
STATUTORY INSTRUMENTS

2005 No. 3228

**FIRE AND RESCUE SERVICES,
ENGLAND AND SCOTLAND
CIVIL PARTNERSHIP,
ENGLAND AND SCOTLAND**

**The Firefighters' Pension Scheme (Civil Partnership
Amendments) (England And Scotland) Order 2005**

<i>Made</i>	- - - -	<i>22nd November</i> <i>2005</i>
<i>Laid before Parliament</i>		<i>29th November 2005</i>
<i>Coming into force</i>	- -	<i>5th December 2005</i>

The First Secretary of State, in exercise of the powers conferred by section 259(1) and (4)(b) of the Civil Partnership Act 2004(1), makes the following Order:

Citation, commencement and application

1. This Order may be cited as the Firefighters' Pension Scheme (Civil Partnership Amendments) (England and Scotland) Order 2005, and shall come into force on 5th December 2005.

Amendment of the Firefighters' Pension Scheme

2. The Firefighters' Pension Scheme set out in Schedule 2 to the Firemen's Pension Scheme Order 1992(2) shall be amended—

- (a) as it has effect in relation to England, in accordance with Schedules 1 and 2 to this Order;
- (b) as it has effect in relation to Scotland, in accordance with Schedules 1 and 3.

(1) 2004 c. 33.

(2) S.I.1992/129; amended, as to England and Scotland, by 1997/2309 and 2851 and 1998/1010; as to England only by 2001/3649 and 3691, 2004/1912 and 2005/2980; and, as to Scotland only, by S.I.2001/310, 2004/385 and 2005/xxxx. 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 That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21).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 the Firefighters' Pension Scheme (England and Scotland) Order 2004 (S.I. 2004/2306). The name of the scheme was changed to the Firefighters' Pension Scheme, by article 4(1) of that Order.

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Signed by authority of the First Secretary of State

22nd November 2005

Phil Woolas
Minister of State, Office of the Deputy Prime
Minister

SCHEDULE 1

Article 2

AMENDMENT OF THE FIREFIGHTERS' PENSION SCHEME
AS IT HAS EFFECT IN ENGLAND AND SCOTLAND

1. In rule A3 (exclusive application to regular firefighters)(3), in paragraph (1), after “their spouses”, insert “or civil partners”.
2. In rule B9 (allocation)(4)—
 - (a) in paragraph (2)(a), after “spouse”, insert “or civil partner”;
 - (b) in paragraph (4)—
 - (i) in sub-paragraph (b)—
 - (aa) after “marry”, insert “or form a civil partnership”; and
 - (bb) after “re-marry”, insert “or form a subsequent civil partnership”;
 - (ii) after “spouse”, insert “or civil partner”; and
 - (iii) after “marriage”, insert “or civil partnership”; and
 - (c) in paragraph (7)(b)—
 - (i) after “marry”, insert “or form a civil partnership”;
 - (ii) after “re-marry”, insert “or form a subsequent civil partnership”;
 - (iii) after “spouse”, insert “or civil partner; and
 - (iv) after “marriage” (in both places), insert “or civil partnership”.
3. In rule C1 (spouse’s ordinary pension)(5)—
 - (a) in paragraph (1), after “spouse”, insert “or civil partner”;
 - (b) after paragraph (2), insert—

“(2A) Subject to paragraph (3), the surviving civil partner is entitled to an ordinary pension of such amount as bears to the ordinary pension to which he would have been entitled had he been the deceased’s surviving spouse (calculated in accordance with Part I of Schedule 3), the same proportion that the deceased’s service after 5th April 1988 bears to the whole of his pensionable service.”; and
 - (c) in paragraphs (3) and (5), after “spouse”, insert “or civil partner”.
4. In rule C2 (spouse’s special award)—
 - (a) in paragraphs (1) and (2), after “spouse”, insert “or civil partner”; and
 - (b) for paragraph (3), substitute—

“(3) Where the deceased died while serving as a regular firefighter the amount of the gratuity is the total of 25% of his average pensionable pay and the greater of—

 - (a) in the case of a surviving spouse—
 - (i) his average pensionable pay, and
 - (ii) two and a quarter times the amount of the pension that would have been payable under rule B3 if on the date of his death he had retired on the ground of permanent disablement;
 - (b) in the case of a surviving civil partner—

(3) Rule A3 was amended, as to England, by S.I. 2001/3691 and S.I. 2005/2980, Sch, para 1 and, as to Scotland, by S.S.I. 2001/310.

(4) Rule B9(2) was amended, as to England, by S.I. 2005/2980, Sch, para 19 and, as to Scotland, by S.S.I. 2005/566, para 19.

(5) Rule C1(3) and (5) was amended, as to England, by S.I. 2005/2980, Sch, para 22 and, as to Scotland, by S.S.I. 2005/566, para 22.

- (i) his average pensionable pay; and
 - (ii) two and a quarter times such amount as bears to the amount of the pension referred to in sub-paragraph (a)(ii) to which he would have been entitled had he been the deceased's surviving spouse, the same proportion that the deceased's service after 5th April 1988 bears to the whole of his pensionable service.”.
5. In rule C3 (spouse's augmented award), in paragraph (1), after “spouse”, insert “or civil partner”.
6. In rule C4 (spouse' accrued pension)—
- (a) in paragraph (1), after “spouse”, insert “or civil partner”; and
 - (b) for paragraph (3), substitute—
 - “(3) Where this rule applies—
 - (a) the surviving spouse is entitled to an accrued pension calculated in accordance with Part III of Schedule 3; and
 - (b) the surviving civil partner is entitled to an accrued pension of such amount as bears to the amount of accrued pension to which he would have been entitled had he been the deceased's surviving spouse, the same proportion that the deceased's service after 5th April 1988 bears to the whole of his pensionable service.”.
7. For rule C5 (limitation on award to spouse by reference to date of marriage)(6), substitute—

“Limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership

5.—(1) A surviving spouse or civil partner is not entitled to an ordinary pension under rule C1, a special award under rule C2, an augmented award under rule C3 or an accrued pension under rule C4 unless he was married to, or had a civil partnership with, the deceased during a period before the deceased last ceased to be a regular firefighter.

(2) A surviving spouse who, but for paragraph (1), would be entitled to a pension or other award mentioned in that paragraph, is instead entitled to a pension calculated, subject in the case of a civil partner to paragraph (3), in accordance with Part IV of Schedule 3.

(3) A surviving civil partner who, but for paragraph (1), would be entitled to a pension or other award mention in that paragraph, is instead entitled to a pension of such amount as bears to the pension to which, under paragraph (2), he would have been entitled had he been the deceased's surviving spouse, the same proportion that the deceased's service after 5th April 1988 bears to the whole of his pensionable service.”.

8. In rule C6 (widow's requisite benefit and temporary pension)(7)—
- (a) in paragraphs (1)(a) and (2) after “spouse”, insert “or civil partner”;
 - (b) for paragraph (4), substitute—
 - “(4) The requisite benefit pension shall be calculated—
 - (a) in the case of a surviving spouse, in accordance with Part V of Schedule 3; and
 - (b) in the case a surviving civil partner, in accordance with that Part subject to the substitution, in paragraphs 1 and 3, of “5th April 1988” for “5th April 1978”.”; and

(6) Rule C5 was substituted, as to England, by S.I. 2005/2980, Sch, para 24 and, as to Scotland, by S.S.I. 2005/566, para 24.

(7) Rule C6 was substituted, as to England, by S.I. 2005/2980, Sch, para 25 and, as to Scotland, by S.S. I. 2005/566, para 25.

- (c) in paragraph (5), after “spouse”, insert “or civil partner”.
- 9.** In rule C7 (spouse’s award where no other award payable), in paragraphs (1) and (2), after “spouse”, insert “or civil partner”.
- 10.** In rule C8 (limitation where spouses living apart)**(8)**—
- (a) in paragraph (1), after “spouse”, insert “or civil partner”;
- (b) for paragraph (2), substitute—
- “**(2)** Except where paragraph (3) applies, a surviving spouse or civil partner who, but for paragraph (1), would be entitled to an award under rule C1, C2, C3 or C4, is entitled instead to a requisite benefit pension calculated—
- (a) in the case of a surviving spouse, in accordance with Part V of Schedule 3; and
- (b) in the case of a surviving civil partner, in accordance with that Part subject to the substitution, in paragraphs 1 and 3, of “5th April 1988” for “5th April 1978”.”;
- (c) in paragraph (3), after “spouse” (in both places), insert “or civil partner”;
- (d) in paragraph (4)—
- (i) in sub-paragraph (a), after “spouse”, insert “or civil partner”; and
- (ii) for sub-paragraph (b), substitute “(b) to the spouse or civil partner for the support of a child of the spouse or civil partner”; and
- (e) in paragraph (7), after “spouse”, insert “or civil partner”.
- 11.** In rule C9 (effect of remarriage)**(9)**, in paragraphs (1) and (2)—
- (a) for “remarries”, substitute “marries, remarries, forms a civil partnership or a subsequent civil partnership”; and
- (b) after “marriage”, insert “or civil partnership”.
- 12.** In rule C10 (pension debit members), after “spouse”, insert “or civil partner”.
- 13.** In rule D3 (child’s special gratuity), in paragraph (1), after “spouse”, insert “or civil partner”.
- 14.** In rule D5 (child’s allowance or special gratuity – limitations), in paragraph (1)(b), after “took place”, insert “, or of a civil partner whose civil partnership with the deceased was formed.”.
- 15.** In rule E1 (lump sum death grant), in paragraphs (4) and (5), after “spouse”, insert “or civil partner”.
- 16.** In rule E3 (dependent relative’s gratuity), in paragraph (2), after “spouse”, insert “or civil partner”.
- 17.** In rule E5 (gratuity in lieu of surviving spouse’s pension)**(10)**, in paragraph (2)(a) and (c), after “spouse”, insert “or civil partner”.
- 18.** In rule E8 (increase of pensions and allowances during first 13 weeks)—
- (a) in paragraph (1), after “spouse's”, insert “or civil partner's”; and
- (b) in paragraphs (5)(a) and (b) and (7), after “spouse”, insert “or civil partner”.
- 19.** In rule I3 (awards on death of servicemen)**(11)**, in paragraph (3)(a), after “spouse”, insert “or civil partner”.

(8) Rule C8(7) was amended, as to England, by S.I. 2005/2980, Sch, para.26 and, as to Scotland, by S.S.I. 2005/566, para 26.

(9) Rule C9 was amended, as to England, by S.I. 2005/2980, Sch, para.27 and, as to Scotland, by S.S. I. 2005/566, para 26.

(10) Rule E5 was substituted, as to England, by S.I. 2005/2980, Sch, para.32 and, as to Scotland, by S.S.I. 2005/566, para 32.

(11) Rule I3(3) was amended, as to England, by S.I. 2005/2980, Sch, para.59 and, as to Scotland, by S.S.I. 2005/566, para 59.

- 20.** In rule J1 (guaranteed minimum pension)—
- (a) omit “and” immediately before paragraph (2)(c);
 - (b) at the end of paragraph (2)(c), insert “, and”; and
 - (c) after paragraph (2)(c), insert—
 - “(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 the deceased’s guaranteed minimum;”;
 - (d) in paragraph (4)—
 - (i) for “paragraph (2)(b) or (c)”, substitute “paragraph (2)(b), (c) or (d)”; and
 - (ii) for “remarries”, substitute “marries, remarries, forms a civil partnership or a subsequent civil partnership”.
- 21.** In rule J3 (whole-time or part-time member of a brigade who is not a firefighter)(**12**), in paragraph (3)(a), after “spouse”, insert “or civil partner”.
- 22.** In rule J4 (retained or volunteer member of a brigade)(**13**), for paragraph (4), substitute—
- “(4) Where paragraph (3) applies and the deceased leaves a surviving spouse or civil partner, the deceased shall be treated for the purposes of rules C2 (spouse’s or civil partner’s special award) and C3 (spouse’s or civil partner’s augmented award) as having been a regular firefighter falling within the description in paragraph (7); and rules C5 (limitation with reference to date of marriage or formation of civil partnership), C8 (limitation where spouses or civil partners living apart), C9 (effect of remarriage or formation of subsequent civil partnership), E5 (gratuity in lieu) and E8 (increase of pensions and allowances during first 13 weeks) apply accordingly in relation to awards to which the spouse or civil partner is thus entitled.”
- 23.** In rule K4 (withdrawal of pension during service as a regular firefighter)(**14**), after “spouses”, insert “and civil partners”.
- 24.** In rule L3 (payment of awards), for paragraph (3), substitute—
- “(3) Where, after receiving a payment in advance in respect of a pension under Part C, a surviving spouse or civil partner marries, remarries, forms a civil partnership or a subsequent civil partnership, no claim for repayment shall be made on the ground that the payment or any part of it is referable to a period after the marriage took place or, as the case may be, the civil partnership was formed.”
- 25.** In rule L4 (prevention of duplication)(**15**), in paragraph (4)(b), after “spouse”, insert “or civil partner”.
- 26.** In rule L4B (prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters)(**16**), in paragraphs (2)(a) to (d) and (3)(a) and (b), after “spouse’s”, insert “or civil partner’s”.
- 27.** In Schedule 1, in Part I (glossary of expressions), in the entry for the expression “child”, in the second column, after “spouse”, insert “or civil partner”.
- 28.** In Schedule 3 (awards on death – spouses), in Part I (spouse’s ordinary pension), in paragraph 2, after “spouse”, insert “or civil partner”.

(12) Rule J3(3) was amended, as to England, by S.I. 2005/2980, Sch, para.67 and, as to Scotland, by S.S.I. 2005/566, para 65.

(13) Rule J4 was amended, as to England, by S.I. 2005/2980, Sch, para.68 and, as to Scotland, by S.S.I. 2005/566, para 66.

(14) Rule K4 was amended, as to England, by S.I. 2005/2980, Sch, para.73 and, as to Scotland, by S.S.I. 2005/566, para 71.

(15) Rule L4(4) was amended, as to England, by S.I. 2005/2980, Sch, para.78 and, as to Scotland, by S.S.I. 2005/566, para 77.

(16) Rule L4B was inserted, as to England, by S.I. 2005/2980, Sch, para.79 and, as to Scotland, by S.S.I. 2005/566, para 78.

- 29.** In Schedule 4 (awards on death - children)—
- (a) in Part I (child's ordinary allowance), in paragraph 2(1)(b) and (2), after "spouse's", insert "or civil partner's"; and
 - (b) in Part III (child's accrued allowance), in paragraph 5(a), after "spouse's", insert "or civil partner's".
- 30.** In Schedule 5 (awards on death – additional provisions), in Part I (adult dependent relative's special pension)(17)—
- (a) in paragraph 1(a), after "spouse", insert "or civil partner"; and
 - (b) in paragraph 2(1)(a) and (2), after "spouse's", insert "or civil partner's".
- 31.** In Schedule 6 (pensionable service and transfer values)—
- (a) in Part II (service reckonable on receipt of transfer value), in paragraph 2(2), in the definition of "E", after "spouse's", insert "or civil partner's"; and
 - (b) in Part III (transfer payments between fire authorities)—
 - (i) in paragraph 1, after "spouse's", insert "or civil partner's"; and
 - (ii) in paragraph 3—
 - (aa) after "spouse's", insert "or civil partner's"; and
 - (bb) in the definition of "E", after "spouse" insert "or civil partner".
- 32.** In Schedule 8 (purchase of increased benefits), in Part III (increases by reference to appropriate amount)(18)—
- (a) in paragraph 2(2)(b), after "spouse's", insert "or civil partner's";
 - (b) in paragraph 2(2)(c), after "spouse", insert "or civil partner";
 - (c) in paragraph 3(2)(a), after "spouse's", insert "or civil partner's"; and
 - (d) in paragraph 4, after "spouse's", insert "or civil partner's".
- 33.** In Schedule 10 (servicemen – increased awards), in paragraph 2, after "spouse" (in both places), insert "or civil partner".
- 34.** In Schedule 11 (special cases)(19)—
- (a) in Part I (spouse's awards), in paragraphs 1(1), 2(1) and 3(1) and (2), after "spouse's", insert "or civil partner"; and
 - (b) in Part IV (modification for persons serving on 10th July 1956)—
 - (i) in paragraphs 6(a) and 9(a), after "spouse" insert "or civil partner"; and
 - (ii) in paragraph 19, in paragraph 3 (Scheme II) of the substituted Part I of Schedule 3, for "any surviving spouse's benefit or retirement pension payable", substitute "any benefit or retirement pension payable to the surviving spouse or civil partner".

(17) In Part I, paragraph 2(2) was amended, as to England, by S.I. 2005/2980, Sch, para 85 and, as to Scotland, by S.S.I. 2005/566, para 93.

(18) In Part I, paragraph 2(2)(c) was amended, as to England, by S.I. 2005/2980, Sch, para 87 and, as to Scotland, by S.S.I. 2005/566, para 95.

(19) In Part IV, paragraphs 9(a) and 19 were amended, as to England, by S.I. 2005/2980, Sch, para 89 and, as to Scotland, by S.S.I. 2005/566, para 97.

SCHEDULE 2

Article 2(a)

FURTHER AMENDMENT OF THE FIREFIGHTERS'
PENSION SCHEME AS IT HAS EFFECT IN ENGLAND

1. In rule D5 (child's allowance or special gratuity – limitations), in paragraph (1)(a), after “took place”, insert “, or of a civil partnership that was formed”.
2. In rule E4 (payment of balance of contributions to estate), in paragraph (2)(f)(i), after “spouse's”, insert “or civil partner's”.

SCHEDULE 3

Article 2(b)

FURTHER AMENDMENT OF THE FIREFIGHTERS'
PENSION SCHEME AS IT HAS EFFECT IN SCOTLAND

1. In rule N2 (pension sharing mechanism in the Scheme)(**20**), in paragraph (2), after “spouse” insert “or civil partner”.
2. In rule N7 (discharge of pension credit liability), in paragraphs (1) and (3), “after ex-spouse” (in both places) insert “or ex-civil partner”.
3. In rule N10 (failure to discharge liability in respect of pension credit within the implementation period and death of ex-spouse before implementation has taken place)—
 - (a) in paragraph (5)—
 - (i) after “ex-spouse” insert “or ex-civil partner”; and
 - (ii) after “spouse” insert “or civil partner”; and
 - (b) in paragraph (6), after “ex-spouse” insert “or civil partner”.
4. In rule N15 (charges in respect of pension sharing costs), in paragraph (4), after “spouse” (in both places) insert “or civil partner”.
5. In Schedule 1, in Part I (glossary of expressions)(**21**), after the entry for the expression “Eligible person”, insert the following entry—

““Ex-civil partner”

A former civil partner who is or will be entitled to pension credit rights under this Scheme following a pensions sharing order.”

(20) Part N was inserted by S.S.I. 2001/301, art.3.

(21) Part I was amended by S.S.I. 2004/385, art.26.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends, with effect from 5th December 2005, the Firefighters' Pension Scheme, set out in Schedule 2 to the Firemen's Pension Scheme Order 1992, as it has effect in England and Scotland ("the Scheme").

The amendments specified in Schedule 1 to the Order have effect in relation to both England and Scotland. Those set out in Schedule 2 to the Order have effect in relation to England only, and those set out in Schedule 3 have effect in relation to Scotland only. The differences between the amendments in Schedules 2 and 3 reflect—

- (a) the fact that the adoption of children by same sex couples is not permitted in Scotland, and
- (b) the drafting of provisions relating to pension sharing, where Part N of the Scheme was inserted, as regards Scotland only, in 2001.

The amendments are all consequential on the Civil Partnership Act 2004 ("the 2004 Act") and enable civil partners to qualify for survivor benefits under the Scheme on a similar basis to spouses. The main difference is that the calculation of benefits for a civil partner is based on the firefighter's service from 6th April 1988.

The Order has no impact on the costs of business, charities or voluntary bodies; though there will be costs to the Government from extending survivor benefits to include civil partners. Depending on the take up rate of civil partnerships, the total annual cost to all public service pension schemes for providing survivor benefits to civil partners could amount to between £7m and £14m per year. There will also be a one-off capital addition to outstanding liabilities of between £60m (low take up) and £125m (high take up) to provide survivor benefits on the basis of service from 1988 up to the introduction of civil partnership.

A Regulatory Impact Assessment was published alongside the 2004 Act and outlines the cost implications for public service pension schemes. The final Regulatory Impact Assessment for the 2004 Act can be viewed at www.dti.gov.uk/access/ria/index.htm#equality. A separate Regulatory Impact Assessment has not been produced for this Order.