

2018 No. 216

FIRE SERVICES

PENSIONS

**The Firemen's Pension Scheme (Amendment) (Scotland) Order
2018**

Made - - - - 27th June 2018

Laid before the Scottish Parliament 29th June 2018

Coming into force - - 28th October 2018

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) and section 12(b) of the Superannuation Act 1972, as applied by section 16(3)(c) of that Act, and all other powers enabling them to do so.

Citation, commencement, effect and extent

1.—(1) This Order may be cited as the Firemen's Pension Scheme (Amendment) (Scotland) Order 2018.

(2) This Order comes into force on 28th October 2018, but the amendments made by—

- (a) article 2 and sub-paragraphs (ii), (iii), (iv) and (v) of paragraph 2(f) of the schedule have effect from 9th April 2018; and
- (b) article 2 and paragraph 2(g) of the schedule so far as it relates to the increase of the additional pension benefit under paragraph (3) and the definitions of “the beginning date” and “following relevant tax year” in paragraph (6) of rule B5C have effect from 9th April 2018; and
- (c) article 2 and paragraph 4 of the schedule have effect from 1st April 2018.

(3) This Order extends to Scotland only.

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- (a) 1947 c.41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21).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, in relation to England and Scotland, 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 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), section 1 of the Police and Firemen's Pensions Act 1997 (c.52), and Schedule 25 to the Civil Partnership Act 2004 (c.33), and article 2 of the Social Security (Modification of Fire Services Act 1947) Order 1976 (S.I. 1976/551). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of article 2 of and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (S.I. 1999/1750) and article 2 of and the Schedule to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2006 (S.I. 2006/304).
 - (b) 1972 c.11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7).
 - (c) Section 26 continues to have effect, for the purposes of the Firefighters' Pension Scheme, by virtue of S.I. 2004/2306.

Amendment of the Firemen's Pension Scheme Order 1992

2. Schedule 2 of the Firemen's Pension Scheme Order 1992(a) (in which is set out the Firefighters' Pension Scheme) is amended in accordance with the schedule of this Order.

St Andrew's House,
Edinburgh
27th June 2018

DEREK MACKAY
A member of the Scottish Government

(a) S.I. 1992/129. The 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 of, the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) of section 26 were continued in force, for the purposes of the scheme established under that section as the Firemen's Pension Scheme, by S.I. 2004/2306. The name of the scheme was changed by article 4(1) of S.I. 2004/2306

SCHEDULE

Article 2

Amendment of the Firefighters' Pension Scheme

1. In schedule 2 (firefighters' pension scheme), Part A (general provisions and retirement)—
 - (a) in rule A3 (exclusive application to regular firefighters)—
 - (i) in paragraph (1) for “the Social Security Act 1975” substitute “the 1993 Act”;
 - (ii) omit paragraph (3); and
 - (iii) for paragraph (5) substitute —

“(5) This Scheme applies to a person who took up employment with a fire and rescue authority on or before 5th April 2006 and who remains in continuous pensionable service.”;

and
 - (b) omit rules A4 to A8, A12, A14 and A15.
2. In Part B (personal awards)—
 - (a) in rule B1 (ordinary pension), after paragraph (3) add—

“(4) Paragraph (2)(b) shall not apply to a Chief Officer appointed after 28th October 2018.”;
 - (b) in rule B2 (short service award)—
 - (i) in paragraph (1) for “retires on or after normal pension age” substitute “retires at or after normal pension age”; and
 - (ii) in paragraph (2)(a) for “Part II of schedule 2;” substitute “Part 2 of schedule 2;”;
 - (c) in rule B3 (ill health awards)—
 - (i) in paragraph (1) for “is required to retire under rule A15 (compulsory retirement on grounds of disablement)” substitute “retires by reason of permanent disablement(a)”; and
 - (ii) for paragraph (2) substitute—

“(2) A regular firefighter who is entitled—

 - (a) to reckon at least 2 years' but less than 5 years' pensionable service becomes entitled on retiring to a lower tier ill health pension calculated in accordance with paragraph 2 of Part 3 of schedule 2; or
 - (b) to reckon at least 5 years' pensionable service becomes entitled on retiring—
 - (i) where paragraph (3) applies, to a lower tier ill health pension calculated in accordance with paragraph 2 of Part 3 of schedule 2; or
 - (ii) where paragraph (4) applies, to the pensions referred to in paragraph (5) (“the higher tier ill health award”).”;
 - (iii) in paragraph (5)(a) omit “or 3 (as the case may be)”; and
 - (iv) in paragraph (7) for “the issue of his capacity for employment began” substitute “the question of his disablement arose for decision”;
 - (d) in rule B5 (deferred pension)—
 - (i) after paragraph (1)(d)(i)(bb) insert—

“(cc) any period of absence from duty without pay, not reckonable as pensionable service under rule F2(3); and”;

and
 - (ii) omit paragraph (5);

(a) Within the meaning of rule A10 (disablement).

- (e) in rule B5A (entitlement to two pensions)—
- (i) in paragraph (2), for “The amounts” substitute “Subject to paragraph (4A), the amounts”; and
 - (ii) after paragraph (4) insert—
- “(4A) Where a firefighter is entitled to—
- (a) a lower tier ill-health pension where rule B3(3) applies;
 - (b) a higher tier ill-health pension where rule B3(4) applies; or
 - (c) a deferred pension under rule B5,

the amount of the first and second pension shall be calculated in accordance with Part 3 or Part 6 (as the case may be) of this schedule with the formula in paragraph (4B).

(4B) For the purpose of the calculation in paragraph (4A)—

- (a) the amount of the first pension is that found by applying the formula—

$$\left(\frac{A}{B} \times \frac{B}{C}\right) \times G$$

- (b) the amount of the second pension is that found by applying the formula—

$$\left(\frac{F}{C} \times G\right);$$

- (c) in sub-paragraphs (a) and (b) A, B, and C have the same meaning as in paragraph (3), E and F have the same meaning as in paragraph (4) and G is the amount of the single pension that the firefighter would otherwise have been awarded.”;

- (f) in rule B5B (additional pension benefit: long service increment)—

- (i) in paragraph (2), for the words after the formula substitute—

“where—

A is the number in years (counting part of a year as the appropriate fraction) by which the firefighter’s continuous pensionable service in the employment of a fire and rescue authority and subsequent continuous pensionable service in the employment of another fire and rescue authority in Scotland 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 his continuous pensionable service in the employment of a fire and rescue authority and subsequent continuous pensionable service in the employment of another fire and rescue authority in Scotland up to and including 30th June 2007, exceeds 20 but does not exceed 30.”;

- (ii) in paragraph (3), for “Where” substitute “Until 11th April 2018, where”;

- (iii) after paragraph (3), insert—

“(3A) On and after 9th April 2018, the amount of additional pension benefit (as calculated in accordance with paragraph (2) and paragraph (3) and, if applicable, paragraph (3B) and this paragraph) shall be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension benefit were a pension to which the Pensions (Increase) Act 1971(a) applied and the beginning date for that pension were 1st July of the tax year immediately before the relevant tax year.

(3B) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2017/2018 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2017 with effect from Monday 9th April 2018.”;

(a) 1971 c.56.

- (iv) in paragraph (4), for “paragraph (3)” substitute “paragraphs (3) and (3A)”; and
- (v) in paragraph (5)—
 - (aa) before the definition of “relevant tax year” insert—
 - ““the beginning date” means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act 1971;
 - “following relevant tax year” means the tax year after the relevant tax year, in relation to which the member is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule B5;”; and
 - (bb) in sub-paragraph (b) of the definition of “relevant tax year”, for “rule B3” substitute “rule B5”;
- (g) for rule B5C (additional pension benefit: continual professional development), substitute—

“Additional pension benefit

B5C.—(1) Where a fire and rescue authority determines that the benefits listed in paragraph (5) are pensionable, and in any additional pension benefit year pays any such pensionable benefits to a regular firefighter, the authority shall credit the firefighter with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraph (3), the amount of additional pension benefit in respect of that 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) The amount of additional pension benefit determined in accordance with paragraph (2) shall be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension benefit were a pension to which the Pensions (Increase) Act 1971 applied and the beginning date for that pension were 1st July of the tax year immediately before the relevant tax year.

(4) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2017/2018 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2017 with effect from Monday 9th April 2018.

(5) The benefits referred to in paragraph (1) are—

- (a) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighter’s duties under the contract of employment but are within the wider functions of the job;
- (b) the amount (if any) paid in respect of a firefighter’s continual professional development;
- (c) the difference between the firefighter’s basic pay in his day to day role and any pay received whilst on temporary promotion or where he is temporarily required to undertake the duties of a higher role; and
- (d) any performance related payment which is not consolidated into his standard pay.

(6) In this rule—

“additional pension benefit year” means the period of 12 months beginning with 1st July in which a firefighter is in receipt of any of the benefits listed in paragraph (5);

“the beginning date” means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act 1971;

“following relevant tax year” means the tax year after the relevant tax year, in relation to which the member is not a pensioner member or entitled to a deferred pension under rule B5;

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

- (a) the amount of a firefighter’s pension benefits determined under this rule for the purposes of this Scheme is taken into account for tax purposes; and

(b) the firefighter is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule B5; and

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

- (h) in rule B5D (additional pension benefit: supplementary provisions)—
- (i) in paragraph (2), for “paragraphs (4) and (5)” substitute “paragraph (4)”; and
 - (ii) in paragraph (3) omit “(rule A15)”; and
- (i) in rule B7 (commutation - general provision)—
- (i) in paragraph (3), for “Government Actuary” substitute “Scheme Actuary”; and
 - (ii) in paragraph (11)—
 - (aa) omit “rule 12(3)”; and
 - (bb) for “serviceman” substitute “reservist”;
- (j) in rule B8 (commutation-small pensions)—
- (i) in paragraph (2), for “Government Actuary” substitute “Scheme Actuary”; and
 - (ii) after paragraph (3), add—

“(4) On the day on which the pension is commuted under this rule, all other entitlements to a pension under this Scheme are extinguished.”;
- (k) in rule B9 (allocation)—
- (i) in paragraph (7), for “the date on which he intends to retire” substitute “the day before the pension comes into payment”;
 - (ii) in paragraph (13), for “Government Actuary” substitute “Scheme Actuary”; and
 - (iii) in paragraph (16), for “serviceman” substitute “reservist”; and
- (l) in rule B12 (pension debit members), in paragraph (a) for “Government Actuary” substitute “Scheme Actuary”.

3. In Part C (awards on death - spouses)—

- (a) in rule C1 (spouse’s ordinary pension), for paragraph (2) omit “, subject to Part 1 of schedule 11 (calculation in certain cases where deceased serving or entitled to pension on 1st July 1973),”;
- (b) in rule C10 (pension debit members), for “Government Actuary” substitute “Scheme Actuary”.

4. In Part D (awards on death – children), for rule D5 (child’s allowance or special gratuity - limitations) substitute—

“Child’s allowance: limitations and duration

D5.—(1) Subject to paragraphs (2) and (3), a child is not eligible if he—

- (a) is 18 or older;
- (b) has ceased full-time education and is in paid employment; or
- (c) is married or has entered into a civil partnership.

(2) A child aged 18 but not more than 23 is eligible if he is in full-time education or attending a course of at least one year’s duration.

(3) A child aged 18 or more is eligible if, when the deceased dies, he is dependent on the deceased by reason of permanent disablement.

(4) A child is not eligible if he is convicted of the murder of the deceased, but this is subject to paragraph (6).

(5) Subject to paragraph (7), where the child is convicted of the culpable homicide of the deceased, the authority may as it thinks fit, withhold the child’s allowance—

- (a) in whole or in part; and

(b) permanently or temporarily.

(6) Where a conviction of the description mentioned in paragraph (4) is quashed on appeal—

(a) a child's pension shall be payable from the day after that on which the deceased died; and

(b) the authority shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of allowance accrued.

(7) Where—

(a) a conviction of the description mentioned in paragraph (5) is quashed on appeal; and

(b) the authority have withheld any part of the child's allowance,

the authority's decision under paragraph (5) shall be treated as revoked and it shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of allowance accrued from the day after that on which the deceased died.

(8) Nothing in paragraph (6) or (7) shall affect the application of paragraph (4) or (5) if the child whose conviction is quashed is subsequently convicted of the murder or culpable homicide of the deceased.

(9) A child's allowance ceases to be payable—

(a) unless paragraph (2) or (3) applies, on his 18th birthday or on the occurrence of the event referred to in paragraph (1)(b) or (c), whichever first occurs;

(b) where paragraph (2) applies, on his 23rd birthday or the day on which his full-time education or course ceases, whichever first occurs;

(c) where paragraph (3) applies, when the authority are satisfied—

(i) that the child is no longer permanently disabled; or

(ii) that the child's allowance should not have been awarded.

(10) Unless paragraph (9)(c) applies, an allowance for which a child is eligible as mentioned in paragraph (3) is payable for life.”.

5. In Part E (awards on death - additional provisions)—

(a) in rule E1 (lump sum death grant)—

(i) in paragraph (2), for “or gratuity” substitute “, gratuity or lump sum”; and

(ii) after paragraph (5), add—

“(6) The grant is to be paid before the end of the period of two years beginning with the earlier of the day on which the Scheme administrator knew of the member's death and the day on which the Scheme administrator could first reasonably be expected to have known of it.”;

(b) in rule E3 (dependent relative's gratuity), in paragraph (2)(b) after “Scheme” insert “in respect of the same firefighter”;

(c) in rule E4 (payment of balance of contributions to estate)—

(i) in paragraph (2)(f), for “Government Actuary” substitute “Scheme Actuary”; and

(ii) for paragraph (4), substitute—

“(4) The fire and rescue authority shall pay a post retirement death grant to the deceased's personal representatives.

(5) In this rule, a “post retirement death grant” is an amount representing the difference between the aggregate of the relevant amounts and the deceased's aggregate pension contributions.”;

- (d) in rule E5 (lump sum in lieu of surviving spouse's or civil partner's pension)—
- (i) in paragraph (1)—
 - (aa) for “Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule)”, substitute “Part 2 of Schedule 29 to the Finance Act 2004 (lump sum death benefit rule)”; and
 - (bb) omit “whole or any part of the”;
 - (ii) in paragraph (2)(a), for “rule C1” substitute “Part C (awards on death - spouses)”;
 - (iii) in paragraph (5), for “Government Actuary” substitute “Scheme Actuary”; and
 - (iv) after paragraph (5), add—

“(6) On the day on which the whole of a pension is commuted under this rule, all other entitlements under the Scheme of the person entitled to the pension are extinguished to the extent that they derive from the deceased member.”;
- (e) in rule E6 (lump sum in lieu of child's allowance)—
- (i) in paragraph (1), omit “whole or any part of the”;
 - (ii) in paragraph (3) omit “the whole or any part of”;
 - (iii) for “(3) A lump sum under this rule shall be calculated in accordance with Part III of Schedule 5” substitute—

“(4) A lump sum under this rule must be calculated in accordance with Part 3 of schedule 5”; and
 - (iv) after paragraph (4)(a), add—

“(5) On the day on which a pension is commuted under this rule, all other entitlements under the Scheme of the person entitled to the pension are extinguished to the extent that they derive from the deceased member.”;
- (f) in rule E7 (limitation on discretion to commute pension or allowance for gratuity)—
- (i) in paragraph (2), after “commute the” omit “the whole or any part of”;
 - (ii) in paragraph (2)(b), for “Part 1 of Schedule 29” to the end, substitute “Part 2 of Schedule 29 to the Finance Act 2004 (lump sum death benefit rule) in paragraph 7(4)”; and
 - (iii) in paragraph (4), for “Government Actuary” substitute “Scheme Actuary”;
- (g) for rule E8 (increase of pensions and allowances during first 13 weeks), substitute—

“Bereavement pension: survivors

E8.—(1) Subject to paragraph (2), a person entitled to a pension under rule C1 (spouse's ordinary pension) is also entitled in respect of each of the 13 weeks following death to a bereavement pension of an amount equal to the difference between the weekly rate at which the survivor's pension is paid and—

- (a) if the deceased was a firefighter member when he died, the weekly rate of his pensionable pay when he died;
- (b) in any other case, the weekly rate of his pension or pensions (including any increase under the Pensions (Increase) Act 1971) when he died.

(2) No entitlement arises under paragraph (1) where—

- (a) an election not to make pension contributions under rule G3 has effect at the date of the deceased's death; or
 - (b) the deceased was entitled to a deferred pension that had not come into payment.”;
- and

(a) Paragraph (4) of rule E6 is inserted by paragraph 5(e)(iii).

(h) after rule E8, insert—

“Bereavement pension: children

E8A.—(1) Subject to paragraph (2) this rule applies to a child’s ordinary or accrued allowance under this Scheme where the deceased died while serving as a regular firefighter or while in receipt of a pension and—

- (a) there is no surviving spouse or civil partner; or
- (b) a surviving spouse or civil partner did not become entitled to a pension which was payable for a continuous period of 13 weeks.

(2) This rule does not apply where the deceased died while serving as a regular firefighter if paragraph (6) of rule A3 had applied to the deceased.

(3) Subject to paragraphs (4) and (5), a person entitled to an allowance is also entitled in respect of each of the 13 weeks following death to a bereavement pension of an amount equal to the difference between the weekly rate at which the allowance is paid and—

- (a) if the deceased was a firefighter member when he died, the weekly rate of his pensionable pay when he died;
- (b) in any other case, the weekly rate of his pension or pensions (including any increase under the Pensions (Increase) Act 1971) when he died.

(4) Where there is more than one eligible child, the amount paid in respect of each bereavement pension shall not be less than the amounts payable under paragraph (3)(a) or (b) divided by the number of the allowances.

(5) No entitlement arises under paragraph (1) where—

- (a) an election not to make pension contributions under rule G3 has effect at the date of the deceased’s death; or
- (b) the deceased was entitled to a deferred pension that had not come into payment.”.

6. In Part F (pensionable service and transfer values)—

- (a) in rule F1 (reckoning of and certificates as to pensionable service)—
 - (i) in paragraphs (1) and (7), for “serviceman” substitute “reservist”;
 - (ii) in paragraph (3), omit “F6,”; and
 - (iii) in paragraph (6), in both places where it occurs, for “or gratuity” substitute “, lump sum or gratuity”;
- (b) After rule F1, insert—

“Reckoning of service for purposes of awards

F1A.—(1) Subject to paragraph (3), for the purpose of calculating an award payable to or in respect of an employee of a fire and rescue authority by reference to any period in years (including a period of pensionable or other service) the period shall be reckoned as—

$$A + \frac{B}{365} \text{ years}$$

where—

- A is the number of completed years in the period, and
- B is the number of completed days in any remaining part of a year, and accordingly a part of a year which includes 29th February in a leap year and comprises 365 days shall be treated as a whole year.

(2) Where, for the purpose of calculating an award payable to or in respect of a regular firefighter—

- (a) it is necessary to determine his pensionable service reckonable by reason of service or employment before or after a particular date (“the material date”); and
- (b) by virtue of the receipt by a fire and rescue authority of a transfer value, he is entitled to reckon a period of pensionable service (“the credited period”) by reason of service or employment for a period (“the previous employment period”) which includes the material date,

the credited period counts as pensionable service reckonable by reason of service or employment before and after the material date in the same proportion as that between the parts of the previous employment period falling before and after the material date.

(3) Subject to rule B13 and Part 6A of Schedule 2, any period of service 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 pensionable service.”;

- (c) in rule F2 (current service), in paragraph (4)(a) omit “(including any such additional or further contributions as are mentioned in rule G4)”;
- (d) in rule F4 (previous service reckonable on payment), omit paragraphs (1), (2), (4) and (5);
- (e) omit rule F6 (war service);
- (f) in rule F6A (previous service reckonable following actionable loss)—
 - (i) in each paragraph where it occurs, for “reckonable service” substitute “pensionable service”; and
 - (ii) omit “section 62 of the Financial Services Act 1986 or”;
- (g) in rule F6B (calculation of amount of restitution payment), in paragraphs (2)(b)(i) and (3), for “Government Actuary” substitute “Scheme Actuary”; and
- (h) in rule F9 (payment of transfer values)—
 - (i) in paragraph (1)(b), for “an approved scheme” substitute “a registered scheme or a qualifying recognised overseas pension scheme within the meaning of section 169 (recognised transfers) of the 2004 Act (“an overseas pension scheme”)”; and
 - (ii) in paragraph (7)(b), for “an approved scheme” substitute “a registered scheme or an overseas pension scheme”.

7. In part G (pensionable pay and contributions)—

- (a) in rule G2A (optional pension contributions during maternity and adoption leave), after paragraph (2) insert—

“(2A) But in calculating the pay on which the contributions are made, any amount the firefighter receives on account of a day’s work carried out under regulation 12A of the Maternity and Parental Leave etc. Regulations 1999^(a) or regulation 21A of the Paternity and Adoption Leave Regulations 2002^(b) that exceeds any maternity, paternity or parental leave pay due for that day, shall be disregarded.”;

- (b) after rule G2A, insert—

“Aggregate pension contributions for the purposes of awards

G2B.—(1) A regular firefighter’s aggregate pension contributions comprise—

- (a) all payments made by him to a fire and rescue authority that fall within paragraph (2);

(a) S.I. 1999/3312; regulation 12A was inserted by S.I. 2006/2014.

(b) S.I. 2002/2788; regulation 21A was inserted by S.I. 2006/2014.

- (b) all payments made by him in accordance with a notice under rule F2 (current service);
- (c) all payments made by him in accordance with an election under rule G2A;
- (d) all payments made by him in accordance with an election under rule G6; and
- (e) if paragraph (3) applies, the amount of the notional award described in paragraph (4).

(2) The payments that fall within this paragraph are payments under this Scheme or a previous Scheme that relate to a period of service which the regular firefighter is, or was immediately before electing under rule G3 not to pay pension contributions, entitled to reckon as pensionable service and have not been refunded to him, including payments made—

- (a) by way of rateable deductions from pay;
- (b) by way of such additional and further payments as were mentioned in articles 57 to 59 of the 1973 Scheme; or
- (c) in accordance with such an undertaking as is mentioned in Part 1 of Schedule 6.

(3) This paragraph applies where the regular firefighter is, or was immediately before electing under rule G3 not to pay pension contributions, entitled to reckon pensionable service by reason of a period of service or employment otherwise than as a regular firefighter (“the previous employment period”).

(4) The notional award mentioned in paragraph (1)(e) is the award by way of return of contributions or analogous payment that would have been paid to him if, at the end of the previous employment period, he had voluntarily retired in circumstances entitling him to such an award under the applicable superannuation arrangements.”;

- (c) in rule G3 (election not to pay pension contributions)—
 - (i) in paragraph (1), for “Subject to paragraphs (1A) and (8)” substitute “Subject to paragraph (1A)”;
 - (ii) in paragraph (1A), omit “: continual professional development”;
 - (iii) in paragraph (2), for “Subject to paragraphs (3) and (3A), an election” substitute “An election”; and
 - (iv) omit paragraphs (3) to (8);
- (d) omit rule G4 (continued payment of additional and further contributions); and
- (e) in rule G6 (election to purchase increased benefits), for paragraph (4) substitute—

“(4) An election to pay periodical contributions must be made at least 2 years before the person’s normal pension age, but no such election may be made if the fire and rescue authority so resolve, unless the person has at his own expense undergone a medical examination and satisfied the authority as to his good health.”.

8. In Part H (determination of questions and appeals)—

- (a) after rule H1 (determination by fire authority), insert—

“Review of medical opinion

H1A.—(1) Where—

- (a) new evidence on an issue wholly or partly of a medical nature is presented to the authority by a person (P) in respect of whom a decision has been made under rule H1;
- (b) the authority receive that evidence—
 - (i) where a copy of an opinion was supplied in accordance with paragraph (2) of rule H2, within 28 days of the receipt by P of that copy; and

(ii) in any other case, within 28 days of the receipt by P of notice of the authority's decision; and

(c) the authority and the person concerned agree that the IQMP should be given the opportunity of reviewing his opinion in the light of the new evidence,

the authority shall send a copy of the new evidence to the IQMP and invite him to reconsider his opinion.

(2) An IQMP's response to an invitation under paragraph (1) shall be in writing ("rule H1A response").

(3) An IQMP's rule H1A response shall be binding on the authority unless it is superseded by the outcome of an appeal under rule H2.

(4) As soon as reasonably practicable after receiving a rule H1A response, the authority shall reconsider its decision.

(5) Within 14 days of that reconsideration, the authority shall—

(a) give written notice to the person concerned that it has confirmed its decision or revised its decision (as the case may be); and

(b) if it has revised its decision, supply the person concerned with written notice of the revised decision, and

supply the person concerned with a copy of the rule H1A response.”;

(b) for rule H2 (appeal against opinion on a medical issue), substitute—

“Appeal to medical referee

H2.—(1) A person who wishes to appeal^(a) against an authority's decision on an issue of a medical nature may appeal to a board of medical referees in accordance with paragraph 1 of Part 1 of schedule 9 (appeal to board of medical referees).

(2) Subject to paragraph (3), where a decision—

(a) is made with regard to an opinion obtained pursuant to rule H1(2) or medical evidence relied on as mentioned in rule H1(3); or

(b) is reconsidered under rule H1A(4) with regard to a rule H1A response,

the authority shall within 14 days of making, confirming or revising the decision (as the case may be) send to the person concerned the documents mentioned in paragraph (4).

(3) Nothing in paragraph (2) requires the supply of documents that have already been supplied under rule H1A(5).

(4) The documents are—

(a) a copy of the opinion, response or evidence (as the case may be);

(b) an explanation of the procedure for appeals under this rule; and

(c) a statement that, if the person wishes to appeal against an authority's decision on an issue of a medical nature, the person must give written notice to the authority, stating his name and address and the grounds of his appeal, not later than 28 days after the person receives the last of the documents required to be supplied to him under this paragraph, or within such longer period as the authority may allow.

(5) A fire and rescue authority shall be bound by any decision duly given on an appeal under this rule.”; and

(a) Further provisions as to appeals under this rule are contained in Part 1 of schedule 9.

- (c) for rule H3 (appeal to Crown Court or Sheriff), substitute—

“Appeals on other issues

H3. Where—

- (a) a person disagrees with an authority’s determination under rule H1; and
- (b) the person’s disagreement does not involve an issue of a medical nature,

he may, by written notice given to the authority within 28 days of receipt of the determination, require the authority to deal with the disagreement by means of the arrangements implemented by them pursuant to the requirements of section 50 of the Pensions Act 1995^(a) (requirement for dispute resolution arrangements) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008^(b).”.

9. In Part I (servicemen)—

- (a) in this Part, in each place where it occurs, including the heading, for “serviceman” or “servicemen” substitute “reservist” or “reservists” as the case may be;
- (b) in rule I1 (preliminary), in paragraph (1) for “the armed forces” substitute “the reserve forces”;
- (c) for rule I2 (awards to servicemen), substitute—

“Awards on permanent disablement

I2. A reservist who, at the end of his forces period, is permanently disabled for performing the duties of a firefighter by reason of an infirmity that—

- (a) is unrelated to any injury received during his forces period; and
- (b) is not a qualifying injury,

is entitled to an award under rule B3 (ill health awards).”;

- (d) in rule I3 (awards on death of reservists^(c))—
 - (i) in paragraph (2), for “paragraphs (3) and” substitute “paragraph”; and
 - (ii) omit paragraphs 2A, (3), (4) and (5);
- (e) in rule I5 (reservists who do not resume service in their former brigade)—
 - (i) in paragraph (1), for “Subject to paragraph (3), a” substitute “A”; and
 - (ii) omit paragraph (3);
- (f) in rule I7 (pension contributions), for paragraph (2) substitute—

“(2) A reservist shall for those purposes be treated as having received no pensionable pay (and accordingly is not liable to pay contributions) in respect of any period during which his service pay is less than the pensionable pay described in paragraph (1).”; and
- (g) after rule I7, insert—

“Interpretation of Part

I8. In this Part—

“the 1996 Act” means the Reserve Forces Act 1996^(d);

(a) 1995 c.26; section 50 was substituted by section 273 of the Pensions Act 2004 (c.35) and amended by the Pensions Act 2007 (c.22).
(b) S.I. 2008/649.
(c) Paragraph 9(a) changes the reference to “servicemen” to “reservists”.
(d) 1996 c.14.

“qualifying injury” means an injury, received by a person in the performance of his duties as a firefighter, which is not wholly or mainly due to his own culpable negligence or misconduct;

“relevant service in the reserve forces” means service in the forces specified in section 1(2) of the 1996 Act—

- (a) in pursuance of a training obligation under Part 3 of that Act; or
- (b) by virtue of a call out for permanent service or a recall under Part 2 of the Reserve Forces Act 1980(a) or Part 6 or Part 7 of the 1996 Act; and

“reservist” means a person who, immediately before a forces period, was a firefighter.”.

10. In Part J (special cases), in rule J1 (guaranteed minimum pensions) for paragraph (2)(d) substitute—

“(d) in the case of a person who dies at any time after 4th December 2005 and leaves a civil partner, the civil partner is entitled to a pension at a weekly rate equal to half of that part of the deceased’s guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years up to and including the tax year 1996-97.”.

11. In Part K (revision and withdrawal of awards)—

- (a) in rule K1 (review of ill-health and certain deferred pensions), in paragraph (3)(a) for “rule B5” substitute “rule B5(4)(b)”;

- (b) in rule K1A (consequences of review), after paragraph (4) add—

“(5) If, on such consideration as is mentioned in rule K1(3), it is found that a person whose deferred pension is being paid early is no longer permanently disabled for engaging in firefighting or performing any other duties appropriate to the role of a firefighter the person’s entitlement to early payment of the deferred pension will cease with immediate effect.”; and

- (c) for rule K4 (withdrawal of pension during service as a regular firefighter), substitute—

“K4. Withdrawal of pension whilst employed by a fire and rescue authority

The fire and rescue authority by whom a pension is payable may, in its discretion, withdraw the whole or any part of the pension, except a pension under Part C (awards on death – spouses and civil partners), for any period during which the person entitled to it is employed by any fire and rescue authority in whatever capacity.”.

12. In Part L (payment of awards and financial provisions)—

- (a) in rule L3 (payment of awards)—

- (i) in paragraph (1)(b), omit “in advance”; and

- (ii) in paragraphs (7) and (8), in each place where it occurs, after “gratuity” insert “or lump sum”; and

- (b) in rule L4 (prevention of duplication)—

- (i) in paragraph (1), for “or the Compensation Scheme” substitute “and the Compensation Scheme”; and

- (ii) in paragraph (3), omit “and rule L4B”.

(a) 1980 c.9; prospectively repealed by the 1996 Act as from a date to be appointed.

(amount of transfer value), in each place where it occurs, for “Government Actuary” substitute “Scheme Actuary”.

19. Omit schedule 7 (war service).

20.—(1) In schedule 8 (pension contribution and purchase of increased benefits), in Part 1 (payments)—

- (a) in paragraph 1(1)—
 - (i) omit “subject to sub paragraph (2)(c),”; and
 - (ii) for “normal pension age” substitute “role”;
- (b) in paragraph 1(2)(b), for “represents; and” substitute “represents.”;
- (c) omit paragraph 1(2)(c);
- (d) in paragraph 3(1)—
 - (i) omit “subject to sub-paragraph (2)(c)”; and
 - (ii) for “normal pension age” substitute “role”;
- (e) in paragraph 3(2)(b), for “disentitlement; and” substitute “disentitlement.”;
- (f) omit paragraph 3(2)(c); and
- (g) in paragraphs 2 and 4, for “Government Actuary” substitute “Scheme Actuary”.

(2) In Part 2 (calculation of appropriate amount), in paragraph 3 for “Government Actuary” substitute “Scheme Actuary”.

21.—(1) In schedule 9 (appeals), in Part 1 (appeal to board of medical referees)—

- (a) for paragraph 1(1), substitute—

“**1.**—(1) Subject to sub-paragraph (2), written notice of appeal against a decision on an issue of a medical nature stating—

- (a) the appellant’s name and address; and
- (b) the grounds of the appeal,

must be given to the authority within 28 days of the date on which the appellant receives the documents referred to in rule H2(4); and where the appellant receives those documents on different dates, they shall be treated for this purpose as received on the later or latest of those dates.”;

- (b) for paragraph 2, substitute—

“**2.**—(1) On receiving a notice of appeal, the authority shall supply the Scottish Ministers with three copies of—

- (a) the notice of appeal;
- (b) the notice of the relevant decision;
- (c) the opinion, response or evidence (as the case may be) supplied to the appellant; and
- (d) every other document in its possession or under its control which appears to it to be relevant to the issue that is the subject of the appeal.

(2) The Scottish Ministers shall refer an appeal to a board of medical referees (“the board”).”;

- (c) after paragraph 2A, insert—

“**2B.**—(1) As soon as reasonably practicable after referring an appeal to the board, the Scottish Ministers shall supply the board’s administrator with three copies of every document supplied under paragraph 2(1).

(2) The board shall arrange for one of its number to review those documents (“the reviewing member”).

- (3) As soon as reasonably practicable after concluding the review, the reviewing member shall give written notice to the Scottish Ministers—
- (a) of any other information which the reviewing member considers would be desirable so as to provide the board with sufficient information for the purpose of enabling the board to determine the appeal; and
 - (b) if it is the case, that it is his opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded.
- (4) On receipt of the reviewing member’s notice, the Scottish Ministers shall—
- (a) where the reviewing member has notified the Scottish Ministers of the desirability of obtaining other information, require the authority to use its best endeavours to obtain that information; and
 - (b) where the notice contains an opinion of the description mentioned in sub-paragraph (3)(b), send a copy of it to the authority.
- (5) An authority which receives a copy of a reviewing member’s opinion shall, as soon as reasonably practicable—
- (a) send a copy of it to the appellant; and
 - (b) by written notice to the appellant—
 - (i) advise him that, if his appeal is unsuccessful, he may be required to pay the authority’s costs; and
 - (ii) require him to notify it, within 14 days of the date of its notice, whether he intends to pursue or withdraw the appeal.
- (6) An authority which notifies an appellant under sub-paragraph (5)(b) shall inform the Scottish Ministers of the appellant’s response to its request under sub-paragraph (b)(ii); and the Scottish Ministers shall notify the board accordingly.”;
- (d) in paragraph 3, for “The board shall secure”, substitute “Where an appeal is to be pursued, the board shall secure”;
- (e) in paragraph 4, in sub-paragraph (2)(b) for “not less than 21 days’ notice of”, substitute “not less than two months’ notice of”;
- (f) after paragraph 6, insert—
- “**6A.**—(1) Where the appellant and the fire and rescue authority have received a copy of the report supplied under paragraph 6 and the appellant and the authority (“the parties”) agree that the board has made an error of fact which materially affects the board’s decision, the authority shall within 28 days of receipt of the report supply the Scottish Ministers with two copies of a statement agreed between the parties setting out—
- (a) the error of fact;
 - (b) the correct fact,
- and invite the board to reconsider its decision.
- (2) The Scottish Ministers shall within 14 days of receipt of the statement supply a copy of it to the board.
- (3) As soon as reasonably practicable after receiving the statement, the board shall reconsider its decision.
- (4) Within 14 days of that reconsideration the board shall—
- (a) give written notice to the Scottish Ministers that it has confirmed its decision, or revised its decision (as the case may be); and
 - (b) if it has revised its decision, supply the Scottish Ministers with a written report of its revised decision.
- (5) The Scottish Ministers shall supply to the appellant and the authority a copy of the written notice confirming the board’s decision, or a copy of the written report of the board’s revised decision (as the case may be).”;

(g) in paragraph 8—

(i) for sub-paragraph (2) substitute—

“(2) Where the board—

(a) decides an appeal in favour of the fire and rescue authority; and

(b) reports that in its opinion the appeal was frivolous, vexatious or manifestly ill-founded,

the fire and rescue authority may require the appellant to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 7(1), as the authority thinks fit;” and

(ii) for sub-paragraph (2A) substitute—

“(2A) Where—

(a) the appellant gives notice to the board—

(i) withdrawing the appeal; or

(ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under paragraph 4(2), and the notice is given less than 22 working days before the date appointed under paragraph 4(2); or

(b) the appellant’s acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under paragraph 4(2) less than 22 working days before the date so appointed,

the authority may require the appellant to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 7(1), as the authority thinks fit.”; and

(h) omit Part 2 (appeal tribunals).

22. In schedule 11 (special cases)—

(a) omit Part 3 (calculation of pensionable service where person ceased to serve before 1st May 1975);

(b) omit Part 4 (modification for persons serving on 10th July 1956); and

(c) in Part 5 (application to persons affected by local government reorganisation or combination scheme)—

(i) in each place where it occurs, for “brigade” substitute “fire and rescue authority”;

(ii) in paragraph 2(2) omit “and” and sub-paragraph (b); and

(iii) omit paragraph 4.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firemen's Pension Scheme 1992 (set out in Schedule 2 of the Firemen's Pension Scheme Order 1992) ("the Scheme") as it has effect in Scotland. Some of the amendments introduce new provisions. Other amendments make corrections.

Except as mentioned below the Order has effect from 28th October 2018. Power to give the Order retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

Paragraph 1 of the Schedule omits rule A14 (compulsory retirement on grounds of efficiency) and rule A15 (compulsory retirement on grounds of disablement). Rules A4 to A8 and A12 are also omitted.

Paragraph 2(a) of the Schedule amends rule B1 so that a chief fire officer, who is appointed after the date on which the order comes into force, is no longer required to obtain the permission of the fire and rescue authority before retiring. Paragraph 2(e) amends the formula for the calculation of pension where a person is entitled to an ill-health award or deferred pension and benefits from the entitlement to two pensions.

The amendment made by sub-paragraph f(i) of paragraph 2 is to make minor corrections so that it is clear which pensionable service can count for the long service increment additional pension benefit. The amendment only includes service with the Scottish Fire and Rescue Service.

Paragraph 2(g) of the Schedule inserts a new rule B5C which extends additional pension benefit so that it covers—

- payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job;
- any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role;
- any non-consolidated performance related payment.

Any payments in respect of a firefighter member's continuing professional development continue to be covered by additional pension benefit.

The amendments made by sub-paragraphs (ii), (iii) and (iv) of paragraphs 2(f) and 2(g) in relation to paragraph (3) and (4) of the new rule B5C amend the method of uprating additional pension benefit for the long service increment (rule B5B) and continuing professional development (rule B5C) from a specific index, retail price index, to an index in accordance with the Pensions (Increase) Act 1971. There is a specific provision to provide that the consumer price index is used for the tax year 2017/2018. These amendments have effect from 9th April 2018.

Paragraph 4 of the Schedule substitutes a new rule D5 (child's allowance: limitations and duration). Paragraph 5 of the Schedule makes various amendments to Part E (awards on death-additional provisions).

Paragraph 6 of the Schedule amends Part F (pensionable service and transfer values) and in particular inserts new rule F1A (reckoning of service for purposes of awards) which repeats most of the provisions of the omitted rule A7.

Paragraph 7(b) inserts rule G2B (aggregate pension contributions for the purposes of awards) which repeats most of omitted rule A8 (aggregate pension contributions for purposes of awards) with some amendments.

Paragraph 8 inserts a new rule and substitutes 2 new rules in Part H (determination of questions and appeals). These—

- enable the review of medical opinion where there is new evidence (rule H1A: review of medical opinion);

- improve the procedure of an appeal new rule H2 (appeal to medical referee);
- remove the right of appeal to the Crown Court or Sheriff and replace it with arrangements implemented for dispute resolution by the fire and rescue authority under section 50 of the Pensions Act 1995 (rule H3: appeals on other issues).

Paragraph 9 amends the provisions in Part I (servicemen) to reflect changes in the relevant legislation.

Paragraph 11(b) amends rule K1A to remove a deferred member's entitlement to the early payment of a deferred pension where he has become capable of undertaking regular employment. Paragraph 11(c) of the Schedule substitutes a new rule K4 which extends the fire and rescue authority's power to abate pension so this applies when a pensioner takes up employment in any role with an authority.

Paragraph 21 amends Part 1 (appeal to board of medical referees) of Schedule 9 (appeals) by the substitution of new paragraphs for paragraphs (1)(1), paragraph 2, 8(2), 8(2A) and the insertion of a new paragraph 2B and 6A. These amendments to procedures of the board enable the board to review its decision where there has been a material error of fact, to appoint a reviewing member to ensure it has all documents required before a hearing and also to increase the grounds on which the authority can require the appellant to pay some or all of the board's costs. Paragraph 23(2) omits Part 2 (appeal tribunals) which is consequential on the amendment of rule H3 (Appeals on other issues).

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

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