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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 160**

**FIRE SERVICES  
PENSIONS**

**The Firefighters' Pension Scheme (Scotland)  
Order 2007 Amendment Order 2008**

<i>Made</i>	- - - -	<i>21st April 2008</i>
<i>Laid before Parliament</i>		<i>22nd April 2008</i>
<i>Coming into force</i>	- -	<i>14th May 2008</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 34(1) to (4) and 60(2) of the Fire and Rescue Services Act 2004(1) and all other powers enabling them to do so.

In accordance with section 34(5) of that Act they have consulted with such persons as they considered appropriate.

**Citation, commencement, effect and extent**

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (Scotland) Order 2007 Amendment Order 2008.

(2) In this article “the Scheme” means the New Firefighters' Pension Scheme (Scotland) set out in Schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007(2).

(3) This Order comes into force on 14th May 2008, but, subject to paragraphs (4) and (5), has effect from 6th April 2006.

(4) The following provisions of the Schedule to this Order, and so much of article 2 as relates to those provisions have effect from 1st October 2006—

- (a) paragraph 3(b);
- (b) paragraph 4(e), in so far as it relates to new rule 7A of Part 3 of the Scheme (additional pension benefit: long service), and so much of new rule 7C (additional pension benefit; supplementary provisions) as relates to new rule 7A; and
- (c) paragraph 10(b)(iii).

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(1) 2004 c. 21; amended by s.89(1) of, and paragraph 24 of schedule 3 to, the [Fire \(Scotland\) Act 2005 \(asp 5\)](#). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc). Order 2005 (S.I.2005/849).

(2) [S.S.I. 2007/199](#).

(5) The following provisions of the Schedule to this Order, and so much of article 2 as relates to those provisions have effect from 1st July 2007—

(a) paragraph 4(e), in so far as it relates to new rule 7B of Part 3 of the Scheme (additional pension benefit: continual professional development), and so much of new rule 7C as relates to new rule 7B; and

(b) paragraph 10(a)(i) and (b)(i).

(6) This Order extends to Scotland only.

### **Amendment of the Firefighters Pension Scheme (Scotland) Order 2007**

2. Schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007 is amended in accordance with the Schedule to this Order.

St Andrew's House,  
Edinburgh  
21st April 2008

*JOHN SWINNEY*  
A member of the Scottish Executive

SCHEDULE

Article 2

AMENDMENT OF SCHEDULE 1 TO THE FIREFIGHTERS'  
PENSION SCHEME (SCOTLAND) ORDER 2007

1. In Part 1 (citation and interpretation), in rule 2(1) (interpretation) in the definition of “child”–
  - (a) for “scheme”, where it first appears, substitute “firefighter member, a deferred member or a pensioner”; and
  - (b) for “the scheme”, wherever it appears, substitute “that”.
2. In Part 2 (scheme membership, cessation and retirement), in rule 1 (scheme membership)–
  - (a) in paragraph (1)–
    - (i) at the end of sub-paragraph (b)(i), add the word “and”; and
    - (ii) omit sub-paragraph (b)(iii) and the word “and” immediately preceding that sub paragraph;
  - (b) in paragraph (5), in sub paragraphs (a), (b) and (c) after “firefighter member” insert “, deferred member or pensioner member”;
  - (c) for paragraph (6) substitute–

“(6) Subject to paragraph (8), for the purposes of paragraph (5), a firefighter member, deferred member or pensioner member (referred to in this paragraph as “the member”) may nominate a person (a “nominated partner”) who–

    - (a) has been living with the member, otherwise than as the member’s spouse or civil partner; and
    - (b) at the date on which the question of the nominated partner’s status in relation to the member falls to be considered–
      - (i) is not the spouse or civil partner of any other person;
      - (ii) is registered with the scheme administrator as the member’s nominated partner;
      - (iii) is financially dependent on the member, or is, with the member, in a state of mutual financial dependency; and
      - (iv) is in a long-term relationship with the member.”;
  - (d) in paragraph (7), in the definition of “long-term relationship”–
    - (i) for “the period of two years”, substitute “a period of at least 2 years”; and
    - (ii) after “firefighter member”, insert “, deferred member or pensioner member”;
  - (e) in paragraph (8), after “firefighter member”, insert “, deferred member or pensioner member”; and
  - (f) in paragraph (10), for “entitled to be a”, substitute “a firefighter”.
3. In Part 2 (scheme membership, cessation and retirement)–
  - (a) in rule 2 (eligibility conditions), for paragraph (1)(b) substitute–

“(b) has had transferred to the Scheme such transfer payment in respect of the firefighter member’s personal pension rights under a personal pension scheme as qualifies the firefighter member for benefits under the Scheme; or”; and
  - (b) in rule 5 (election not to make pension contributions), after paragraph (1) insert–

“(1A) A contributions election may not be made solely in respect of contributions relevant to additional pension benefit under rule 7B of Part 3 (additional pension benefit: continual professional development).”.

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4. In Part 3 (personal awards)–

(a) in rule 2 (award on ill-health retirement)–

(i) in paragraph (3), after “calculated”, insert “, subject to paragraph (4),”; and

(ii) after paragraph (3), add–

“(4) The amount of the higher tier ill-health pension of a firefighter member who, by virtue of rule 7, is entitled to 2 pensions, is whichever is the greater of–

(a) the sum of the firefighter member’s lower tier ill-health pension (calculated in accordance with paragraph 1 of Annex 1) and the higher tier ill health pension to which the firefighter member would be entitled if paragraph (3) were not subject to this paragraph (calculated in accordance with paragraph 2 or 3 of Annex 1); and

(b) the amount of the single pension to which the firefighter member would be entitled under paragraph (7) of rule 7,

and for the purposes of this paragraph it shall be assumed that the firefighter member had given the written notice referred to in paragraph (6) of rule 7.”;

(b) in rule 4(2) (cancellation of deferred pension) for “the service” substitute “the authority’s employment”;

(c) in rule 6(1) (pension on authority-initiated early retirement) for “the service” substitute “the authority’s employment”;

(d) in rule 7(4) (entitlement to 2 pensions) for “that day”, substitute “the last day of his membership of the Scheme”;

(e) after rule 7 insert–

**“Additional pension benefit: long service**

7A.—(1) A firefighter member who–

(a) in respect of a period that includes 30th June 2007 is entitled to a long service increment or an interim or transitional payment connected with long service; and

(b) on or after 1st October 2007–

(i) retires from employment as a regular firefighter; or

(ii) becomes entitled to a deferred pension under rule 3;

shall be credited with an amount of additional pension benefit.

(2) Subject to paragraph (3) and rule 7C(5), the amount of additional pension benefit is that found by applying the formula–

$$A+(B\times 2)60\times \pounds 990$$

where–

A is the number in years (counting part of a year as the appropriate fraction) by which the member’s pensionable service up to and including 30th June 2007 exceeds 15 but does not exceed 20; and

B is the number in years (counting part of a year as the appropriate fraction) by which the firefighter member’s pensionable service exceeds 20 but does not exceed 30.

(3) Where the Retail Prices Index for the month of September preceding the relevant tax year is higher than it was for September 2007, the amount of additional pension benefit (as calculated in accordance with paragraph (2) and, if applicable, this paragraph) shall be increased by the same percentage as the percentage increase in the Retail Prices Index.

(4) Any increase in accordance with paragraph (3) shall be applied with effect from the first Monday of the relevant tax year.

(5) In paragraph (3)–

“relevant tax year” means a tax year in relation to which–

(a) the amount of a firefighter member’s pension benefits is calculated for the purposes of this Scheme; and

(b) the firefighter member is not a pensioner member or a deferred member; and

“tax year” means the period of 12 months beginning with 6th April.

#### **Additional pension benefit: continual professional development**

**7B.—**(1) A firefighter member who, in any CPD year beginning with the year commencing on 1st July 2007, receives CPD payments, shall be credited with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraph (3) and rule 7C(3) and (5), the amount of additional pension benefit in respect of a CPD year shall be determined on 1st July immediately following the year in question in accordance with guidance and tables provided by the Scheme Actuary.

(3) Where the Retail Prices Index for the month of September preceding the relevant tax year is higher than it was for the month of September in the CPD year in question, the amount of additional pension benefit for that CPD year (as calculated in accordance with paragraph (2)) shall be increased by the same percentage as the percentage increase in the Retail Prices Index.

(4) Any increase in accordance with paragraph (3) shall be applied with effect from the first Monday of the relevant tax year.

(5) In this rule–

“CPD payments”, as regards a firefighter, means payments made to the firefighter member by the employing authority in respect of the firefighter member’s continual professional development;

“CPD year” means a period of 12 months beginning with 1st July in which a firefighter member is in receipt of CPD payments;

“relevant tax year” means a tax year in relation to which–

(a) the amount of a firefighter member’s pension benefits is calculated for the purposes of this Scheme; and

(b) the firefighter member is not a pensioner member or a deferred member,

and a tax year is a relevant tax year in relation to a particular CPD year if it is the tax year in which CPD payments for that CPD year are taken into account; and

“tax year” means the period of 12 months beginning with 6th April.

#### **Additional pension benefit: supplementary provisions**

**7C.—**(1) Subject to paragraphs (2) to (4), additional pension benefit under rule 7A or 7B is payable at normal retirement age.

(2) Where the firefighter member resigns or is dismissed or makes a contributions election, additional pension benefit is payable at normal benefit age; and paragraphs (4) to (6) of rule 3 (deferred pension) shall apply in relation to that benefit as if it were a deferred pension to which the firefighter member was entitled under that rule.

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(3) Where the firefighter member leaves employment on ill-health retirement, the firefighter member's additional pension benefit is payable immediately.

(4) Where the firefighter member takes authority-initiated early retirement or member-initiated early retirement, additional pension benefit is payable at the same time as the firefighter member's pension under rule 5 (pension on member-initiated early retirement), or, as the case may be, rule 6 (pension on authority-initiated early retirement).

(5) Where paragraph (4) applies, the firefighter member's additional pension benefit shall be actuarially reduced by applying to the amount ascertained in accordance with rule 7A or 7B (as the case may be) the appropriate actuarial reduction factor notified by the Scheme Actuary.

(6) For the purposes of rules 9 and 10 (commutation), additional pension benefit shall be treated as if it were a pension payable under this Part.

(7) For the purposes of determining the amount of any survivor's pension under Part 4 or pension credit under Part 6, additional pension benefit shall be treated as if it were a pension payable under this Part.”;

(f) in rule 8 (refund of aggregate pension contributions), in paragraph (1)(b), for “the service” substitute “the authority's employment”;

(g) in rule 9 (commutation: general)–

(i) after paragraph (8), insert–

“(8A) Paragraph (8B) applies where–

(a) notice of commutation has taken effect in relation to–

(i) a person's ill-health pension; and

(ii) the pension is withdrawn under rule 2(3) of Part 9 (consequences of review); or

(b) notice of commutation has taken effect in relation to–

(i) a person's deferred pension that has been paid before normal benefit age (“the early-paid pension”); and

(ii) the early-paid pension is withdrawn under rule 2(5) of Part 9.

(8B) If the person becomes entitled to another pension, other than an injury pension under the Compensation Scheme, for which the person is entitled to reckon the period of pensionable service that was reckonable for the purposes of the ill-health pension or the early-paid pension (as the case may be), the other pension shall be reduced by the amount by which the ill-health pension or the early-paid pension would have been reduced if it had not been withdrawn.

(8C) Where paragraph (8B) applies, and notice of commutation is given in respect of the other pension, the portion of it that may be commuted is reduced by the amount of the reduction under that paragraph.”; and

(ii) in paragraph (9)(b), for the words from “Part 7” to the end, substitute “Part 7A of the Compensation Scheme in an award to a reservist(3).”;

(h) in rule 10(1) (commutation: small pensions) omit “Scottish fire”; and

(i) in rule 11(4) (allocation of pension), for “Part 7 of the Compensation Scheme (awards to, or on death of, servicemen)”, substitute “Part 7A of the Compensation Scheme (reservists)”.

5. In Part 5 (awards on death)–

(3) Part 7A was inserted by S.S.I. 2007/198, paragraph 8 of the Schedule.

- (a) in rule 1 (death grant)–
    - (i) in paragraph (4), after “part-time”, insert “, retained or volunteer”;
    - (ii) in paragraph (8), for sub-paragraph (b), substitute–
      - “(b) dies without having paid in full the contributions due to the employing authority under that rule.”;
    - (iii) in paragraph (9), after “amount”, insert “or, where there has been partial payment, the balance”; and
  - (b) in rule 2(1) (post-retirement death grant)–
    - (i) in paragraph (i), after “period”, insert “(excluding any lump sum received by the pensioner on commutation under rule 9 of Part 3)”; and
    - (ii) in paragraph (ii), for “including”, substitute “excluding” and omit “or 10”.
8. In Part 6 (pension sharing on divorce)–
- (a) in rule 3 (commutation of part of pension credit benefits), for paragraph (2), substitute–
    - “(2) The commuted portion must not exceed one quarter of the amount of the pension.”;
  - (b) in rule 5(1)(b) (post-retirement death grant: pension credit members) for paragraph (ii), substitute–
    - “(ii) the instalments of pension that have been paid.”; and
  - (c) after rule 5 insert–

**“Death grants where pension credit member dies before pension credit benefits payable**

6.—(1) If a pension credit member dies before any benefits deriving from the member’s pension have become payable to the member under this Scheme, a lump sum death grant is to be paid to the member’s personal representatives.

(2) The amount of the grant shall be equal to the product of 2.25 and the annual rate of the pension to which the member would have been entitled under rule 1(2) of this Part.”.

7. In Part 7 (reservists)–
- (a) in rule 2 (continuity of employment)–
    - (i) in paragraph (2), for “pensionable”, substitute “additional”;
    - (ii) for paragraph (3) substitute–
      - “(3) For the purposes of calculating the amount of a reservist’s pension contributions under rule 3 of Chapter 1 of Part 11–
        - (a) where the reservist was a regular firefighter immediately before the forces period in question the pay that the reservist would have received from the reservist’s former authority during the reservist’s forces period shall be taken to be the reservist’s pay for that period (the reservist’s “notional regular pay”); and
        - (b) where the reservist was a retained or volunteer firefighter immediately before the forces period in question, the amount determined by multiplying the average of the reservist’s pensionable pay for the period of 12 months that immediately preceded the reservist’s forces period (expressed as a daily rate) by the number of days in the reservist’s forces period shall be taken to be the reservist’s pay for that period (the reservist’s “notional retained or volunteer pay”);

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but this is subject to paragraph (4).

(4) In respect of any period during a reservist's forces period in which the aggregate of—

(a) the reservist's actual pay; and

(b) any payments that the reservist receives under section 4 of the 1996 Act, is less than the reservist's notional regular pay or, as the case may be, the reservist's notional retained or volunteer pay for that first-mentioned period, the reservist shall be treated as having no pensionable pay (and, accordingly, no liability to make pension contributions)<sup>(4)</sup>.”; and

(b) in rule 3 (awards on death or permanent disablement), for paragraph (2) substitute—

“(2) Where a reservist dies—

(a) during the reservist's forces period; or

(b) while receiving a pension under paragraph (1),

an award shall be payable in accordance with paragraphs (3) and (4).”.

**8.** In Part 8 (determination of questions and appeals), in rule 3(1)(b)(i) (review of medical opinion) for “rule 1”, substitute “rule 2”.

**9.** In Part 10 (qualifying service and pensionable service)—

(a) in rule 2 (reckoning of pensionable service)—

(i) in paragraph (1)(d)—

(aa) for “an”, where it first appears, substitute “a lower tier”; and

(bb) omit “, other than any period included by way of enhancement,”; and

(ii) in paragraph (6)(b), after “under”, insert “rule 1 of”; and

(b) in rule 4 (reckoning of unpaid period of absence)—

(i) in paragraph (1), for “Part 11”, substitute “Parts 11 and 13”; and

(ii) in paragraph (2), for “unpaid leave”, substitute “absence without pay”.

**10.** In Part 11 (pensionable pay, pension contributions and purchase of additional service)—

(a) in rule 1 (pensionable pay)—

(i) in paragraph (1)(a), for the words from “other than” to the end substitute “except any allowance or emoluments paid to the firefighter member on a temporary basis, other than payments in respect of the firefighter member's continual professional development (see rule 7B of Part 3); and”; and

(ii) in paragraph (5), for “December” (in both places), substitute “September”;

(b) in rule 2 (final pensionable pay)—

(i) after paragraph (1), insert—

“(1A) Where the pensionable pay received by a firefighter in respect of the 365 pensionable pay days referred to in paragraph (1) includes an amount in respect of the firefighter member's continual professional development (see rule 7B of Part 3), that amount shall be disregarded for the purpose of ascertaining the firefighter member's final pensionable pay.”;

(ii) in paragraph (2)(a)(i), omit the words after “higher rate” to the end;

<sup>(4)</sup> See, as to pension payments, regulation 5 of the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (S.I. 2005/859).

(iii) after paragraph (5) insert–

“(5A) The final pensionable pay of a firefighter member who–

- (a) is entitled to a long service increment; and
- (b) retires after 30th September 2006 and before 1st October 2007, or becomes entitled to a deferred pension under rule 3 of Part 3 within that period,

shall be calculated–

- (i) as if the firefighter member’s long service increment had accrued at the rate of £990 per annum (disregarding the reduction that had effect in relation to times on and after 1st October 2006); and
- (ii) disregarding any LS-related payment.

(5B) The final pensionable pay of a firefighter member who–

- (a) retires or becomes entitled to a deferred pension on or after 1st October 2007; and
- (b) is entitled to additional pension benefit under rule 7A of Part 3 (additional pension benefit: long service,

shall be calculated taking into account whichever of the following paragraphs yields the greater amount–

- (i) the calculation is made with regard to the amount credited to the firefighter member under rule 7A of Part 3 but without regard to any long service increment and any LS-related payment; or
- (ii) the calculation is made with regard to the firefighter member’s long service increment and any LS-related payment, but without regard to the amount credited to the firefighter member under rule 7A of Part 3.

(5C) In paragraphs (5A) and (5B) “LS-related payment” means an interim or transitional payment connected with a firefighter member’s long service.”; and

(c) for paragraph (6), substitute–

“(6) The final pensionable pay of a retained or volunteer firefighter shall be determined by reference to the final pensionable pay of a regular firefighter employed in a similar role and with equivalent qualifying service.”.

**11.** In Part 12 (transfers into and out of the Scheme)–

(a) in rule 4(6)(a) (applications for transfer value payments)–

- (i) for “eligible”, substitute “, or is entitled”; and
- (ii) omit “firefighter”;

(b) in rule 9(2)(a) (procedure for applications under rule 8) omit “, or such longer period as the authority may allow”;

(c) in rule 10(3)(acceptance of transfer value payments) omit sub-paragraph (a);

(d) in rule 12 (transfer of payments and pension history between fire authorities)–

(i) in paragraph (1)–

- (aa) at the end of sub-paragraph (a), insert “and”; and
- (bb) omit sub-paragraph (c) and the word “; and” immediately preceding that sub paragraph; and

(ii) after “pensionable service”, insert “and qualifying service”.

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12. In Part 13(1) (payment of awards), in rule 1 (authorities responsible for payment of awards) omit “regular”.

13. In Annex 1 (ill-health pensions), in paragraph 1–

(a) in sub-paragraph (2)–

(i) after “person”, insert “who is a retained or volunteer firefighter”; and

(ii) before “reference pay”, insert “final”; and

(b) in sub-paragraph (3)–

(i) after “retained” where it first appears, insert “or volunteer”; and

(ii) for “the retained” substitute “that”.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Firefighters' Pension Scheme (set out in the Schedule to the Firefighter's Pension Scheme (Scotland) Order 2007) (“the new Scheme”).

Except as mentioned below, the Order has effect from 6th April 2006, which is the date from which the Scheme has effect. Power to give the Order retrospective effect is conferred by section 34 of the Fire and Rescue Services Act 2004.

Amendments, except those made by paragraphs 3(b), 4(e) and 10(a)(i) and (b)(i) and (iii) of the Schedule, correct errors, including errors of omission. Some of those correcting amendments have resulted in the insertion of new rules or paragraphs. In particular–

the amendment made by paragraph 4(a) inserts a new paragraph (4) in rule 2 of Part 3 (award on ill-health retirement) to provide for the calculation of ill-health awards payable in the case of a firefighter member who is entitled to two pensions by virtue of rule 7 of that Part;

the amendment made by paragraph 4(g)(i) inserts new paragraphs (8A) to (8C) in rule 9 of Part 3 (commutation: general) to provide for account to be taken of any earlier commutation. This is to ensure that any subsequent pension and lump sum is reduced accordingly where an ill-health pension or a deferred pension that has been paid early is terminated under Part 9;

the amendment made by paragraph 6(c) inserts new rule 6 in Part 6 (pension sharing on divorce) which allows for the payment of a lump sum death grant where a pension credit member dies before any benefits under the Scheme become payable. The grant is to be paid to the deceased member's personal representatives.

The amendments made by paragraphs 3(b), 4(e) and 10(a)(i) and (b)(i) and (iii) of the Schedule reflect policy changes since the introduction of the Scheme. Those made by paragraphs 4(e), partially, and 10(b)(iii) have effect from 1st October 2006. The others have effect from 1st July 2007.

The amendment made by paragraph 4(e) of the Schedule, in so far as it inserts new rule 7A, and so much of new rule 7C as relates to rule 7A, into Part 3 of the Scheme, relates to the discontinuance, with effect from the end of June 2007, of long service increments payable to firefighters who have at least 15 years' continuous service at that point. The amount of the increment, which was pensionable, was frozen, with effect from 7th November 2003, at the annual rate of £990 and reduced, with effect from 1st October 2006, to an annual rate of £495 (with some interim and transitional payments). The

effect of the amendment is that a firefighter member who was entitled to a long service increment (or a compensatory interim or transitional payment)) in respect of a period including 30th June 2007 and who either retires or becomes entitled to a deferred pension on or after 1st October 2007, will be entitled to an additional pension credit in respect of long service, calculated without regard to the reduction in the annual rate.

The effect of the related amendment made by paragraph 10(b)(iii) of the Schedule, which inserts new rule 2(5A) into Part 11 of the Scheme is that the pension of a firefighter member who is entitled to additional pension benefit under new rule 7A of Part 3 will be calculated either with regard to the amount of additional pension benefit credited to him and without regard to his actual long service increment (and any compensatory interim or transitional payment) or with regard to his actual long service increment (and any compensatory interim or transitional payment) and without regard to the amount credited to him under new rule 7A of Part 3, according to whichever rule produces the more beneficial result for the firefighter.

The amendment made by paragraph 4(e) of the Schedule, in so far as it inserts new rule 7B, and so much of new rule 7C as relates to rule 7B, into Part 3 of the Scheme and the amendment made by paragraph 4(e) are consequential on the introduction by the National Joint Council for Local Authority Fire and Rescue Services, with effect from 1st July 2007, of a new scheme of payments in respect of continual professional development. Under that scheme the payments are subject to annual review and therefore temporary in nature. For that reason, they would not ordinarily be regarded as pensionable for the purposes of the Scheme. However, the amendment made by paragraph 10(a)(i) has the effect of making the payments part of pensionable pay. This attracts, among other provisions, those of rule 3 of Part 11 of the Scheme, which require the making of pension contributions in respect of pensionable pay. But the amendment made by paragraph 10(b)(i) provides for payments in respect of continual professional development to be disregarded for the purposes of determining the amount of final pensionable pay (on which the amount of the ordinary pension is based).

The amendment to rule 2(5) in Part 2 of the Scheme, made by paragraph 3(b) of the Schedule to this Order, ensures that a person cannot make an election to discontinue pension contributions only in respect of additional pension benefit under rule 7B.

A full impact assessment has not been produced for this Order, as no impact on the private or voluntary sectors is foreseen.