

## SCHEDULE 1

### THE NEW FIREFIGHTERS' PENSION SCHEME (SCOTLAND)

## PART 12

### TRANSFERS INTO AND OUT OF THE SCHEME

#### CHAPTER 2

#### TRANSFERS OUT OF THE SCHEME

##### **Applications for statements of entitlement**

3.—(1) A member who requires a transfer value payment to be made must apply in writing to the authority for a statement of the amount of the cash equivalent of the member's accrued benefits under the Scheme at the guarantee date ("a statement of entitlement").

(2) In this Chapter, "the guarantee date" means any date that—

- (a) falls within the required period;
- (b) is chosen by the authority;
- (c) is specified in the statement of entitlement; and
- (d) is within the period of ten days ending with the date on which the member is provided with the statement of entitlement.

(3) In counting the period of ten days referred to in paragraph (2)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(4) In paragraph (2) "the required period" means—

- (a) the period of three months beginning with the date of the member's application for a statement of entitlement; or
- (b) such longer period (not exceeding six months beginning with that date) as may reasonably be required if, for reasons beyond the control of the authority, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

(6) Where, in any period of twelve consecutive months, a member—

- (a) has made, and not withdrawn, two applications for a statement of entitlement; and
- (b) makes a third (or subsequent) application,

the authority shall not be required to entertain the application if it is not accompanied by a payment of such amount as the authority may reasonably require.

##### **Applications for transfer value payments**

4.—(1) A member who has applied for and received a statement of entitlement under rule 3 of this Part may apply in writing to the authority for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of paragraph (9)).

(3) An application under paragraph (1) must be made before the end of the period of three months beginning with the guarantee date, and the payment must be made no later than—

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- (a) six months after that date; or
  - (b) if it is earlier, the date on which the member reaches normal benefit age.
- (4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.
- (5) Subject to paragraph (6), an application by a person who is entitled to apply for a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of the 1993 Act may only be made before—
- (a) the beginning of the period of one year ending with the date on which the member reaches normal benefit age; or
  - (b) the end of the period of six months beginning with the day after that on which the member's pensionable service ends, provided that service ends at least one year before normal benefit age,
- whichever is the later.
- (6) An application for a transfer value payment to be made under public sector transfer arrangements may only be made—
- (a) before the first anniversary of the day on which the member becomes eligible to be a firefighter member of the scheme to which the transfer is to be made; and
  - (b) before the member reaches normal benefit age.
- (7) An application by a person who is not entitled to apply for a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of the 1993 Act may only be made—
- (a) on or before the first anniversary of the day on which the applicant ceases to be a firefighter member of this Scheme; and
  - (b) before the member reaches normal benefit age.
- (8) An application under this rule may be withdrawn by notice in writing, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.
- (9) If the payment is made later than six months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—
- (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or
  - (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of one per cent above base rate.
- (10) In this rule—
- “base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in descending sequence of seven, is fourth in the sequence; and
- “the reference banks” means the seven largest persons for the time being who—
- (a) have permission under Part IV of the Financial Services and Markets Act 2000 (permission to carry on regulated activities)(1) to accept deposits;
  - (b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits; and

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(1) 2000 c. 8, to which there are amendments not relevant to this Order.

- (c) quote a base rate in sterling,  
and for the purpose of this definition the size of a person at any time is to be determined by reference to the gross assets denominated in sterling of that person, together with any subsidiary (as defined in section 736 of the Companies Act 1985 (“subsidiary”, “holding company” and “wholly owned subsidiary”))(2), as shown in the audited end-of-year accounts last published before that time.

### **Ways in which transfer value payments may be applied**

5.—(1) A member who is entitled to a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of the 1993 Act may only require the authority to apply the cash equivalent transfer value payment in one or more of the ways permitted under section 95 of that Act.

(2) A member who is not entitled to a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of the 1993 Act may only require the authority to apply the guaranteed cash equivalent transfer value payment in one of the ways permitted under section 95 of that Act.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (4) applies.

(4) The benefits attributable to—

- (a) the member’s accrued rights to a guaranteed minimum pension; or
- (b) the member’s accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the guaranteed cash equivalent transfer value payment if section 96(2) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member’s other rights).

(5) A transfer payment may only be made to—

- (a) a pension scheme that is registered under Chapter 2 of Part 4 of the Finance Act 2004; or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that Act).

### **Calculating amounts of transfer value payments**

6.—(1) Subject to paragraph (3), the amount of the guaranteed cash equivalent transfer value payment is to be calculated in accordance with guidance and tables provided by the Scheme Actuary for use at the guarantee date.

(2) In preparing those tables the Scheme Actuary must use such factors as the Scheme Actuary considers appropriate, having regard to section 97 of the 1993 Act and regulations under that Act (whether or not the payment is in respect of a person entitled to a guaranteed cash equivalent transfer value payment under that Act).

(3) If the amount calculated in accordance with paragraph (1) is less than the minimum transfer value, the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value instead.

(4) In paragraph (3) “the minimum transfer value”, in relation to any person, means the sum of—

- (a) any transfer value payments that have been made to the Scheme in respect of the person; and
- (b) any contributions paid by the person under rule 3 of Part 11.

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(2) 1985 c. 6; section 736 was substituted for section 736 as originally enacted by section 144(1) of the Companies Act 1989 (c. 40).

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(5) If the transfer value payment is made under public sector transfer arrangements, the amount of the transfer value payment shall be calculated—

- (a) in accordance with those arrangements rather than paragraphs (1) to (3); and
- (b) by reference to the guidance and tables provided by the Scheme Actuary for the purposes of this paragraph that are in use on the date used for the calculation.

**Effect of transfers-out**

7. Where a transfer value payment is made under this Chapter in respect of a person's rights under this Scheme, those rights are extinguished.