

SCHEDULE 1

THE NEW FIREFIGHTERS' PENSION SCHEME (SCOTLAND)

Part 8, rule 4

ANNEX 2

APPEALS TO BOARD OF MEDICAL REFEREES

1.—(1) Subject to sub-paragraph (2), written notice of appeal against a decision on an issue of a medical nature stating—

- (a) the appellant's name and address; and
- (b) the grounds of the appeal,

must be given to the authority within 28 days of the date on which the appellant receives the documents referred to in rule 4(4) of Part 8; and where the appellant receives those documents on different dates, they shall be treated for this purpose as received on the later or latest of those dates.

(2) Where—

- (a) notice of appeal is not given within the period specified in sub paragraph (1); but
- (b) the authority are of the opinion that the person's failure to give it within that period was not due to the person's own default,

they may extend the period for giving notice to such length, not exceeding six months from the date mentioned in sub-paragraph (1), as they think fit.

2.—(1) On receiving a notice of appeal, the authority shall supply the Scottish Ministers with three copies of—

- (a) the notice of appeal;
- (b) the notice of the relevant decision;
- (c) the opinion, rule 3 response or evidence (as the case may be) supplied to the appellant; and
- (d) every other document in their possession or under their control which appears to them to be relevant to the issue that is the subject of the appeal.

(2) The Scottish Ministers shall refer an appeal to a board of medical referees ("the board").

3.—(1) The board shall consist of not less than three medical practitioners appointed by, or in accordance with arrangements made by, the Scottish Ministers.

(2) One member of the board shall be a specialist in a medical condition relevant to the appeal.

(3) One member of the board shall be appointed as chairman.

(4) Where there is an equality of votes among the members of the board, the chairman shall have a second or casting vote.

4.—(1) As soon as reasonably practicable after referring an appeal to the board, the Scottish Ministers shall supply the board's administrator with three copies of every document supplied under paragraph 2(1).

(2) The board shall arrange for one of their number to review those documents ("the reviewing member").

(3) As soon as reasonably practicable after concluding the review, the reviewing member shall give written notice to Scottish Ministers—

- (a) of any other information which the reviewing member considers would be desirable for the purpose of enabling the board to determine the appeal; and

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- (b) if it be the case, that it is the reviewing member's opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded.
- (4) On receipt of the reviewing member's notice the Scottish Ministers shall—
 - (a) where the reviewing member has notified the Scottish Ministers of the desirability of obtaining other information, require the authority to use their best endeavours to obtain that information; and
 - (b) where the notice contains an opinion of the description mentioned in sub paragraph (3) (b), send a copy of it to the authority.
- (5) An authority which receives a copy of a reviewing member's opinion shall, as soon as reasonably practicable—
 - (a) send a copy of it to the appellant; and
 - (b) by written notice to the appellant—
 - (i) advise the appellant that, if the appellant's appeal is unsuccessful, the appellant may be required to pay the authority's costs; and
 - (ii) require the appellant to notify them, within 14 days of the date of their notice, whether the appellant intends to pursue or withdraw the appeal.
- (6) An authority which notifies an appellant under paragraph (5)(b) shall inform the Scottish Ministers of the appellant's response to their request under sub paragraph (b)(ii) of that paragraph; and the Scottish Ministers shall notify the board accordingly.
- 5. Where an appeal is to be pursued, the board shall secure that the appellant and the authority ("the parties") have been informed—
 - (a) that the appeal is to be determined by the board; and
 - (b) of an address to which communications relating to the appeal may be delivered to the board.
- 6.—(1) Subject to sub-paragraph (4), the board—
 - (a) shall interview and medically examine the appellant at least once; and
 - (b) may interview or medically examine the appellant or cause the appellant to be interviewed or medically examined on such further occasions as the board thinks necessary for the purpose of determining the appeal.
- (2) The board shall appoint, and give the parties not less than 2 months' notice of, the time and place for every interview and medical examination; and if the board is satisfied that the appellant is unable to travel, the place shall be the appellant's place of residence.
- (3) The appellant shall attend at the time and place appointed for any interview and medical examination by the board or any member of the board or any person appointed by the board for that purpose.
- (4) If—
 - (a) the appellant fails to comply with sub paragraph (3); and
 - (b) the board is not satisfied that there was reasonable cause for the failure,the board may dispense with the interview and medical examination required by paragraph (1)(a) or, as the case may be, with any further interview or medical examination, and may determine the appeal on such information as is then available.
- (5) Any interview under this paragraph may be attended by persons appointed for the purpose by the authority or by the appellant or by each of them.

7.—(1) Where either party intends to submit written evidence or a written statement at an interview held under paragraph 6, the party shall, subject to sub-paragraph (2), submit the evidence or statement to the board and to the other party not less than 28 days before the date appointed for the interview.

(2) Where any written evidence or statement has been submitted under sub-paragraph (1) less than 28 days before the date appointed for the interview, any written evidence or statement in response may be submitted by the other party to the board and the party submitting the first mentioned evidence or statement at any time up to, and including, that date.

(3) Where any written evidence or statement is submitted in contravention of sub-paragraph (1), the board may postpone the date appointed for the interview and require the party who submitted the evidence or statement to pay such reasonable costs of the board and of the other party as arise from the postponement.

8.—(1) The board shall supply the Scottish Ministers with—

- (a) a written report of its decision on the relevant medical issues; and
- (b) if the board is of the opinion that the appeal was frivolous, vexatious or manifestly ill founded, a statement to that effect (which may form part of the report).

(2) The Scottish Ministers shall supply the parties with a copy of the report and of any separate statement under paragraph (1)(b).

9.—(1) There shall be paid to the board and the reviewing member—

- (a) such fees and allowances (including those payable to the reviewing member for work undertaken on the review of documents under paragraph 4(2)) as are determined in accordance with arrangements made by the Scottish Ministers; or
- (b) where no such arrangements have been made, such fees and allowances as the Scottish Ministers may from time to time determine.

(2) The fees and allowances payable under sub paragraph (1) shall—

- (a) be paid by the authority; and
- (b) be treated for the purposes of paragraph 10 as part of the authority's expenses.

10.—(1) Subject to paragraph 7(3) and sub paragraphs (2) to (5) below, the expenses of each party to the appeal shall be borne by that party.

(2) Where the board—

- (a) determines an appeal in favour of the authority; and
- (b) states that, in its opinion, the appeal was frivolous, vexatious or manifestly ill founded,

the authority may require the appellant to pay them such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 9(1), as the authority think fit.

(3) Where—

- (a) the appellant gives notice to the board withdrawing the appeal; and
- (b) the notice is given less than 22 working days before the date appointed for an interview or medical examination under paragraph 6(2),

the authority may require the appellant to pay them such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 9(1), as the authority think fit.

(4) Where the board—

- (a) determines an appeal in favour of the appellant; and
- (b) does not otherwise direct,

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the authority shall refund to the appellant the amount specified in sub-paragraph (5).

(5) The amount is the total of—

- (a) any personal expenses actually and reasonably incurred by the appellant in respect of any interview under paragraph 6; and
- (b) if any such interview was attended by a qualified medical practitioner appointed by the appellant, any fees and expenses reasonably paid by the appellant in respect of such attendance.

(6) For the purposes of sub-paragraphs (2) and (4) any question arising as to whether the board's determination is in favour of the authority or of the appellant shall be decided by the board or, in default, by the Scottish Ministers.

11. Any notice, information or document which an appellant is entitled to receive for any purpose of this Annex shall, unless the contrary is proved, be treated as having been received by the appellant if it was posted in a letter addressed to the appellant at the appellant's last known place of residence.