

2014 No. 168

FIRE AND RESCUE SERVICES

PENSIONS

**The New Firefighters' Pension Scheme (Amendment) (No. 2)
Order (Northern Ireland) 2014**

Made - - - -

9th June 2014

Coming into operation- -

1st July 2014

The Department of Health, Social Services and Public Safety, in exercise of the powers conferred by article 10(1), (3), (4) and (5) of the Fire Services (Northern Ireland) Order 1984 (a), and now vested in it(b) and with the approval of the Department of Finance and Personnel in accordance with article 10(1) of that Order makes the following Order:

Citation, commencement and effect

1.—(1) This Order may be cited as the New Firefighters' Pension Scheme (Amendment) (No. 2) Order (Northern Ireland) 2014.

(2) Subject to paragraphs (3) to (5) this Order shall come into operation on 1st July 2014.

(3) Paragraph 1 of the Schedule (which relates to article 4 (scheme membership) of Part 2) shall have effect from 1st October 2013.

(4) Sub-paragraphs (ii), (iii) and (iv) of paragraph 2(b) of the Schedule (which relates to article 17A (additional pension benefit: long service) of Part 3 (personal awards)) shall have effect from 11th April 2011.

(5) Paragraph 3 of the Schedule (which substitutes for article 17B (additional pension benefit: continual professional development) in Part 3, article 17B (additional pension benefit)) shall have effect in relation to paragraph (3) and the definitions of "beginning date" and "following relevant tax year" in paragraph (6) of article 17B from 11th April 2011.

Amendment of the New Firefighters' Pension Scheme Order (Northern Ireland) 2007

2. The New Firefighters' Pension Scheme Order (Northern Ireland) 2007(c) shall be amended in accordance with the Schedule.

(a) S.I. 1984/1821 (N.I. 11) article 10(5) was amended by S.I. 1998/1549 (N.I.11) article 4. Article 10 was continued by S.I. 2006/1254 (N.I.9) article 60(1) and (2).

(b) See S.R. 1999 No. 481 article 6(c) and Schedule 4, Part III

(c) S.R. 2007 No 215, amended by S.R. 2008 No 381, S.R. 2013 No 172, SR 2012 No 162, SR 2013 No 84 and SR 2014 No 57

Transitional provisions: transfer into Firefighters' Pension Fund

3.—(1) The amendment made by article 2 and paragraph 6 of the Schedule to article 86 (payments and transfers into Firefighters' Pension Fund) of Part 13 (Firefighters' Pension Fund) shall not have effect in relation to a person who had entered into a contract of employment with the Board before the date on which this Order came into operation.

(2) In a case to which paragraph (1) applies, article 86 of Part 13 of the New Firefighters' Pension Scheme (Northern Ireland), in the form in which it existed immediately before the coming into operation of this Order, shall continue to have effect in relation to such a person.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 9th June 2014.



Bill Pauley
A senior officer of the
Department of Health, Social Services and Public Safety

The Department of Finance and Personnel approves this Order.

Sealed with the Official Seal of the Department of Finance and Personnel on 9th June 2014.



John McKibbin
A senior officer of the
Department of Finance and Personnel

SCHEDULE

AMENDMENT OF THE ANNEX TO THE NEW FIREFIGHTERS' PENSION SCHEME ORDER (NORTHERN IRELAND) 2007

1. In Part 2 (scheme membership, cessation and retirement)—
 - (a) in article 4 (scheme membership), for paragraph (2A) substitute—

“(2A) Where a person who—

 - (a) having taken up employment as a firefighter before 6th April 2006;
 - (b) having continued in such employment until his automatic enrolment date;
 - (c) having made an election not to pay pension contributions under the Firefighters' Pension Scheme Order (Northern Ireland) 2007 or not being eligible to be a member of the Firefighters's Pension Scheme Order (Northern Ireland) 2007; and
 - (d) having not otherwise elected to become a member of this Scheme,

is automatically enrolled in this Scheme, that enrolment shall constitute an election to become a firefighter member of this Scheme.”.
 - (b) in article 8 (election not to make pension contributions) the paragraph numbered (1A) immediately before paragraph (2) shall be re-numbered (1B)(a).
2. In Part 3 (personal awards)—
 - (a) in article 12 (award on ill-health retirement), in paragraph (4) for “The amount of the higher tier ill-health pension” substitute “The amount of the higher tier ill-health award”;
 - (b) in article 17A (additional pension benefit: long service)—
 - (i) in paragraph (2), for the words after the formula substitute—

“Where—

A is the number in years (counting part of a year as the appropriate fraction) by which the member's continuous pensionable service in the employment of the Board and subsequent continuous pensionable service up to and including 30th June 2007, exceeds 15 but does not exceed 20; and

B is the number in years (counting part of a year as the appropriate fraction) by which his continuous pensionable service in the employment of the Board and subsequent continuous pensionable service up to and including 30th June 2007, exceeds 20 but does not exceed 30.”;
 - (ii) in paragraph (3), for “Where” substitute “Until 11th April 2011, where”;
 - (iii) after paragraph (3), insert—

“(3A) On and after 11th April 2011, the amount of additional pension benefit (as calculated in accordance with paragraph (2) and paragraph (3) and, if applicable, paragraph (3B) and this paragraph) shall be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension to which the Pensions (Increase) Act (Northern Ireland) 1971(b) applied and the beginning date for that pension were the 1st July of the tax year immediately before the relevant tax year.

(3B) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2010/2011 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2010 with effect from Monday 11th April 2011.”;

(a) Relevant amendment S.R. 2013 No. 172 article 2(b)
(b) 1971 c.35 (NI)

(iv) in paragraph (5) for “paragraph (3)” substitute “paragraphs (3) and (3A)”, and before the expression “relevant tax year” insert—

““the beginning date” means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act (Northern Ireland) 1971;

“following relevant tax year” means the tax year after the relevant tax year, in relation to which the member is not a pensioner member or a deferred member;”;

3. For article 17B (additional pension benefit: continual professional development), substitute—

“Additional pension benefit

17B.—(1) Where the Board determines that the benefits listed in paragraph (5) are pensionable, and in any added pension benefit year pays any such pensionable benefits to a firefighter member, the Board shall credit the firefighter member with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraphs (3) and (4), the amount of additional pension benefit in respect of that year shall be determined on 1st July immediately following the year in question in accordance with guidance and tables provided by the Scheme Actuary.

(3) The amount of additional pension benefit determined in accordance with paragraph (2) shall be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension benefit were a pension to which the Pensions (Increase) Act (Northern Ireland) 1971 applied and the beginning date for that pension were the 1st July of the tax year immediately before the relevant tax year.

(4) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2010/2011 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2010 with effect from Monday 11th April 2011.

(5) The benefits referred to in paragraph (1) are—

(a) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighter member’s duties under the contract of employment but are within the wider functions of the job;

(b) the amount (if any) paid in respect of a firefighter member’s continual professional development;

(c) the difference between the firefighter member’s basic pay in their day to day role and any pay received whilst on temporary promotion or where he is temporarily required to undertake the duties of a higher role;

(d) any performance related payment which is not consolidated into his standard pay.

(6) In this article—

“additional pension benefit year” means the period of 12 months beginning with 1st July in which a firefighter is in receipt of any of the benefits listed in paragraph (5);

“the beginning date” means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act (Northern Ireland) 1971;

“following relevant tax year” means the tax year after the relevant tax year, in relation to which the member is not in receipt of a pension under this Scheme or entitled to a deferred pension under article 13;

“relevant tax year” means a tax year in relation to which—

(a) the amount of a firefighter member’s pension benefits determined under this article for the purposes of this Scheme is taken into account for tax purposes, and

(b) the firefighter member is not in receipt of a pension under this Scheme or entitled to a deferred pension under article 13, and

“tax year” means the period of 12 months beginning with 6th April.”.

4. In Part 10 (qualifying service and pensionable service), in article 60 (calculation of pensionable service), in paragraph (5) for “(A/B) x 365,” substitute “(A/B)”.

5. In Part 11 (pensionable pay, pension contributions and purchase of additional service), in chapter 1 (pensionable pay and pension contributions)—

(a) in article 61 (pensionable pay)—

(i) in paragraph (1)—

(aa) for “Subject to paragraph (3)” substitute “Subject to paragraphs (3), (5A) and (6)”;

(bb) in sub-paragraph (a) omit “other than payments in respect of his continual professional development (see article 17B), and”;

(cc) after paragraph (a) insert—

“(aa) the amount (if any) of any benefits which are pensionable under article 17B(1) of Part 3, and”;

(ii) after paragraph (5) insert—

“(5A) Where before the date of coming into operation of this Order and after that date, any allowance or supplement is being paid to a firefighter member which the Board treats as pensionable, but is not—

(a) pensionable pay within the meaning of paragraph (1)(a);

(b) additional pension benefit under article 17A of Part 3 (long service); or

(c) a payment in respect of a firefighter’s continual professional development under article 17B.

that allowance or supplement shall continue to be treated as pensionable for so long as the firefighter receives it without any break in payment.”;

(b) in article 62 (final pensionable pay) in paragraph (1A) for “an amount in respect of his continual professional development (see article 17B),” substitute “an amount payable to him in respect of the benefits falling within article 17B of Part 3.”.

6. In Part 13 (Firefighters’ Pension Fund), in article 86 (payments and transfers into Firefighters’ Pension Fund) after paragraph (9) add—

“(10) Where the Board exercises its discretion not to withdraw or abate the whole or any part of a pension under article 52 (withdrawal of pension during service as a firefighter) of Part 9 (review, withdrawal and forfeiture of awards), the Board shall in the financial year in which payment is not withdrawn or abated, transfer into the FPF an amount equal to the amount of pension paid during that financial year to that person which might have been abated or withdrawn.”.

7. In Schedule 2 (appeal to Independent Medical Referee)—

(a) after paragraph 9, insert—

“9A.—(1) Where the parties have received a copy of the report supplied under paragraph 9 and—

(a) the parties agree that the independent medical referee has made an error of fact which materially affects the independent medical referee’s decision;

(b) the Board shall within 28 days beginning with the receipt of the report, supply the Department with one copy of a statement agreed between the parties setting out—

(i) the error of fact;

(ii) the correct fact, and

invite the independent medical referee to reconsider his decision.

(2) The Department shall within 14 days beginning with the receipt of the statement supply a copy of it to the independent medical referee.

(3) As soon as reasonably practicable after receiving the statement, the independent medical referee shall reconsider his decision.

(4) Within 14 days beginning with that reconsideration the independent medical referee shall—

- (a) give written notice to the Department that he has confirmed his decision, or revised his decision (as the case may be), and
- (b) if he has revised his decision, supply the Department with a written report of his revised decision.

(5) The Department shall supply to the appellant and the Board a copy of the written notice confirming the independent medical referee's decision, or a copy of the written report of the independent medical referee's revised decision (as the case may be).";

(b) in paragraph 11 for sub-paragraph (3) substitute—

“(3) Where—

- (a) the appellant gives notice to the independent medical referee—
 - (i) withdrawing the appeal;

- (ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under paragraph 7(2), and

the notice is given less than 21 working days before the date appointed under paragraph 7(2); or

- (b) the appellant's acts or omissions cause the independent medical referee to cancel, postpone or otherwise adjourn the date appointed under paragraph 7(2) less than 21 working days before the date so appointed,

the Board may require the appellant to pay it such sum, not exceeding the total amount of the fees and allowances payable to the independent medical referee under paragraph 10(1), as it thinks fit.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the New Firefighters' Pension Scheme Order (Northern Ireland) 2007. Some of the amendments introduce new provisions to the New Firefighters' Pension Scheme Order (Northern Ireland) 2007 ("the Scheme") set out in that Order. Others make minor corrections to the Scheme.

Except as mentioned below the Order has effect from 1st July 2014. Power to give the Order retrospective effect is conferred by article 10 of the Fire Services (Northern Ireland) Order 1984.

The amendments made by paragraphs 1, 2(a), 4 and 5 of the Schedule are to make minor changes to the Scheme. The amendment made by paragraph 1 is to ensure that those who took up employment as a firefighter before 6th April 2006 and were either not eligible to be a member of the Firefighters' Pension Scheme 2007 or made an election not to pay pension contributions required by that scheme, are treated as a firefighter member of the Scheme when automatically enrolled into that Scheme. This amendment has retrospective effect from 1st October 2013.

The amendment made by paragraph 2(b)(i) is to make a correction so that it is clear which pensionable service can count for the additional pension benefit: long service increment in article 17A of Part 3.

Paragraph 3 of the Schedule inserts a new article 17B which extends additional pension benefit so that it covers—

- payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job;
- any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role;
- any non-consolidated performance related payment.

Any payments in respect of a firefighter member's continuing professional development continue to be covered by additional pension benefit.

The amendments made by sub-paragraphs (ii), (iii) and (iv) of paragraph 2(b) and paragraph 3 in relation to paragraphs (3) and (4) of the new article 17B amend the method of uprating additional pension benefit for the long service increment (article 17A of Part 3) and continuing professional development (article 17B) from a specific index, retail price index, to an index in accordance with the Pension (Increase) Act (Northern Ireland) 1971. There is a specific provision to provide that the consumer price index is used for the tax year 2010/2011. These amendments have effect from 11th April 2011.

Paragraph 5(a) of the Schedule amends the definition of pensionable pay to include payments which are pensionable under additional pension benefit (article 17B) and provide that payments which are not within the definition of pensionable pay in article 61(1)(a) as amended, or additional pension benefits payable for long service or in respect of a firefighter's continual professional development, should remain pensionable whilst the firefighter continues to receive them. Paragraph 5(b) amends the payments treated as final pensionable pay to exclude additional pension benefit payments payable within article 17B of Part 3.

The amendments made by paragraph 6 of the Schedule require the Board to transfer into the Firefighters' Pension Fund an amount equal to the amount of pension paid to a person in respect of whom the authority choose not to exercise its discretion to withdraw or abate the permitted part of that individual's pension under article 52 (withdrawal of pension during service as a firefighter) of Part 9 (review, withdrawal and forfeiture of awards).

The amendment made to Schedule 2 (appeal to independent medical referee) by paragraph 7 of the schedule enable—

- the independent medical referee to reconsider its decision where the parties agree that it has made a material error of fact;
- the Board to recover some or all of the expenses of the independent medical referee where the appellant has withdrawn the appeal or requested the date for an interview or examination to be cancelled or postponed less than 21 working days before the date appointed.

A full impact assessment has not been produced for this Order as no impact on the private or voluntary sector is foreseen.

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