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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 19**

**The Firefighters' Pension Scheme (Scotland) Regulations 2015**

**PART 6**

Death benefits

CHAPTER 1

Interpretation

**Meaning of “surviving partner”**

**76.**—(1) For the purposes of these Regulations, a person is a surviving partner in relation to a member if, at the date of the member's death, that person is—

- (a) the spouse or civil partner of the member;
- (b) cohabiting with the member and—
  - (i) is not married or in a civil partnership with that member,
  - (ii) is not the spouse or civil partner of any other person,
  - (iii) could enter into a marriage or civil partnership under the law of Scotland with the member but has not done so,
  - (iv) is financially dependent on the scheme member, or is, with the scheme member, in a state of mutual financial dependency, and
  - (v) is in a long-term relationship with the scheme member.

(2) In paragraph (1), “long-term relationship” means a relationship that has continued for a period of at least two years ending with the date on which the question of the person's status in relation to the member falls to be considered, or such shorter period as the scheme manager may in any particular case think fit.

(3) In these Regulations, “cohabiting partner” means a person who satisfies the requirements in paragraph (1)(b).

**Meaning of “initial period”**

**77.** For the purposes of this Part, the “initial period” is the period of 13 weeks commencing on the day after the death of the member during which a bereavement pension may be payable to any surviving partner or eligible child.

CHAPTER 2

Pensions for surviving partners

**Surviving partner's pension payable on death of active member**

**78.**—(1) This regulation applies in relation to the surviving partner of a member who dies if, at the date of death, the member is an active member and has qualifying service of more than three months.

(2) A surviving partner to whom this regulation applies is entitled to a surviving partner's pension.

(3) Subject to regulation 82 (reduction in pensions in cases of wide age disparity), the annual rate of the surviving partner's pension is an amount equal to half the pension which the member would have been entitled to draw if the member had retired on the grounds of ill-health with the award of a higher tier ill-health pension on the date of the member's death.

#### **Surviving partner's pension payable on death of deferred member**

**79.**—(1) This regulation applies in relation to the surviving partner of a member who at the date of death is a deferred member.

(2) A surviving partner to whom this regulation applies is entitled to a surviving partner's pension.

(3) Subject to regulation 82 (reduction in pensions in cases of wide age disparity), the annual rate of surviving partner's pension is an amount equal to half of the sum of the provisional amount of deferred pension specified in the deferred member's account and the amount of the added pension (if any) specified in the added pension account.

#### **Surviving partner's pension payable on death of pensioner member**

**80.**—(1) This regulation applies in relation to the surviving partner of a member (P) who at the date of death is a pensioner member.

(2) A surviving partner to whom this regulation applies is entitled to a surviving partner's pension.

(3) Subject to regulation 82 (reduction in pensions in cases of wide age disparity), the annual rate of the surviving partner's pension is equal to half the amount of the annual rate of the retirement pension payable to P immediately before P's death.

(4) Where an early payment reduction had been made on P's retirement, the amount in paragraph (3) is half of the amount of retirement pension that would have been payable to P if that reduction had not been made.

#### **Bereavement pension: surviving partner**

**81.**—(1) Subject to paragraph (2), the surviving partner of an active member, or a pensioner member, is entitled to a bereavement pension for the initial period.

(2) The surviving partner of an active member is only entitled to a bereavement pension if the active member had at least three months' qualifying service.

(3) If the member was an active member at the date of the member's death, the weekly amount of the bereavement pension payable under paragraph (1) is equal to the difference between the weekly amount of pensionable pay which the member was paid at the date of the member's death or, where the member was treated as receiving assumed pensionable pay, the weekly amount of assumed pensionable pay, and the weekly amount of the surviving partner's pension.

(4) If the member was a pensioner member at the date of the member's death, the weekly amount of the bereavement pension payable under paragraph (1) is equal to the difference between the weekly amount of the pension to which the member was entitled at the date of the member's death, and the weekly amount of the surviving partner's pension.

#### **Reduction in pensions in cases of wide age disparity**

**82.**—(1) This regulation applies if, on the death of a member of this scheme, a surviving partner's pension is payable to a person who is more than 12 years younger than the member.

(2) The annual rate of that pension is reduced by the lower of—

(a) 50% of the amount of the annual rate of the pension so calculated; or

- (b)  $2.5 \times (N - 12) \%$  of that amount,

where N is the number of whole years by which the surviving partner is younger than the member.

### **Survivor's guaranteed minimum pensions**

**83.**—(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum under section 17(1) of PSA 1993 in relation to benefits in respect of the deceased member under this scheme—

- (a) nothing in these Regulations permits or requires anything that would cause requirements made by or under that Act in relation to such a person and such a person's rights under a scheme not to be met in the case of the person;
  - (b) nothing in these Regulations prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person.
- (2) Paragraphs (3) and (4) are without prejudice to the generality of paragraph (1).
- (3) This paragraph applies if apart from this regulation—
- (a) no pension would be payable to the surviving partner under this Part; or
  - (b) the weekly rate of the pensions payable would be less than the guaranteed minimum.
- (4) If paragraph (3) applies—
- (a) a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable; or
  - (b) if paragraph (3)(b) applies, the pensions payable are increased to the amount specified in paragraph (a).
- (5) Paragraph (4) does not apply to a pension—
- (a) that is forfeited—
    - (i) as a result of a conviction for treason, or
    - (ii) in a case where the relevant offence under regulation 161 (forfeiture: offences committed by members, surviving partners or eligible children) falls under paragraph (b) of the definition in that regulation of “relevant offence” (Official Secrets Acts offences); or
  - (b) where that pension is commuted under regulation 157 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(2) are met.

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(1) Section 17 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 1, paragraph 39; the Child Support, Pensions and Social Security Act 2000 (c.19), Schedule 5, paragraph 1 and Schedule 9, Part 3; the Pensions Act 2004 (c.35), section 284(2); the Pensions Act 2007 (c.22), section 14(2); the Marriage (Same Sex Couples) Act 2013 (c.30), Schedule 4, paragraphs 18 and 20; and S.I. 2005/2050 and S.I. 2014/560.

(2) S.I. 1996/1172. Regulation 60 was substituted by S.I. 2006/744, S.I. 2006/1337, S.I. 2009/2930 and S.I. 2010/499.

## CHAPTER 3

### Pensions for eligible children

#### **Eligible child's pension**

**84.**—(1) If a member, who has three months qualifying service, dies leaving an eligible child, an eligible child's pension and, depending on the deceased member's circumstances, a bereavement pension is payable in respect of the child.

(2) An eligible child's pension is not payable in respect of any period before a child's birth.

(3) If the person ceases to be an eligible child after the date of the member's death, the pension ceases to be payable unless and until the child becomes an eligible child again, but, if the child does not cease to be an eligible child, the pension is payable for life.

#### **Meaning of "eligible child"**

**85.**—(1) In these Regulations, "child", in relation to a deceased member, means—

- (a) a natural child, step-child or adopted child of the member;
- (b) the natural child, step-child or adopted child of the member's spouse, civil partner or cohabiting partner; or
- (c) any natural child of the member who was born after the member's death and with whom the child's mother was pregnant at the date of the member's death.

(2) A child of the deceased member is an "eligible child" if—

- (a) the child was at the date of the deceased member's death financially dependent on the deceased member;
- (b) the child is not married or in a civil partnership; and
- (c) the child satisfies any of the conditions A to C.

(3) Condition A is that the person is under the age of 18.

(4) Condition B is that the person is in full-time education or on a course of education of at least one year's duration and has not reached the age of 23.

(5) Condition C is that the person is dependent on the member at the date of the deceased's death by reason of permanent incapacity of mind or body.

#### **Eligible child's pension on death of active member**

**86.**—(1) This regulation applies in relation to an eligible child of a member who dies if, at the date of death, the member is an active member and has qualifying service of more than three months.

(2) The annual rate of an eligible child's pension to which this regulation applies is an amount equal to the specified proportion of the pension which the member would have been entitled to draw if the member had retired on the grounds of ill-health with the award of a higher tier ill-health pension on the date of the member's death.

#### **Eligible child's pension payable on death of deferred member**

**87.**—(1) This regulation applies in relation to an eligible child of a member who dies if, at the date of death, the member is a deferred member.

(2) The annual rate of an eligible child's pension is an amount equal to the specified proportion of the sum of the provisional amount of deferred pension specified in the deferred member's account and the amount of the added pension (if any) specified in the added pension account.

### **Eligible child's pension payable on death of pensioner member**

**88.**—(1) This regulation applies in relation to an eligible child of a member who dies if, at the date of death, the member is a pensioner member (P).

(2) Subject to paragraph (3), the annual rate of an eligible child's pension is an amount equal to the specified proportion of the amount of retirement pension payable to P immediately before P's death.

(3) Where an early payment reduction had been made on P's retirement, the amount in paragraph (2) is the specified proportion of the amount of retirement pension that would have been payable if that reduction had not been made.

### **Specified proportion**

**89.**—(1) The specified proportion is one quarter where there is one eligible child at the date of the member's death.

(2) If there is more than one eligible child at the date of the member's death, the specified proportion is half of the pension mentioned in regulations 86 (eligible child's pension on death of active member), 87 (eligible child's pension payable on death of deferred member) and 88 (eligible child's pension payable on death of pensioner member) divided by the number of eligible children so that each eligible child receives an equal share.

(3) If a person ceases to be an eligible child, that person's pension will cease to be paid and where there is still more than one eligible child, the amount of that pension must be distributed between the remaining eligible children (if any).

### **Increase in eligible child's pension where there is no surviving partner**

**90.**—(1) This regulation applies if at the date of the member's death there was no person who was entitled to a surviving partner's pension.

(2) If this regulation applies and there is an eligible child, that child is also entitled to the amount of pension in accordance with paragraph (3) or (4) which the surviving partner would have received—

- (a) under regulation 78 (surviving partner's pension payable on death of active member) if the member (P) was an active member at the date of P's death;
- (b) under regulation 79 (surviving partner's pension payable on death of deferred member) if P was a deferred member at the date of P's death;
- (c) under regulation 80 (surviving partner's pension payable on death of pensioner member) if P was a pensioner member at the date of P's death.

(3) If there is only one eligible child, that child receives an additional amount equal to the amount ascertained in accordance with paragraph (2).

(4) If there is more than one eligible child at the date of P's death, the amount ascertained in accordance with paragraph (2) is divided between the number of eligible children so that each eligible child receives an equal share.

(5) If a person ceases to be an eligible child, that person's share of the amount ascertained in accordance with paragraph (2) will cease to be paid and the share must be distributed between the remaining eligible children (if any).

### **Increase in eligible child's pension where member was pension debit member**

**91.** If the member's benefits were at the date of death subject to a reduction under section 31 of the WRP, any eligible child's pension must be calculated as though that reduction had not been made.

### **Bereavement pension: eligible child**

**92.**—(1) If a surviving partner’s pension is not payable on the death of the member, a bereavement pension is payable to an eligible child who is entitled to an eligible child’s pension on the death of an active member or a pensioner member.

(2) If the surviving partner dies before the end of the initial period and a bereavement pension was payable to the surviving partner, a bereavement pension is payable to any eligible child for the remaining part of the initial period or until the child ceases to be eligible for an eligible child’s pension if that is earlier.

(3) If the member was an active member at the date of the member’s death, the weekly amount of the bereavement pension payable under paragraph (1) or (2) is equal to the difference between the weekly amount of pensionable pay which the member was paid at the date of the member’s death or, where the member was treated as receiving assumed pensionable pay, the weekly amount of assumed pensionable pay, and the weekly amount of the surviving partner’s pension.

(4) If the member was a pensioner member, the weekly amount of the bereavement pension payable under paragraph (1) or (2) is equal to the difference between the weekly amount of the pension to which the member was entitled at the date of the member’s death, and the weekly amount of the surviving partner’s pension.

(5) If there is more than one eligible child, the weekly amount of the bereavement pension payable under paragraph (1) or (2) is divided by the number of eligible children so that each receives an equal share.

(6) If a person ceases to be an eligible child before the end of the initial period, that person’s share of the bereavement pension will cease to be paid and the share will be distributed between the remaining eligible children (if any).

## **CHAPTER 4**

### **Lump sum death benefits**

#### **Meaning of “final pay”**

**93.**—(1) In this Chapter, “final pay” means the greater of the following amounts—

- (a) the amount of the member’s pensionable pay during the member’s continuous period of pensionable service in the period of 365 days ending with the last day of pensionable service; and
- (b) the amount of the member’s pensionable pay during the member’s continuous period of pensionable service in the period of three years ending with the last day of pensionable service, divided by three.

(2) If the member’s continuous period of pensionable service was less than 365 days, the amount in paragraph (1)(a) is an amount equal to the member’s annualised final pay.

(3) For the purpose of determining which of the amounts mentioned in paragraph (1) is the greater—

- (a) if the member’s continuous period of pensionable service was less than three years, the amount in paragraph (1)(b) is the total pensionable pay received for that service divided by the number of years in pensionable service calculated in accordance with regulation 172 (calculation of periods of membership and service); and
- (b) if a member is treated as receiving assumed pensionable pay for any period included in paragraph (1)(a) or (1)(b), pensionable pay in this regulation includes that assumed pensionable pay.

(4) But if the continuous period of pensionable service includes the day 29th February, paragraphs (1)(a) and (2) have effect with the substitution for “365” of “366”.

### **Meaning of “annualised final pay”**

**94.**—(1) For the purpose of this Chapter, a member’s annualised final pay is—

$$FP \times 365/N$$

where—

- (a) FP is the member’s pensionable pay during the member’s continuous period of pensionable service; and
- (b) N is the number of days in that period.

(2) But if the continuous period of pensionable service includes the day 29th February, paragraph (1) has effect with the substitution for “365” of “366”.

### **Person to whom lump sum death benefit payable**

**95.** The scheme manager may, at its absolute discretion, pay any lump sum death benefit payable under this Chapter to or for the benefit of the member’s nominee or executors or any person appearing to the scheme manager to have been a relative or dependent of the member.

### **Lump sum payable on death of active member**

**96.**—(1) If an active member dies, the scheme manager must pay a lump sum death benefit.

(2) The amount of the lump sum death benefit is an amount equal to three times the amount of the member’s final pay.

(3) Where an active member has more than one active member’s account, a lump sum death benefit is payable in respect of each of those accounts.

### **Lump sum payable on death of pensioner member**

**97.**—(1) This regulation applies if a pensioner member dies within five years of the pension coming into payment.

(2) If this regulation applies, the scheme manager must pay a lump sum death benefit.

(3) The amount of the lump sum death benefit is equal to—

- (a) the total annual amount of the member’s pensions, multiplied by five; less
- (b) the total amount of any pension payments made to the member under this scheme.

(4) In paragraph (3)(a), “total annual amount of the member’s pensions” means the total of the annual rate of the retirement pension shown in the member’s pension accounts calculated as if the beginning date for that pension were the date of the member’s death.

(5) For the purpose of this regulation any amounts paid or payable to or in respect of the member in the capacity of a pension credit member are disregarded.

### **Lump sum payable on death in certain cases**

**98.** Where a person (P) at the time of P’s death was a pensioner member of this scheme and an active member of this scheme, the amount of the lump sum death benefit payable is the greater of the amount of lump sum death benefit payable under regulation 96 (lump sum payable on the death of active member) and the amount of the lump sum death benefit payable under regulation 97 (lump sum payable on the death of a pensioner member).

### **Lump sum payable on death of pension credit member**

**99.**—(1) If a pension credit member dies before any benefits derived from a pension credit have become payable to the member, the scheme manager must pay a lump sum death benefit in accordance with paragraph (2).

(2) The amount of the lump sum death benefit that is payable under paragraph (1) is equal to the product of 2.25 and the annual rate of the pension credit member's pension to which that member would have been entitled if that member had been entitled to the immediate payment of the pension at the date of death.

(3) If a pension credit member dies within five years of the pension credit member's pension becoming payable, and before attaining the age of 75, the scheme manager must pay a lump sum death benefit in accordance with paragraph (4).

(4) The amount of the lump sum death benefit that is payable under paragraph (3) is the difference between—

- (a) the amount that is five times the amount of the pension credit member's pension; and
- (b) the instalments of pension that have been paid.

(5) In paragraph (4), "amount of the pension credit member's pension" means the annual amount of that pension at the date the pension credit member's pension came into payment.

(6) If the deceased member was a pension credit member entitled to two or more pension credits, the lump sum death benefits under this scheme are payable in respect of the member as if the member were two or more members, each being entitled to one of the pension credits.

## **CHAPTER 5**

### **Payment of death benefits**

#### **Payment of pensions under this Part**

**100.**—(1) A surviving partner's pension or eligible child's pension is payable from the day after the date of the member's death.

(2) An eligible child's pension payable in respect of an eligible child aged under 18 must be paid to such other person as the scheme manager determines and the scheme manager must require the person to apply it for the eligible child's benefit in accordance with the scheme manager's directions.

#### **Surviving partner's pensions and eligible child's pensions: suspension and recovery**

**101.**—(1) This regulation applies if—

- (a) on a member's death a pension has been awarded and paid under this Part; and
- (b) it later appears to the scheme manager that the member or the person to whom the pension has been paid made a false declaration or deliberately suppressed a material fact in connection with the award.

(2) The scheme manager may—

- (a) cease paying the pension; and
- (b) recover any payment made under the award.

(3) Paragraph (2) does not affect the scheme manager's right to recover a payment or overpayment under any other provision where the scheme manager considers it appropriate to do so.



### **Provisional awards of eligible child's pensions: later adjustments**

**102.**—(1) This regulation applies where after the death of an active member, deferred member or pensioner member—

- (a) a pension is paid in respect of one or more persons under this Part on the basis that they were eligible children as at the date of the member's death and that there were then no other eligible children; and
- (b) subsequently it appears—
  - (i) that a person in respect of whom such a pension has been paid was not an eligible child on the date of death,
  - (ii) that a further person was an eligible child, or
  - (iii) that a child who was born after the member's death is an eligible child.

(2) The scheme manager may make such adjustments in the amount of the pensions payable in respect of the children in question as are required in view of the facts as they subsequently appear and these adjustments may apply retrospectively.

(3) Paragraph (2) does not affect the scheme manager's right to recover a payment or overpayment in any case where the scheme manager considers it appropriate to do so.

### **Adjustment of eligible child's awards consequent on re-instatement of pension benefits**

**103.**—(1) This regulation applies where a person (P) who would be eligible to receive benefits as a surviving partner or eligible child following the death of an active member, deferred member or pensioner member, has been convicted of the murder or culpable homicide of that member and that conviction has subsequently been quashed on appeal.

(2) If P is then eligible to receive a surviving partner's pension, any increase in an eligible child's pension under regulation 90 (increase in eligible child's pension where there is no surviving partner) ceases to be payable from the date on which the conviction is quashed.

(3) If P is then eligible to receive an eligible child's pension, and if more than one person is receiving an eligible child's pension on the day before the conviction is quashed, the amount of each eligible child's pension is reduced from the date on which the conviction is quashed to an amount of the eligible child's pension determined according to the specified proportion which would have applied to that number of eligible children.

### **Adjustment of benefits to comply with FA 2004 where members die over 75**

**104.**—(1) This regulation applies if—

- (a) a member dies after reaching the age of 75; and
- (b) apart from this regulation, any part of a pension to which any person becomes entitled under this Part on the death would not qualify as a dependants' scheme pension for the purposes of section 167 of FA 2004 (pension death benefit rules).

(2) The benefit payable to the person may be adjusted in such manner as is determined by the scheme manager so that it qualifies as a dependants' scheme pension for the purposes of section 167 of FA 2004.