

2007 No. 198

FIRE SERVICES

PENSIONS

**The Firefighters' Compensation Scheme (Scotland) Amendment
Order 2007**

<i>Made</i> - - - -	<i>7th March 2007</i>
<i>Laid before Parliament</i>	<i>8th March 2007</i>
<i>Coming into force</i> - -	<i>1st April 2007</i>

The Scottish Ministers in exercise of the powers conferred by sections 34(1) to (5) and (8) and 60(2) of the Fire and Rescue Services Act 2004(a), after consulting such persons as they considered appropriate in accordance with section 34(5) of that Act, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Firefighters' Compensation Scheme (Scotland) Amendment Order 2007 and shall come into force on 1st April 2007, but the amendments made by article 2 and the Schedule shall have effect from 6th April 2006.

(2) In this Order "the Compensation Scheme" means the Scheme set out in Schedule 1 to the Firefighters' Compensation Scheme (Scotland) Order 2006(b).

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

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

General transitional provision

3.—(1) Where a person to whom a protected benefit was being paid or might become payable under the Compensation Scheme is placed in a worse position than that person would have been in if the Scheme had continued to have effect without the amendments made by article 2, that person may, by giving written notice to the fire and rescue authority liable or prospectively liable for payment of the benefit, elect that the provisions of the Compensation Scheme, in the form in which they existed immediately before the coming into force of this Order, shall continue to have effect in relation to the benefit.

(2) Notice under paragraph (1) must be given not later than 1st July 2007.

(a) 2004 c.21. The functions of the Secretary of State in respect of sections 34(1) to (5) and (8) and 60(2) as regards Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 S.I. 2005/849.

(b) S.S.I. 2006/338.

(3) For the purposes of paragraph (1), a protected benefit is one paid, or capable of becoming payable, to or in respect of a person who, before the coming into force of this Order, ceased to be employed by a fire and rescue authority or died.

Transitional provision: decisions and determinations made before date of coming into force of this Order

4.—(1) The amendments made by article 2 shall not have effect in relation to a person in respect of whom a determination or decision relevant to whether permanent disablement has been occasioned by a qualifying injury (within the meaning of rule 7 of Part 1 of the Compensation Scheme) has been made before the coming into force of this Order.

(2) In a case to which paragraph (1) applies, the provisions of the Compensation Scheme, in the form in which they existed immediately before the coming into force of this Order, shall continue to have effect in relation to such a person.

St Andrew's House,
Edinburgh
7th March 2007

GEORGE LYON
Authorised to sign by the Scottish Ministers

**AMENDMENTS TO SCHEDULE 1 TO THE FIREFIGHTERS’
COMPENSATION SCHEME (SCOTLAND) 2006**

- 1. In Part 1 (general provisions)–**
- (a) in rule 2(1) (interpretation)–
- (i) omit the definitions of “Pension Scheme”, “pensionable pay” and “pensionable service”, “retained firefighter” and “volunteer firefighter”;
- (ii) before the definition of “the 2004 Act”, insert the following definition–
““the 1992 Scheme” means the Firefighters’ Pension Scheme set out in Schedule 2 to the Firefighters’ Pension Scheme Order 1992(a);”;
- (iii) after the definition of “the 2005 Act”, insert the following definition–
““the 2006 Scheme” means the New Firefighters’ Pension Scheme (Scotland), set out in Schedule 1 to the Firefighters’ Pension Scheme (Scotland) Order 2007(b);”;
- (iv) in the definition of “average pensionable pay”, for “the Pension Scheme” substitute “the 1992 Scheme”;
- (v) for the definition of “fire and rescue authority” substitute–
““fire and rescue authority” means a Scottish Fire Authority under the 2004 Act;”;
and
- (vi) insert, in the appropriate places, the following definitions–
““final pensionable pay” shall be construed in accordance with rule 2 of Chapter 1 of Part 11 of the 2006 Scheme;”;
““normal benefit age” has the meaning given by rule 3(2) of Part 2 of the 2006 Scheme;”;
““pensionable pay”–
- (a) in relation to the 1992 Scheme, shall be construed in accordance with rule G1 of that Scheme; and
- (b) in relation to the 2006 Scheme, shall be construed in accordance with rule 1 of Part 11 of that Scheme;
- ““pensionable retained service”, in relation to a retained firefighter or a volunteer firefighter, means the same proportion of whole-time service as that which that firefighter’s actual annual pensionable pay bears to that firefighter’s reference pay;
- ““pensionable service”–
- (a) in relation to the 1992 Scheme, shall be construed in accordance with rule F1 of that Scheme;
- (b) in relation to the 2006 Scheme, shall be construed in accordance with rule 2 to 6 of Part 10 of that Scheme;”;
- ““reference pay”, in relation to the pensionable pay of a retained or volunteer firefighter for any period, means the whole-time equivalent pensionable pay for that period of a regular firefighter employed in a similar role and with equivalent qualifying service;” and

(a) S.I. 1992/129, amended by S.I. 1997/2309 and 2851, 1998/1010, 2001/3649 and 2005/3228, and S.S.I. 2001/310, 2004/385, 2005/566 and 2006/342. The Scheme was made under section 26 of the Fire Services Act 1947 (c.41). That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21). The Firefighters’ Pension Scheme and subsections (1) to (5) of section 26 were continued in force, for the purposes of the scheme established under that section as the Firemen’s Pension Scheme, by S.I. 2004/2306. The name of the scheme was changed by article 4(1) of S.I. 2004/2306.

(b) S.S.I. 2007/ .

““retained firefighter” and “retained or volunteer firefighter” mean a person employed by an authority–

- (a) as a firefighter, but not as a regular firefighter;
- (b) on terms under which that person is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to that person’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting);
- (c) otherwise than in a temporary capacity; and
- (d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that the firefighter receives;”;

(b) in rule 7 (qualifying injury), in paragraph (4), omit “regular or retained”.

2. In Part 2 (injury awards and duty-related compensation)–

- (a) in rule 1 (injury awards), in paragraph (1), omit “regular”;
- (b) for rule 2 (part-time members) substitute–

“Part-time, retained and volunteer firefighters

2.—(1) Where a person is entitled to an award under this Part and some or all of that person’s service, by virtue of which that person’s pensionable service is reckonable, is part-time service, that person’s award shall be calculated in accordance with Part 2 of Schedule 1 to this Part.

(2) Where a person–

- (a) first takes up employment with a fire and rescue authority as a retained or volunteer firefighter on or after 6th April 2006; and
- (b) is entitled to an award under this Part,

that person’s award shall be calculated in accordance with Part 3 of Schedule 1 to this Part.”;

- (c) in rule 3 (compensation for death or permanent incapacity while on duty), in paragraph (8), for “the Pension Scheme” substitute “the 1992 Scheme, or any lump sum payable under the 2006 Scheme”; and
- (d) in rule 4 (commutation of small compensatory pensions), in paragraph (1)(b), for “the Pension Scheme (pension credit member’s entitlement to pension)”, substitute “the 1992 Scheme or rule 1 of Part 6 of the 2006 Scheme”.

3. In Part 3 (awards on death: spouses and civil partners)–

- (a) in rule 1 (special award for spouse or civil partner)–
 - (i) in paragraph (2), for “rule 3 and 4” substitute “rules 3, 4 and 6”;
 - (ii) in paragraph (3)–
 - (aa) after “average pensionable pay” (in each place), insert “or, as the case may be, the deceased’s final pensionable pay”; and
 - (bb) in sub-paragraph (a)(ii), for “the Pension Scheme (ill-health award)” substitute “the 1992 Scheme (ill-health award) or rule 2 of Part 3 of the 2006 Scheme (award on ill-health retirement)”;
 - (iii) in paragraph (4), after “average pensionable pay”, insert “or, as the case may be, the deceased’s final pensionable pay”;
- (b) in rule 4 (limitation where spouse or civil partner is living apart)–
 - (i) in paragraph (1), for “A” substitute “Subject to paragraph (1A), a”;

- (ii) after paragraph (1), insert–
 - “(1A) Paragraph (1) does not apply to a person–
 - (a) who is a member of the 2006 Scheme; or
 - (b) who first takes up employment with a fire and rescue authority on or after 6th April 2006 and is entitled to be a member of that Scheme, but elects not to pay pension contributions.”; and
 - (iii) in paragraph (2)(a), for “the Pension Scheme”, substitute “the 1992 Scheme”;
- (c) in rule 5 (effect of new relationship)–
 - (i) in paragraph (1), for “A” substitute “Subject to paragraph (3), a”;
 - (ii) in paragraph (2), for “Where” substitute “Subject to paragraph (3), where”; and
 - (iii) after paragraph (2) insert–
 - “(3) Paragraphs (1) and (2) do not apply to a person–
 - (a) who is a member of the 2006 Scheme; or
 - (b) who first takes up employment with a fire and rescue authority on or after 6th April 2006 and is entitled to be a member of that Scheme, but elects not to pay pension contributions.”; and
- (d) after rule 5 insert–

“Amount of survivor’s pension: special cases

6.—(1) This rule applies in relation to a person–

- (a) who is a member of the New Firefighters’ Pension Scheme (Scotland)(a) on the day on which the person dies; or
- (b) in respect of whom an election under rule 5(1) of Part 2 of that Scheme not to make pension contributions has effect on that day.

(2) Subject to paragraph (3), where the person entitled to a special pension under rule 1 of this Part is more than twelve years younger than the deceased on the day on which the deceased dies, a reduction of 2.5 per cent for each year by which the age of the surviving spouse or civil partner exceeds, by more than twelve years, that of the deceased, shall be applied to the Schedule 2 amount.

(3) Where the application of paragraph (2) would result in the payment of a special pension of less than 50 per cent of the Schedule 2 amount, the special pension shall be 50 per cent of the Schedule 2 amount.

(4) In paragraphs (2) and (3), “the Schedule 2 amount” means the amount that would have been ascertained in accordance with Part 1 of Schedule 2 to this Part if rule 1 were not subject to this rule.

(5) For the purposes of paragraph (2), a part of a year shall be treated as a whole year.

(6) References in this rule to rule 1 include references to that rule as applied by rule 2(3).”.

4. In Part 4 (awards on death: children), in rule 3 (child’s special allowance or gratuity: limitations), for paragraphs (2) to (7) substitute–

“(2) Subject to paragraphs (3) and (4), no allowance under this Part shall be paid to a person if that person–

- (a) is 18 or older;
- (b) has ceased full-time education and is in paid employment; or
- (c) is married or has entered into a civil partnership.

(a) Set out in Schedule 1 to the Firefighters’ Pension Scheme (Scotland) Order 2007 (S.S.I. 2007/).

(3) A child who is aged 18 but not more than 23 is entitled to an allowance if the child is in full-time education or attending a course of at least one year's duration.

(4) A child who is aged 18 or more is entitled to an allowance if, when the scheme member dies, the child is dependent on the scheme member by reason of permanent disablement.

(5) A child's allowance ceases to be payable—

- (a) unless paragraph (3) or (4) applies, on the child's 18th birthday or the occurrence of an event referred to in sub-paragraph (b) or (c), whichever first occurs;
- (b) where paragraph (3) applies, on the child's 23rd birthday or that on which the child's full-time education or course ceases, whichever first occurs;
- (c) where paragraph (4) applies, when the fire and rescue authority are satisfied—
 - (i) that the child is no longer permanently disabled; or
 - (ii) that the child's pension should not have been awarded.

(6) Unless paragraph (5)(c) applies, an allowance payable in the circumstances mentioned in paragraph (4) is payable for life.”.

5. In Part 5 (awards on death: additional provisions)—

- (a) in rule 3 (lump sum in lieu of surviving spouse's or civil partner's pension), in paragraph (1), for the words from “Part 1” to “rule)” substitute “Part 2 of Schedule 29 to the Finance Act 2004(a)(lump sum death benefit rule)”; and
- (b) in rule 5 (increase of pensions and allowances during first 13 weeks)—
 - (i) in paragraph (2)—
 - (aa) in sub-paragraph (b), for “the Pension Scheme” substitute “the 1992 Scheme; and”;
 - (bb) after sub-paragraph (b), insert—

“(c) any children's pensions payable under the 2006 Scheme.”;
 - (ii) in paragraph (4)(a), for “the Pension Scheme” substitute “the 1992 Scheme”;
 - (iii) in paragraph (5), for the words from “and” (where it second occurs) to “the Pension Scheme”, substitute “, a child's ordinary or accrued allowance under the 1992 Scheme or a child's pension under the 2006 Scheme”;
 - (iv) in paragraph (7), for “the Pension Scheme” substitute “the 1992 Scheme or the 2006 Scheme”.

6. In Part 6 (determination of questions and appeals), in rule 3 (appeal to Sheriff Court), in paragraph (3)(c), for “the Pension Scheme” substitute “the 1992 Scheme”.

7. In Part 7 (servicemen)—

- (a) in rule 1 (interpretation of Part 7), for paragraph (1) substitute—

“(1) This Part applies to a person who—

 - (a) immediately before undertaking relevant service in the armed forces, was employed by a fire and rescue authority as a regular firefighter; and
 - (b) ceased to be so employed at any time before 6th April 2006,

and in this Part such a person is referred to as a serviceman.”;
- (b) in rule 2 (awards to servicemen)—
 - (i) in paragraph (2), for “the Pension Scheme” (in both places), substitute “the 1992 Scheme”;

(a) 2004 c.12. As to “the lump sum death benefit rule”, see section 168 of, and Part 2 of Schedule 29 to, that Act.

- (ii) in paragraph (3)–
 - (aa) in sub-paragraph (a), for “the Pension Scheme” substitute “the 1992 Scheme”; and
 - (bb) in sub-paragraph (b), after “pension” insert “or any ill-health pension payable under the 1992 Scheme or the 2006 Scheme”; and
 - (c) in rule 3 (awards on death of servicemen)–
 - (i) in paragraph (2), for “the Pension Scheme” (in both places) substitute “the 1992 Scheme”; and
 - (ii) in paragraph (3), for “the Pension Scheme” substitute “the 1992 Scheme”.
8. After Part 7, insert–

“PART 7A RESERVISTS

Interpretation of Part 7A

- 1.—(1) This Part applies to a person who–
- (a) on or after 6th April 2006–
 - (i) takes up employment with a fire and rescue authority; or
 - (ii) having been employed by such an authority before that date, becomes a member of the 2006 Scheme; and
 - (b) immediately before undertaking relevant service in the armed forces, is employed by the authority as a firefighter,

and in this Part such a person is referred to as a reservist.

(2) For the purposes of this Scheme a reservist shall be treated as having continued to be a firefighter during the reservist’s period of relevant service in the armed forces (referred to in this Part as the reservist’s “forces period”).

- (3) References in this Part 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^(a) (“the 1951 Act”), other than service specified in paragraph 5(b) of that Schedule; and
 - (b) 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.

Awards to reservists

2.—(1) This rule applies to a reservist who, at the end of the reservist’s forces period, is permanently disabled.

(2) Subject to paragraph (3), rule 2 of Part 3 of the 2006 Scheme (award on ill-health retirement) has effect in relation to a reservist to whom this rule applies as if the reservist were a firefighter member taking ill-health retirement at the end of the reservist’s forces period.

(3) Where the infirmity that occasioned the reservist’s incapacity for the performance of duty was occasioned by an injury received during the reservist’s forces period or by a qualifying injury the fire and rescue authority may–

^(a) 1951 c.65.

- (a) pay the reservist, instead of an ill-health pension under rule 2 of Part 3 of the 2006 Scheme, a pension at the rate of one twelfth of the reservist's final pensionable pay; and
- (b) subject to paragraph (4), increase any such pension.

(4) Paragraph 1 of Schedule 7 (reservists: increased awards) has effect for limiting increases under paragraph (3)(b).

Awards on death of reservists

3.—(1) This rule applies in the case of a reservist who—

- (a) dies during the reservist's forces period; or
- (b) was permanently disabled at the end of the reservist's forces period, has not since been a firefighter, and dies either from the effects of an injury that occasioned the reservist's incapacity for the performance of duty or while in receipt of a pension.

(2) If the reservist dies from the effects of an injury received during the reservist's forces period or a qualifying injury, the fire and rescue authority may, subject to paragraph (3), increase any pension or child's pension payable under rule 1, or rule 6 or 9, of Part 4 of the 2006 Scheme.

(3) Paragraphs 2 and 3 of Schedule 7 have effect for limiting increases under paragraph (2).

Reservists who resume service as firefighters

4. Paragraph (2) of rule 2 or, as the case may be, paragraph (2) of rule 3 of this Part shall apply in relation to a reservist who, having sustained an injury during the reservist's forces period and resumed service as a firefighter—

- (a) is permanently disabled; or
- (b) dies, whether or not while serving as a firefighter,

as they apply in relation to reservists to whom rule 2 or, as the case may be, rule 3 of this Part applies.”.

9. In Part 8 (special cases)—

- (a) in rule 1 (award for or in relation to employee who is not a regular or retained firefighter)—
 - (i) in paragraph (1), omit “regular or retained”;
 - (ii) in paragraph (4)(a), for “paragraph” substitute “rule”;
 - (iii) in paragraph (6), for “The”, substitute “Subject to paragraph (6A), the”; and
 - (iv) after paragraph (6) insert—

“(6A) Where a person is or has been a part-time employee, the appropriate amount is that found by applying the formula—

$$(A \times (B + C)) \div D$$

where—

A is the amount that would have been calculated as mentioned in sub-paragraph (a), (b) or (c) of paragraph (6) (as the case may be) if the person had been a whole-time employee of a fire and rescue authority;

B is the period in years of the person's pensionable service as a whole-time employee of a fire and rescue authority;

C is the period in years of the person's pensionable service as a part-time employee of a fire and rescue authority, expressed as a fraction, where the numerator is the total number of contractual hours during the part-time employment and the denominator is the number of contractual hours for one year of whole-time employment; and

D is the period in years of the person's pensionable service.”; and

- (b) in rule 2 (award for or in relation to a retained or volunteer firefighter)–
- (i) in paragraph (1)(a), after “authority”, insert “immediately before 6th April 2006”;
 - (ii) in paragraph (2), at the end insert “; but an award under rule 1 or 3 shall be reduced by 75 per cent of any other pension under the 1992 Scheme or the 2006 Scheme that is then in payment”;
 - (iii) in paragraph (3), for “the Pension Scheme” substitute “the 1992 Scheme or rule 9 of Part 3 of the 2006 Scheme (commutation: general) or rule 11 of that Part (allocation of pension)”;
 - (iv) in paragraph (4)–
 - (aa) for “A”, substitute “Subject to paragraph (4A), a”;
 - (bb) for “the Pension Scheme”, substitute “the 1992 Scheme”; and
 - (cc) after “case of default)”, insert “of the 1992 Scheme or, if the person has become a member of the 2006 Scheme, rule 9 (commutation: general) or 11 (allocation of pension) of Part 3 of the 2006 Scheme, rule 1 of Part 9 of that Scheme (review of ill-health pension) or rule 2 of that Part (consequences of review)”;
 - (v) after paragraph (4), insert–

“(4A) In the case of a person who has become a member of the 2006 Scheme, the award under rule B3 (ill-health awards) of the 1992 Scheme shall be reduced by the amount of any award to which the person is entitled under rule 2 of Part 3 of the 2006 Scheme (award on ill-health retirement).”; and
 - (vi) for paragraph (5) substitute–

“(5) This paragraph applies where–

 - (a) a person dies from the effects of a qualifying injury or infirmity of mind or body occasioned by a qualifying injury; and
 - (b) the person has at any time before 6th April 2006 been employed by a fire and rescue authority as a retained or volunteer firefighter.”.

10. In Part 9 (review, withdrawal and forfeiture of awards)–

- (a) in rule 2 (reduction of award in case of default)–
 - (i) in paragraph (2), for sub-paragraph (b) substitute–

“(b) the amount of the reduced pension is less than that of the notional deferred pension–

 - (i) if the person is a member of the 1992 Scheme, on that person's 60th birthday;
or
 - (ii) if the person is a member of the 2006 Scheme, on that person's 65th birthday.”; and
 - (ii) in paragraph (3), for “the Pension Scheme” substitute “the 1992 Scheme or rule 3 of Part 3 of the 2006 Scheme”(a); and
- (b) in rule 3 (withdrawal of pension during service as regular firefighter), omit “regular”.

11. In Part 10 (payment of awards and financial provisions)–

- (a) for rule 1 (authorities responsible for payment of awards) substitute–

(a) Rule B5 was amended by S.S.I. 2005/566, Sch, para 15.

“Authorities responsible for payment of awards

1.—(1) Subject to paragraph (2), an award payable under this Scheme to or in respect of a person by reason of the person having received an injury while employed by a fire and rescue authority is payable by the authority by whom the person was employed when the person received the injury.

(2) Subject to paragraph (3), where—

(a) an award is payable in respect of a qualifying injury sustained by a person who is employed by more than one authority; and

(b) the injury is of such a nature that it cannot be attributed solely to one employment, the award shall be paid—

(i) by such one of the person’s employing authorities as may be agreed;

(ii) by each of them, in such proportion as may be agreed; or

(iii) in default of agreement, in equal proportions.

(3) An award payable to a person in respect of a qualifying injury sustained in the course of the person’s employment with one authority and a different qualifying injury sustained in the course of the person’s employment with another authority shall be paid—

(a) by such one of the person’s employing authorities as may be agreed;

(b) by each of them, in such proportion as may be agreed; or

(c) in default of agreement, in equal proportions.”;

(b) in rule 3 (prevention of duplication)—

(i) in paragraph (1)(b), for “the Pension Scheme”, substitute “the 1992 Scheme or the 2006 Scheme”;

(ii) for paragraph (2) substitute—

“(2) A pension payable—

(a) under rule B9 of the 1992 Scheme^(a) or rule 11 of Part 3 of the 2006 Scheme to the beneficiary of an allocation;

(b) under Part N of the 1992 Scheme^(b) or rule 1 of Part 6 of the 2006 Scheme (pension credit member’s entitlement to pension); or

(c) under rule J1 of the 1992 Scheme^(c) or rule 1 of Part 14 of the 2006 Scheme (guaranteed minimum pensions),

is not a pension for the purposes of this rule.”;

(iii) in paragraph (3), for “rule L4B of the Pension Scheme”, substitute “rule L4 of the 1992 Scheme or, as the case may be, rule 4 of Part 13 of the 2006 Scheme”; and

(iv) in paragraph (4), for sub-paragraph (a) substitute—

“(a) under rule 1 of Part 2 to an injury pension and also—

(i) under rule B1, B2, B3 or B5 of the 1992 Scheme to an ordinary, short service, ill-health or deferred pension; or

(ii) under rule 1, 2 or 3 of Part 3 of the 2006 Scheme to an ordinary, ill-health or deferred pension; or”;

(v) in paragraph (5) omit—

(aa) in sub-paragraph (a), “retained”; and

(bb) the words “by whom the person is so employed”; and

(c) for rules 4 and 5 substitute—

(a) Rule B9 was amended by S.I. 2005/2980, Schedule, paragraph 19 and S.I. 2005/3228, Schedule 1, paragraph 2.

(b) Part N was inserted by S.S.I. 2001/310

(c) Rule J1 was amended by S.S.I. 2005/566, Schedule, paragraph 64 and S.I. 2005/3228, Schedule 1, paragraph 26.

“Prevention of duplication: other injury awards for persons who are both regular and retained firefighters

4.—(1) In this rule—

“B3 award” means an ill-health award under rule B3 of the 1992 Scheme;

“injury award” means an injury award under Part 2 of this Scheme;

“Part 8 award” means an injury award which is payable by virtue of rule 2 of Part 8 of this Scheme; and

“rule 2 award” means an ill-health pension under rule 2 of Part 3 of the 2006 Scheme.

(2) This paragraph applies to a person employed as both a regular firefighter and a retained firefighter (whether by the same fire and rescue authority or by different fire and rescue authorities) who—

(a) in respect of the person’s retained employment, is not a member of the 2006 Scheme; and

(b) is entitled—

(i) from the fire and rescue authority which employs the person as a regular firefighter, to an injury award, a B3 award, a rule 2 award, or more than one of those awards; and

(ii) from the fire and rescue authority which employs the person as a retained firefighter, to a Part 8 award.

(3) The fire and rescue authority which employs a person to whom paragraph (2) applies as a regular firefighter shall pay the B3 award in full or, as the case may be, the rule 2 award and, subject to paragraph (4), the authority which employs the person as a retained firefighter shall pay only the injury element of the Part 8 award.

(4) Where the amount of the B3 award or, as the case may be, the rule 2 award is less than the amount which, but for paragraph (3), would have been paid to the person as the ill-health element of the Part 8 award, the fire and rescue authority which employs the person as a retained firefighter shall pay the person an amount equal to the amount of the difference.

(5) A firefighter who is entitled to both an injury award and a Part 8 award shall receive, in respect of those awards, a single award of an amount equal to the injury award or the Part 8 award, whichever is greater; and rule 1(2) of this Part shall apply as regards the payment of that single award.

Prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters

5.—(1) This rule applies where—

(a) a person employed as both a regular firefighter and a retained firefighter dies (whether during or after such employment);

(b) a qualifying injury sustained in the course of such employment is certified by an independent qualified medical practitioner as the cause of death; and

(c) in consequence of the person’s death, another person becomes entitled not only to an award of a description mentioned in paragraph (2), but also to an award of a description mentioned in paragraph (3).

(2) The descriptions mentioned in this paragraph are—

(a) a spouse’s or civil partner’s special award under rule 1 of Part 3;

(b) a spouse’s or civil partner’s augmented award under rule 2 of that Part;

(c) a child’s special allowance under rule 1 of Part 4; and

(d) a child’s special gratuity under rule 2 of that Part.

- (3) The descriptions mentioned in this paragraph are—
- (a) a spouse’s or civil partner’s ordinary pension under rule C1 of the 1992 Scheme;
 - (b) a spouse’s or civil partner’s accrued pension under rule C4 of that Scheme;
 - (c) a spouse’s or civil partner’s requisite benefit and temporary pension under rule C6 of that Scheme;
 - (d) a spouse’s or civil partner’s award under rule C7 of that Scheme (award where no other award is payable);
 - (e) a child’s ordinary allowance under rule D1 of that Scheme; and
 - (f) a child’s accrued allowance under rule D4 of that Scheme.

(4) The award of the description in paragraph (3) shall be paid in full, and the award of the description in paragraph (2) shall not be paid.

(5) Where the amount of the award paid to a person in accordance with paragraph (4) is less than the amount which, but for that paragraph, would have been paid to that person by way of an award of a description in paragraph (2), the fire and rescue authority which employed the deceased as a retained firefighter shall pay an amount equal to the amount of the difference.”.

12.—(1) In Schedule 1 to Part 2 (injury awards and duty-related compensation), in Part 1 (calculation of awards for full-time service)—

- (a) in paragraph 1—
 - (i) in sub-paragraph (1), for “Part 2” substitute “Parts 2 and 3”;
 - (ii) in sub-paragraph (2)—
 - (aa) for “the Pension Scheme” substitute “the 1992 Scheme or rule 5 of Part 2 of the 2006 Scheme”; and
 - (bb) for “that Scheme” substitute “the 1992 Scheme or rule 4 of Part 11 of the 2006 Scheme”; and
 - (iii) in the headings in the Table, after “*average pensionable pay*” (in both places), insert “*or, as the case may be, final pensionable pay*”; and
- (b) in paragraph 2—
 - (i) in sub-paragraph (1), for “the Pension Scheme” substitute “the 1992 Scheme or rule 2 of Part 3 of the 2006 Scheme”;
 - (ii) in sub-paragraph (2)—
 - (aa) for “the Pension Scheme” substitute “the 1992 Scheme or rule 5 of Part 2 of the 2006 Scheme”; and
 - (bb) for “that Scheme” substitute “the 1992 Scheme or rule 4 of Part 11 of the 2006 Scheme”; and
 - (iii) in sub-paragraph (3)—
 - (aa) in paragraph (a), for “the Pension Scheme” substitute “the 1992 Scheme or rule 9 (commutation: general) or rule 11 (allocation of pension) of Part 3 of the 2006 Scheme”; and
 - (bb) in sub-paragraph (b), for “that Scheme” substitute “the 1992 Scheme”.

13. In Schedule 1 to Part 2, in Part 2 (calculation of awards for part-time service), in paragraph 2—

- (a) in sub-paragraph (1)—
 - (i) for “The” substitute “Subject to sub-paragraph (2), the”;
 - (ii) in the definition of “A”, after “average pensionable pay”, insert “or, as the case may be, the final pensionable pay”;

(b) for sub-paragraph (2) substitute–

“(2) Where the person is a member of the 1992 Scheme, neither (B + C) nor D shall exceed 30 years.”.

14. After Part 2 of Schedule 1 to Part 2 insert–

“PART 3

CALCULATION OF AWARDS FOR RETAINED OR VOLUNTEER SERVICE

1. The amounts of the injury gratuity and injury pension payable to a retained or volunteer firefighter shall be calculated in accordance with paragraph 1(2) of Part 1 as if for “pensionable service” there were substituted “pensionable retained service”(a).”.

15. In Schedule 2 to Part 3 (awards for spouses and civil partners), in Part 1 (special pension)–

(a) in paragraph 1, after “average pensionable pay”, insert “or, as the case may be, final pensionable pay”; and

(b) in paragraph 2–

(i) in sub-paragraph (1), in the definition of “A”, after “average pensionable pay”, insert “or, as the case may be, the final pensionable pay”; and

(ii) for sub-paragraph (2) substitute–

“(2) Where the person was a member of the 1992 Scheme, neither (B + C) nor D shall exceed 30 years.”.

16. In Schedule 2 to Part 3, for Part 2 (award for surviving spouse or civil partner of post-retirement marriage or civil partnership) substitute–

“PART 2

AWARD FOR SURVIVING SPOUSE OF POST-RETIREMENT MARRIAGE WHERE DECEASED A MEMBER OF THE 1992 SCHEME BUT NOT A MEMBER OF THE 2006 SCHEME

1.—(1) Where the surviving spouse of a person who–

(a) was a member of the 1992 Scheme; but

(b) was not a member of the 2006 Scheme,

would otherwise have been entitled to a special award under rule 1 of Part 3 or an augmented award under rule 2 of that Part, the amount of the surviving spouse’s pension under that Part shall, subject to sub-paragraph (2), be calculated in accordance with paragraph 1 of Part 1 of Schedule 3 to the 1992 Scheme (spouse’s ordinary pension) in the same way as that of an ordinary pension.

(2) For the purposes of this paragraph, paragraph 1 of Part 1 of Schedule 3 to the 1992 Scheme has effect–

(a) as if the reference in sub-paragraph (1)(a) to the base pension were a reference to the appropriate proportion of the base pension; and

(b) as if the base pension were the ill-health pension to which the deceased would have been entitled if the deceased had, when the deceased ceased to serve, retired because the deceased was disabled in circumstances entitling the deceased to such a pension.

(a) See the definition of “pensionable retained service” inserted in rule 2(1) of the Compensation Scheme by paragraph 1(a) of the Schedule to this Order.

2. The appropriate proportion mentioned in paragraph 1(2)(a) is the proportion which the deceased's relevant pensionable service bears to the deceased's total pensionable service."

17. In Schedule 3 to Part 4 (awards on death: children)–

- (a) in Part 1 (child's special allowance)–
 - (i) in paragraph 1, after "average pensionable pay", insert "or, as the case may be, the deceased's final pensionable pay"; and
 - (ii) in paragraph 4(2), after "average pensionable pay", insert "or, as the case may be, the final pensionable pay"; and
- (b) in Part 2 (reduction in child's allowance during full-time remunerated training), in paragraph 2(2), for "the Pension Scheme" substitute "the 1992 Scheme".

18. In Schedule 4 to Part 5 (awards on death: additional provisions), after "average pensionable pay" (in each place), insert "or, as the case may be, the deceased's final pensionable pay".

19. After Schedule 6 to Part 7 (servicemen: increased awards), insert–

"SCHEDULE 7 TO PART 7A

Part 7A

RESERVISTS: INCREASED AWARDS

1. The total of–

- (a) the amount of a pension as increased under rule 2(3)(b) of Part 7A; and
- (b) the amount of any service pension other than an allowance for constant attendance, wear and tear of clothing, or comforts,

must not exceed the amount of the injury pension to which the reservist would have been entitled if rule 1 of Part 2 had applied.

2. The total of–

- (a) the amount of a pension as increased under rule 3(2) of Part 7A; and
- (b) the amount of any service pension payable to the spouse or civil partner in respect of the reservist,

must not exceed the amount of the special pension to which the spouse or civil partner would have been entitled if rule 1 of Part 3 had applied.

3. The total of–

- (a) the amount of a child's allowance as increased under rule 3(2) of Part 7A; and
- (b) the amount of any service pension payable to or for the child in respect of the reservist,

must not exceed the amount of the special allowance to which the child would have been entitled if rule 1 of Part 4 had applied."

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends provisions of the Firefighters' Compensation Scheme set out in Schedule 1 to S.S.I. 2006/338 ("the Compensation Scheme"). The amendments made by article 2 of this Order have effect from 6th April 2006. The power to provide for an order to have effect from a date that is earlier than that on which it is made is conferred by section 34(3) of the Fire and Rescue Services Act 2004.

Articles 3 and 4 of the Order contain transitional provisions. Article 3 enables a person whose position would be less favourable under the amended version of the Scheme to elect to retain benefits under the unamended version. Notice of election has to be given to the fire and rescue authority before 1st July 2007. Article 4 provides for the compensation scheme in its unamended form to continue to apply in relation to decisions and determinations made before the coming into force of this Order as to whether permanent disablement has been caused by a "qualifying injury" as defined in rule 7 of Part 1 of the Compensation Scheme.

Subject to two exceptions, the amendments are consequential on the introduction of a new pension scheme for firefighters employed by fire and rescue authorities in Scotland (the New Firefighters' Pension Scheme (Scotland), set out in Schedule 1 to S.S.I. 2007/).

The first exception is the definition of "fire and rescue authority" which is amended to cover joint fire boards.

The second exception relates to the amendment made by paragraph 8(a)(ii) of the Schedule to this Order. It corrects an error in rule 1(4)(a) of Part 8 of the Compensation Scheme by substituting "rule" for "paragraph".

The main effects of the amendments made by this Order are that—

- (a) the former distinction between regular firefighters and retained and volunteer firefighters is removed. This change reflects the fact that retained and volunteer firefighters were not entitled to be members of the Firefighters' Pension Scheme (set out in Schedule 2 to S.I. 1992/129). (Persons who join the fire and rescue service in Scotland on or after 6th April 2006 as retained or volunteer firefighters are entitled to membership of the new pension scheme, and persons who were employed in the fire and rescue service in Scotland before that date as regular or retained firefighters may elect to become members of the new pension scheme. Benefits under the compensation scheme, as amended by this Order, are not dependent on membership of a firefighters' pension scheme); and
- (b) the insertion of references to relevant provisions of the new pension scheme ensures that the provisions of the compensation scheme apply to members of both pension schemes.

A full regulatory impact assessment has not been produced for this Order, as it has no impact on the costs of business, charities or voluntary bodies.

2007 No. 198

FIRE SERVICES

PENSIONS

The Firefighters' Compensation Scheme (Scotland) Amendment
Order 2007

£3.00

© Crown Copyright 2007

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland

70

03/07

19593