

2014 No. 109

FIRE SERVICES

PENSIONS

**The Firefighters' Compensation Scheme (Scotland) Amendment
Order 2014**

<i>Made</i> - - - -	<i>22nd April 2014</i>
<i>Laid before the Scottish Parliament</i>	<i>24th April 2014</i>
<i>Coming into force</i> - -	<i>23rd May 2014</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(a) 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 interpretation

1.—(1) This Order may be cited as the Firefighters' Compensation Scheme (Scotland) Amendment Order 2014.

(2) This Order comes into force on 23rd May 2014, but the amendments made by the following provisions in the Schedule have effect from 1st April 2006—

- (a) in paragraph 1, sub-paragraphs (a), (b), (c)(iii), (d)(ii) and (e);
- (b) in paragraph 2, sub-paragraphs (a) and (c);
- (c) paragraphs 3 to 5;
- (d) in paragraph 7, sub-paragraphs (a)(ii) and (b);
- (e) paragraphs 8 to 11.

(3) In this Order—

“the Compensation Scheme” means the Scheme set out in Schedule 1 to the Firefighters' Compensation Scheme (Scotland) Order 2006(b);

“retained firefighter” has the meaning given in the Compensation Scheme (as amended by this Order).

(a) 2004 c.21; section 34 was relevantly amended by S.I. 2013/602, Schedule 1, paragraph 7(2); 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).

(b) S.S.I. 2006/338, amended by S.S.I. 2007/198 and S.S.I. 2013/186.

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

2. Schedule 1 to the Firefighters' Compensation Scheme (Scotland) Order 2006 is amended in accordance with the Schedule to this Order.

Transitional provisions

3.—(1) The amendments made by article 2 and paragraphs 6 (award for or in relation to a retained or volunteer firefighter) and 7 (prevention of duplication) of the Schedule do not have effect in relation to a person in respect of whom a determination or decision relevant to whether death or permanent disablement has been occasioned by a qualifying injury (coming within the meaning of rule 7 of Part 1 of the Compensation Scheme) has been made before the coming into force of this Order.

(2) The amendments made by article 2 and paragraphs 6 and 7 of the Schedule do not have effect in relation to a person who has been in a continuous employment as a retained firefighter since 5th April 2006 and has sustained an injury in the performance of duties as a firefighter before the coming into force of this Order where it is subsequently determined that that injury is a qualifying injury (coming within the meaning of rule 7 of Part 1 of the Compensation Scheme) and that the person is permanently disabled as a result of that injury.

(3) In a case to which paragraph (1) or (2) applies and in relation to the provisions mentioned in that paragraph, the provisions of the Compensation Scheme, in the form in which they existed immediately before the coming into force of this Order, continue to have effect in relation to such a person.

JOHN SWINNEY
A member of the Scottish Government

St Andrew's House,
Edinburgh
22nd April 2014

SCHEDULE

Article 2

Amendments to the Firefighters' Compensation Scheme (Scotland) 2006

Amendments to Part 1

1. In Part 1 (general provisions)—

(a) in rule 2(1) (interpretation)—

(i) for the definition of “pensionable pay”, substitute—

““pensionable pay”—

(a) in relation to a person who is a member of the 1992 Scheme, shall be construed in accordance with rule G1 of that Scheme;

(b) in relation to a person who is a member of the 2006 Scheme, shall be construed in accordance with rule 1 of Part 11 of that Scheme;

(c) in the case of a person who is not a member of either scheme, shall be construed in accordance with rule 11 of this Part”;

(ii) after the definition of “regular firefighter”, insert—

““relevant service”, except where the context otherwise requires, means service which either was, or would but for an election under rule G3 of the 1992 Scheme or rule 5 of Part 2 of the 2006 Scheme or a failure to elect under rule G2A of the 1992 Scheme or rule 4 of Part 11 of the 2006 have been, reckonable as pensionable service;”

(iii) for the definitions of “retained firefighter” and “retained or volunteer firefighter”, substitute—

““retained firefighter” means a person who is employed by the authority—

(a) as a retained firefighter, but not as a regular firefighter or a volunteer firefighter;

(b) on terms under which that person is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to that person’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting);

(c) otherwise than in a temporary capacity; and

(d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders received;”

(iv) after the definition of “surviving spouse”, insert—

““volunteer firefighter” means a person who is employed by an authority—

(a) as a volunteer firefighter but not as a regular firefighter or retained firefighter;

(b) on terms under which that person is, or may be, required to engage in fire-fighting or may be required to perform other duties appropriate to that person’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting);

(c) otherwise than in a temporary capacity, and

(d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders received.”;

(b) in rule 3—

(i) for the heading, substitute “Exclusive application to regular and retained firefighters”;

(ii) in paragraph (1), for “regular firefighters” substitute “regular and retained firefighters”;

(iii) in paragraph (2), for “regular firefighter” substitute “regular or retained firefighter”;

- (c) in rule 6 (reckoning of service for purposes of awards)—
 - (i) in paragraph (2), for “regular firefighter” in each place where that phrase occurs substitute “regular or retained firefighter”;
 - (ii) in paragraph (3), for “retained or volunteer firefighter” substitute “volunteer firefighter”;
 - (iii) in paragraph (3), for the words from “Part 3” to the end substitute “Part 3 and except where the context otherwise requires, any period of service as a retained firefighter or as a part-time employee of a fire and rescue authority shall be treated as service as a whole-time employee of a fire and rescue authority when calculating a person’s relevant service”;
- (d) in rule 7 (qualifying injury)—
 - (i) in paragraph (1)(b), omit “retained or”;
 - (ii) in paragraph (1), for “regular firefighter” substitute “regular or retained firefighter”;
 - (iii) in paragraph (3), omit “and paragraph (4) of rule 3 of Part 10” and “retained or”;
- (e) after rule 10, insert—

“Determining pensionable pay in certain cases

11.—(1) Where an award is to be calculated in respect of a person who is not, or was not, a member of the 1992 Scheme or the 2006 Scheme, the definition of “pensionable pay” is to be construed in accordance with—

- (a) rule G1 of the 1992 Scheme in the case of a person who elected not to pay pension contributions under rule G3 of that Scheme;
- (b) rule 1 of Part 11 of the 2006 Scheme in the case of a person who elected not to pay pension contributions under rule 5 of Part 2 of that Scheme;
- (c) rule 1 of Part 11 of the 2006 Scheme, where an election had been made at different times under both schemes.

(2) Where, in accordance with paragraph (1), the definition of pensionable pay is to be construed in the case of a person in accordance with the 1992 Scheme, that person’s award is to be calculated on the basis of the pay which would have been average pensionable pay if the person had not made an election.

(3) Where, in accordance with paragraph (1), the definition of pensionable pay is to be construed in the case of a person in accordance with the 2006 Scheme, that person’s award is to be calculated on the basis of the pay which would have been final pensionable pay if the person had not made an election.

(4) For the purposes of calculating a retained firefighter’s pensionable pay (whether or not that person is or was a member of the 2006 Scheme), the authority shall determine the period of the person’s service from its records.

(5) Where the authority is not able to determine the period of the person’s service from its records, the person, or any other person entitled to an award under this Scheme, may provide the authority with documents to assist it to determine the person’s period of service.

(6) Where the authority is not able to determine the period of the person’s service and the authority does not hold records of that person’s pay for that period, and the necessary documents cannot be provided in accordance with paragraph (5), the authority may estimate the person’s pensionable pay for that period from the records which it holds and may in particular estimate this on the basis of the average of recent pay data for retained firefighters at the same station or stations as that or those at which the person was based for the relevant period.”.

Amendments to Part 2

2. In Part 2 (injury awards and duty-related compensation), in rule 2 (part-time, retained and volunteer firefighters)—

- (a) in paragraph (1), for “this Part” substitute “rule 1” and omit “, by virtue of which that person’s pensionable service is reckonable”;
- (b) in paragraph (2)(a), omit “retained or”;
- (c) in paragraph (2)(b), for “this Part” substitute “rule 1”;
- (d) after paragraph (2), insert—
 - “(3) Where a person—
 - (a) is employed as a retained firefighter; and
 - (b) is entitled to an award under rule 1,

the award is to be calculated in accordance with Part 3 of Schedule 1.”.

Amendments to Part 3

3. In Part 3 (awards on death: spouses and civil partners)—

- (a) in rule 1 (special award for spouse or civil partner), in paragraphs (1) and (3) for “regular firefighter” in each place where it occurs substitute “regular or retained firefighter”;
- (b) in rule 2 (augmented award for spouse or civil partner), in paragraph (1) for “regular firefighter” substitute “regular or retained firefighter”.

Amendments to Part 4

4. In Part 4 (awards on death: children)—

- (a) in rule 1(1) (child’s special allowance) and rule 2 (1) (child’s special gratuity), for “regular firefighter” in each place where it occurs substitute “regular or retained firefighter”;
- (b) in rule 3(1) (child’s special allowance), for “a regular firefighter” substitute “either a regular or retained firefighter”.

Amendments to Part 5

5. In Part 5 (awards on death: additional provisions), in rule 1(1) (adult dependent relative’s special pension), rule 2(1)(a) (dependent relative’s gratuity) and rule 5(1)(a) (increase of pensions and allowances during first 13 weeks) for “regular firefighter” in each place where it occurs substitute “regular or retained firefighter”.

Amendments to Part 8

6. In Part 8 (special cases), in rule 2 (award for or in relation to a retained or volunteer firefighter)—

- (a) in the heading to the rule, omit “retained or”;
- (b) in paragraph (1)(a), omit “retained firefighter or”;
- (c) in paragraphs (5)(b) and (10)(a) and (b), omit “retained or” in each place where it occurs.

Amendments to Part 10

- 7. In Part 10 (payment of awards and financial provisions)—**
- (a) in rule 3 (prevention of duplication)—
 - (i) in paragraph (4), for sub-paragraph (a)(ii) substitute—
 - “(ii) under rule 1, 1A, 2 or 3 of Part 3 of the 2006 Scheme to an ordinary, special member’s ordinary, ill-health or deferred pension;”; and
 - (ii) in paragraph (6), for “regular firefighter” substitute “regular or retained firefighter”;
 - (b) in rule 4 (prevention of duplication: other injury awards for persons who are both regular and retained firefighters)—
 - (i) in paragraph (2), for “both a regular firefighter and” substitute “a volunteer firefighter and a retained firefighter or a regular firefighter”;
 - (ii) omit sub-paragraph (a) of paragraph (2) and the word “and” after it;
 - (iii) in paragraph (2)(b)(i), after “regular firefighter” insert “or a retained firefighter”;
 - (iv) in paragraph (2)(b)(ii), for “retained firefighter” substitute “volunteer firefighter”;
 - (v) in paragraph (3), after “regular firefighter” insert “or a retained firefighter”;
 - (vi) in paragraph (3), for “retained firefighter” substitute “volunteer firefighter”;
 - (vii) in paragraph (4), for “retained firefighter” substitute “volunteer firefighter”;
 - (c) in rule 5 (prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters), in paragraph (3)—
 - (i) omit “and” after sub-paragraph (e);
 - (ii) after sub-paragraph (f), insert—
 - “(g) a survivor’s pension under rule 1 of Part 4 of the 2006 Scheme;
 - (h) a survivor’s bereavement pension under rule 4 of Part 4 of the 2006 Scheme;
 - (i) a child’s pension under rule 6 of Part 4 of the 2006 Scheme;
 - (j) a child’s bereavement pension under rule 9 of Part 4 of the 2006 Scheme;
 - (k) a death grant under rule 1 of Part 5 of the 2006 Scheme;
 - (l) a post-retirement death grant under rule 2 of Part 5 of the 2006 Scheme.”.

Amendments to Schedule 1

- 8. In Schedule 1 (injury awards and duty-related compensation)—**
- (a) in Part 1 (calculation of awards for full-time service), omit sub-paragraph (2) of paragraph 1;
 - (b) in Part 2 (calculation of awards for part-time service)—
 - (i) in paragraph 1, omit “, by virtue of which the person’s pensionable service is reckonable,”;
 - (ii) in paragraph 2(1), in the definitions of “B”, “C” and “D” for “pensionable service” in each place where it occurs substitute “relevant service”;
 - (c) in Part 3 (calculation of awards for retained or volunteer service)—
 - (i) for “paragraph 1(2)” substitute “paragraph 1”;
 - (ii) for “pensionable service” substitute “relevant service”.

Amendments to Schedule 2

- 9. In Part 1 (special pension) of Schedule 2 (awards for spouses and civil partners)—**
- (a) in paragraph 1, for “paragraph 2” substitute “paragraphs 2 and 3”;

- (b) in paragraph 2, in the definitions of “B”, “C” and “D”, for pensionable service” in each place where it occurs substitute “relevant service”;
- (c) after paragraph 2, insert—

“3.—(1) Where the deceased was employed as a retained firefighter but not as a regular firefighter at the time of death, the amount of special pension is to be calculated in accordance with the formula—

$$A \times B/C$$

where—

A is the amount calculated under paragraph 1 as if the final pensionable pay was the pay the deceased would have received had he or she been a whole-time employee of the authority;

B is the period in years of pensionable retained service; and

C is the period in years of relevant service.

(2) Where the person was a member of the 2006 Scheme, neither B nor C is to exceed 40 years.”.

Amendments to Schedule 3

10. In Schedule 3 (awards on death: children), in Part 1 (child’s special allowance)—

- (a) in paragraph 1, for “paragraph 4” substitute “paragraphs 4 and 5”;
- (b) in paragraph 4(1), omit “, which is reckonable as pensionable service,”;
- (c) after paragraph 4, insert—

“5. Where the deceased was employed as a retained firefighter but not as a regular firefighter at the time of death, the amount of the special allowance is to be calculated in accordance with the formula—

$$A \times B/C$$

A is the amount calculated under paragraphs 1 to 3 of this Part as if the final pensionable pay was the pay the deceased would have received had he or she been a whole-time employee of the authority;

B is the period in years of pensionable retained service; and

C is the period in years of relevant service.”.

Amendments to Schedule 4

11. In Schedule 4 (awards on death: additional provisions), in Part 1 (adult dependent relative’s special pension)—

- (a) in paragraph 1, for “and 3” substitute “, 3 and 4”;
- (b) in paragraph 3, omit “, which is reckonable as pensionable service,”;

(c) after paragraph 3, insert—

“4. Where the deceased was employed as a retained firefighter but not as a regular firefighter at the time of death, paragraphs 1 and 2 are to apply with the modification that for any reference to final pensionable pay there shall be substituted the product of the formula—

$$A \times B/C$$

where—

A is the amount of pay the deceased would have received had he or she been a whole-time employee of the authority;

B is the period in years of pensionable retained service; and

C is the period in years of his relevant service.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 1 to the Firefighters' Compensation Scheme (Scotland) Order 2006 in which is set out the compensation scheme for firefighters and dependants of firefighters in Scotland ("the Compensation Scheme").

Article 3 of the Order contains transitional provisions in relation to the amendments made by article 2 and paragraphs 6 and 7 of the Schedule to this Order – they provide for the Compensation Scheme in its unamended form to continue to apply in certain circumstances.

The amendments made to rule 2 (award for or in relation to a retained or volunteer firefighter) of Part 8 (special cases) remove the right of a retained firefighter who was employed as a retained firefighter before 6th April 2006 to an injury award calculated as though he or she were a wholetime firefighter from the date of commencement of the Order. These changes are consequential on changes to pension arrangements for retained firefighters made by the Firefighters' Pension Scheme (Scotland) Amendment (No. 2) Order 2014 (S.S.I. 2014/110).

The amendments to rule 6 (reckoning of service for purposes of awards) and rule 7 (qualifying injury) of Part 1 (general provisions) and those to rule 4 of Part 10 are consequential on the amendments to rule 2.

The various amendments which substitute "regular or retained firefighters" for a reference to "regular firefighter" correct the general terms of the Compensation Scheme which were intended to apply to a retained firefighter who took up employment as a retained firefighter after 5th April 2006. The effect of the amendments made to rule 2 of Part 8 by this Order is that the general provisions of the Compensation Scheme apply to all retained firefighters who do not fall within the transitional provisions.

The amendments to Part 1 (special pension) of Schedule 2 (awards for spouses and civil partners), Part 1 (child's special allowance) of Schedule 3 (awards on death: children) and Part 1 (adult dependent relative's special pension) of Schedule 4 (awards on death: additional provisions) insert a formula to calculate an award in respect of retained firefighters.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen and the impact on the public sector is minimal.

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Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£6.00

S201404232 04/2014 19585

<http://www.legislation.gov.uk/id/ssi/2014/109>

ISBN 978-0-11-102326-6



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