

## SCHEDULE 1

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

## PART 12

### TRANSFERS INTO AND OUT OF THE SCHEME

#### CHAPTER 1

#### INTERPRETATION OF PART 12 AND ENTITLEMENT TO TRANSFER VALUE PAYMENT

##### **Interpretation of Part 12**

**1.** In this Part—

“guaranteed cash equivalent transfer value payment” means a payment of the description mentioned in rule 4(2) of this Part; and

“public sector transfer arrangements” means arrangements approved by the Secretary of State as providing reciprocal arrangements for the payment and receipt of transfer values between this Scheme and other occupational pension schemes.

##### **Entitlement to transfer value payment**

**2.—(1)** This Part supplements the rights conferred by Chapter IV of Part IV of the 1993 Act (transfer values) (“Chapter IV”).

(2) A firefighter member or deferred member—

(a) to whom Chapter IV applies<sup>(1)</sup>; and

(b) who is not a pension credit member or pensioner member of this Scheme,

is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of the firefighter member or deferred member under this Scheme.

(3) Subject to the provisions of this Part, any former firefighter member, other than a pensioner member, is entitled to require such a payment as if such rights had accrued to or in respect of the former firefighter member by reference to the pensionable service the former firefighter member is entitled to count under this Scheme (and references in this Part to the former firefighter member’s accrued rights or benefits are to be read accordingly).

(4) Paragraph (3) does not apply if the contributions the former member has paid during the period of service ending with the former member’s ceasing to be a firefighter member are refunded under rule 8 of Part 3 and, where applicable, in accordance with Chapter V of Part IV of the 1993 Act.

(5) Paragraphs (2) and (3) do not apply to rights that are directly attributable to a pension credit.

#### 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”).

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(1) See section 93(1)(a) of the Pension Schemes Act 1993 (c. 48).

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- (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—
  - (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.

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(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)<sup>(2)</sup> to accept deposits;
- (b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits; and
- (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”))<sup>(3)</sup>, 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.

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<sup>(2)</sup> 2000 c. 8, to which there are amendments not relevant to this Order.

<sup>(3)</sup> 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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(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.

(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.

## CHAPTER 3 TRANSFERS INTO THE SCHEME

### **Applications for acceptance of transfer value payment from another scheme**

**8.—**(1) Subject to the provisions of this Part, a firefighter member may apply for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of the firefighter member under—

- (a) another occupational pension scheme 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<sup>(4)</sup>; or
- (c) a personal pension scheme,

to be accepted by the authority for the purposes of this Scheme.

(2) Paragraph (1) does not apply to rights that are directly referable to a pension credit.

(3) Paragraph (1) does not apply if the member is on unpaid leave that does not count as pensionable service.

### **Procedure for applications under rule 8**

**9.—**(1) An application under rule 8 of this Part—

- (a) must be made in writing;
- (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment; and
- (c) subject to paragraph (2), must be made—
  - (i) before the beginning of the period of one year ending with the date on which the member reaches normal retirement age; and
  - (ii) in the case of a transfer value payment from a non-occupational pension scheme, during the period of one year beginning with the day on which the member becomes eligible to be a firefighter member, or such longer period as the authority may allow.

(2) In the case of a transfer value payment to be made under public sector transfer arrangements, the application under rule 8 of this Part—

- (a) must be made during the period of one year beginning with the day on which the member becomes eligible to be a firefighter member, or such longer period as the authority may allow; and
- (b) must be received by the authority before the applicant reaches the age which is the normal pension age under the scheme by which the transfer value payment is to be made.

### **Acceptance of transfer value payments**

**10.—**(1) Subject to paragraph (3) below and paragraphs (2) and (3) of rule 2 of Part 10 (reckoning of pensionable service), where an application is duly made by a member under rule 8 of this Part, the authority may accept the transfer value payment.

(2) If the authority accept the payment, the member is entitled to count the period calculated in accordance with rule 11 of this Part as pensionable service for the purposes of this Scheme.

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(4) See section 169(2) of the Finance Act 2004 (c. 12).

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- (3) The authority may not accept a transfer value payment if—
- (a) it would be paid otherwise than under public sector transfer arrangements;
  - (b) it would be applied in whole or in part in respect of the member’s or the member’s spouse’s or civil partner’s entitlement to a guaranteed minimum pension; and
  - (c) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the Scheme Actuary for the purposes of this paragraph.

### **Calculation of transferred-in pensionable service**

**11.**—(1) Subject to paragraph (3), the period of pensionable service that a member is entitled to count under rule 10(2) of this Part shall be calculated as at the date on which the transfer value payment is received by the authority and in accordance with guidance and tables provided by the Scheme Actuary for the purpose.

(2) For the purposes of that calculation, the member’s pensionable earnings are to be taken to be the amount of those earnings as at—

- (a) two months after the application under rule 8 of this Part is received; or
- (b) the date on which the transfer value payment is received,

whichever is the later; and, in a case where the transfer value payment is received earlier than two months after that application is received, any necessary adjustment shall be made to that calculation to reflect any change in the amount of those earnings.

(3) If the transfer payment is accepted under public sector transfer arrangements, the period that the member is entitled to count shall be calculated—

- (a) subject to paragraph (4), in accordance with those arrangements; 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 that is used by the transferring scheme for calculating the transfer value payment.

(4) If the period that the member would be entitled to count would be greater if the transfer value payment were accepted otherwise than under public sector transfer arrangements—

- (a) those arrangements shall not apply; and
- (b) paragraph (1) of this rule shall apply instead.

## **CHAPTER 4**

### **TRANSFERS BETWEEN FIRE AUTHORITIES**

#### **Transfer of payments and pension history between fire authorities**

**12.**—(1) Subject to both the calculation of a transfer payment under Chapter 2 and to paragraph (7) of this rule, where a firefighter member—

- (a) leaves the employment of an authority (the “former authority”);
- (b) without a break of service, takes up employment as a firefighter with another authority (the “new authority”); and
- (c) in that capacity continues to be a member of this Scheme,

the former authority shall in addition to providing a cash transfer value calculated under Chapter 2 of this Part, not later than six months after the firefighter member left their employment, supply the new authority with a certificate showing the pensionable service the firefighter member was entitled to reckon as at the date on which the firefighter member left the former authority’s employment (“the material date”).

(2) At the same time as the former authority supply a certificate under paragraph (1), they shall send a copy of it to the person concerned, together with a statement of its effects on completion of the transfer.

(3) Subject to paragraph (7), if the person concerned is dissatisfied with the information specified in a certificate under paragraph (1), the person may, within three months after being supplied with a copy of it, ask the former authority to determine the accuracy of the information contained in it.

(4) A person who makes a request under paragraph (3) shall send a copy of it to the person's new authority.

(5) A request under paragraph (3) shall be considered by means of the arrangements for the resolution of disagreements implemented by the authority pursuant to the requirements of section 50 of the Pensions Act 1995<sup>(5)</sup> (resolution of disputes) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996<sup>(6)</sup>; and the authority shall either confirm the certificate or issue a new certificate.

(6) If the person concerned does not make a request under paragraph (3), the certificate as supplied, and if the person does make such a request, the certificate as confirmed or the new certificate issued (as the case may be), is conclusive as to the pensionable service the person was entitled to reckon at the material date.

(7) If, after the material date but before a certificate has been supplied under paragraph (1), the person concerned—

- (a) claims a pension or lump sum under this Scheme;
- (b) claims a pension or lump sum under the Compensation Scheme; or
- (c) dies,

that paragraph ceases to apply.

(8) If an event mentioned in any sub paragraphs (a) to (c) of paragraph (7) occurs before the certificate in question has become conclusive, the certificate ceases to have effect and paragraph (3) ceases to apply.

(9) As soon as reasonably practicable after a certificate has become conclusive, the new authority shall give effect to it by crediting the person concerned with the pensionable service shown in the certificate.

(10) For the purposes of this rule, at least the former authority or the new authority must be a Scottish fire authority.

## 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

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(5) 1995 c. 26.

(6) S.I.1996/2788.

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“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(7) (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.

- (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),

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(7) 2000 c. 8, to which there are amendments not relevant to this Order.



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<sup>(8)</sup>; 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

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

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<sup>(8)</sup> 1974 c. 9.