- (b) he is undergoing full-time education or full-time vocational training and either he has not attained the age of 19 or the condition in paragraph (5) is satisfied.

(4) The conditions mentioned in paragraph (3)(a) are—

- (a) that he was both permanently disabled and substantially dependent on the deceased at the time of the death; or
- (b) that he became permanently disabled while in receipt of an allowance under this Part; or
- (c) that the Board, having regard to all the circumstances, in its discretion determines to pay an allowance to him.

(5) The condition mentioned in paragraph (3)(b) is that he was undergoing full-time education or full-time vocational training immediately before his 19th birthday and either—

- (a) he has since continued to do so without any period of interruption; or
- (b) the Board, having regard to all the circumstances, in its discretion determines to pay an allowance to him notwithstanding any period of interruption.

(6) Part III of Schedule 4 has effect for the reduction, in certain circumstances, of allowances under this Part.

Pension debit members

36.—(1) Where a pension debit member dies leaving a child, the reduction in his rights under this Scheme by virtue of Article 28 of the 1999 Order is disregarded for the purposes of calculating any award payable under this Part.

PART E

AWARDS ON DEATH — ADDITIONAL PROVISIONS

Lump sum death grant

37.—(1) On the death of a person while serving as a regular firefighter a lump sum death grant becomes payable unless, at the time of his death—

- (a) he was aged 75 or more; or
- (b) an election under article 59 not to pay pension contributions had effect.

(2) The grant is payable whether or not any pension or gratuity is payable under Part C.

(3) The amount of the grant is twice that of the deceased's pensionable pay, expressed as an annual rate—

- (a) at the time of the death; or
- (b) if he was then absent from duty without pay, immediately before that absence began.

(4) The grant is to be paid—

- (a) to any surviving spouse or civil partner who qualifies for it; or
- (b) if there is no such surviving spouse or civil partner, to the personal representatives.

(5) A surviving spouse or civil partner who qualifies for the grant is one who was not living apart from the deceased at the time of the death.

Dependent relative's gratuity

38.—(1) This article applies where a person dies—

- (a) while serving as a regular firefighter; or
- (b) while in receipt of a pension other than a deferred pension,

and there is a dependent relative.

(2) A relative is a person who is, or is a child of, a surviving spouse or civil partner, or a parent, grandparent or child of the deceased, and a dependent relative is any relative who—

- (a) was substantially dependent on the deceased immediately before his death; and
- (b) is not entitled to any award under this Scheme.

(3) If the Board thinks fit, it may grant a gratuity to a dependent relative, but the aggregate of all gratuities granted under this article in respect of the death shall not exceed the amount of the deceased's aggregate pension contributions.

Payment of balance of contributions to estate

39.—(1) This article applies where a person dies—

- (a) while in receipt of an ordinary, short service or ill-health pension; or
- (b) while entitled to a deferred pension; or
- (c) while serving as a regular firefighter,

and the aggregate of the relevant amounts is less than the amount of his aggregate pension contributions.

(2) Where paragraph (1)(a) or (b) applies, the relevant amounts are—

- (a) the sums paid in respect of the pension mentioned in paragraph (1) (“the pension”);

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- (b) if the pension was an ill-health pension and the deceased was also in receipt of an injury pension under the Compensation Scheme, the sums paid by way of pension and gratuity under that Scheme;
 - (c) if the pension was reduced under article 18 (commutation – general provisions), the lump sum paid under that article;
 - (d) if the pension was reduced under article 20 (allocation), the sums that would otherwise have been paid in respect of the allocated portion;
 - (e) any gratuity payable in respect of the death; and
 - (f) the actuarial value, as calculated in accordance with guidance provided for the purpose by the Government Actuary of
 - (i) any surviving spouse’s or civil partner’s pension or child’s allowance payable in respect of the death, and
 - (ii) if the deceased member was a pension debit member, any pension credit member’s pension deriving from the deceased member’s rights.
- (3) Where paragraph (1)(c) applies, the relevant amounts are those described in subparagraphs (e) and (f) of paragraph (2).
- (4) The Board shall pay the difference between the aggregate of the relevant amounts and the deceased’s aggregate pension contributions to his personal representatives.

Lump sum in lieu of surviving spouse’s or civil partner’s pension

40.—(1) Subject to paragraph (2) and article 42, where the amount of any pension payable under Part C, together with any increase under the Pensions (Increase) Act (Northern Ireland) 1971, does not exceed the commutation limit specified for the purposes of Part I of Schedule 29 to the Finance Act 2004 (lump sum rule) in paragraph 7(4) of that Part (trivial commutation lump sum), the Board may commute the whole or any part of the pension for a lump sum.

(2) Where—

- (a) a surviving spouse or civil partner is entitled to a pension under article 25; and
- (b) the Board is satisfied that there are sufficient reasons; and
- (c) the surviving spouse or civil partner consents; and
- (d) the deceased spouse or civil partner died before his 75th birthday,

the Board may commute the whole or any part of the pension for a lump sum.

(3) The Board may, under this article, commute the whole or any part of a pension for a lump sum only when the pension first becomes payable.

(4) The payment of a lump sum on the commutation of the whole or any part of a pension under this article must be made before the date on which the deceased would have attained the age of 75.

(5) A lump sum under this article shall be calculated in accordance with such guidance as is provided for the purpose by the Government Actuary.

Lump sum in lieu of child’s allowance

41.—(1) Where the amount of a child’s allowance under Part D, together with any increase under the Pensions (Increase) Act 1971, does not exceed the commutation limit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (trivial commutation lump sum death benefit)(10), the Board may, subject to the provisions of this article and article 42, commute the whole or any part of the allowance for a lump sum.

(10) As to the lump sum rule, *see* section 166 of the Finance Act 2004.

- (2) The allowance may not be commuted unless—
 - (a) the Board is satisfied that there are sufficient reasons; and
 - (b) a surviving parent or the child’s guardian or, if he has neither, the child himself consents; and
 - (c) the deceased died before his 75th birthday.
- (3) The payment of a lump sum on the commutation of the whole or any part of an allowance under this article must be made before the date on which the deceased would have attained the age of 75.
- (4) A lump sum under this article shall be calculated in accordance with Schedule 5.

Limitation on discretion to commute pension or allowance for gratuity

42.—(1) This article applies where a person dies while in receipt of an ordinary, short service, ill-health or deferred pension (“the principal pension”).

(2) The Board may not under article 40 or 41 commute the whole or a part of a pension or allowance for a gratuity the actuarial value of which exceeds—

- (a) the permitted amount; or
 - (b) the commutation limit specified for the purposes of Part I of Schedule 29 to the Finance Act 2004 (lump sum rule) in paragraph 7(4) of that Part (trivial commutation lump sum)(11).
- (3) The permitted amount is $A - B - C$, where—

A is a quarter of the actuarial value of the principal pension, disregarding any reduction under article 18 (commutation – general provisions),

B is the actuarial value of any other lump sum paid under article 40 or 41, and

C is the actuarial value of any lump sum paid under article 18.

(4) The actuarial value of any pension or lump sum is its actuarial value at the time of the deceased’s retirement as calculated by the Government Actuary.

(5) For the purposes of this article no account shall be taken of an increase under article 69(3) or rule 2 or 3 of Part 7 of the Compensation Scheme in an award to a serviceman.

Increase of pensions and allowances during first 13 weeks

43.—(1) Paragraphs (2) to (4) apply to a surviving spouse’s or civil partner’s ordinary or accrued pension (“the survivor’s pension”) where the deceased died—

- (a) while serving as a regular firefighter; or
- (b) while in receipt of a pension.

(2) For each of the first 13 weeks for which it is payable the survivor’s pension under the Scheme or the Compensation Scheme shall if necessary be increased so that the total of—

- (a) the survivor’s pension; and
- (b) any children’s allowances payable,

is not less than the appropriate amount.

(3) The appropriate amount is—

- (a) where paragraph (1)(a) applies, the deceased’s pensionable pay for a week; and
- (b) where paragraph (1)(b) applies, the weekly amount of the deceased’s pension together with any increase in it under the Pensions (Increase) Act (Northern Ireland) 1971,

(11) 2004 c.12

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immediately before the death.

(4) For the purposes of paragraph (3)(b), any reduction in the deceased's pension under Part VII of Schedule 2 (reduction of pension related to uprating of widow's pensions) shall be disregarded.

(5) Paragraphs (6) and (7) apply to a child's ordinary or accrued allowance under this Scheme and to a child's special allowance under the Compensation Scheme where the deceased died as mentioned in paragraph (1) and—

- (a) there is no surviving spouse or civil partner; or
- (b) a surviving spouse or civil partner did not become entitled to a pension which was payable for a continuous period of 13 weeks.

(6) Subject to paragraph (7), for each of the first 13 weeks for which it is payable an allowance shall if necessary be increased—

- (a) so that the amount paid in respect of it is not less than the appropriate amount ascertained in accordance with paragraphs (3) and (4); or
- (b) where two or more allowances are payable, so that the amount paid in respect of each of them is not less than that appropriate amount divided by the number of allowances.

(7) No allowance shall be increased under paragraph (6) for any week for which a pension is payable under this Scheme or an injury pension under the Compensation Scheme to a surviving spouse or civil partner.

Flat-rate awards

44.—(1) This article applies where an election has effect under—

- (a) paragraph 2 of Part I of Schedule 3 (spouse's or civil partner's ordinary pension); or
- (b) paragraph 3 of Part III of Schedule 3 (spouse's or civil partner's accrued pension); or
- (c) paragraph 3 of Part I of Schedule 4 (child's ordinary allowance); or
- (d) paragraph 3 of Part I of Schedule 4 as applied by Part II of that Schedule (child's accrued allowance).

(2) Subject to paragraph (4), where paragraph (1)(a) or (b) applies and the deceased retired before 1st July 2006, the amount of the pension is—

- (a) if the deceased's last rank was not higher than sub-officer ("Case A"); £379.78;
- (b) if it was higher than sub-officer but not higher than divisional officer (Grade 1) ("Case B"), £494.54; and
- (c) if it was higher than divisional officer (Grade 1) ("Case C"), £594.18,

increased in each case, in accordance with paragraph (8).

(3) Subject to paragraph(4), where paragraph (1)(a) or (b) applies and the deceased retired on or after 1st July 2006, the amount of that pension is—

- (a) if his last role was not higher than Watch Manager A ("Case A"), £379.78;
- (b) if his last role was higher than Watch Manager A but not higher than Area Manager A ("Case B"), £494.54; and
- (c) in any other case ("Case C"), £594.18,

increased, in each case, in accordance with paragraph (8).

(4) Where—

- (a) paragraph (1)(a) applies and the deceased was entitled to reckon at least 10 years' pensionable service; or

(b) paragraph (1)(b) applies and the deceased ceased to serve as a regular firefighter after 5th April 1975 and would, had he continued to serve until he could have been required to retire on account of age, have become entitled to reckon at least 10 years' pensionable service, the amount specified in, as the case may be, paragraph (2)(a), (b) or (c), or (3)(a), (b) or (c) is increased by £29.91.

(5) Where paragraph (1)(c) or (d) applies and one of the child's parents is alive, the amount of the allowance is—

- (a) in Case A, £107.99;
- (b) in Case B, £127.29; and
- (c) in Case C, £157.02,

increased, in each case, in accordance with paragraph (8).

(6) Subject to paragraph (7), where paragraph (1)(c) or (1)(d) applies and neither of the child's parents is alive, the amount of the allowance is—

- (a) in Case A, £159.11;
- (b) in Case B, £188.84; and
- (c) in Case C, £233.19,

increased, in each case, in accordance with paragraph (8).

(7) The Board may in any particular case from time to time determine to substitute for the amount specified in paragraph (5)(a), (b) or (c) a higher amount not exceeding—

- (a) in Case A, £209.19;
- (b) in Case B, £249.88; and
- (c) in Case C, £311.44.

(8) An amount arrived at under paragraphs (2) to (7) ("the basic rate") shall be increased to an amount equal to the annual rate (rounded up to the nearest penny) at which the pension or allowance would for the time being be payable if it had been an official pension, within the meaning of the Pensions (Increase) Act (Northern Ireland) 1971 ("the 1971 Act"), which began, and first qualified for increases under the 1971 Act, on 30th June 1978 and was then payable at the basic rate.

(9) In calculating an increased amount under paragraph (8) any increase that would have occurred under the 1971 Act in respect of a period beginning before 12th November 1979 shall be disregarded.

(10) If the deceased was a pension debit member, this article has effect as if the sums referred to in paragraph (2)(a), (b) and (c) or (3)(a), (3)(b) or (c) were reduced in the same proportion as the member's rights are reduced by virtue of Article 28 of the 1999 Order.

PART F

PENSIONABLE SERVICE AND TRANSFER VALUES

Reckoning of and certificates as to pensionable service

45.—(1) Subject to paragraph (2), a person is entitled to reckon as pensionable service the total of the periods he is entitled to reckon under articles 46 to 53 and, in the case of a serviceman, any period reckonable under article 72 (pensionable service).

(2) No period is reckonable as pensionable service under more than one provision of articles 46 to 53.

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(3) Within 6 months of the date on which a person becomes entitled to reckon a period as pensionable service under article 47, 48, 49, 50, 51, 53 or 72 the Board shall supply him with a certificate showing the pensionable service he was entitled to reckon on that date (“the material date”).

(4) A person who is dissatisfied with a certificate supplied to him under paragraph (3) may, within 3 months after being supplied with it, appeal to the Department, which shall either confirm or vary the certificate.

(5) If he does not appeal, the certificate as supplied, and if he does appeal, the certificate as confirmed or varied, is conclusive as to the pensionable service he was entitled to reckon on the material date.

(6) If he claims a pension or gratuity under this Scheme, or a pension or gratuity under the Compensation Scheme, or dies, after the material date but before a certificate has been supplied, paragraph (3) ceases to apply; if he does so before a certificate has become conclusive, the certificate ceases to have effect and paragraph (4) ceases to apply.

(7) For the purposes of paragraphs (3) to (6) a serviceman shall be treated as only becoming entitled to reckon service under article 72 if and when he resumes service as a member of the fire and rescue service.

Current service

46.—(1) Subject to paragraphs (2) and (3), a person serving as a regular firefighter is entitled to reckon as pensionable service—

- (a) any period of service as a regular firefighter after 31st March 1972, except a period during which pension contributions were not payable under article 57, as a member of the fire and rescue service; and
- (b) if he was a member of the fire brigade both on and immediately before 1st April 1972, any period he was entitled to reckon immediately before that date, under a previous scheme.

(2) A person is not entitled to reckon as pensionable service by virtue of paragraph (1)—

- (a) if he has ceased to be a member of the fire brigade and rejoined the brigade after 31st March 1972, any period of service before he last so rejoined ; or
- (b) any period of absence from duty as a regular firefighter as a result of sickness or injury certified by a qualified medical practitioner to be due to his own misconduct; or
- (c) subject to paragraph (3) and article 47, any period of absence from duty without pay; or
- (d) any period of maternity or adoption leave in respect of which the person has the right to, but does not, pay contributions under article 58.

(3) A regular firefighter may, by written notice given to the Board within 6 months of returning to duty after a period of absence without pay (excluding absence for maternity, paternity or adoption leave), require it to reckon as pensionable service all or part of that period (the “reckonable period”).

(4) Where notice is given under paragraph (3), the firefighter shall, within 6 months of giving that notice, pay to the Board—

- (a) the contributions (including any such additional or further contributions as are mentioned in article 60) that he would have been liable to pay in respect of the reckonable period (in accordance with article 57(1) if he had been paid at his normal rate; and
- (b) subject to paragraph (5), such amount as shall be notified to him by the Board as the amount that would have been payable by it, in accordance with article 57(4), in respect of his service for that period and if he had been paid at his normal rate.

(5) The Board may pay the amount notified under sub-paragraph (b) of paragraph (4); and where it does so, the requirements of that sub-paragraph shall cease to apply.

(6) Nothing in paragraph (3) requires the Board to reckon as pensionable service any reckonable period where—

- (a) a case to which paragraph (5) applies, the requirements of paragraph (4)(a) have not been met; or
- (b) in any other case, the requirements of paragraph (4)(a) and (b) have not been met.

(7) Any periods of pensionable service before and after any period of maternity or adoption leave in respect of which the person has the right to, but does not, pay continuous contributions under article 58 shall be treated as continuous.

Maternity, paternity and adoption leave

47.—(1) A woman serving as a regular firefighter is entitled to reckon as pensionable service any period of —

- (a) paid maternity leave;
- (b) unpaid ordinary maternity leave; and
- (c) unpaid maternity leave in respect of which she has paid pension contributions to the Board in accordance with article 58,

taken on or after 23rd June 1994.

(2) A person serving as a regular firefighter is entitled to reckon as pensionable service any period of—

- (a) paternity leave;
- (b) ordinary adoption leave;
- (c) paid additional adoption leave; and
- (d) unpaid additional adoption leave in respect of which he has paid contributions to the Board in accordance with article 58.

Previous service reckonable without payment

48. A person who—

- (a) has retired with an ill-health pension; and
- (b) has resumed service as a regular following an offer of employment under article 81(2)(b),

is entitled to reckon as pensionable service the period he was entitled to reckon when he retired.

Previous service reckonable on payment

49.—(1) A person who—

- (a) has retired without a pension and without any transfer value or cash equivalent becoming payable by the Board; and
- (b) has within 12 months, with the written consent, applied for before retiring, of the Board, rejoined the fire and rescue service as a regular firefighter; and
- (c) within 6 months of so rejoining, or such longer period as the Board may allow, has undertaken to pay the required amount in accordance with paragraph 1 of Part I of Schedule 6,

is entitled to reckon as pensionable service the period he was entitled to reckon when he retired.

(2) The required amount is $A - B + C$, where—

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A is any sum paid to him on the retirement by way of gratuity or return of his aggregate pension contributions,

B is so much of A as represents a return of such additional and further payments as were mentioned in Articles 51 to 53 of the 1973 Scheme, and

C is the balance outstanding immediately before the retirement of any sum he had undertaken to pay in accordance with paragraph 1 of Part I of Schedule 6.

(3) A person who—

- (a) has retired with no pension other than an ill-health pension the unsecured portion of which has been terminated as mentioned in article 81; and
- (b) has again become a regular firefighter; and
- (c) within 6 months of his again becoming a regular firefighter, or such longer period as the Board, may allow, has undertaken to pay in accordance with paragraph 1 of Part I of Schedule 6 a sum calculated in accordance with paragraph 2 of that Part,

is entitled to reckon as pensionable service the period he was entitled to reckon when he retired.

(4) This article shall apply in the case of a regular firefighter—

- (a) who was serving as a regular firefighter in a fire brigade maintained under the Fire Services Act 1947⁽¹²⁾;
- (b) who last became a regular firefighter within 12 months of the termination of his former service or within such longer period as may be agreed, in the circumstances of his case, between the Board and the fire authority for the fire and rescue service mentioned in subparagraph (a);
- (c) in respect of whom a transfer value relating to his former service is paid to the Board;
- (d) who, within 3 months of his becoming a regular firefighter or within such longer period as the Board may allow in his case, undertakes to pay in accordance with paragraph 1 of Part 1 of Schedule 6—
 - (i) a sum equal to the balance of any liability outstanding immediately before the termination of his former service in respect of payments or contributions he was then making as a condition of reckoning past service as contributing service, being service of which account has been taken in the calculation of the said transfer value, together with
 - (ii) a sum equal to the amount, if any, by which the said transfer value falls to be reduced on account of any gratuity or award by way of return of contributions made under the said arrangements on the termination of his former service.

(5) Such a person as is mentioned in paragraph (4) shall be entitled to reckon as pensionable service the period of service which is or was reckonable for the purpose of calculating the transfer value.

(6) In this article, the expression “award by way of return of contributions” means the amount of any award by way of return of contributions which would have been made to him at the end of any period of service, being a period which he is entitled to reckon as pensionable service for the purposes of this Scheme, had he then voluntarily retired in circumstances entitling him to such an award.

(7) A person who—

- (a) has retired with a deferred pension; and
- (b) has by written notice to the Board relinquished the pension; and
- (c) has again become a regular firefighter; and

⁽¹²⁾ 1947 c. 41

- (d) within 6 months of his again becoming a regular firefighter, or such longer period as the Board may allow, has undertaken to pay in accordance with paragraph 1 of Part I of Schedule 6 the required amount described in paragraph (2),

is entitled to reckon as pensionable service the period he was entitled to reckon when he retired.

(8) If immediately before the retirement a person entitled to reckon service under paragraph (7) was making by way of contributions any such additional or further payments as are mentioned in Articles 51 and 52 of the 1973 Scheme—

- (a) the Board shall repay him the amount he paid by way of such contributions; and
- (b) he shall be treated as having neither paid nor elected to pay the contributions.

Period during which injury pension was payable

50.—(1) A person who—

- (a) (i) on retiring from employment with the Board before 6th April 2006, became entitled to an injury pension under Article 11 of the 1973 Scheme; or
- (ii) on retiring from employment with the Board on or after 6th April 2006, becomes entitled to an injury pension under the Compensation Scheme; and
- (b) has resumed service as a regular firefighter following an offer of employment under article 81(2)(b); and
- (c) within 6 months of his resuming service, or such longer period as the Board may allow, has undertaken to pay the required amount in accordance with paragraph 1 of Part I of Schedule 6,

is entitled to reckon as pensionable service the period during which he was entitled to the injury pension (“the pension period”).

(2) The required amount is the total of the pension contributions (excluding such additional and further contributions as were mentioned in Articles 51 and 52 of the 1973 Scheme) that would have been payable by him for the pension period if he had continued to serve as a regular firefighter in the rank he held immediately before the retirement.

Previous service reckonable following actionable loss

51.—(1) This article applies to a regular firefighter who—

- (a) has opted out or transferred out or both;
- (b) has suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986(13) (actions for damages in respect of contraventions of rules etc. made under the Act), or section 150 of the Financial Services and Markets Act 2000(14).

(2) A regular firefighter—

- (a) to whom this article applies; and
- (b) who has given notice under article 59(7) cancelling his election under article 59(1),

may give written notice to the Board that he wishes it to accept payment of a transfer value in order to create or restore his reckonable service.

(3) Paragraph (4) or (5) applies where the Board has accepted—

- (a) within 12 months of the date of the notice given under paragraph (2); or

(13) 1986 c.60

(14) 2000 c.8

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(b) such longer period as it may allow,
 payment of a transfer value in relation to a regular firefighter by whom a notice has been given under paragraph (2) (whether or not he has ceased to be a regular firefighter after the date of the notice) not exceeding the amount which it calculates in accordance with article 52 would need to be made as a restitution payment in respect of him.

(4) Where the amount of the transfer value equals the amount which the Board calculates in accordance with article 52 would need to be made as a restitution payment in respect of that firefighter—

- (a) the whole of the relevant period shall be treated as reckonable service; and
- (b) he shall be treated for the purposes of calculating any award under this Scheme as having made pension contributions throughout the period of reckonable service credited under this paragraph.

(5) Where the amount of the transfer value is less than the amount which the Board calculates in accordance with article 52 would need to be made as a restitution payment in respect of that firefighter—

- (a) the Board shall calculate in accordance with the methods and assumptions required by article 52 the period of reckonable service that the transfer value represents and treat as reckonable service such period;
- (b) he shall be treated for the purpose of calculating any award under this Scheme as having made pension contributions throughout the period of reckonable service credited under this paragraph; and
- (c) that period shall be treated as a continuous period with the same final date as the final date of the relevant period.

(6) Where a regular firefighter who is being credited under paragraph (4) or (5) with a period of reckonable service has previously been credited with an additional period of reckonable service calculated in accordance with Part IV of Schedule 6 (amount of transfer value) in respect of the relevant period, the Board may adjust the amount of the transfer value that it accepts under this article to ensure that no part of the additional period of reckonable service that was previously credited is included in the period of reckonable service credited under paragraph (4) or (5).

(7) In this article and article 52 —

- (a) a person shall be taken to have opted out if he had elected under article 59(1) (election not to pay pension contributions) not to pay pension contributions and for any period during which he was a regular firefighter he instead made contributions to a personal pension scheme;
- (b) a person shall be taken to have transferred out if a transfer value has been paid in respect of him under article 55 (payment of transfer values) by the Board to a personal pension scheme; and
- (c) “relevant period”, in relation to a regular firefighter, means the total of any periods of opted out and, where appropriate, transferred out service.

Calculation of amount of restitution payment

52.—(1) The Board shall calculate in accordance with this article the restitution payment that would need to be made to it in respect of a person to whom article 51 applies to create or restore his position to what it would have been if he had not opted out or, where relevant, also transferred out.

(2) The restitution payment for a regular firefighter is an amount equal to the sum of—

- (a) the capitalised value at the material date, determined in accordance with the relevant methods and assumptions, which would produce a service credit equal to his total period

of opted out service, including the capitalised value of any rights under the Pensions (Increase) Act (Northern Ireland) 1971(15) and the Pensions (Increase) (Northern Ireland) Order 1974(16); and

- (b) in the case of a regular firefighter who also transferred out, the greater of—
 - (i) any transfer value paid to a personal pension scheme in respect of his transferred out service by the Board under article 55 (payment of transfer values), increased by interest calculated at a rate approved by the Government Actuary over the period from the date of payment of that transfer value to the assumed calculation date; and
 - (ii) the cash equivalent transfer value that would be payable by the Board in respect of that transferred out service if it were to pay a cash equivalent transfer value in respect of that service determined in accordance with the relevant methods and assumptions applicable immediately after the assumed calculation date.

(3) In this article—

“assumed calculation date” means the date on which it is assumed, for the purpose of calculating a restitution payment, that a transfer value will be paid to the Board;

“material date” means the date on which the Board receives a notice under article 51(2); and

“relevant methods and assumptions” means ones notified by the Government Actuary for the calculation of cash equivalent values from occupational pension schemes.

Receipt of transfer value

53.—(1) Subject to paragraphs (2) to (4) and (6), the Board may accept a transfer value offered to it, in respect of a person who has become a regular firefighter, by the scheme managers of a superannuation scheme to which he was subject in previous service or employment (“the previous scheme”).

(2) The person must have made a written request to the Board, not later than 12 months after the date on which he takes up employment, for the transfer value to be accepted.

(3) A transfer value may not be accepted—

- (a) if one was accepted before 1st April 2006 in relation to the same transfer; or
- (b) where the person became a regular firefighter before 1st April 2006 if a transfer value could not have been accepted under Article 65A(17) of the 1973 Scheme; or
- (c) if he had a guaranteed minimum in relation to a pension provided by the previous scheme unless—
 - (i) the previous scheme is a club scheme, or
 - (ii) the transfer value offered is of at least the required amount.

(4) The required amount is $A \times B$, where—

A is the annual amount of the guaranteed minimum pension to which he would be entitled under article 78 if the transfer value were accepted, and

B is the factor ascertained from the Table by reference to his age at the date on which he requested the Board to accept it.

<i>Age</i>	<i>Factor</i>
29 or under	8

(15) 1971 c. 35(N.I.)

(16) S.I. 1974/1267 (N.I. 2)

(17) Article 65A was inserted by paragraph 7 of Part II of Schedule 1 to S.R. 1979 No. 88 and amended by S.R. 1991 No. 312

Status: This is the original version (as it was originally made).

<i>Age</i>	<i>Factor</i>
30 to 39	9
40 to 49	10
50 or over	12

(5) A person in respect of whom a transfer value is accepted is entitled to reckon as pensionable service a period calculated in accordance with Part II of Schedule 6.

(6) A transfer value may not be accepted in respect of any pension credit rights.

Transfer payments between fire authorities

54.—(1) Where a person—

- (a) has retired from the fire and rescue service; and
- (b) has after 1st April 2006 become a regular firefighter in a fire and rescue service maintained under the Fire and Rescue Services Act 2004 (“the second fire and rescue service”); and
- (c) has become entitled under article 49 to reckon as pensionable service the period he was entitled to reckon when he retired,

the Board shall subject to paragraph (2) pay to the fire authority maintaining the second fire and rescue service a sum calculated in accordance with Part III of Schedule 6.

(2) No sum may be paid in respect of any pension credit rights.

Payment of transfer values

55.—(1) Subject to paragraphs (2) to (9), the Board—

- (a) may pay a transfer value in respect of a person who has, before attaining state pensionable age, either ceased to serve as a regular firefighter in the fire and rescue service or elected under article 59 not to pay pension contributions and has become subject to another superannuation scheme (“the receiving scheme”); and
- (b) shall pay a transfer value in respect of such a person if the receiving scheme is an approved scheme.

(2) The person must within 6 months after becoming subject to the receiving scheme, or such longer period as the Board may in the circumstances allow, have made a written request to the Board for the transfer value to be paid.

(3) A transfer value may not be paid if one was paid before in relation to the same transfer.

(4) A transfer value may not be paid if the person has received any payment in respect of a pension to which he became entitled under Part B on ceasing to serve as a regular firefighter.

(5) A transfer value may not be paid if the person has received any gratuity or repayment of pension contributions to which he became entitled under Part B on ceasing to serve as a regular firefighter unless he—

- (a) became subject to the receiving scheme within 12 months, or such longer period as the Board may in the circumstances allow, after ceasing to serve; and
- (b) has, within the period allowed by paragraph (2) for requesting payment of the transfer value, repaid to the Board the amount paid to him.

(6) A transfer value may not be paid if the person has a guaranteed minimum in relation to a pension provided by this Scheme, unless—

- (a) the receiving scheme is a contracted-out scheme; or

- (b) a contributions equivalent premium has been paid in respect of him by the Board and has not been repaid.
- (7) A transfer value may not be paid if the person has acquired a right to a cash equivalent, unless—
 - (a) the service to which the cash equivalent relates includes service before 1st October 1990; and
 - (b) the right has been exercised by requiring the whole of the cash equivalent to be paid to the scheme managers of an approved scheme which is not a club scheme.
- (8) A transfer value may not be paid if the person—
 - (a) has acquired a right to a part cash equivalent; and
 - (b) would on taking that right remain entitled to a deferred pension.
- (9) A transfer value may not be paid in respect of any pension credit rights.
- (10) If a transfer value or cash equivalent is paid any award to which the person became entitled under Part B on ceasing to serve as a regular firefighter ceases to be payable.
- (11) Part IV of Schedule 6 has effect for determining the amounts of transfer values payable under this article.

PART G

PENSIONABLE PAY AND CONTRIBUTIONS

Pensionable pay and average pensionable pay

56.—(1) Subject to paragraph (2), the pensionable pay of a regular firefighter is the pay he receives (whether as a whole-time or part-time member of the fire and rescue service) in the ordinary course of fulfilling his duties as determined—

- (a) in relation to his role; or
- (b) in the case of a chief fire officer, deputy chief fire officer or assistant chief fire officer, for the post

during the period used to calculate his average pensionable pay in paragraph (4).

(2) For the purposes of paragraph (1), in the case of a person by whom pension contributions became payable after 31st May 1989 either—

- (a) for the first time; or
- (b) following any period in respect of which they were not payable,

except where regulation 4 of the Retirement Benefit Schemes (Tax Reliefs on Contributions) (Disapplication of Earnings Cap) Regulations 1990⁽¹⁸⁾ applies his pay shall be taken not to include any excess, in any tax year, over the figure which is the permitted maximum for that year for the purposes of section 594(2) and (3) of the Income and Corporation Taxes Act 1988⁽¹⁹⁾ (that is to say, the figure specified for the year by an order made by the Treasury under section 590C(6) of that Act).

(3) For the purposes of article 58 the pensionable pay of a regular firefighter during a period of maternity, paternity or adoption leave shall be deemed to be the pay to which the person is entitled for that period including any statutory maternity, paternity or adoption pay under the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

⁽¹⁸⁾ S.I. 1990/586

⁽¹⁹⁾ 1988 c. 1: section 590C was inserted, and section 594 amended, by the Finance Act 1989 (c.26), section 75 and Schedule 6 paragraphs 4 and 6.

Status: This is the original version (as it was originally made).

(4) The average pensionable pay of a regular firefighter is, subject to paragraphs (6) to (8), the aggregate of his pensionable pay for the year ending with the relevant date.

(5) Pay is pensionable pay when it is paid to a regular firefighter at the rate applicable to his role and in the ordinary course of fulfilling his duties under this contract of employment during the relevant period used to determine average pensionable pay.

(6) Subject to paragraphs (7) and (8), if he was in receipt of pensionable pay for part only of the year ending with the relevant date, his average pensionable pay is the aggregate of his pensionable pay for that part multiplied by the reciprocal of the fraction of the year which that part represents.

(7) For the purposes of paragraphs (4) and (6) any reduction of pensionable pay as a result of any-

- (a) sick leave;
- (b) stoppage by way of punishment;
- (c) ordinary maternity, ordinary adoption or paternity leave;
- (d) paid additional maternity or additional adoption leave ; or
- (e) unpaid additional maternity or additional adoption leave where contributions have been paid under article 58,

shall be disregarded.

(8) If the amount determined in accordance with paragraphs (3) to (6) is less than it would have been if the relevant date had been the corresponding date in whichever of the two preceding years yields the highest amount, that corresponding date shall be taken to be the relevant date.

(9) The relevant date is—

- (a) for the purposes of article 29 (spouse's or civil partner's award where no other award payable) the date of the person's last day of service as a regular firefighter; and
- (b) for all other purposes of this Scheme, the date of his last day of service in a period during which pension contributions were payable under article 57(1).

(10) A regular firefighter's average pensionable pay for a week is his average pensionable pay divided by 52 1/6th.

Pension contributions

57.—(1) A regular firefighter shall, except where an election under article 59 has effect, pay pension contributions to the Board at the rate specified in paragraph (2).

(2) The rate is—

- (a) for a person who takes up employment with the Board on or after 6th April 2006, unless article 2(6) applies, 8.5 per cent of his pensionable pay; or
- (b) in any other case, 11 per cent of his pensionable pay.

(3) The contributions payable under paragraph (1) on each instalment of pay are due at the same time as that instalment and, without prejudice to any other method of payment, may be deducted by the Board from the instalment.

(4) For each financial year beginning with the financial year commencing on 1st April 2006, the Board shall, by transfer to its Firefighters' Pension Fund from any other fund maintained by it, make an annual contribution towards the discharge of its future liability for the payment of pensions under this Scheme and the Compensation Scheme.

(5) The annual contribution shall be such percentage of the Board's estimate of the aggregate of the pensionable pay, for the year in respect of which the contribution is made, of those firefighters employed by the Board who are required by paragraph (1) to make pension contributions in that year, as shall have been notified to it for that year by the Department.

(6) Where a firefighter elects under article 59(1) not to pay pension contributions, nothing in paragraphs (3) and (4) shall require the Board to make a contribution in respect of its future liability for the payment of his pension as regards—

- (a) in the financial year in which notice of that election is given, the part of the year that falls after the first date after the notice is received on which an instalment of pay falls due; and
- (b) any later period in which the election not to pay pension contributions has effect.

Optional pension contributions during maternity and adoption leave

58.—(1) A regular firefighter who—

- (a) is on maternity or adoption leave which would not otherwise count as pensionable service under article 47; and
- (b) for the whole or part of the period of leave is not entitled to receive pay (including any statutory maternity pay or statutory adoption pay under the Social Security Contributions and Benefits (Northern Ireland) Act 1992)(20),

may elect to pay pension contributions in respect of such period.

(2) The contributions shall be calculated by applying article 57 to the pensionable pay (including any statutory maternity or adoption pay under the Social Security Contributions and Benefits (Northern Ireland) Act 1992) received by him immediately before the start of the unpaid period in question.

(3) An election to pay pension contributions under paragraph (1) must be made by the person in writing to the Board before the expiry of a period of 30 days (or such longer period as the Board may allow) beginning with—

- (a) the day on which he returns to work; or
- (b) if he does not return to work after the leave period, the day he ceases to be employed by the Board.

(4) Where the person dies before the end of the period in paragraph (3) without having given the required notice, he shall be deemed to have given the notice and to have paid the contributions.

(5) On receipt of the notice the Board shall calculate the amount of contribution due and shall give notice in writing of that amount to the person concerned.

(6) Where the full amount of contributions due has not been paid within 6 months of the date of notice in paragraph (5), the person concerned shall be entitled to reckon as pensionable service such proportion of the period in respect of which contributions were due, as the contributions paid relate to the total amount of contributions due.

(7) Where the period of additional maternity or additional adoption leave ended prior to 1st April 2006 the provisions of this article shall apply where the person gives written notice to the Board by 30th April 2007.

Election not to pay pension contributions

59.—(1) Subject to paragraph (11), a regular firefighter may at any time, by giving written notice to the Board, elect that article 57 is not to apply in his case.

(2) Subject to paragraphs (3) and (4), an election under paragraph (1) takes effect on the first date after the notice is received on which an instalment of pay falls due.

(20) 1992 c.7

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(3) In the case of a person who has given notice under paragraph (1) within 3 months after the date on which he last became a regular firefighter (“the material date”), the election shall be treated as having taken effect on the material date.

(4) Where—

(a) a person gives notice under paragraph (1) within 3 months of taking up employment as a regular firefighter; and

(b) no transfer of pension rights from another pension scheme has been made in respect of him, the election shall be treated as given on his first day of employment and the Board shall repay the pension contributions made by him.

(5) Where an election is to be treated as having taken effect on the material date—

(a) the Board shall repay the person the pension contributions paid by him since that date; and

(b) for the purposes of articles 28 and 29 pension contributions shall be taken not to have been payable by him at any time.

(6) Where aggregate pension contributions are repaid under paragraph (4), the Board shall transfer from its Firefighters’ Pension Fund to any other fund maintained by it an amount equal to the aggregate of the amounts that it has paid by way of employer’s contributions under article 57(4) in respect of the firefighter concerned.

(7) Subject to paragraphs (8) and (9), a person who has made an election under paragraph (1) may cancel it by giving written notice to the Board.

(8) Except in the case of a person to whom article 51 applies, a notice under paragraph (7) must be given no later than his 45th birthday.

(9) Except in the case of a person to whom article 51 applies, the Board may resolve that a person’s election may not be cancelled unless he has undergone a medical examination, at his own expense, and satisfied it as to his good health.

(10) Where an election is cancelled it ceases to have effect on the first date after the notice is received on which an instalment to pay falls due.

(11) A person who has cancelled an election made under paragraph (1) may not make a further election under that paragraph during the same period of service as a regular firefighter.

(12) References in this Scheme to any period during which an election under this article not to pay pension contributions had effect shall not include any period in respect of which a transfer value or lump sum has been paid under article 51.

Continued payment of additional and further contributions

60. A regular firefighter who immediately before 1st April 2006 was still liable to pay additional or further contributions pursuant to an election under Article 52(2) or (3) of the 1973 Scheme shall continue to pay them, except while an election under article 59 has effect, for so long as they would have remained payable if that Scheme had not been revoked.

Purchase of increased benefits

61.—(1) For the purpose of securing increased benefits as provided in article 64, additional sixtieths of average pensionable pay may be purchased in accordance with articles 62 and 63 by eligible persons.

(2) An eligible person is a regular firefighter—

(a) who is paying pension contributions under article 57;

- (b) whose normal pension age is at least 9 years after the date on which he last became a regular firefighter; and
- (c) who at his normal pension age would be entitled to reckon less than 30 years' pensionable service.

Election to purchase increased benefits

62.—(1) Subject to paragraphs (2) to (4), an eligible person may, by giving written notice to the Board, elect to purchase a specified number of sixtieths on his average pensionable pay by paying to the Board—

- (a) a lump sum calculated in accordance with paragraph 1 or 2 of Part I of Schedule 7; or
 - (b) periodical contributions calculated in accordance with paragraph 3 or 4 of that Part.
- (2) The number of sixtieths specified—
- (a) must not be such that, if he continued to serve as a regular firefighter until his normal pension age, more than 40 sixtieths of his average pensionable pay would count in calculating his pension; and
 - (b) need not be a whole number.
- (3) An election to pay a lump sum—
- (a) must be made within 12 months after the date on which he last became a regular firefighter; and
 - (b) if the sum is not paid within 3 months of the date that payment of periodical contributions commenced, that portion of the election shall be treated as not having been made.
- (4) An election to pay periodical contributions must be made at least 2 years before the person's retirement date, but no such election may be made—
- (a) if the Board has notified him that they require him to retire under article 10 (efficiency) or 11 (disablement), or
 - (b) if the Board so resolves, unless he has at his own expense undergone a medical examination and satisfied it as to his good health.
- (5) An election under this article—
- (a) takes effect, subject to paragraph (3)(b), on the day on which the written notice is received by the Board;
 - (b) continues to have effect notwithstanding any postponement by reason of promotion of the date on which the person could be required to retire on account of age; and
 - (c) is irrevocable.

Payment of periodical contributions for increased benefits

63.—(1) Subject to paragraphs (2) and (3), where a person has elected under article 62 to pay periodical contributions they are payable from his next birthday and continue to be payable until the earliest of—

- (a) his normal pension age;
 - (b) the date on which he ceases to serve as a regular firefighter; and
 - (c) the date on which any election under article 59 takes effect.
- (2) If before his normal pension age he—
- (a) retires with an ill-health pension, and resumes service as a regular firefighter; or
 - (b) having made an election under article 59, cancels it,

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the contributions again become payable, and continue to be payable as provided in paragraph (1).

(3) If the Board is satisfied that payment of the periodical contributions is causing, or is likely to cause, financial hardship it may consent to the discontinuance of payment for such period as it thinks fit.

Effect of payment for increased benefits

64.—(1) Where a person has paid a lump sum, or begun paying periodical contributions, in accordance with an election under article 62—

- (a) if he becomes entitled to a pension under article 13, 14, 15 or 16 (ordinary, short-service, ill-health and deferred pensions) the amount of the pension, before any commutation under article 18, shall be increased by the appropriate amount; and
- (b) awards mentioned in paragraph 2(2), 3(2), 4 and 5 of Part III of Schedule 7 shall be increased in accordance with that Part.

(2) Subject to paragraph (3), where the person—

- (a) dies while serving as a regular firefighter; or
- (b) retires with an ill-health pension; or
- (c) retires on or after his normal pension age,

the appropriate amount is the number of sixtieths of his average pensionable pay specified in the election.

(3) If the person had begun paying periodical contributions and—

- (a) payment of those contributions had at any time been discontinued under article 63(3); or
- (b) he had made and subsequently cancelled an election under article 59,

the appropriate amount is the amount described in paragraph 1 of Part II of Schedule 7.

(4) Where on—

- (a) ceasing to be a member of the fire and rescue service in circumstances not falling within paragraph (2); or
- (b) making an election under article 59 which is not subsequently cancelled,

the person does not become entitled to the repayment of his aggregate pension contributions, the appropriate amount is to be ascertained from paragraphs (5) and (6).

(5) Subject to paragraph (6)—

- (a) if he had paid a lump sum, the appropriate amount is the number of sixtieths of his average pensionable pay specified in the election; and
- (b) if he had begun paying periodical contributions, the appropriate amount is the amount described in paragraph 2 of Part II of Schedule 7.

(6) Where he retires with an ordinary pension before his normal pension age, the appropriate amount is the amount specified in paragraph (5)(a) or (b) reduced by the actuarial valuation described in paragraph 3 of Part II of Schedule 7.

PART H

DETERMINATION OF QUESTIONS AND APPEALS

Determination by the Board

65.—(1) The question whether a person is entitled to any and, if so, what awards shall be determined in the first instance by the Board.

(2) Subject to paragraph (3), before deciding, for the purpose of determining that question or any other question arising under this Scheme—

- (a) whether a person has been disabled;
- (b) whether any disablement is likely to be permanent;
- (c) whether the person would be able to undertake regular employment within the meaning given by article 15(7);
- (d) whether a person has become incapable of performing the duties of a regular firefighter; or
- (e) any other issue wholly or partly of a medical nature,

the Board shall obtain the written opinion of at least one qualified medical practitioner selected by it and the opinion of the qualified medical practitioner shall be binding on the Board.

(3) If by reason of the person's refusal or wilful or negligent failure to submit to medical examination by the practitioner or practitioners selected by it the Board is unable to obtain the opinion mentioned in paragraph (2), it may—

- (a) on such other medical evidence as it thinks fit; or
- (b) without medical evidence,

give such decision on the issue as it may choose to give.

Appeal against opinion on a medical issue

66.—(1) Where—

- (a) an opinion of the kind mentioned in article 65(2) has been obtained; and
- (b) within 14 days of his being notified of the Board's decision on the issue the person concerned applies to it for a copy of the opinion,

the Board shall supply him with a copy, together with a statement informing the person concerned that, if he wishes to appeal against the opinion, he must give the Board written notice of his grounds of appeal, together with his name and address, within 14 days of the date on which he is so supplied.

(2) If the person concerned is dissatisfied with the opinion which has been supplied to him under paragraph (1), he may appeal against it by giving notice to the Board in accordance with paragraph 1 of Schedule 8.

(3) The Board shall be bound by any decision on a medical issue duly given on an appeal under this article. A decision given under this article overrules that of the medical practitioner selected by the Board under article 65.

(4) In this article, "medical issue" means any issue referred to in article 65(2).

(5) Further provisions as to appeals under this article are contained in Schedule 8.

Appeal against decision of the Board

67.—(1) Where a person claims that he is entitled to an award or to any payment in respect of an award and the Board—

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- (a) does not admit the claim at all; or
- (b) does not admit the claim to its full extent,

the Board shall reconsider the case if he applies to it to do so.

(2) If he is dissatisfied with any determination given by the Board on reconsidering the case he may, within 2 months of being informed by the Board of the decision, appeal to the Department against the decision of the Board.

(3) The Department shall, unless it appears to it that the case is of such a nature that it can properly be determined without taking oral evidence, arrange for the hearing of the appeal, and at any such hearing the appellant shall be entitled to have an opportunity of submitting statements relating to the subject matter of the appeal, calling witnesses, giving evidence and making such representations as he desires, and shall be entitled to have the assistance in presenting his case of a person selected by himself.

(4) After considering in accordance with the foregoing provisions of this article all the circumstances of the case the Department shall either allow the claim to such extent as it thinks fit or dismiss the appeal.

(5) Nothing in this paragraph shall authorise the Department to:-

- (a) control or restrict the exercise of any discretion which is by this Scheme vested in the Board other than the discretion so vested by article 84;
- (b) reopen any medical issue decided on appeal under article 66; or
- (c) question any certificate as to pensionable service which has become conclusive under article 45(5).

(6) The decision of the Department on an appeal under paragraph (2) shall be final and binding on both parties.

PART I SERVICEMEN

Preliminary

68.—(1) A serviceman is a person who immediately before undertaking relevant service in the armed forces was a regular firefighter.

(2) For the purposes of this Scheme a serviceman is to be treated as having continued to be a regular firefighter during his period of relevant service in the armed forces (referred to in this Part as his “forces period”).

Award to servicemen

69.—(1) This article applies to a serviceman who at the end of his forces period is permanently disabled.

(2) Subject to paragraphs (3) and (4), article 15 (ill-health award) has effect in relation to a serviceman to whom this article applies as if he had been required to retire under article 11 (compulsory retirement on grounds of disablement) at the end of his forces period.

(3) Where the infirmity that occasioned his incapacity for the performance of duty was occasioned by an injury received during his forces period the Board may, in its discretion—

- (a) pay him, instead of an ill-health gratuity under article 15(2)(b), a pension at the rate of 1/12th of his average pensionable pay; and

- (b) subject to paragraph (4), increase any such pension, or any ill-health pension payable to him under article 15(2)(a).
- (4) Schedule 6 to the Compensation Scheme has effect for limiting increases under paragraph (3)(b).

Awards on death of servicemen

- 70.—(1) This article applies in the case of a serviceman who—
- (a) dies during his forces period; or
 - (b) was permanently disabled at the end of his forces period, has not since been a regular firefighter and dies either from the effects of an injury that occasioned his incapacity for the performance of duty or while in receipt of a pension.
- (2) Subject to paragraphs (4) and (5), where this article applies—
- (a) article 25 (spouse’s or civil partner’s ordinary pension) has effect as if the serviceman had died in the circumstances mentioned in article 25(1)(b) to (d); and
 - (b) if the serviceman died during his forces period and no pension is payable under article 25, article 29 (spouse’s or civil partner’s award where no other award payable) has effect as if he had died in the circumstances mentioned in article 29(1).
- (3) Subject to paragraph (4) where this article applies article 33 (Child’s ordinary allowance) has effect as if the serviceman had died in the circumstances mentioned in article 33(1).
- (4) If the serviceman dies from the effects of an injury received during his forces period the Board may—
- (a) pay the surviving spouse or civil partner, instead of a gratuity under article 29(2)(b), a pension of the appropriate amount; and
 - (b) subject to paragraph (6), increase any such pension and any pension or child’s allowance payable under article 25 or 33.
- (5) The appropriate amount mentioned in paragraph (4)(a) is £379.78 increased as described in article 44(8) (flat-rate awards).
- (6) Schedule 6 to the Compensation Scheme has effect for limiting increases under paragraph (4)(b).

Servicemen who do not resume service in the fire and rescue service

- 71.—(1) Subject to paragraph (3), a serviceman who does not resume service in the fire and rescue service within one month from the end of his forces period shall be treated for the purposes of the material provisions as having left the fire and rescue service at the end of that period.
- (2) The material provisions are those of articles 16 (deferred pension), 27 (limitation award to surviving spouse or civil partner with reference to date of marriage or civil partnership), 48 (previous service reckonable without payment), 49 (previous service reckonable on payment), 55(9) (no award where transfer value paid) and 56 (pensionable pay and average pensionable pay).
- (3) The serviceman may apply for the consent mentioned in article 49(1)(b) (Authority’s consent to rejoining fire and rescue service) within one month from the end of his forces period.

Pensionable service

72. For the purposes of article 46(1) a serviceman shall be treated as having continued during his forces period to serve in the fire and rescue service.

Pension contributions

73.—(1) Subject to paragraph (2), for the purposes of article 57 a serviceman's pensionable pay during his forces period is the pay he would have received if he had continued to serve in the fire and rescue service.

(2) A serviceman shall for those purposes be treated as having received no pensionable pay (and accordingly is not liable to pay contributions) in respect of any period during which the total of—

- (a) his service pay; and
- (b) any payments under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951⁽²¹⁾,

is less than the pensionable pay described in paragraph (1).

PART J**PENSION CREDIT MEMBERS****Pension credit member's entitlement to pension**

74.—(1) Subject to article 75, a pension credit member is entitled to a pension for life which becomes payable

- (a) when he attains normal benefit age, or
- (b) if it is later, when the pension sharing order under which he is entitled to the pension credit takes effect.

(2) The pension must be of such an amount that its actuarial value is equal to the member's pension credit, as calculated from tables prepared by the Government Actuary and in accordance with regulations made under paragraph 5(b) of Schedule 5 to the 1999 Order.

Commutation of the pension credit benefits

75.—(1) In the circumstances described in regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000⁽²²⁾ (commutation of the whole of pension credit benefit), the Board may commute for a lump sum the whole of the pension to which a pension credit member is entitled under article 74.

(2) A person entitled or prospectively entitled to such a pension may commute for a lump sum a portion of the pension ("the commuted portion").

(3) But paragraph (2) does not apply if the pension debit member from whose rights the pension credit member's pension credit is derived has received a lump sum under article 18 before the date on which the pension sharing order takes effect.

(4) The lump sum under paragraph (2) is the actuarial equivalent of the commuted portion at the normal benefit age, calculated from tables prepared by the Government Actuary.

(5) But the lump sum under paragraph (2) may not exceed the annual rate of the pension for the first year it is payable (disregarding any reduction under this article or any other article of the Scheme), multiplied by 2.25.

(6) A person who wishes to commute a portion of a pension under paragraph (2) must not later than 6 months after—

- (a) the date on which the person attains normal benefit age; or

⁽²¹⁾ 1951 c.23

⁽²²⁾ SR 2000 No. 146

(b) the date on which the pension sharing order takes effect,
whichever is the later, give the Board written notice of commutation, specifying the portion to be commuted.

(7) Notice of commutation takes effect on the later of—

- (a) the date on which the pension under article 74 becomes payable; and
- (b) the date on which it is received by the Board.

(8) When a person's notice of commutation takes effect, the Board shall—

- (a) reduce the pension, as from the effective date, by the commuted portion; and
- (b) pay him the lump sum, reduced where the effective date is the date of receipt of the notice, by the difference between the aggregate payments made in respect of the pension and the aggregate payments that would have been made in respect of it if it had been reduced from—
 - (i) the date on which the person attains normal benefit age; or
 - (ii) the date on which the pension sharing order takes effect,

whichever is the later.

Death grants where pension credit member dies before pension credit benefits payable

76. If a pension credit member dies before any benefits deriving from the member's pension credit have become payable to him under this Scheme, a lump sum death grant is to be paid to the personal representatives of an amount equal to the annual rate of the pension to which the member would have been entitled under article 74 if he had attained normal benefit age on the date of his death (as calculated from tables prepared by the Government Actuary) multiplied by 2.25.

Application of general rules

77.—(1) The provisions of this Scheme specified in paragraph (2) apply to pension credit members and awards payable to or in respect of them, but apart from where provision is made by this Part or a contrary intention is otherwise indicated—

- (a) this Scheme shall not apply to pension credit members and benefits payable to or in respect of them, except if and to the extent that they are also members of another description or dependants of a member; and
- (b) the benefits payable to or in respect of pension credit members are not aggregated for any purpose with benefits payable to or in respect of those persons in any other capacity or as pension credit members deriving their pension credit benefits from any other pension debit member.

(2) Those provisions are

- article 65 (determination by the Board);
- article 67 (appeal against decision of the Board);
- article 84 (withdrawal of pension on conviction of certain offences);
- article 85 (payment of awards);
- article 87(1) to (5) and (10) (payments of awards-supplementary); and
- article 90 (establishment, maintenance and operation of Firefighters' Pension Fund).

PART K

SPECIAL CASES

Guaranteed minimum pensions

78.—(1) This article applies where a person who is or has been a regular firefighter has a guaranteed minimum in relation to a pension provided by this Scheme by reason of service before 6th April 1997 which is contracted-out employment by reference to the Scheme.

(2) Subject to paragraphs (3) to (7)—

- (a) the person is entitled from the date on which he attains state pensionable age to a pension at a weekly rate equal to his guaranteed minimum;
- (b) in the case of a man who dies at any time and leaves a widow or civil partner, that widow or civil partner is entitled to a pension at a weekly rate equal to half his guaranteed minimum; and
- (c) in the case of a woman who dies at any time and leaves a widower or civil partner, that widower or civil partner is entitled to a pension at a weekly rate equal to half of that part of the deceased's guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years up to and including the tax year 1996-1997.

(3) A pension to which a person is entitled under paragraph (2)(a) is not payable for any period within 5 years after his attaining state pensionable age during which—

- (a) he is continuing to serve as a regular firefighter; or
- (b) a decision under article 83 (withdrawal of pension during employment as regular firefighter) taken by the Board before he attained state pensionable age has effect.

(4) An entitlement to a pension under paragraph (2)(b) or (c) ceases if the person entitled remarries or forms a civil partnership before attaining state pensionable age.

(5) Where a person is entitled to a pension under any other provision of this Scheme—

- (a) a pension under paragraph (2) is payable only if it is greater than the other pension, disregarding any secured portion; and
- (b) if a pension under paragraph (2) is paid, only the secured portion, if any, of the other pension is payable.

(6) For the purposes of paragraph (5), a pension includes any increase in it under the Pensions (Increase) Act (Northern Ireland) 1971(23).

(7) In relation to a pension under paragraph (2)—

- (a) article 19 (commutation of small pensions) applies as it applies in relation to a pension under Part B; and
- (b) article 84 (withdrawal of pension on conviction of certain offences) applies as it applies in relation to a pension under Part B or C but as if article 84(2)(b) were omitted.

(8) A pension under paragraph (2) shall not be reduced or extinguished except as provided in this article.

Revaluation of guaranteed minimum

79.—(1) This article applies where a person—

- (a) has ceased to serve as a regular firefighter; or

(23) 1971 c.35(N.I.)

(b) has elected under article 59 not to pay pension contributions, and has taken a right to a cash equivalent by exercising the option conferred by section 91(1) of the Pension Schemes (Northern Ireland) Act 1993(24) (“the 1993 Act”) wholly or partly in the way specified in section 91(2)(c) of that Act (purchase of annuity).

(2) Where this article applies, to the extent that the person’s guaranteed minimum is otherwise appropriately secured within the meaning of section 15(3) of the 1993 Act—

(a) for the purposes of section 10(2) of that Act (amount of guaranteed minimum) his earnings factors shall be determined by reference to the last order under section 130 of the Social Security Administration (Northern Ireland) Act 1992(25) to come into force before the end of the tax year in which he ceased to serve as a regular firefighter or, as the case may be, in which his election under article 59 took effect and without reference to any subsequent order; and

(b) the weekly equivalent mentioned in section 10(2) of the 1993 Act shall be increased—

(i) by at least the prescribed percentage for each relevant year after the end of the tax year in which he ceased to serve as a regular firefighter or, as the case may be, in which his election under article 59 took effect, and

(ii) in accordance with such additional requirements as may be prescribed for the purposes of section 12(3) of the 1993 Act(26).

(3) In this article—

“relevant year” has the meaning given in section 10(8) of the 1993 Act(27);

“prescribed percentage” has the meaning given in regulation 62 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(28).

PART L

REVISION AND WITHDRAWAL OF AWARDS

Review of ill-health and certain deferred pensions

80.—(1) So long as a person—

(a) has been in receipt of an ill-health pension for less than 10 years; and

(b) is under the age of 60,

the Board shall consider, at such intervals as it thinks proper, whether he has become capable of carrying out any duty appropriate to the role from which he retired on grounds of ill-health.

(2) So long as a person—

(a) has been in receipt of a higher tier ill-health pension for less than 10 years; and

(b) is under the age of 60,

the Board shall also consider, at such intervals as it thinks proper, whether he has become capable of undertaking regular employment.

(3) So long as a person—

(a) is in receipt of payments in respect of a deferred pension under article 16; and

(24) 1993 c.49

(25) 1992 c.8

(26) Section 12(3) was amended by the Pensions (Northern Ireland) Order 1995, Schedule 3, paragraph 21

(27) Section 10(8) was amended by the Pensions (Northern Ireland) Order 1995, Schedule 3, paragraph 20

(28) S.R. 1996 No. 493

Status: This is the original version (as it was originally made).

- (b) is under the age of 60,
- the Board shall also consider, at such intervals as it thinks proper, whether he has become capable—
- (i) of carrying out any duty appropriate to the role from which he retired on grounds of ill-health; or
 - (ii) of undertaking regular employment.
- (c) In this Part, “regular employment” means employment for at least 30 hours a week on average over a period of 12 consecutive months beginning with the date on which the issue of his capacity for undertaking employment arises.

Consequences of review

81.—(1) If, on such consideration as is mentioned in article 80(2), it is found that a person has become capable of undertaking regular employment, the Board shall immediately terminate his higher tier ill-health pension.

(2) A lower tier ill-health pension shall continue to be paid to a person whose higher tier ill-health pension is terminated as mentioned in paragraph (1) unless—

- (a) on such consideration as is mentioned in article 80, it is found that he has become capable of performing the duties appropriate to the role from which he retired on the grounds of ill-health; and
- (b) the Board make him an offer of employment in that role (“a paragraph (2)(b) offer”).

(3) Entitlement to a lower tier ill-health pension shall cease, with immediate effect, where a person accepts or declines a paragraph (2)(b) offer.

(4) A person who declines a paragraph (2)(b) offer shall then become entitled to a deferred pension under article 16.

Reduction of award in case of default

82.—(1) Subject to paragraph (2), where a person—

- (a) is permanently disabled; and
- (b) has brought about or contributed to his infirmity by his own serious and culpable negligence or misconduct,

the Board may reduce any ill-health award payable to him by it to not less than half its full amount.

(2) Where—

- (a) a pension has been reduced under paragraph (1); and
- (b) then the person attains the age of 60 the amount of the reduced pension is less than that of the notional deferred pension,

the amount of the reduced pension shall be increased to that of the notional deferred pension.

(3) The notional deferred pension is the deferred pension that would have been payable if the person had become entitled to one on the date of his ceasing to serve.

Withdrawal of pension during service as regular firefighter

83. The Board may withdraw the whole or any part of the pension, except a pension under Part C (Awards on death – spouses and civil partners), for any period during which the person entitled to it is serving as a regular firefighter in a fire and rescue service maintained under the Fire and Rescue Services Act 2004.

Withdrawal of pension on conviction of certain offences

84.—(1) Subject to paragraph (4), in the circumstances specified in paragraph (2), the Board may withdraw a pension in whole or in part, and permanently or temporarily as it may specify.

(2) The circumstances are—

- (a) that the person entitled to the pension (“the pensioner”) has been convicted of an offence falling within paragraph (3), and in the case of a pension under Part C that the offence was committed after the death on which the pensioner became entitled to it; or
- (b) that the pensioner has been convicted of an offence committed in connection with his service as a member of the fire and rescue service which is certified by a Minister of the Crown either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.

(3) The offences mentioned in paragraph (2)(a) are—

- (a) an offence of treason; and
- (b) one or more offences under the Official Secrets Acts 1911 to 1989⁽²⁹⁾ for which the pensioner has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.

(4) In determining whether the withdrawal of a pension should—

- (a) be permanent or temporary; and
- (b) affect the pension in whole or in part,

the Board may make different determinations in respect of the secured and unsecured portions of the pension; but the secured portion may not be withdrawn permanently and may only be withdrawn temporarily for a period ending before the pensioner attains state pensionable age or one during which he is imprisoned or otherwise detained in legal custody.

(5) The Board may, to such extent as it thinks fit—

- (a) apply for the benefit of any dependant of the pensioner’s; or
- (b) restore to the pensioner,

so much of any pension as has been withdrawn under this article.

PART M

PAYMENT OF AWARDS AND FINANCIAL PROVISIONS

Payment of awards

85.—(1) While a pension or allowance is payable—

- (a) it is payable in respect of each week; and
- (b) the Board shall discharge its liability in respect of it by making payments in advance at such reasonable intervals as it may determine,

but payment may be delayed to the extent necessary for determining any question as to the liability of the Board.

(2) Where a person dies after receiving a payment in advance in respect of a pension or allowance, no claim for repayment shall be made on the ground that the payment or any part of it is referable to a period after his death.

⁽²⁹⁾ 1911 c. 28, 1920 c. 75, 1939 c. 121. 1989 c.6

Status: This is the original version (as it was originally made).

(3) Where, after receiving a payment in advance in respect of a pension under Part C, a surviving spouse or civil partner marries or forms a subsequent civil partnership, no claim for repayment shall be made on the ground that the payment of any part of it is referable to a period after the remarriage or, as the case may be, the formation of the new civil partnership.

(4) Subject to paragraphs (5) to (7), pensions under Part C and allowances under Part D (“survivors’ benefits”) are payable from the date of the death.

(5) Subject to paragraphs (6) and (7), in the case of a posthumous child any allowance under Part D is payable from the date of his birth.

(6) Where the deceased—

- (a) was in receipt of a pension; and
- (b) died during a period in respect of which he had already received it,

no survivors’ benefits are payable before the end of that period.

(7) Where the deceased received a gratuity survivors’ benefits are payable from the first anniversary of his death or such earlier date as the Board, in the circumstances of the case, thinks fit.

(8) A gratuity shall be paid in one sum as soon as the entitlement to it arises, except that—

- (a) payment may be delayed to the extent necessary for determining any question as to the liability of the Board; and
- (b) if the Board is satisfied that it would be to the advantage of the person entitled, it may pay a gratuity in instalments of such reasonable amounts and over such reasonable period as it thinks fit.

(9) Where a person is entitled under article 17 to the repayment of his aggregate pension contributions, the Board is not obliged to make payment—

- (a) until the expiration of a year from the date of his retirement; or
- (b) until he requests payment,

whichever is the earlier.

Prevention of duplication

86.—(1) This article applies where a person is entitled in respect of any particular period to two or more pensions or allowances under this Scheme or the Compensation Scheme.

(2) A pension payable—

- (a) under article 20 to the beneficiary of an allocation;
- (b) under article 78 (guaranteed minimum pensions);
- (c) under article 74 (pension credit member’s entitlement to pension)

is not a pension for the purposes of this article.

(3) Subject to paragraph (4), where this article applies only one of the pensions or allowances shall be paid in respect of the period in question; if they are for the time being unequal in amount, the one to be paid is the largest of them.

(4) For the purposes of this article, where a person is entitled—

- (a) under the Compensation Scheme to an injury pension and also under article 13, 14, 15 or 16 to an ordinary, short service, ill-health or deferred pension; or
- (b) to a pension in respect of service as a member of the fire and rescue service and also to a pension as the surviving spouse or civil partner of such a member; or
- (c) to pensions as the surviving child of both parents who served as members of the fire and rescue service,

those pensions shall be treated as one.

Payment of awards - supplementary

87.—(1) Any sum payable to a minor in respect of an award may, if the Board thinks fit, be paid by it to such other person as it may determine, who shall, in accordance with any directions given by the Board, apply it for the minor's benefit.

(2) If it appears to the Board that a person entitled to payment of an award is, by reason of mental disorder or otherwise, incapable of managing his affairs—

- (a) it may pay the award or any part of it to a person having the care of the person entitled, or such other person as it may determine; and
- (b) insofar as it does not pay the award in that manner, it may apply it in such manner as it thinks fit for the benefit of the person entitled or his dependants.

(3) On the death of a person to whom there was due in respect of an award a sum not exceeding the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967(30) and applying in relation to the death, the Board may, as it thinks fit, without requiring the production of probate or any other proof of title—

- (a) where only one person appears to be beneficially entitled to the personal estate of the deceased, pay the sum to that person; or
- (b) in any other case, either pay the sum to one of the persons appearing to be so entitled or distribute it among all or any of them in such proportions as the Board may determine.

(4) An assignment of or charge on an award is void to the extent that—

- (a) it is in favour of a person other than a dependent of the person entitled to the award; or
- (b) it relates to a sum due in respect of the secured portion of an ordinary, short service, ill-health or deferred pension for a period beyond state pensionable age; or
- (c) to pensions as the surviving child of both parents who served as members of the fire and rescue service.

(5) On the bankruptcy of a person entitled to an award the award does not pass to any trustee or other person acting on behalf of the creditors.

(6) Subject to paragraphs (7) to (9), where as a result of fraud, theft or negligence on the part of a regular firefighter in connection with his employment there has been a loss to the funds the Board, the Board may withhold all or part of any sums becoming due to him from the Board in respect of a pension.

(7) The total amount withheld under paragraph (6) must not exceed the amount of the loss; and in the event of any dispute as to the amount of the loss nothing may be withheld unless the loss has become recoverable from the person entitled to the pension under the order of a competent court.

(8) There shall not in any case be withheld—

- (a) where a sum is due in respect of a period beyond state pensionable age, any amount in respect of the secured portion of an ordinary, short service or ill-health pension; or
- (b) any part of a sum due that is not attributable to service as a member of the fire and rescue service.

(9) The Board shall provide the person entitled to the award with a certificate showing the amount withheld.

(10) In this article a reference to an award is a reference to a pension, allowance, gratuity or other award under this Scheme.

(30) 1967 c. 5 (N.I.)

PART N

SCHEME ADMINISTRATION, RECEIPTS AND EXPENSES

Scheme administrator for purposes of Part 4 of Finance Act 2004

88. For the purposes of Part 4 (pension schemes, etc) of the Finance Act 2004, the Head of the Department of Health, Social Services and Public Safety shall be the scheme administrator of this Scheme⁽³¹⁾.

PART O

SUPPLEMENTAL PROVISION

Transitional and other matters

89.—(1) Schedule 10 has effect with respect to transitional and other matters in connection with the coming into operation of this Scheme.

(2) Nothing in Schedule 10 is intended to affect the general operation of section 28 of the Interpretation Act (Northern Ireland) 1954⁽³²⁾ (effect of repeal).

PART P

FIREFIGHTERS' PENSION FUND

Establishment, maintenance and operation of Firefighters' Pension Fund

90.—(1) For the purposes of this Scheme, and in connection with rights acquired and liabilities incurred under the 1973 Scheme or previous Firemen's Pension Schemes and transferred to the Board, the Board shall establish and maintain, in accordance with proper practices, a pension fund, which shall be known as their Firefighters' Pension Fund (in this Part referred to as the FPF).

(2) Without prejudice to the generality of paragraph (1), there shall be credited to the FPF or, where a transfer is made to the FPF from any other fund maintained by the Board, credited to the FPF and debited to that other fund—

- (a) sums receivable from firefighters in respect of periods treated as reckonable by virtue of paragraph (3) of article 46 (current service);
- (b) sums receivable under article 53 (receipt of transfer value);
- (c) sums receivable from English, Scottish or Welsh fire and rescue authorities under provisions of the Firefighters' Pension Scheme set out in Schedule 2 to the Firemen's Pension Scheme Order 1992⁽³³⁾ as it has effect in England and Scotland or the Firefighters' Pension Scheme (Wales) Order 2004⁽³⁴⁾ equivalent to article 54 (transfer payments between fire and rescue authorities);
- (d) the amount of the Board's annual contributions under paragraph (3) of article 57 (pension contributions).

⁽³¹⁾ 2004 c. 12 See section 270 for the meaning of "scheme administrator"

⁽³²⁾ 1954 c.33 (N.I.)

⁽³³⁾ S.I. 1992/129 – see footnote (b) on page 2 of S.I. 2006/1810.

⁽³⁴⁾ See S.I. 2004/2918 (W.257) as amended by S.I. 2006/1672 (W.160)

(3) Without prejudice to the generality of paragraph (1), there shall be payable out of the FPF or, if a transfer is made from the FPF to any other fund maintained by the Board, debited to the FPF and credited to that other fund—

- (a) sums payable under article 17 (repayment of aggregate pension contributions);
- (b) awards payable under any provision of this Scheme (including the commuted portion of a pension to which article 18 (commutation: general provision) applies);
- (c) sums payable under article 54 (transfer payments between fire authorities);
- (d) sums payable under article 55 (payment of transfer values) by way of transfer values or cash or part cash equivalents; and
- (e) the amount of any refund of employer's contributions under article 17 or 59(4).

(4) Every amount to be paid or repaid to or by the Board under this Part shall be credited or, as the case may be, debited, to the FPF.

(5) In this Part—

- (a) references to the total amount payable out of the FPF do not include references to any amount which the Department required the Board to pay to it under any of articles 94 to 97; and
- (b) references to the total amount credited to the FPF do not include references to any amount which the Department pays to the Board for crediting to the FPF under any of articles 94 to 97.

Special payments and transfers into Firefighters' Pension Fund

91.—(1) The Board shall make transfers into their FPF in accordance with paragraphs (2) to (5).

(2) In respect of each firefighter employed by the Board who retires on or after 1st April 2005 and before 1st April 2006 with an entitlement to immediate payment of an ill-health award under article 17 (ill-health award), the Board shall, as soon as reasonably practicable after the date on which this Order comes into operation, transfer into the FPF an amount equal to that firefighter's average pensionable pay.

(3) In respect of each firefighter employed by the Board who retires on or after 1st April 2006 with an entitlement to immediate payment of a higher tier ill-health award under article 15, the Board shall transfer into the FPF such amount as shall be determined and notified to it by the Department as the higher tier ill-health charge applicable in respect of that pension.

(4) In respect of each firefighter employed by the Board who retires on or after 1st April 2006—

- (a) with an entitlement to immediate payment of a lower tier ill-health award under article 15 (ill-health awards) ; and
- (b) with no entitlement to a higher tier ill-health award,

the Board shall transfer into the FPF such amount as shall be determined and notified to it by the Department as the lower tier ill-health charge applicable in respect of that pension.

(5) The amount to be transferred under paragraph (3) or (4) shall be transferred in accordance with arrangements agreed with the Department.

Transfer from Firefighters' Pension Fund

92.—(1) Where, in consequence of a review under article 80 (review of ill-health and certain deferred pensions)—

Status: This is the original version (as it was originally made).

- (a) a higher tier ill-health pension is cancelled before all the instalments of the higher tier ill-health charge in respect of that pension have been transferred in accordance with article 91; and
 - (b) a lower tier ill-health pension continues to be paid,
- the amount referred to in paragraph (2) shall be transferred from the FPF to any other fund maintained by the Board.
- (2) The amount is an amount equal to the difference between—
 - (a) the aggregate of such instalments of the higher tier ill-health charge as have been transferred in accordance with article 91; and
 - (b) the aggregate amount that would have been transferred if—
 - (i) the lower tier ill-health charge had always applied in respect of the pension, and
 - (ii) instalments of that charge had been transferred on the dates on which instalments of the higher tier ill-health charge were transferred.
 - (3) For the purposes of ascertaining the amount to be transferred in accordance with paragraph (2), the Board shall request the Department to determine the amount of notional lower tier ill-health charge in respect of the pension concerned.
 - (4) Where a person declines an offer of employment under paragraph (2)(b) of article 81 (consequences of review) and does not again take up employment in the fire and rescue service—
 - (a) article 91(3) or (4) (as the case may be) shall be disregarded in his case (to the extent that it remains to be complied with); and
 - (b) the Board—
 - (i) shall not make any transfer into the FPF in respect of him as regards any time after the date on which it receives notice that the offer has been rejected; and
 - (ii) shall transfer from the FPF to any other fund maintained by it an amount equal to the aggregate of the instalments that have been transferred to the FPF in respect of the pension that has been terminated.
 - (5) Where—
 - (a) a higher tier ill-health pension or a lower tier ill-health pension is wholly and permanently withdrawn under article 84 (withdrawal of pension on conviction of certain offences); and
 - (b) the former recipient of that pension does not again take up employment in the fire and rescue service,
 article 91(3) or (4) (as the case may be) shall be disregarded in his case (to the extent that it remains to be complied with); and the Board shall transfer from the FPF to any other fund maintained by it an amount equal to the aggregate of the instalments that have been transferred to the FPF in respect of the pension that has been terminated.

Excess amounts – information

- 93.—(1) Beginning with the financial year ending on 31st March 2007, the Board shall, in relation to each financial year, send the following information to the Department—
- (a) the total amount that the Board estimate will be payable out of their FPF in that year;
 - (b) the total amount that the Board estimate will be credited to their FPF in that year;
 - (c) the Board’s un-audited statement of accounts for that year;
 - (d) the Board’s statement of accounts for that year, as it is after the Board’s auditor issues his certificate and opinion, including or together with that certificate and opinion;
 - (e) the total amount payable out of the Board’s FPF in that year; and

- (f) the total amount credited to the Board's FPF in that year.
- (2) In relation to the financial year ending on 31st March 2007, the Board shall send the information referred to in sub-paragraphs (a) and (b) of paragraph (1) to the Department as soon as is reasonably practicable before that date ("the initial estimate").
- (3) In relation to each financial year ending on or after 31st March 2008, the Board—
 - (a) shall send the information referred to in sub-paragraphs (a) and (b) of paragraph (1) to the Department in March in the financial year before the year in question ("the estimate"); and
 - (b) if the Board revises the information referred to in those sub-paragraphs after it sends the estimate to the Department, may send that revised information to the Department in September during the year in question ("the revised estimate").
- (4) The Board shall send the information referred to in sub-paragraphs (c), (e) and (f) of paragraph (1) to the Department in July in the financial year following the year in question ("the un-audited information").
- (5) The Board shall send to the Department as soon as reasonably practicable after the Board's auditor issues his certificate and opinion on the Board's accounts for the year in question ("the audited information")—
 - (a) the information referred to in sub-paragraph (d) of paragraph (1); and
 - (b) if the Board revises the information referred to in sub-paragraphs (e) and (f) of paragraph (1) after it has sent the un-audited information to the Department, that information as revised.
- (6) For the purposes of this article, the auditor issues his certificate and opinion when—
 - (a) he enters on the Board's statement of accounts for the relevant year—
 - (i) a certificate that he has completed the audit; and
 - (ii) his opinion on the statement; or
 - (b) where he makes a report to the Board at the conclusion of the audit, he includes the certificate and opinion referred to in sub-paragraph (a) in that report instead of making an entry on the statement.

Excess amounts – estimated deficits

94.—(1) Where, having taken into account the initial estimate or, as the case may be, the estimate, and any other relevant information available to it, it appears to the Department that the total amount likely to be payable out of the Board's FPF in the year in question will exceed the total amount likely to be credited to the Board's FPF in that year, it shall pay to the Board an amount equal to the likely deficit.

(2) Subject to paragraph (3), where, having taken into account any revised estimate and any other relevant information available to it, it appears to the Department that —

- (a) the total amount likely to be payable out of the Board's FPF in the year in question will exceed the total amount likely to be credited to the Board's FPF in that year; and
- (b) the deficit is more than—
 - (i) the amount paid or payable by it to the Board by virtue of paragraph (1) in relation to the relevant year; or
 - (ii) where no such amount was paid or payable by it, zero,

it may pay to the Board such amount as it thinks fit.

(3) The aggregate of the amounts paid to the Board under paragraphs (1) and (2) in relation to a particular year shall not exceed the Board's likely deficit for that year.

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(4) Where the Department pays an amount to the Board under paragraph (2), any amount paid or payable to it in relation to the year in question under article 95(1) shall not be payable and, if already paid, the Department shall repay it to the Board.

(5) An amount payable to the Board under paragraph (1) shall be paid—

- (a) where the year in question ends on 31st March 2007, on or before that date;
- (b) where the year in question ends on or after 31st March 2008, in July in the year in question.

(6) Any amount payable or repayable by the Department to the Board under paragraph (2) or (4) shall be paid or repaid before the end of the year in question.

Excess amounts – estimated surpluses

95.—(1) Where, having taken into account the initial estimate or, as the case may be, the estimate, and any other relevant information available to it, it appears to the Department that the total amount likely to be credited to the Board's FPF in the year in question will exceed the total amount likely to be payable out of their FPF in that year, it shall require the Board to pay to it an amount equal to the likely surplus.

(2) Subject to paragraph (3), where, having taken into account any revised estimate and any other relevant information available to it, it appears to the Department that—

- (a) the total amount likely to be credited to the Board's FPF in the year in question will exceed the total amount likely to be payable out of the Board's FPF in that year; and
- (b) the difference between those total amounts is more than—
 - (i) the amount paid or payable by the Board to him under paragraph (1) in the year in question; or
 - (ii) where no such amount was paid or payable by the Board, zero,

it may require the Board to pay to it such amount as it may by notice specify.

(3) The aggregate of the amounts paid to the Department under paragraphs (1) and (2) in relation to a particular year shall not exceed the Board's likely surplus for that year.

(4) Where the Department requires the Board to pay an amount to it by virtue of paragraph (2), any amount paid or payable by the Department to the Board under article 94(1), shall not be payable and, if already paid, the Board shall repay it to the Department.

(5) The Department shall give to the Board, on or before the 3rd March in the year in question, written notice of the amount of any payment that it requires the Board to make under paragraph (1) or (2).

(6) An amount payable or repayable by the Board to the Department under paragraph (1), (2) or (4) shall be paid or repaid in March in the year in question.

Excess amounts – actual deficits

96.—(1) Where, having taken into account the un-audited information and any other relevant information available to it, it appears to the Department that the total amount likely to be payable out of the Board's FPF in the year in question exceeds the total amount likely to be credited to the Board's FPF in that year—

- (a) where the likely deficit (“the un-audited deficit”) exceeds the total of any amounts paid or payable to the Board in relation to that year under article 94(1) or (2) (“the article 94 total”), it shall pay to the Board the amount of the un-audited deficit less the article 94 total.
- (b) where the un-audited deficit is less than the article 94 total, the amount of the article 94 total less the un-audited deficit shall not be payable under article 94(1) or (2) and, if already paid, the Board shall repay that amount to the Department.

- (c) where no amount was paid or payable by it to the Board in relation to the year in question under article 94(1) or (2), it shall pay to the Board the amount of the un-audited deficit; and
- (d) any amount paid or payable to it in relation to that year under article 95(1) or (2), shall not be payable and, if already paid, the Department shall repay it to the Board.

(2) Where, having taken into account the audited information and any other relevant information available to it, it appears to the Department that the total amount paid or payable out of the Board's FPF in the year in question exceeds the total amount credited or to be credited to their FPF in that year—

- (a) where the difference between those amounts (“the audited deficit”) exceeds the total of any amounts paid (but not repaid or repayable) or payable to the Board in relation to that year under paragraph (1)(a) or (c) or article 94(1) or (2) (“the un-audited total”), it shall pay to the Board the amount of the audited deficit less the un-audited total;
- (b) where the audited deficit is less than the un-audited total, the amount of the un-audited total less the audited deficit shall not be payable under paragraph (1)(a) or (c) or article 94(1) or (2) and, if already paid, the Board shall repay it to the Department;
- (c) where no amount was paid or payable by it to the Board in relation to the year in question under paragraph (1)(a) or (c) or article 94(1) or (2), it shall pay to the Board the amount of the audited deficit; and
- (d) any amount paid or payable to it in relation to the year in question under article 95(1) or (2) or article 97(1)(a) or (c), shall not be payable and, if already paid, the Department shall repay it to the Board.

(3) An amount payable or repayable by the Department to the Board, or vice versa, under paragraph (1), shall be paid or repaid in July in the financial year following the year in question (“the second year”).

(4) An amount payable or repayable by the Department to the Board, or vice versa, under paragraph (2), shall be paid or repaid in July in the financial year following the second year.

Excess amount – actual surpluses

97.—(1) Where, having taken into account the un-audited information and any other relevant information available to it, it appears to the Department that the total amount credited to the Board's FPF in the year in question exceed the total amount paid out of their FPF in that year—

- (a) where the difference between those total amounts (“the un-audited surplus”) exceeds the total of any amounts paid or payable to it by the Board in relation to that year under article 95(1) or (2) (“the article 95 total”), it shall require the Board to pay to it the amount of the un-audited surplus less the article 95 total;
- (b) where the un-audited surplus is less than the article 95 total, the amount of the article 95 total less the un-audited surplus shall not be payable under article 95(1) or (2) and, if already paid, the Department shall repay it to the Board;
- (c) where no amount was paid or payable to it by the Board in relation to the year in question under article 95(1) or (2), it shall require the Board to pay to it the amount of the un-audited surplus; and
- (d) any amount paid or payable to it by the Board in relation to that year under article 94(1) or (2), shall not be payable and, if already paid, the Board shall repay it to the Department.

(2) Where, having taken into account the audited information and any other relevant information available to it, it appears to the Department that the total amount credited to the Board's FPF in the year in question exceeds the total amount payable out of the Board's FPF in that year—

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- (a) where the difference between those amounts (“the audited surplus”) exceeds the total of any amounts paid (but not repaid or repayable) or payable to it by the Board in relation to that year under paragraph (1)(a) or (c) or article 95(1) or (2) (“the un-audited article 95 total”), it shall require the Board to pay to it out of their FPF the amount of the audited surplus less the un-audited article 95 total;
 - (b) where the audited surplus is less than the un-audited article 95 total, the amount of the un-audited article 95 total less the audited surplus shall not be payable under paragraph (1)(a) or (c) or article 95(1) or (2) and, if already paid, the Department shall repay it to the Board;
 - (c) where no amount was paid or payable to it by the Board in relation to the year in question under paragraph (1)(a) or (c) or article 95(1) or (2), it shall require the Board to pay it the amount of the audited surplus; and
 - (d) any amount paid or payable by it to the Board in relation to that year under article 94(1) or (2) or article 96(1)(a) or (c) shall not be payable and, if already paid, the Board shall repay it to the Department.
- (3) The Department shall give to the Board, on or before 3rd July in the financial year after the year in question (“the second year”), written notice of the amount of the payment that it requires the Board to pay make under paragraph (1)(a) or (c).
- (4) An amount payable or repayable by the Board to the Department, or vice versa, under paragraph (1), shall be paid or repaid in July in the second year.
- (5) The Department shall give to the Board, on or before 3rd July in the financial year that is the second financial year after the year in question (“the third year”), written notice of the amount of any payment that it requires the Board to make under paragraph (2)(a) or (c).
- (6) An amount payable or repayable by the Board to the Department, or vice versa, by virtue of paragraph (2), shall be paid or repaid in July in the third year.

Duty to provide information

- 98.—(1) The Board shall provide the Department with such information relevant to the exercise of the Board’s functions under this Part as the Department may, by written notice, require.
- (2) The Board shall respond to a request under paragraph (1) within such period as the Department shall specify in its notice under that paragraph, or such longer period as it may in any particular case allow.

Duty to have regard to guidance

99. In exercising its functions under this Part the Board shall have regard to such guidance as may be issued by the Department from time to time.