

2001 No. 3691

**FIRE SERVICES, ENGLAND AND WALES
PENSIONS, ENGLAND AND WALES**

**The Firemen's Pension Scheme (Pension Sharing)
Order 2001**

Made - - - - - 13th November 2001
Laid before Parliament 22nd November 2001
Coming into force - - 1st December 2001

The Secretary of State, in exercise of the powers conferred on him by section 26 of the Fire Services Act 1947(a) and section 12 of the Superannuation Act 1972(b), as applied by section 16(3) of that Act, and of all other powers enabling him in that behalf, with the consent of the Treasury(c) and after consultation with the Central Fire Brigades Advisory Council, hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Firemen's Pension Scheme (Pension Sharing) Order 2001 and shall have effect from 1st December 2000.

(2) This Order extends to England and Wales only.

Amendment of the Pension Scheme Regulations

2. The Firemen's Pension Scheme set out in Schedule 2 to the Firemen's Pension Scheme Order 1992(d) shall be amended in accordance with the Schedule to this Order.

Signed by authority of the Secretary of State

Alan Whitehead
Parliamentary Under-Secretary of State,
12th November 2001 Department for Transport, Local Government and the Regions

We consent to the making of this Order

Anne McGuire
John Heppell
13th November 2001 Two of the Lords Commissioners of Her Majesty's Treasury

(a) 1947 c. 41, to which there are amendments not relevant to this Order.
(b) 1972 c. 11. These powers are extended by section 42 of the Welfare Reform and Pensions Act 1999 (c. 30).
(c) See S.I. 1981/1670.
(d) S.I. 1992/129.

AMENDMENTS OF THE FIREMEN'S PENSION SCHEME

1. In rule A3 (exclusive application to regular firefighters)—
 - (a) in paragraphs (1) for the words “paragraph (3)” there shall be substituted the words “paragraphs (3) and (4)”, and
 - (b) after paragraph (3) there shall be inserted—

“(4) Nothing in this rule prevents provision being made by this Scheme in respect of pension credit members.”.
2. In rule B8(1) after “together with” there shall be inserted the words “any pension to which he is entitled under rule IA1 and”.
3. After rule B11 the following rule shall be inserted—

“Pension debit members

B12. Where a pension debit member is entitled to an award under rule B1, B2, B3 or B5—
 - (a) the award is calculated by reference to the member’s rights under this Scheme as reduced by virtue of section 31 of the 1999 Act and in accordance with such tables and other guidance as are provided for the purpose by the Government Actuary, and
 - (b) rules B7 to B10 have effect accordingly.”.
4. After rule C9 the following rule shall be inserted—

“Pension debit members

C10. Where a pension debit member dies leaving a surviving spouse, any award under rule C1, C4, C5, C6, C7 or C8, and the pension under any of those rules by reference to which any payment under rule C9 is made, is calculated by reference to the member’s rights under this Scheme as reduced by virtue of section 31 of the 1999 Act and in accordance with such tables and other guidance as are provided for the purpose by the Government Actuary.”.
5. After rule D5 the following rule shall be inserted—

“Pension debit members

D6. Where a pension debit member dies leaving a child, the reduction in his rights under this Scheme by virtue of section 31 of the 1999 Act is disregarded for the purposes of calculating any award payable under this Part.”.
6. In rule E4(2) for paragraph (f) there shall be substituted—

“(f) the actuarial value, as calculated in accordance with guidance provided for the purpose by the Government Actuary, of—
 - (i) any surviving spouse’s pension or child’s allowance payable in respect of the death, and
 - (ii) if the deceased member was a pension debit member, any pension credit member’s pension deriving from the deceased member’s rights.”.
7. In rule E9 after paragraph (8) there shall be inserted—

“(9) If the deceased was a pension debit member, this rule has effect as if the sums referred to in paragraph (2)(a), (b) and (c) were reduced in the same proportion as the member’s rights are reduced by virtue of section 31 of the 1999 Act.”.
8. In rule F7 (receipt of transfer value)—
 - (a) in paragraph (1) after “(4)” there shall be inserted the words “and “(6)”, and
 - (b) after paragraph (5) there shall be inserted—

“(6) A transfer value may not be accepted in respect of any pension credit rights.”.
- 9—(1) The existing provisions of rule F8 (transfer payments between fire authorities) shall become paragraph (1) of that rule.
 - (2) In that paragraph after the word “shall” there shall be inserted the words “subject to paragraph (2)”.
 - (3) After that paragraph there shall be inserted—

“(2) No sum may be paid in respect of any pension credit rights.”.
10. In rule F9 (payment of transfer values)—
 - (a) in paragraph (1) for “(8)” there shall be substituted “(8A)”, and

(b) after paragraph (8) there shall be inserted—

“(8A) A transfer value may not be paid in respect of any pension credit rights.”.

11. In rule G6(1) (election to purchase increased benefits) after “(4)” there shall be inserted the words “and rule G9”.

12. After rule G8 the following rule shall be inserted—

“Pension debit members: restriction on replacement of debited rights

G9.—(1) Subject to paragraph (2), a pension debit member may not replace any rights debited to him as a consequence of a pension sharing order with any rights which he would not have been able to acquire (in addition to the debited rights) had the order not been made.

(2) Paragraph (1) does not apply if and to the extent that regulations made under paragraph 18(10) or (11) of Schedule 10 to the Finance Act 1999 make provision as a result of which the requirement in section 590(3)(bb) of the Income and Corporation Taxes Act 1988 has effect in the case of this Scheme with any exception, exclusion or modification permitting a member to replace any rights so debited.”.

13. After Part I the following Part shall be inserted—

“PART IA

PENSION CREDIT MEMBERS

Pension credit member’s entitlement to pension

IA1.—(1) Subject to rule IA2, a pension credit member is entitled to a pension for life which becomes payable—

- (a) when he attains normal benefit age, or
- (b) if it is later, when the pension sharing order under which he is entitled to the pension credit takes effect.

(2) The pension must be of such an amount that its actuarial value is equal to the member’s pension credit, as calculated from tables prepared by the Government Actuary and in accordance with regulations made under paragraph 5(b) of Schedule 5 to the 1999 Act.

Commutation of the pension credit benefits

IA2.—(1) In the circumstances described in regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000(a) (commutation of pension credit benefit: small pensions), the relevant fire authority may commute for a lump sum the whole of the pension to which a pension credit member is entitled under rule IA1.

(2) A person entitled or prospectively entitled to such a pension may commute for a lump sum a portion of the pension (“the commuted portion”).

(3) But paragraph (2) does not apply if the pension debit member from whose rights the pension credit member’s pension credit is derived has received a lump sum under rule B7 before the date on which the pension sharing order takes effect.

(4) The lump sum under paragraph (2) is the actuarial equivalent of the commuted portion at the normal benefit age, calculated from tables prepared by the Government Actuary.

(5) But the lump sum under paragraph (2) may not exceed the annual rate of the pension for the first year it is payable (disregarding any reduction under this rule or any other rule of the Scheme), multiplied by 2.25.

(6) A person who wishes to commute a portion of a pension under paragraph (2) must not later than 6 months after—

- (a) the date on which the person attains normal benefit age, or
- (b) the date on which the pension sharing order takes effect,

whichever is the later, give the relevant fire authority written notice of commutation, specifying the portion to be commuted.

(7) Notice of commutation takes effect on the later of—

- (a) the date on which the pension under rule IA1 becomes payable, and
- (b) the date on which it is received by the fire authority.

(a) S.I. 2000/1054, as amended by S.I. 2000/2691.

- (8) When a person's notice of commutation takes effect, the relevant fire authority shall—
- (a) reduce the pension, as from the effective date, by the commuted portion, and
 - (b) pay him the lump sum, reduced where the effective date is the date of receipt of the notice, by the difference between the aggregate payments made in respect of the pension and the aggregate payments that would have been made in respect of it if it had been reduced from—
 - (i) the date on which the person attains normal benefit age, or
 - (ii) the date on which the pension sharing order takes effect,
 whichever is the later.

Death grants where pension credit member dies before pension credit benefits payable

IA3. If a pension credit member dies before any benefits deriving from the member's pension credit have become payable to him under this Scheme, a lump sum death grant is to be paid to the personal representatives of an amount equal to the annual rate of the pension to which the member would have been entitled under rule IA1 if he had attained normal benefit age on the date of his death (as calculated from tables prepared by the Government Actuary) multiplied by 2.25.

Application of general rules

IA4.—(1) The provisions of this Scheme specified in paragraph (2) apply to pension credit members and awards payable to or in respect of them, but apart from where provision is made by this Part or a contrary intention is otherwise indicated—

- (a) this Scheme shall not apply to pension credit members and benefits payable to or in respect of them, except if and to the extent that they are also members of another description or dependants of a member, and
- (b) the benefits payable to or in respect of pension credit members are not aggregated for any purpose with benefits payable to or in respect of those persons in any other capacity or as pension credit members deriving their pension credit benefits from any other pension debit member.

- (2) Those provisions are—
- rule H1 (determination by fire authority),
 - rule H3 (appeal to Crown Court or Sheriff),
 - rule K5 (withdrawal of pension on conviction of certain offences),
 - rule L2 (expenses and receipts of fire authorities),
 - rule L3 (payment of awards), and
 - rule L5(1) to (5) and (10) (payments of awards-supplementary).

14. In rule L1 (authorities responsible for payment of awards) after paragraph (2) there shall be inserted—

“(3) An award payable to or in respect of a pension credit member under Part IA, and any sum paid in commutation of such an award, is payable by the relevant fire authority.

- (4) In this Scheme “the relevant fire authority”, in relation to a pension credit member, means—
- (a) the fire authority who employ the pension debit member from whose rights the pension credit member's pension credit is derived at the time when the pension sharing order takes effect, or
 - (b) if he is not then employed by a fire authority, the fire authority by whom he was last employed.”.

15. In rule L4 (prevention of duplication) after paragraph (2)(d) there shall be inserted—

“(e) under rule IA1 (pension credit member's entitlement to pension),”.

16. In Part I of Schedule 1 (interpretation: glossary of expressions) there shall be inserted in the appropriate places in alphabetical order the following definitions—

“The 1993 Act”	The Pension Schemes Act 1993(a).
“The 1999 Act”	The Welfare Reform and Pensions Act 1999(b).
“Normal benefit age”	The age of 60.
“Pension credit”	A credit under section 29(1)(b) of the 1999 Act, including a credit under corresponding Northern Ireland legislation.
“Pension credit benefit”	Construe in accordance with section 101B of the 1993 Act(c).

(a) 1993 c. 48.
 (b) 1999 c. 30.
 (c) Section 101B is inserted by section 37 of the Welfare Reform and Pensions Act 1999.

“Pension credit member”	Construe in accordance with section 124(1) of the Pensions Act 1995(a).
“Pension credit rights”	Construe in accordance with section 101B of the 1993 Act.
“Pension debit”	A debit under section 29(1)(a) of the 1999 Act.
“Pension debit member”	A person whose benefits or future benefits under this Scheme have been reduced under section 31 of the 1999 Act.
“Pension sharing order”	An order or provision mentioned in section 28(1) of the 1999 Act.
“Relevant fire authority”	Construe in accordance with rule L1(4).”.

17. In paragraph 2(2) of Part V of Schedule 2 (injury awards) after the words “this Schedule” there shall be inserted the words “or by virtue of a pension debit”.

18. In Part III of Schedule 6 (transfer payments between fire authorities) after paragraph 6 there shall be inserted—

“**6A.** In the case of a pension debit member, the sum payable is reduced by such amount as is calculated in accordance with such guidance as is provided for the purpose by the Government Actuary.”.

19. In Part IV of Schedule 6 (amount of transfer value) after paragraph 5 there shall be inserted—

“**6.** In the case of a pension debit member, the sum payable is reduced by such amount as is calculated in accordance with such guidance as is provided for the purpose by the Government Actuary.”.

(a) 1995 c. 26. The definition of “pension credit member” is inserted by paragraph 61(3) of Schedule 12 to the Welfare Reform and Pensions Act 1999.

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order amends the Firemen's Pension Scheme, as set out in Schedule 2 to the Firemen's Pension Scheme Order 1992, as it applies in England and Wales. The amendments make provision for the implementation of pension sharing on divorce and nullity in accordance with the Welfare and Pensions Reform Act 1999 and subordinate legislation made under that Act. In particular, they implement the overriding reduction of benefits made by section 31 of that Act. The amendments are set out in the Schedule to this Order.

Paragraph 1 of the Schedule amends rule A3 of the Scheme to enable the Scheme to provide benefits for pension credit members (the ex-spouses in whose favour pension sharing orders have been made).

Paragraph 2 amends rule B8 so that any pension a person is entitled to as a pension credit member is taken into account in determining whether a pension the person is entitled to under Part B is commuted.

Paragraph 3 inserts a new rule, B12, providing for the awards of pension debit members (firemen subject to pension sharing orders) to be calculated by reference to the rights they have after the reduction in consequence of the pension sharing order has been made. Paragraph 4 makes similar provision about awards to the surviving spouses of such members and other awards on death. But paragraph 5 provides for that reduction to be disregarded for the purposes of calculating children's benefits.

Paragraph 6 amends rule E4 so that the actuarial value of the pension credit member's pension is taken into account in determining whether there is a balance of contributions to pay to the member's estate.

Paragraph 7 amends rule E9 so that, if a deceased member is a pension debit member, the flat rate awards for surviving spouses are reduced in the same proportion as the member's pension.

Paragraphs 8 to 10 prevent transfer values being paid or accepted in respect of pension credit rights.

Paragraphs 11 and 12 make provision preventing a pension debit member from purchasing rights to replace those debited by a pension sharing order, except in the circumstances allowed under regulations made under paragraph 18(10) or (11) of Schedule 10 to the Income and Corporation Taxes Act 1988.

Paragraph 13 inserts a new Part, Part IA, in the Scheme making special provision for pension credit members. The new rules provide for the pension to which such members are entitled at their normal benefit age or, if later, the date when the pension sharing order takes effect, for the commutation of the pension and for a death grant to be payable if the member dies before the pension is payable. Rule IA4 disapplies most rules of the Scheme for these members, except the rules mentioned in the new rule IA4(2).

Paragraph 14 makes provision about which fire authorities exercise functions under the Scheme in relation to pension credit members' awards.

Paragraph 15 excludes pension credit members' pensions under Part IA from the rules in rule L4 preventing the payment of duplicate pensions.

Paragraph 16 adds various expressions relating to pension sharing to the glossary in Part I of Schedule 1.

Paragraphs 17 to 19 contain various consequential amendments of the provisions in the Schedules to the Scheme concerning calculations of awards and transfer values.

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