

SCHEDULE 1

THE NEW FIREFIGHTERS' PENSION SCHEME (SCOTLAND)

PART 12

TRANSFERS INTO AND OUT OF THE SCHEME

CHAPTER 5

MIS-SOLD PENSIONS AND RESTITUTION PAYMENTS

Interpretation of Chapter 5

13.—(1) In this Chapter—

“calculated amount” means the amount which, in accordance with rule 15 of this Part, an authority calculate would need to be made as a restitution payment in respect of the firefighter concerned;

“relevant methods and assumptions” means the methods and assumptions notified by the Scheme Actuary for the calculation of cash equivalent values for occupational pension schemes; and

“relevant period”, in relation to a firefighter, means the total of any periods of opted out and, where appropriate, transferred-out service.

(2) For the purposes of this Chapter—

(a) a person shall be taken to have opted out if the person had made a contributions election and for any period during which the person was a firefighter the person instead made contributions to a personal pension scheme; and

(b) a person shall be taken to have transferred out if an authority have made a transfer value payment in respect of the person under Chapter 2 of this Part to the administrator of a personal pension scheme.

Mis-sold pensions

14.—(1) This rule applies to a firefighter who—

(a) has opted out or transferred out, or both; and

(b) has suffered actionable loss as a result of a contravention which is actionable under section 150 of the Financial Services and Markets Act 2000⁽¹⁾ (actions for damages).

(2) A firefighter to whom this rule applies who has given notice—

(a) under rule 6 of Part 2 cancelling his or her contributions election; or

(b) under rule G3(5) of the 1992 Scheme (cancellation of election not to pay contributions),

may give written notice to the authority that the firefighter wishes them to accept a transfer value payment in order to create or restore the firefighter’s pensionable service.

(3) Paragraph (4) or (5) applies where, within twelve months of the date of a notice given under paragraph (2) or such longer period as the authority may allow, the authority have accepted a transfer value payment in relation to the firefighter who gave the notice (whether or not the firefighter has ceased to be a firefighter after the date of the notice) not exceeding the calculated amount.

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

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- (4) Where the amount of the transfer value payment is equal to the calculated amount—
 - (a) the whole of the relevant period shall be treated as pensionable service; and
 - (b) for the purposes of calculating any award under this Scheme, the firefighter who gave the notice shall be treated as having made pension contributions throughout that period.
- (5) Where the amount of the transfer value payment is less than the calculated amount—
 - (a) the authority shall, in accordance with the relevant methods and assumptions, calculate the period of pensionable service that the transfer value payment represents, and treat that period as pensionable service;
 - (b) for the purposes of calculating any award under this Scheme, the firefighter who gave the notice shall be treated as having made pension contributions throughout that period; and
 - (c) that period shall be treated as a continuous period with the same final date as the final date of the relevant period.
- (6) Where a firefighter who is being credited under paragraph (4) or (5) with a period of pensionable service has previously been credited, in respect of the relevant period, with—
 - (a) an additional period of pensionable service calculated in accordance with this Part; or
 - (b) an additional period of reckonable service calculated in accordance with Part 4 of Schedule 6 to the 1992 Scheme (amount of transfer value),

the authority may adjust the amount of the transfer value payment that they accept under this rule to ensure that no part of the additional period of pensionable or reckonable service that was previously credited is included in the period of pensionable service credited under paragraph (4) or (5).

Calculation of amount of restitution payment

15.—(1) An authority shall, in accordance with paragraph (2), calculate the restitution payment that would need to be made to them in respect of a person to whom rule 14 of this Part applies to create or restore the person’s position to what it would have been if the person had not opted-out or, where relevant, transferred-out.

- (2) The restitution payment is an amount equal to the sum of—
 - (a) the capitalised value at the material date, determined in accordance with the relevant methods and assumptions, which would produce a service credit equal to the person’s total period of opted out service, including the capitalised value of any rights under the Pensions (Increase) Act 1971 and the Pensions (Increase) Act 1974(2); and
 - (b) in the case of a firefighter who also transferred out, the greater of—
 - (i) any transfer value paid by an authority to the administrator of a personal pension scheme in respect of the firefighter’s transferred-out service under Chapter 2 of this Part, increased by interest calculated at a rate approved by the Scheme Actuary over the period from the date of payment of that transfer value to the assumed calculation date; and
 - (ii) the cash equivalent transfer value that would be payable by the authority in respect of that transferred-out service if they were to pay a cash equivalent transfer value in respect of that service determined in accordance with the relevant methods and assumptions applicable immediately after the assumed calculation date.

- (3) In this rule—

“assumed calculation date” means the date on which it is assumed, for the purpose of calculating a restitution payment, that a transfer value will be paid to the authority; and

(2) 1974 c. 9.

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“material date” means the date on which the authority receive a notice under rule 14 of this Part.