

**2001 No. 310**

**FIRE SERVICES**

**SUPERANNUATION**

**PENSIONS**

**The Firemen's Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001**

<i>Made</i>	<i>10th September 2001</i>
<i>Laid before the Scottish Parliament</i>	<i>13th September 2001</i>
<i>Coming into force</i>	<i>5th October 2001</i>

The Scottish Ministers, in exercise of the powers conferred by section 26 of the Fire Services Act 1947(a), section 8 of the Fire Services Act 1959(b), sections 12 and 16 of the Superannuation Act 1972(c) and of all other powers enabling them in that behalf, and after consultation with the Scottish Central Fire Brigades Advisory Council, hereby make the following Order:

**Citation, commencement, effect and extent**

1.—(1) This Order may be cited as the Firemen's Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001.

(2) This Order shall come into force on 5th October 2001 and shall have effect from 1st December 2000.

(3) This Order extends to Scotland only.

**Amendment of the Firemen's Pension Scheme Order 1992**

2. The Firemen's Pension Scheme Order 1992(d) ("the 1992 Order") shall be amended in accordance with articles 3 to 5 of this Order.

**Pension sharing on divorce**

3. After Part M of Schedule 2 to the 1992 Order there shall be inserted—

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(a) 1947 c.41; section 26 was amended and extended by the Fire Services Act 1951 (c.27), section 1; by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65), section 42; by the Superannuation Act 1972 (c.11), sections 12 and 16; and by the Police and Firemen's Pensions Act 1997 (c.52), section 1(3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ("the 1999 Order"), article 2 and Schedule 1, (S.I. 1999/1750); approval of the Treasury is not required by virtue of the 1999 Order, article 2.

(b) 1959 c.44.

(c) 1972 c.11; section 16 applies section 12 with the necessary modifications to orders under section 26 of the Fire Services Act 1997.

(d) S.I. 1992/129 as amended by S.I. 1997/2309 and 2851 and 1998/1010.

“PART N

PENSION SHARING

PRELIMINARY PROVISIONS

**Interpretation of Part N**

**N1.**—(1) The definitions of expressions contained in Parts I and IA(a) of Schedule 1 to this Scheme shall, unless the context indicates that they have a different meaning, apply for their interpretation in this Part of the Scheme.

(2) All provisions in Parts A to M of this Scheme shall, unless the context indicates otherwise, be subject to the provisions of this Part.

SHARING OF RIGHTS

**Pension sharing mechanism in the Scheme**

**N2.**—(1) Pension sharing is available under this Scheme in respect of any of a person’s shareable rights under this Scheme except as otherwise provided in this rule.

(2) Excluded from shareable rights for the purposes of this Part of this Scheme are any rights under this Scheme in respect of which a person is in receipt of a pension by virtue of being the surviving spouse or other dependant of a deceased member with pension rights under this Scheme(b).

**Pension sharing order activates pension sharing, creating pension debits and credits**

**N3.** On the coming into effect of a pension sharing order—

- (a) the transferor’s shareable rights under this Scheme become subject to a debit of the appropriate amount (“pension debit”(c)) as defined in rule N4, and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”(d)) as against this Scheme.

**Calculation of appropriate amount**

**N4.**—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of rule N3 is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of rule N3 is the lesser of—

- (a) the specified amount, and
- (b) the cash equivalent of the relevant benefits on the valuation day.

(3) Where the transferor is in pensionable service under this Scheme on the transfer day, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which he would be entitled under this Scheme by virtue of his shareable rights under it had his pensionable service terminated immediately before that day.

(4) Otherwise, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of this Scheme by virtue of his shareable rights under it.

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(a) Inserted by this order, article 4.

(b) See regulation 2(1) of the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052) which describes rights of a description which are not to be classed as shareable rights for the purposes of section 27(2) of the Welfare Reform and Pensions Act 1999 (c.30) (“the 1999 Act”).

(c) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.

(d) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

(5) For the purposes of this rule, the valuation day is such day within the implementation period for the discharge of the credit referred to in rule N3(b) as the fire authority may specify by notice in writing to the transferor and transferee.

(6) In this rule, the transfer day means the day on which the relevant pension sharing order takes effect(a).

### **Pension debits and reduction of benefit**

**N5.**—(1) Subject to paragraph (2), where a member’s shareable rights are subject to a pension debit, each benefit or future benefit—

- (a) to which he is entitled under this Scheme by virtue of those rights, and
- (b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under this Scheme of a member who is in pensionable service under this Scheme on the transfer day, each benefit or future benefit—

- (a) to which the person is entitled under this Scheme by virtue of those rights, and
- (b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) A benefit is a qualifying benefit for the purposes of paragraphs (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) In this rule(b)—

“appropriate percentage”, in relation to a pension debit, means—

- (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;
- (b) if the relevant order or provision specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the 1999 Act represents of the amount mentioned in subsection (3)(b) of that section;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order on which the debit depends;

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.

### **Effect of pension sharing on protected rights and guaranteed minimum pension**

**N6.** Where a member has protected rights or a guaranteed minimum in relation to a pension provided by this Scheme, these shall in the case of a pension debit in relation to the member’s rights under this Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the Pension Schemes Act 1993(c).

#### MODE OF DISCHARGE AND IMPLEMENTATION PERIOD

### **Discharge of pension credit liability**

**N7.**—(1) A fire authority, in relation to a pension credit derived from this Scheme, may discharge its liability in respect of the credit by conferring appropriate rights as defined in paragraph (3) under this Scheme on the ex-spouse.

(2) If this Scheme becomes closed to new members, the liability in respect of any pension credit derived from the Scheme may be discharged in accordance with paragraphs 2(3) to (5) of Schedule 5 to the 1999 Act and in accordance with regulations made under paragraph 2(3) of Schedule 5 to that Act.

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(a) This definition is that in section 29(8) of the 1999 Act.

(b) The definitions in this paragraph are those in section 31(5) of the 1999 Act.

(c) 1993 c.30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

- (3) For the purposes of this rule, rights conferred on the ex-spouse are appropriate if—
- (a) they are conferred with effect from, and including, the day on which the pension sharing order, under which the credit arises takes effect, and
  - (b) their value, when calculated in accordance with regulations made by the Secretary of State under section 30(1) of the 1999 Act in relation to the calculation of cash equivalents(a), equals the amount of the credit.

**Adjustment to the amount of the pension credit – payments made without knowledge of the pension debit**

**N8.** If—

- (a) a person's shareable rights under this Scheme have become subject to a pension debit,
- (b) a fire authority makes a payment which is referable to those rights without knowing of the pension debit, and
- (c) the cash equivalent of the member's shareable rights after deduction of the payment is less than the amount of the pension debit,

the pension credit shall be reduced to the lesser amount(b).

**Implementation period for discharge of pension credit**

**N9.**—(1) A fire authority shall discharge its liability in respect of a pension credit within the implementation period(c), which for a pension credit is the period of 4 months beginning with the later of—

- (a) the day on which the relevant pension sharing order takes effect; and
- (b) the first day on which the fire authority in relation to the relevant pension sharing order is in receipt of—
  - (i) the relevant matrimonial documents, and
  - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations made under section 34(1)(b)(ii) of the 1999 Act(d).

(2) The reference in paragraph (1)(b)(i) to the relevant matrimonial documents is to copies of—

- (a) the relevant pension sharing order, and
- (b) the order, decree or declarator responsible for the divorce or annulment to which it relates,

and, if the pension credit depends on provision falling within sub-section (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which sub-section (3)(a) of that section applies.

(3) Paragraph (1) is subject to any provision made by regulations under section 41(2)(a) of the 1999 Act(e).

(4) The provisions of this rule are subject to any provisions or requirements which the Secretary of State may make by regulations under section 34(4)(a) and (c) of the 1999 Act which—

- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;
- (b) provide for that section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time(f).

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(a) See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).

(b) See the 1999 Act, Schedule 5, paragraph 9 and regulation 17 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

(c) See section 33(1) of the 1999 Act.

(d) See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).

(e) See regulation 7 of the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049), which specifies circumstances in which the implementation period may be postponed.

(f) See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

### **Failure to discharge liability in respect of pension credit within the implementation period and death of ex-spouse before implementation has taken place**

**N10.**—(1) Where a fire authority has not done what is required to discharge its liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) it shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act<sup>(a)</sup>, notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe; and
- (b) section 10 of the Pensions Act 1995<sup>(b)</sup> (power of the Regulatory Authority to impose civil penalties) shall apply where any fire authority has failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.

(2) If a fire authority fails to perform the obligation imposed by paragraph (1)(a) above, section 10 of the Pensions Act 1995 shall apply.

(3) Where a fire authority is subject to liability in respect of a pension credit, the Regulatory Authority may on the application of the authority extend the implementation period for the credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations made under section 33(4) of the 1999 Act<sup>(c)</sup>.

(4) In this rule “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.

(5) Where an ex-spouse dies before the fire authority has discharged its liability in respect of the pension credit, that liability may be discharged by the fire authority by the payment of a lump sum in accordance with paragraph (6) to the deceased’s spouse, whom failing to his personal representatives.

(6) The lump sum shall be equal to two and a quarter times the annual rate of the pension which would have been paid to the ex-spouse if on the date of his death he had become entitled to a pension as a pension credit member.

#### APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

### **Appropriate rights and pension credit benefits under this Scheme**

**N11.**—(1) Except as referred to in rule N7, in this rule, or otherwise in this Part of the Scheme, the appropriate rights under this Scheme to which a pension credit member shall be entitled shall consist only of a pension and rights in relation to a death grant as provided under paragraph (10).

(2) Pension credit benefits are subject to the same indexing as other benefits payable under this Scheme, beginning on the day on which the relevant pension sharing order takes effect<sup>(d)</sup>.

- (3) A pension credit member is entitled to his benefits on the later of—
  - (a) the day on which the pension sharing order takes effect; and
  - (b) the day on which he attains age 60.

(4) If on the day on which the relevant pension sharing order takes effect the pension debit member has not commuted part of his pension under rule B7, the pension credit member may commute for a lump sum a portion of the pension to which he is entitled under paragraph (1).

- (5) The lump sum is the actuarial equivalent of the commuted portion of the pension at the later of—
  - (a) the day on which the pension sharing order takes effect; and
  - (b) the day on which the pension credit member attains age 60.

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(a) See regulation 2 of S.I. 2000/1053 which prescribes a 21 day period beginning with the day immediately following the end of the implementation period.

(b) 1995 c.26.

(c) See regulation 3 of S.I. 2000/1053.

(d) See section 39 of the Welfare Reform and Pensions Act 1999 (c.30), which amends the Pensions (Increase) Act 1971 (c.57) to apply it to pensions attributable to a pensioner having become entitled to a pension credit.

(6) The commuted portion must not be such that the lump sum exceeds two and a quarter times the annual rate of the pension before commutation.

(7) In order to commute a portion of a pension the pension credit member must, not later than 6 months after the later of—

- (a) the day on which the pension sharing order takes effect; and
- (b) the day on which he attains age 60,

give the fire authority written notice of commutation, specifying the portion to be commuted.

(8) Notice of commutation under paragraph (7) takes effect from the later of—

- (a) the date on which it is received by the fire authority; and
- (b) the date on which the pension becomes payable.

(9) When a pension credit member's notice of commutation takes effect, the fire authority 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 which would have been made in respect of it if it had been reduced from the later of—
  - (i) the day on which the pension sharing order took effect; and
  - (ii) the day on which the pension credit member attained age 60.

(10) If a pension credit member dies before any benefits deriving from the pension credit have become payable to him under this Scheme, there shall be payable to his personal representatives a lump sum death grant amounting to two and a quarter times the annual rate of the pension to which he would have become entitled if he had attained age 60 on the date of his death.

#### **Additional contributions and additional periods**

**N12.**—(1) Subject to paragraph (2) an active member, whose benefits have been made subject to a pension sharing order, shall not be allowed to replace any rights debited to the member as a consequence of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made(a).

(2) The provisions of paragraph (1) shall be relaxed if the relaxation is in line with any taxation exception or concession which the Inland Revenue may stipulate in relation to “moderate earners” in accordance with the limits imposed in Schedule 10 to the Finance Act 1999 and any modifications thereto made by the Inland Revenue from time to time under paragraph 18(10) and (11) of that Schedule(b), or otherwise.

#### **Commutation: small pensions**

**N13.**—(1) Rule B8 shall apply, if, as a result of a pension sharing order, the annual rate of the retirement pension which a member who has attained state pensionable age is entitled to be paid falls below the sum mentioned in that rule.

(2) Rule B8 shall apply in respect of the retirement pension payable to a pension credit member in respect of a pension credit and the amount of that pension shall for the purpose of this rule be aggregated with any other pension payable to that member under this Scheme.

#### **Pension Transfers**

**N14.**—(1) A fire authority shall not accept any transfer into this Scheme in respect of any pension credit rights or pension credit benefits under any other pension scheme.

(2) A fire authority shall not pay a transfer value in respect of any pension credit rights.

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(a) See section 590(3)(bb) of the Taxes Act 1988 (c.1), inserted by the Finance Act 1999 (c.16), Schedule 10, paragraph 2(3).

(b) See S.I. 2000/1085 and 1093.

### **Charges in respect of pension sharing costs**

**N15.**—(1) A fire authority may recover from the parties involved in pension sharing charges as set out in paragraph (2).

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by a fire authority in connection with pension sharing activity other than those costs specified in paragraph (3).

(3) The costs specified in this paragraph are any costs which are not directly related to the costs which arise in relation to an individual case<sup>(a)</sup>.

(4) A fire authority shall, before a pension sharing order is made, inform the member or his spouse, as the case may be, in writing of its intention to recover costs incurred with any description of pension sharing activity and provide the member or his spouse, as the case may be, with a written schedule of charges in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act<sup>(b)</sup>.

### **Excluded membership**

**N16.**—(1) Pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under this Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member, he may not count any period which may count for any purpose in connection with his pension credit benefit towards any membership period required under this Scheme.

### **Assignment**

**N17.** Except as may be required by law, or is necessary in law to give effect to a pension sharing order or is otherwise permitted for the purpose of this Part of this Scheme, pension credit benefits under this Scheme may not be assigned, charged or otherwise made subject to a security.

### **Calculation of debits and credits**

**N18.** Calculations under this Part of this Scheme shall, so far as legally possible, be made in accordance with any relevant guidance issued by the Government Actuary.

### **Application of rules of this Scheme to pension credit members etc.**

**N19.** The following provisions of this Scheme apply to pension credit members and awards payable to or in respect of them—

- rule H1 (determination by fire authority),
- rule H3 (appeal to sheriff),
- rule K5 (withdrawal of pension on conviction of certain offences),
- rule L2 (expenses and receipts of fire authorities),
- rule L3 (payment of awards), and
- rule L5(1) to (5) and (10) (payment of awards – supplementary).”.

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(a) See regulation 5 of the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049).

(b) See regulations 2 to 9 of S.I. 2000/1049.

**Interpretation of the Firemen's Pension Scheme Order 1992**

4. In Schedule 2 to the 1992 Order after Part I of Schedule 1 to the Firemen's Pension Scheme 1992 there shall be inserted Part IA as set out in Schedule 1 to this Order.

**Minor and consequential amendments to the Firemen's Pension Scheme Order 1992**

5. Schedule 2 to the 1992 Order shall be amended in terms of the minor and consequential amendments specified in Schedule 2 to this Order.

St Andrew's House,  
Edinburgh  
10th September 2001

*ANGUS MACKAY*  
A member of the Scottish Executive

SCHEDULE 1

PART TO BE INSERTED INTO SCHEDULE 1 TO THE FIREMEN'S PENSION  
SCHEME 1992

"PART IA

GLOSSARY OF EXPRESSIONS

- "the 1993 Act" means the Pension Schemes Act 1993(a);
- "1995 Act" means the Pensions Act 1995(b);
- "1999 Act" means the Welfare Reform and Pensions Act 1999(c);
- "the Taxes Act" means the Income and Corporation Taxes Act 1988(d);
- "appropriate percentage" has the meaning given in rule N5(4);
- "appropriate rights" has the meaning given in rule N7(3);
- "ex-spouse" means an individual who is or will be entitled to pension credit rights under this Scheme following a pension sharing order;
- "indexing" means indexing in accordance with the Government Index of Retail Prices;
- "the Inland Revenue" means the Commissioners of Inland Revenue;
- "member of this Scheme" means a member of this Scheme and includes an active member, a deferred member and a pension credit member;
- "pension credit" has the meaning given in rule N3(b);
- "pension credit benefits" means in relation to this Scheme the benefits payable under this Scheme to or in respect of a pension credit member by virtue of his appropriate rights under this Scheme attributable to a pension credit;
- "pension credit member" means an individual who is a member of this Scheme, either,
- (i) solely for the provision of a pension credit benefit; or,
  - (ii) for the wholly separate provision of a pension credit benefit, where benefits accrue or have accrued to that individual under the Scheme for any other reason;
- "pension credit rights" means rights to future benefits under this Scheme which are attributable to a pension credit;
- "pension debit" has the meaning given in rule N3(a);
- "pension debit member" means a member, whether an active member, a deferred member or a pensioner member, whose shareable rights under the Scheme are subject to a pension debit;
- "pension sharing order" means any order or provision which is mentioned in section 28(1) of the 1999 Act or article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(e);
- "pensionable service" has the meaning given by section 124(1) of the Pensions Act 1995(f);
- "shareable rights" has the meaning given by section 27(2) of the 1999 Act;
- "this Scheme" means the Firemen's Pension Scheme 1992 as set out in Schedule 2 to the Firemen's Pension Scheme Order 1992(g);
- "transferee" has the meaning given by section 29(8) of the 1999 Act; and
- "transferor" has the meaning given by section 29(8) of the 1999 Act."

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(a) 1993 c.48.

(b) 1995 c.26.

(c) 1999 c.30.

(d) 1988 c.1.

(e) S.I. 1999/3147 (N.I. 11).

(f) Section 124 is amended by paragraph 61 of Schedule 12 to the Welfare Reform and Pensions Act 1999.

(g) S.I. 1992/129 as amended by S.I. 1997/2309 and 2851 and 1998/1010.

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS TO THE FIREMEN'S PENSION SCHEME 1992

1. In rule A3 (exclusive application to regular firefighters)–
  - (a) in paragraph (1) for “paragraph (3)” there shall be substituted “paragraphs (3) and (4)”; and
  - (b) after paragraph (3) there shall be inserted–

“(4) Nothing in this rule prevents provision being made by this Scheme in respect of pension credit members.”.
2. In rule A7 (reckoning of service for purposes of awards), after paragraph (3) there shall be inserted–

“(4) In the case of a regular firefighter or a person to whom rule A4 or A5 applies who is also a pension credit member under Part N, no account shall be taken of the pension credit in the reckoning of service for purposes of awards.”.
3. In rule B7 (commutation – general provision), after paragraph (11) there shall be inserted–

“(12) This rule shall not apply to a pension credit member, who shall be subject to the commutation provisions in rule N11.”
4. In rule B8 (commutation – small pensions) in paragraph (1) after the words “together with” there shall be inserted “any pension to which he is entitled under rule N11 and”.
5. In rule B9 (allocation), after the word “Part” in paragraph (1) there shall be inserted “but not to a pension credit under Part N”.

6. After rule B11 the following rule shall be inserted–

**“Pension debit members**

**B12.** Where a pension debit member is entitled to an award under rule B1, B2, B3 or B5–

- (a) the award is calculated by reference to the member’s rights under this Scheme as reduced by virtue of section 31 of the Welfare Reform and Pensions Act 1999(a) and in accordance with such tables and other guidance as are provided for the purpose by the Government Actuary, and
  - (b) rules B7 to B10 have effect accordingly.”.
7. After rule C9 the following rule shall be inserted–

**“Pension debit members**

**C10.** Where a pension debit member dies leaving a surviving spouse, any award under rule C1, C4, C5, C6, C7 or C8, and the pension under any of those rules by reference to which any payment under rule C9 is made, is calculated by reference to the member’s rights under this Scheme as reduced by virtue of section 31 of the Welfare Reform and Pensions Act 1999 and in accordance with such tables and other guidance as are provided for the purpose by the Government Actuary.”.

8. After rule D5 the following rule shall be inserted:–

**“Pension debit members**

**D6.** Where a pension debit member dies leaving a child, the reduction in his rights under this Scheme by virtue of section 31 of the Welfare Reform and Pensions Act 1999 is disregarded for the purposes of calculating any award payable under this Part.”.

**9.** In rule E4 (payment of balance of contributions to estate) in sub-paragraph (2)(f) after the word “death” there shall be inserted “or any pension credit member’s pension derived from the person’s pension”.

**10.** In rule F7 (receipt of transfer value)–

- (a) in paragraph (1) after “(4)” there shall be inserted “and (6)”, and
- (b) after paragraph (5) there shall be inserted–

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

**11.—(1)** The existing provisions of rule F8 (transfer payments between fire authorities) shall become paragraph (1) of that rule.

(2) In that paragraph after the word “shall” there shall be inserted the words “subject to paragraph (2)”.

(3) After that paragraph there shall be inserted–

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

**12.** In rule F9 (payment of transfer values)–

- (a) in paragraph (1) for “(8)” there shall be substituted “(8A)”, and
- (b) after paragraph (8) there shall be inserted–

“(8A) A transfer value may not be paid in respect of any pension credit rights.”.

**13.—(1)** In rule G5 (purchase of increased benefits), after paragraph (3), there shall be inserted–

“(4) This rule is subject to rule N12.”;

(2) In rule G6 (election to purchase increased benefits), after paragraph (5), there shall be inserted–

“(6) This rule is subject to rule N12.”;

(3) In rule G7 (payment of periodical contributions for increased benefits), after paragraph (4), there shall be inserted–

“(5) This rule is subject to rule N12.”;

(4) In rule G8 (effect of payment for increased benefits), after paragraph (6), there shall be inserted–

“(7) This rule is subject to rule N12.”.

**14.** In rule K4 (withdrawal of pension during service as a regular firefighter), after the word “brigade” there shall be inserted the words “, save that such withdrawal shall not apply to any pension credit under Part N”.

**15.** In rule L1 (authorities responsible for payment of awards) after paragraph (2) there shall be inserted–

“(3) An award payable to or in respect of a pension credit member under Part N, and any sum paid in commutation of such an award, is payable by the relevant fire authority.

(4) In this Scheme “the relevant fire authority”, in relation to a pension credit member, means–

- (a) the fire authority who employ the pension debit member from whose rights the pension credit member’s pension credit is derived at the time when the pension sharing order takes effect, or
- (b) if he is not then employed by a fire authority, the fire authority by whom he was last employed.”.

**16.** In rule L4 (prevention of duplication) after paragraph (2)(d) there shall be inserted–

“or

(e) under rule N11 (pension credit member’s entitlement to pension),”.

**17.** In paragraph 2(2) of Part V of Schedule 2 (injury awards) after the words “this Schedule” there shall be inserted “or by virtue of a pension debit”.

**18.** In Part I of Schedule 3 (awards on death-spouses), after paragraph 2 there shall be inserted—

**“3.** If the deceased was a pension debit member, paragraph 2 only applies if the amount of the ordinary pension calculated in accordance with rule E9 would exceed the amount calculated in accordance with paragraph 1 if the reduction of the member’s rights by virtue of section 31 of the Welfare Reform and Pensions Act 1999 were disregarded.”.

**19.** In Part III of Schedule 6 (transfer payments between fire authorities) after paragraph 6 there shall be inserted—

**“6A.** In the case of a pension debit member, the sum payable is reduced by such amount as is calculated in accordance with such guidance as is provided for the purpose by the Government Actuary.”.

**20.** In Part IV of Schedule 6 (amount of transfer value) after paragraph 5 there shall be inserted—

**“6.** In the case of a pension debit member, the sum payable is reduced by such amount as is calculated in accordance with such guidance as is provided for the purpose by the Government Actuary.”.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends, in relation to firefighters in Scotland, the Firemen's Pension Scheme 1992 ("the 1992 Scheme"), as set out in Schedule 2 to the Firemen's Pension Scheme Order 1992. The amendments relate to cases where firefighters are divorced, and stem from the pension sharing provisions in the Welfare Reform and Pensions Act 1999 and associated subordinate legislation.

The Order has retrospective effect from 1st December 2000 as authorised under section 26 of the Fire Services Act 1947, as read with sections 12 and 16 of the Superannuation Act 1972. References in the Order to the Secretary of State are to the Secretary of State for Work and Pensions.

Article 3 inserts a new Part N (Pension Sharing) into the 1992 Scheme. The new Part has the following effect:–

*Rule N1* provides that the definition of expressions in respect of Part N are set out in Part 1A of Schedule 1 to the 1992 Order, as inserted by Schedule 1 to this Order, and are additional to the definitions of expressions in Part 1 of Schedule 1 to the 1992 Order. The rule also provides that the provisions in Parts A to M of the 1992 Order are subject to the provisions of Part N.

*Rule N2* provides for pension sharing in respect of a member's shareable rights under the 1992 Scheme, but excludes any benefit payable to a widow or widower or other dependant of a deceased member.

*Rule N3* provides that, when a relevant pension sharing order comes into effect, the firefighter's pension rights under the 1992 Scheme become subject to a "pension debit" and the ex-spouse becomes entitled to a "pension credit".

*Rule N4* prescribes how the pension debit is to be calculated, depending on whether the pension sharing order specifies a percentage, or an amount, to be transferred to the ex-spouse.

*Rule N5* provides for the shareable rights of the firefighter to be reduced in accordance with the pension sharing order.

*Rule N6* provides that, where a pension sharing order has effect, the firefighter's protected rights and guaranteed minimum pension are subject to the pension debit.

*Rule N7* allows a fire authority to discharge its liability in respect of a pension credit by conferring on the ex-spouse "appropriate rights", which are rights within the 1992 Scheme to the same value as the pension credit.

*Rule N8* makes provision for the pension credit to be reduced in any case where a fire authority makes a payment to a firefighter under the 1992 Scheme without knowing that it was subject to a pension debit because of a pension sharing order. In such a case, if the cash equivalent of the firefighter's shareable rights after deduction of the payment is less than the amount of the pension debit, the corresponding pension credit is reduced to the remaining cash equivalent. The effect of this is to restrict, in certain circumstances, the pension credit for which the Scheme is liable.

*Rule N9* requires a fire authority to discharge its liability in respect of a pension credit within a 4 month 'implementation period'. Broadly, this period begins from the date on which the pension sharing order takes effect or, if later, from the date on which all relevant documents (as set out in the rule) are with the authority.

In *Rule N10*, paragraphs (1), (2) and (4) require a fire authority to inform the Occupational Pensions Regulatory Authority ("OPRA") if the period for implementing a pension sharing order is not met, and also clarify that civil penalties for the breach may be imposed. Paragraph (3) enables OPRA to extend the implementation period in certain circumstances. Paragraphs (5) and (6) refer to cases where an ex-spouse dies before the pension credit liability has been implemented. In such circumstances, provision is made for the fire authority to discharge its liability by paying a death grant equal to the annual rate of the pension which would have become payable to the ex-spouse, multiplied by 2.25.

*Rule N11* sets out the appropriate rights in respect of the pension credit member (the firefighter's ex-spouse). The credit member's benefits, which will be treated in a similar way to a deferred pension, are broadly restricted to a pension at age 60 (part of which can be commuted to a lump sum, in the circumstances described in paragraph (4)), and a lump sum death grant. Benefits will be payable on reaching the normal age for a deferred pension under the Scheme (age 60) and may not be further deferred. Provision is made for the benefits to be increased under the Pensions (Increase) Act 1971 (c.56). Paragraphs (5) to (9) make detailed provision for the commutation of part of the pension, including notifying the fire authority. The lump sum death grant (paragraph 10)) is payable if the pension credit member dies before the age of 60.

*Rule N12* restricts the amount of additional service which the firefighter may purchase in order to replace rights debited. The restricted amount is the amount of service he could have purchased if the pension sharing order had not been made. This restriction is relaxed in respect of moderate earners, i.e. those whose earnings at the date of divorce or annulment do not exceed 25 per cent of the permitted Inland Revenue maximum.

*Rule N13* allows a fire authority to commute under rule B8 (commutation – small pensions) the pension of a firefighter who has been affected by a pension debit. It also allows a fire authority to commute a small pension payable to a pension credit number (as long as that pension is still trivial when aggregated with any other pension payable to the person under the 1992 Scheme).

*Rule N14* prevents a fire authority accepting into the Scheme a transfer of a pension credit from another occupational or personal pension scheme, and also prevents it transferring-out a pension credit.

*Rule N15* allows fire authorities to recover, from the parties involved in the divorce, the costs accrued in administering the pension sharing (as set out in the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049)). The fire authority has to give notice of its schedule of charges, in advance of the pension sharing order being made.

*Rule N16* provides that a pension credit cannot be aggregated with other Scheme benefits. It also ensures that, where a pension credit member is also an active member of the 1992 Scheme, the pension credit must be disregarded when assessing the length of service in relation to Scheme benefits.

*Rule N17* provides for the pension credit not to be assigned except where required by law.

*Rule N18* provides for calculations relating to pension credits and pension debits to be done in accordance with guidance issued by the Government Actuary.

*Rule N19* specifies which rules of the Scheme apply to pension credit members.

Article 4, along with Schedule 1, inserts into Schedule 1 to the 1992 Scheme a new Part containing definitions of expressions relevant to the pension sharing provisions (Part IA).

Article 5, along with Schedule 2, makes minor and consequential amendments to the 1992 Scheme.



£3.00

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland  
500 09/01 19593

