

2009 No. 184

PENSIONS

The Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2009

<i>Made</i> - - - -	<i>14th May 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>15th May 2009</i>
<i>Coming into force</i> - -	<i>26th June 2009</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 26(1) to (5) of the Fire Services Act 1947(a), sections 12 and 16 of the Superannuation Act 1972(b) and all other powers enabling them to do so.

Citation, commencement, effect and extent

1.—(1) This Order may be cited as the Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2009.

(2) This Order comes into force on 26th June 2009 and, subject to paragraph (3), has effect from 6th April 2009(c).

(3) (a) Article 3 has effect from 6th April 2006; and

(b) Paragraph 2 of the Schedule, in so far as required to give effect to paragraph 3 of the Schedule, and paragraph 3 of the Schedule have effect from 12th November 1979 to 5th April 2009.

(4) This Order extends to Scotland only.

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- (a) 1947 c.41 ("the 1947 Act"); repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) of section 26 continue to have effect for the purposes of the scheme established under that section as the Firemen's Pension Scheme and set out in the Firemen's Pension Scheme Order 1992 (S.I. 1992/129), by article 3 of the Firefighters' Pension Scheme (England and Scotland) Order 2004 (S.I. 2004/2306). The name of the scheme was changed to the Firefighters' Pension Scheme by article 4(1) of S.I. 2004/2306. Section 26 of the 1947 Act was amended by section 1 of the Fire Services Act 1951 (c.27), section 42 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65), section 33 of, and Schedule 3 to, the Theft Act 1968 (c.60), sections 16 and 29 of, and Schedule 8 to, the Superannuation Act 1972 (c.11), section 100 of, and Schedule 27 to, the Social Security Act 1973 (c.38), section 1 of, and Schedule 1 to, the Social Security (Consequential Provisions) Act 1975 (c.18), section 32 of the Magistrates' Courts Act 1980 (c.43), article 2 of the Social Security (Modification of Fire Services Act 1947) Order 1976 (S.I. 1976/551), section 1 of the Police and Firemen's Pensions Act 1997 (c.52) and section 256 of, and Schedule 25 to, the Civil Partnership Act 2004 (c.33). 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 1999, article 2 and Schedule 1 (S.I. 1999/1750) and the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006, article 2 and the Schedule (S.I. 2006/304).
- (b) 1972 c.11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). 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 1999, article 2 and Schedule 1 (S.I. 1999/1750). Section 16 applies section 12 with the necessary modifications to orders under section 26 of the Fire Services Act 1947. Section 16 is repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21) but continues to have effect, for the purposes of the Firefighters' Pension Scheme, by virtue of article 3 of S.I. 2004/2306.
- (c) Retrospective effect is permitted by section 12 of the Superannuation Act 1972 as applied by section 16 of that Act.

Amendment of the Firemen's Pension Scheme Order 1992

2. Schedule 2 to the Firemen's Pension Scheme Order 1992(a) as it has effect in Scotland is amended in accordance with the Schedule to this Order.

Amendment of the Firefighters' Compensation Scheme (Scotland) Order 2006

3. In paragraph 2(1) of Part I of Schedule 1 to Part 2 of the Firefighters' Compensation Scheme (Scotland) Order 2006(b) (calculation of awards for full-time service), from "any other pension referable to" to the end substitute—

"any—

- (a) other pension referable to the person's service as a firefighter (including, if rule 4 of Part 10 applies in that person's case, the aggregate of the pension to which the person is entitled under rule B3 of the 1992 Scheme or rule 2 of Part 3 of the 2006 Scheme and the amount of the difference referred to in rule 4(3) of Part 10);
- (b) GMP-related payment made under rule P4 (authorisation of GMP-related payments) of the Pension Scheme; and
- (c) Increased Pension Entitlement calculated by reference to rule P5 (increased pension entitlement) of the Pension Scheme".

JOHN SWINNEY

A member of the Scottish Executive

St Andrew's House,
Edinburgh
14th May 2009

(a) S.I. 1992/129; amended by S.I. 1997/2309 and 2851, 1998/1010, 2001/3649 and 2005/3228 and S.S.I. 2001/310, 2004/385, 2005/566, 2006/342, 2007/200 and 2008/161. The Firemen's Pension Scheme was made under section 26 of the Fire Services Act 1947 (c.41). That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21). The Scheme and subsections (1) to (5) of section 26 were continued in force by S.I. 2004/2306. The name of the scheme was changed to the Firefighters' Pension Scheme by article 4(1) of S.I. 2004/2306.

(b) S.S.I. 2006/338, amended by S.S.I. 2007/198.

SCHEDULE

Article 2

Amendment of Schedule 2 to the Firemen's Pension Scheme Order 1992

1.—(1) Rule E8 (increase of pensions and allowances during first 13 weeks) is amended as follows.

(2) For paragraph (3)(b) substitute—

“(b) where paragraph (1)(b) applies—

- (i) the weekly amount of the deceased's pension together with any increase in it under the Pensions (Increase) Act 1971; and
- (ii) the weekly amount of any Increased Pension Entitlement (within the meaning of rule P5), if applicable.”.

2. After rule N19 (application of rules of this Scheme to pension credit members etc), insert—

“PART P

INCREASED PENSION ENTITLEMENT

Interpretation

P1.—(1) In this Part—

“the 1971 Act” means the Pensions (Increase) Act 1971(**a**);

“basic rate” has the meaning given by section 17(1) of the 1971 Act;

“the existing Orders” means the Pensions Increase (Review) Order 1979(**b**) the Pensions Increase (Review) Order 1980(**c**), the Pensions Increase (Review) Order 1981(**d**), the Pensions Increase (Review) Order 1982(**e**), the Pensions Increase (Review) Order 1983(**f**), the Pensions Increase (Review) Order 1984(**g**), the Pensions Increase (Review) Order 1985(**h**), the Pensions Increase (Review) Order 1986(**i**), the Pensions Increase (Review) Order 1987(**j**), the Pensions Increase (Review) Order 1988(**k**), the Pensions Increase (Review) Order 1989(**l**), the Pensions Increase (Review) Order 1990(**m**), the Pensions Increase (Review) Order 1991(**n**), the Pensions Increase (Review) Order 1992(**o**), the Pensions Increase (Review) Order 1993(**p**), the Pensions Increase (Review) Order 1994(**q**), the Pensions Increase (Review) Order 1995(**r**), the Pensions Increase (Review) Order 1996(**s**), the Pensions Increase (Review) Order

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- (a) 1971 c.56.
 - (b) S.I. 1979/1047.
 - (c) S.I. 1980/1302.
 - (d) S.I. 1981/1217.
 - (e) S.I. 1982/1178.
 - (f) S.I. 1983/1264.
 - (g) S.I. 1984/1307.
 - (h) S.I. 1985/1575.
 - (i) S.I. 1986/1116.
 - (j) S.I. 1987/130.
 - (k) S.I. 1988/217.
 - (l) S.I. 1989/477.
 - (m) S.I. 1990/483.
 - (n) S.I. 1991/684.
 - (o) S.I. 1992/198.
 - (p) S.I. 1993/779.
 - (q) S.I. 1994/776.
 - (r) S.I. 1995/708.
 - (s) S.I. 1996/800.

1997(a), the Pensions Increase (Review) Order 1998(b), the Pensions Increase (Review) Order 1999(c), the Pensions Increase (Review) Order 2000(d), the Pensions Increase (Review) Order 2001(e), the Pensions Increase (Review) Order 2002(f), the Pensions Increase (Review) Order 2003(g), the Pensions Increase (Review) Order 2004(h), the Pensions Increase (Review) Order 2005(i), the Pensions Increase (Review) Order 2006(j), the Pensions Increase (Review) Order 2007(k), the Pensions Increase (Review) Order 2008(l) and the Pensions Increase (Review) Order 2009(m); and “existing Order” shall be construed accordingly;

“guaranteed minimum pension” has the same meaning as in section 181(1) of the Pension Schemes Act 1993 (n);

“pension authority” has the same meaning as given by section 7(1) of the 1971 Act;

“relevant fire and rescue authority” means, in relation to a person, the authority responsible for payment of that person’s pension as determined by rule L1 (authorities responsible for payment of awards) of the Scheme; and

“tax year” means a period of 12 months beginning on 6th April and ending on the following 5th April.

Application of Part P

P2. This Part applies to a person who—

- (a) was entitled to a pension under this Scheme on 5th April 2009;
- (b) was entitled to a guaranteed minimum pension(o) on that date; and
- (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received a GMP-related payment.

GMP-related payment

P3.—(1) Where, in any tax year, the relevant fire and rescue authority has—

- (a) increased the annual rate of an official pension in accordance with the existing Order relevant to that tax year; but
- (b) the amount by reference to which that increase is calculated is not reduced by the GMP-related reduction,

the GMP-related payment for that tax year is the amount equal to the GMP-related reduction in that tax year.

(2) The GMP-related reduction for any tax year is the reduction in the amount by reference to which any increase in the rate of an official pension is calculated by the amount calculated in accordance with—

- (a) the existing Order for that tax year;

(a) S.I. 1997/634.
(b) S.I. 1998/503.
(c) S.I. 1999/522.
(d) S.I. 2000/672.
(e) S.I. 2001/664.
(f) S.I. 2002/669.
(g) S.I. 2003/681.
(h) S.I. 2004/758.
(i) S.I. 2005/858.
(j) S.I. 2006/741.
(k) S.I. 2007/801.
(l) S.I. 2008/711.
(m) S.I. 2009/692.
(n) 1993 (c.48).
(o) See section 17 of the Pension Schemes Act 1993 (c.48).

- (b) section 59(5) and (5ZA) of the Social Security Pensions Act 1975^(a), as modified by section 59A of that Act, as these sections have effect in relation to that tax year; and
- (c) any direction made under section 59A of that Act which has effect in relation to that tax year.”.

3. After rule P3 (payments) insert—

“Authorisation of payment of GMP-related payments

P4.—(1) The relevant fire and rescue authority may pay GMP-related payments to—

- (a) a person to whom this Part applies; and
- (b) a deceased entitled member.

(2) Where a relevant fire and rescue authority has paid GMP-related payments before 6th April 2009, the authority may not recover those payments after 6th April 2009.

(3) In this rule, a deceased entitled member is a person who—

- (a) at the date of his death was entitled to a pension under this Scheme;
- (b) at that date was entitled to a guaranteed minimum pension; and
- (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received a GMP-related payment.”.

4. After rule P4 (authorisation of payment of GMP-related payments) insert—

“Increased Pension Entitlement

P5.—(1) Subject to paragraphs (3) and (4), a person to whom this Part applies is entitled to an Increased Pension Entitlement calculated in accordance with paragraph (2).

(2) The Increased Pension Entitlement is an amount equal to the basic rate of a pension which, if that pension had been increased by the amount of any increase under section 1 of the 1971 Act and the existing Orders, would result in an annual amount being paid to the person in relation to the tax year 2009–10 which equals the Protected Sum.

(3) Where the person’s entitlement to a pension ceases under this Scheme, the person is not entitled to receive any payment of an amount of the Increased Pension Entitlement in respect of any period after the date on which the entitlement to that pension ceases.

(4) Where the person’s pension, or any proportion of the pension is forfeited under this Scheme, either permanently or temporarily, the same proportion of the Increased Pension Entitlement is forfeited for the same period.

(5) For the purposes of paragraph (2) of this rule “pension” has the meaning given by section 8 of the 1971 Act and begins at the time stated in section 8(2) of that Act.

(6) In this regulation—

- (a) “Protected Sum” is the amount equal to the annual amount of the GMP-related payment for the tax year 2009–10; and
- (b) the annual amount of the GMP-related payment for the tax year 2009–10 is the amount that the relevant fire and rescue authority would have paid to the persons in the tax year 2009–10 if that authority had, in relation to that complete tax year, applied the existing Orders as if the person was not entitled to a guaranteed minimum pension.

(a) 1975 (c.60).

Increased Pension Entitlement – further provision

P6.—(1) An Increased Pension Entitlement is payable by the relevant fire and rescue authority.

(2) An Increased Pension Entitlement is payable for life and shall be discharged by payments at such reasonable intervals as the relevant fire and rescue authority may, in their discretion, determine except that payment on account of an Increased Pension Entitlement may be delayed, in whole or in part, pending the determination of any question as to the liability of the relevant fire and rescue authority in respect thereof, including any question as to the continuance of that liability.

(3) Neither the Increased Pension Entitlement nor any proportion of it may be commuted for a lump sum.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters' Pension Scheme Order 1992 (S.I. 1992/129) ("the 1992 Order") to authorise the payments made by fire and rescue authorities between 12th November 1979 and 5th April 2009 of annual increases to certain persons who are entitled to a guaranteed minimum pension. They also introduce a new entitlement to an Increased Pension Entitlement ("IPE").

Paragraphs 2, 3 and 4 of the Schedule to this Order introduce a new Part P (Increased Pension Entitlement) into Schedule 2 of the 1992 Order. New rule P2 provides that Part P applies only to persons who, on 5th April 2009, were entitled to a pension (under the scheme established by the 1992 Order ("the 1992 scheme")) and to a guaranteed minimum pension ("GMP"), and who have in any tax year since entitlement to that GMP began, received a GMP-related payment.

Section 5 of the Pensions (Increase) Act 1971 ("the 1971 Act") requires pensions authorities to increase annually pensions to which that Act applies. The 1971 Act is modified by sections 59 and 59A of the Social Security Pensions Act 1975 ("the 1975 Act"). Pensions authorities pay annual increases on pensions in accordance with the annual Pensions (Increase) Review Orders ("the annual PIROs") which are made under section 59 of the 1975 Act. The combined effect of section 59(5) of the 1975 Act, Directions by the Treasury made under section 59A of the 1975 Act and relevant provisions of the annual PIROs is that the amount of increase payable by a pensions authority under the annual PIROs is reduced by the amount equal to the rate of the GMP which is paid by the Department of Work and Pensions ("DWP"). Affected pensioners (to whom Part P applies) have received duplicate payments, from both DWP and the fire and rescue authority.

New rule P3 defines a GMP-related payment as a payment made by the fire and rescue authority applying the annual PIROs as if no reduction fell to be made in relation to the person's GMP.

New rule P4 authorises the past payment of GMP-related payments. This provision has effect from 12th November 1979 until 5th April 2009. Paragraph (2) provides that where a fire and rescue authority has made such payments to an affected pensioner, it may not recover them.

New rule P5 sets out the entitlement to IPE. Although entitlement to IPE begins on 6th April 2009, the effect of the 1971 Act is that annual increases must apply to IPE from the beginning date of the pension (usually the day after the person's date of retirement). IPE is therefore defined as the amount a pension would have to be at the beginning date of a pension in order for that amount, after annual increases have been applied under the annual PIROs, to equal the GMP-related payment for the tax year 2009-2010. The effect is that for the tax year 2009-10 the IPE that the affected pensioner will receive is equal to the GMP-related payment he or she would have received were the fire and rescue authority to apply the 2009 PIRO as if no reduction fell to be made in relation to the person's GMP. Thereafter, IPE will continue to be increased in line with the annual PIROs although future PIROs will no longer be applied as if no reduction fell to be made.

Paragraph 1 of the Schedule to this Order amends rule E8 of Schedule 2 to the 1992 Order so that the IPE is included in the increase paid for the first 13 weeks following the death of a member who is entitled to an IPE.

Article 3 of this Order amends paragraph 2(1) of Part 1 of Schedule 1 to Part 2 of the Firefighters' Compensation Scheme (Scotland) Order 2006 (S.S.I. 2006/338) so that any reduction of an injury award which is calculated by reference to pensions payable under rule B3 of the 1992 scheme or rule 2 of Part 3 of the 2006 scheme also takes an IPE entitlement into account.

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