

SCHEDULE 1

THE NEW FIREFIGHTERS' PENSION SCHEME (SCOTLAND)

PART 8

DETERMINATION OF QUESTIONS AND APPEALS

Interpretation of Part 8

1. In this Part—

“IQMP” means independent qualified medical practitioner; and

“rule 3 response” means an IQMP’s response under rule 3(2) of this Part and the provisions of Annex 2.

Determinations and decisions by Scottish fire authority

2.—(1) The question whether a person is entitled to any and, if so, what awards, shall be determined in the first instance by the authority.

(2) Subject to paragraph (6), before deciding, for the purpose of determining that question or any other question arising under this Scheme—

- (a) whether the person is disabled;
- (b) whether any disablement is likely to be permanent;
- (c) whether the person has become capable of performing any duties of the role from which the person retired on grounds of ill-health;
- (d) whether the person is or has become capable of undertaking regular employment; or
- (e) any other issue wholly or partly of a medical nature,

the authority shall obtain the written opinion of an IQMP selected by them.

(3) The IQMP must certify in the IQMP’s opinion under paragraph (2)—

- (a) that the IQMP has not previously advised, or given an opinion on, or otherwise been involved in, the particular case for which the opinion has been requested; and
- (b) that the IQMP is not acting, and has not at any time acted, as the representative of the employee, the authority, or any other party in relation to the same case.

(4) An IQMP’s opinion under paragraph (2) shall be binding on the authority unless it is superseded by his or her rule 3 response or the outcome of an appeal under rule 4 of this Part.

(5) Where, in consequence of an opinion given under paragraph (2), an employee has retired on grounds of ill-health, the IQMP who gave the opinion may, if so requested by the authority for the purposes of a review under rule 1(1) of Part 9, give a further opinion.

(6) If—

- (a) the person concerned wilfully or negligently fails to submit to medical examination by the IQMP selected by the authority; and
- (b) the IQMP is unable to give an opinion on the basis of the medical evidence available to the IQMP,

the authority may make a decision on the issue—

- (i) on such other medical evidence as they think fit; or

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(ii) without medical evidence.

(7) Within 14 days of making a decision or determination under this rule, the authority shall—

- (a) give written notice of it to the person concerned; and
- (b) in the case of a decision on an issue wholly or partly of a medical nature, unless paragraph (6) applies, supply the person with a copy of the opinion obtained under paragraph (2).

Review of medical opinion

3.—(1) Where—

- (a) new evidence on an issue wholly or partly of a medical nature is presented to the authority by a person in respect of whom a decision has been made under rule 2 of this Part;
- (b) the authority receive that evidence—
 - (i) where a copy of an opinion was supplied in accordance with paragraph (7) of rule 1 of this Part, within 28 days of the receipt by that person of that copy; and
 - (ii) in any other case, within 28 days of the receipt by that person of notice of the authority's decision; and
- (c) the authority and the person concerned agree that the IQMP should be given the opportunity of reviewing his or her opinion in the light of the new evidence,

the authority shall send a copy of the new evidence to the IQMP and invite the IQMP to reconsider the IQMP's opinion.

(2) An IQMP's response to an invitation under paragraph (1) shall be in writing.

(3) An IQMP's rule 3 response shall be binding on the authority unless it is superseded by the outcome of an appeal under rule 4 of this Part.

(4) As soon as reasonably practicable after receiving a rule 3 response, the authority shall reconsider their decision.

(5) Within 14 days of that reconsideration, the authority shall—

- (a) give written notice to the person concerned that they have confirmed their decision or revised their decision (as the case may be);
- (b) if they have revised their decision, supply the person with written notice of the revised decision; and
- (c) supply the person with a copy of the rule 3 response.

Appeals against decisions based on medical advice

4.—(1) A person who wishes to appeal against an authority's decision on an issue of a medical nature may do so to a Board of medical referees in accordance with the provisions of Annex 2.

(2) Subject to paragraph (3), where a decision—

- (a) is made with regard to an opinion obtained under rule 2(2) of this Part or medical evidence relied on as mentioned in rule 2(6) of this Part; or
- (b) is reconsidered under rule 3(4) of this Part with regard to a rule 3 response,

the authority shall, within 14 days of making, confirming or revising the decision (as the case may be), send to the person concerned the documents mentioned in paragraph (4).

(3) Nothing in paragraph (2) requires the supply of documents that have already been supplied under rule 2(7) or 3(5) of this Part.

(4) The documents are—

- (a) a copy of the opinion, rule 3 response or evidence (as the case may be);
- (b) an explanation of the procedure for appeals under this rule; and
- (c) a statement that, if the person wishes to appeal against the authority's decision on an issue of a medical nature, the person must give written notice to the authority, stating the person's name and address and the grounds of appeal, not later than 28 days after the person receives the last of the documents required to be supplied to the person under this paragraph, or within such longer period as the authority may allow.

Appeals on other issues

5. Where—

- (a) a person disagrees with an authority's determination under rule 2 of this Part; and
- (b) the person's disagreement does not involve an issue of a medical nature,

the person may, by notice in writing given to the authority within 28 days of receipt of the determination, require the authority to deal with the disagreement by means of the arrangements implemented by them pursuant to the requirements of section 50 of the Pensions Act 1995⁽¹⁾(resolution of disputes) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996⁽²⁾.

(1) 1995 c. 26. The arrangements that apply for the purposes of the Scheme take the form of a disputes resolution procedure. The procedure is set out in Fire Service Circular 2/1997 issued by the Home Office on 4th February 1997.

(2) S.I.1996/1270.