

POLICY NOTE

THE FIREFIGHTERS' COMPENSATION SCHEME AND PENSION SCHEME (AMENDMENT) (SCOTLAND) ORDER 2015

SSI 2015/143

The above instrument was made in exercise of the powers conferred by sections 34 and 60 of the Fire and Rescue Services Act 2004. This instrument is subject to negative procedure.

Policy Objectives

This instrument amends Schedule 1 to the Firefighters' Compensation Scheme (Scotland) Order 2006 (S.I. 2006/338) which provides a compensation scheme for firefighters and dependants of firefighters in Scotland ("the Compensation Scheme") in consequence of the coming into force of the Firefighter's Pension Scheme 2015 ("the 2015 Scheme") set out in the Firefighters' Pension Scheme (Scotland) Regulations 2015 (S.I. 2015/19), which deals with the payment of pensions and other benefits to, or in respect of, firefighters employed in Scotland. The amendments update provisions as a consequence of the coming into force of the 2015 Scheme, to ensure that members of the 2015 Scheme, firefighters eligible to be members of the 2015 Scheme, and their qualifying survivors, receive compensation awards in the event of a qualifying injury or death in service in accordance with the Compensation Scheme.

This Order also amends Schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007 (S.I. 2007/199) which sets out the New Firefighters' Pension Scheme (Scotland) ("the 2006 Scheme"). The amendments clarify provisions in the 2006 Scheme:

- extend the period that members can elect to join the modified schemes, by identifying eligible members and extending the period for which they can make an election to pay additional pension contributions during the specified period in respect of their service during the specified period;
- clarify provisions relating to the payment of interest in respect of contributions payable during the period 6 April 2006 and the date that an eligible individual joined the standard 2006 Scheme;
- amend the commutation factors table set out in Annex ZA of the 2006 Scheme to reflect the commutation factors as on 31st March 2014.
- update provisions and terminology as a consequence of the coming into force of the 2015 Scheme.
- revise the 2006 Scheme pensionable pay bands to include a 1% annual uprating covering the period from 1 April 2015 to 31 March 2019.

Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (Schedule 1)

Amendment of Part 1 (interpretation)

Part 1 provides definitions for specific terminology used within the Scheme's Regulations and amends Schedule 1 to:

- provide definitions for the additional terms used in respect of members of the 2015 Scheme;
- provide for the "normal pension age" in the 2015 Scheme to be determined by the 2013 Act (section 10), which is currently set at 60 years;
- correct an existing error so that it is clear that the "normal pension age" in relation to the 2006 Scheme is 60 years;
- increase the scope of the definition of "pensionable service" so that it also applies to members of the 2015 Scheme. In addition, the amendments ensures that the provision encapsulates linked service accrued by members of the existing 1992 and 2006 Schemes who subsequently transfer into the 2015 Scheme on or after 1 April 2015;
- increase the scope of the definition of 'relevant service' so that it also applies to those individuals who have an entitlement to join the 2015 Scheme but did not make an election to join, in keeping with the current arrangements for persons who are eligible to be members of the 1992 or 2006 Schemes, who have not joined those schemes;

Amendment of Parts 2, 3, and 5 (injury awards and duty related compensation; awards on death)

The Order amend Parts 2, 3 and 5 of the Compensation Scheme, to ensure that the following provisions apply to the members, or eligible members of the 2015 Scheme:

- 'compensation for death or permanent incapacity while on work',
- 'awards on death; spouses and civil partners', and
- 'awards on death; additional provisions.'

Amendment of Parts 7 and 7A (servicemen and reservists)

This Order amend Parts 7 and 7A of the Compensation Scheme to ensure that the compensation provisions relating to armed forces' 'reservists' and 'servicemen' also apply to members of the 2015 Scheme.

Amendment of Part 8 (special cases)

This Order amends Part 8 of the Compensation Scheme to ensure that the 'special cases' provisions also apply to volunteer members employed on or after 1st April 2015. As such, volunteer firefighters who suffer a qualifying injury on or after 1st April are to be treated as whole-time, regular firefighters for the purposes of calculating an injury award. This reflects the current application for volunteer firefighters in respect of the existing 1992 and 2006 Schemes.

Amendment of Part 9 (review, withdrawal and forfeiture of awards)

This Order amends Part 9 of the Compensation Scheme to apply the 'review, withdrawal and forfeiture of awards' provisions to members of 2015 Scheme. Part 9 makes provision for the reduction of a 2015 Scheme member's injury award where the permanent disablement that gives entitlement to the injury award has been caused, or contributed to, by the member's own default. This is in line with the current application for existing members of the 1992 and 2006 Schemes.

Amendment of Part 10 (payment of awards and financial provisions)

The current ‘prevention of duplication’ provisions are extended to members of the 2015 Scheme. The amendments ensure that where a member of the 2015 Scheme has other separate employments as a firefighter that confer an additional entitlement to join one of the other firefighter pension schemes (namely, any one of the 1992, 2006 or 2015 Schemes), should they subsequently suffer a qualifying injury, they will not receive duplicate injury awards in respect of each employment. This reflects the current application of the provision to members of the existing 1992 and 2006 Schemes.

The amendments also ensure that, where a 2015 Scheme member dies from the effects of a qualifying injury whilst employed as a regular firefighter and retained firefighter, duplicate survivor benefits will not be payable. Where survivor benefits are payable from both the Compensation Scheme and the 2015 Scheme, only the survivor benefits from the 2015 Scheme will be payable. This reflects the current application of the provisions to members of the existing 1992 and 2006 Schemes in the same position.

Amendment of Schedule 1 (injury awards and duty related compensation)

This Order amends Schedule 1 to the Compensation Scheme ensure that where an individual is entitled to an injury award but is not an active member of the 2015 Scheme, the award is determined by reference to the person’s ‘relevant service’. Effectively, this is the service that the person would have accrued if they had become an active member of the 2015 Scheme. The amendment also ensures that any service, in respect of the same/similar employment, prior to 1st April 2015, where the individual had an entitlement to join either the 1992 or 2006 Schemes, is also to be included as relevant service for the purposes of calculating any injury award entitlement. This reflects the current position for those individuals that have elected not to join the 1992 or 2006 Schemes.

Amendment of Schedules 2, 3 and 4 (awards for spouses and civil partners, awards on death)

This Order ensures that the ‘special pension’, ‘child’s special allowance’, and ‘adult dependent relative’s special pension’ provisions apply in respect of deceased members of the 2015 Scheme. It also provides for the calculation of the ‘special pension’, ‘child’s special allowance’ and ‘adult dependent relative’s special pension’ on the basis of the deceased’s relevant service where they had an entitlement to join the 2015 Scheme but did not elect to join. This reflects the current position for those individuals that have decided not to join the 1992 or 2006 Schemes.

Changes to the Modified Section of the 2006 Scheme

Following a series of appeals by retained firefighters to the Employment Tribunal and the House of Lords claiming access to the 1992 Scheme under the ParttimeWorkers (Prevention of Less Favourable Treatment) Regulations (S.I.2000/1551), the 2006 Scheme was amended in April 2014 to introduce a ‘modified section’. This is known as the “Modified Scheme” and provides individuals employed as retained firefighters during the period 1 July 2000 and 5 April 2006, with an opportunity to purchase pension benefits in respect of this employment. The benefits provided by the Modified Scheme are comparable to those that are available to members of the 1992 Scheme.

The Modified Scheme requires the application of interest to any retrospective pension or lump sum paid, and on any employee contributions paid in respect of purchasing past service. The current provisions regarding individuals who elect to convert special service to their standard membership, and are required to buy any break in scheme membership between 6 April 2006 and the date they joined the standard 2006 scheme, did not address the interest payable during this period. The amendments reflect the original policy intention.

The amendments to the 2006 Scheme also correct a number of small errors in the commutation factor tables that apply to special members who retire. These corrections ensure that the original policy intention to provide special members with fixed commutation factors – that reflect those in the 1992 Scheme as at 31st March 2014 – is achieved.

Amendment of Part 1 (citation and interpretation)

This Order amends the 2006 Scheme to:

- introduce definitions for specific terminology used in respect of the 2015 Scheme;
- make provision for the ‘limited period’ to end on 1st April 2015 for those individuals that have no transitional protections and that are provisionally enrolled to the Modified Scheme; and for the ‘limited period’ to end on the date that they join the 2015 Scheme in respect of those provisionally enrolled members who have full or tapered protections;
- to clarify references in the definitions of special deferred member, special eligibility criteria, special firefighter member, and special pensioner member.
- to extend the rights provided for civil partners to surviving dependants of same sex marriages

Amendment of Part 2 (scheme membership, cessation and retirement)

This Order permits provisionally enrolled members to temporarily join the Modified Scheme. Part 2 is also amended to remove the inclusion of a superfluous “a” in rule 2A(2), and to provide clarity that the retrospective award on ill-health retirement being referred to is paid under Part 3 of the 2006 Scheme regulations.

Amendment of Part 11 (pensionable pay, pension contributions and purchase of additional service)

The amendments to this Order:

- remove a superfluous reference to “member” in rule 5A(1) and make a minor adjustment to Rule 6A para 2 amend;
- provide clarity that interest should be payable on any pension contributions owing where a special member converts their standard service in the 2006 Scheme to special pensionable service in the Modified Scheme. This provision was previously inadvertently omitted;
- make provision for individuals that have an eligibility to join the Modified Scheme to be provisionally enrolled for up to a maximum of 6 months, until 30th September 2015, to enable the responsible fire and rescue authority to conclude the options exercise of giving them the opportunity to make an election to join.

Amendment of Annex ZA (commuted portion: special members)

The provisions correct an error in the commutation factors set out in Annex ZA of the 2006 Scheme so that they reflect the commutation factors of the 1992 Scheme as on 31 March 2014, as per original policy intention.

Amendments to the 2006 Scheme contribution bands

This sets out the revised 2006 scheme pensionable pay bands including the 1% annual uprating for the next four years from 1st April 2015. The contribution bands for special members have also been updated. The figures have been rounded down to the nearest pound to simplify the administration of the scheme. These amendments have been made to Annex A1 (pension contributions) and Annex AB1 (pension contributions for special members).

Consultation

A consultation was undertaken from 28 January to 19 February 2015. All stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments. Three responses were received in total, one from an individual and two from firefighters' unions. A copy of the consultation document and a summary of responses will be made available on the Scottish Public Pension Agency's website www.sppa.gov.uk.

Impact Assessments

The equality impact assessment has been completed and will be made available in due course. No impact is expected.

Financial Effects

In line with the reform of public service pensions, these changes will support the introduction of a reformed scheme from 2015 that is designed to ensure long-term sustainability and affordability. The changes extend survivor benefits to survivors of same sex marriage and will be reflected in the overall costs of the scheme at each future valuation. It is not anticipated that this will have a material impact on the future contribution rates set by scheme valuations. The estimated required contribution yield from 2006 scheme members for the period April 2015 to March 2019 takes into account the indexation of contribution bands.

Business and Regulatory Impact Assessment

This policy introduces reform to the pension scheme for firefighters in Scotland, following recommendations by the Independent Public Service Pensions Commission. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these regulations.

Scottish Public Pensions Agency
An Agency of the Scottish Government
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