

2013 No. 1393

FIRE AND RESCUE SERVICES, ENGLAND
PENSIONS, ENGLAND

**The Firefighters' Pension Scheme (England) (Amendment)
(No.2) Order 2013**

<i>Made</i> - - - -	<i>5th June 2013</i>
<i>Laid before Parliament</i>	<i>7th June 2013</i>
<i>Coming into force</i> - -	<i>1st July 2013</i>

This Order is made in exercise of the powers conferred by sections 34 and 60 of the Fire and Rescue Services Act 2004(a).

In accordance with section 34(5) of that Act, the Secretary of State for Communities and Local Government consulted such persons as he considered appropriate before making the Order.

The Secretary of State makes the following Order:

Citation, application and commencement.

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (England)(Amendment) (No.2) Order 2013.

(2) This Order applies in relation to England only(b).

(3) This Order shall come into force on 1st July 2013 but the amendment made by article 2 and—

- (a) paragraph 1 of the Schedule to this Order (which relates to rule 1 (scheme membership) of Part 2) shall have effect from 31st December 2012;
- (b) sub-paragraphs (ii), (iii) and (iv) of paragraph 2(b) of the Schedule (which relates to rule 7A (additional pension benefit: long service) of Part 3 (personal awards)) shall have effect from 11th April 2011;
- (c) paragraph 3 of the Schedule (which substitutes for rule 7B (additional pension benefit: continual professional development) in Part 3, rule 7B(additional pension benefit)) shall have effect in relation to paragraph (3) and the definitions of “beginning date” and “following relevant tax year” in paragraph (6) of rule 7B from 11th April 2011.

(a) 2004 c.21.

(b) Powers under sections 34 and 60 of the Fire and Rescue Services Act 2004 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by section 62 of the Fire and Rescue Services Act 2004. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32), they were transferred to Welsh Ministers. Powers under sections 34 and 60 of the Fire and Rescue Services Act 2004 are now vested in Scottish Ministers so far as they are exercisable in relation to Scotland (S.I.2005/849).

Amendment of the Firefighters' Pension Scheme (England) Order 2006

2. Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006^(a) (in which the New Firefighters' Pension Scheme (England) is set out) shall be amended in accordance with the Schedule to this Order.

Transitional provisions: transfers into Firefighters' Pension Fund

3.—(1) The amendment made by article 2 and paragraph 7 of the Schedule to this Order to rule 2 (payments and transfers into Firefighters' Pension Fund) of Part 13 (Firefighters' Pension Fund) shall not have effect in relation to a person who had entered into a contract of employment with a fire and rescue authority before the date on which this Order came into force.

(2) In a case to which paragraph (1) applies, rule 2 of Part 13 of the New Firefighters' Pension Scheme (England), in the form in which it existed immediately before the coming into force of this Order, shall continue to have effect in relation to such a person.

Signed by authority of the Secretary of State for Communities and Local Government

Brandon Lewis

Parliamentary Under Secretary of State

Department for Communities and Local Government

5th June 2013

SCHEDULE

Article 2

Amendment of Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006

1. In Part 2 (scheme membership, cessation and retirement), in rule 1 (scheme membership), for paragraph (2A) substitute—

“(2A) Where a person who—

- (a) having taken up employment as a firefighter before 6th April 2006;
- (b) having continued in such employment until his automatic enrolment date;
- (c) having made an election not to pay pension contributions under the 1992 Scheme or not being eligible to be a member of the 1992 Scheme; and
- (d) having not otherwise elected to become a member of this Scheme,

is automatically enrolled in this Scheme, that enrolment shall constitute an election to become a firefighter member of this Scheme.”

2. In Part 3 (personal awards)—

- (a) in rule 2 (award on ill-health retirement), in paragraph 4 for “The amount of the higher tier ill-health pension” substitute “The amount of the higher tier ill-health award”;
- (b) in rule 7A (additional pension benefit: long service)—

(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 member's continuous pensionable service in the employment of an authority and subsequent continuous pensionable service in the employment of another authority in England up to and including 30th June 2007, exceeds 15 but does not exceed 20; and

^(a) S.I.2006/3432; amended by 2008/213, 2012/954 and 2988, and 2013/704.

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 an authority and subsequent continuous pensionable service in the employment of another authority in England up to and including 30th June 2007, exceeds 20 but does not exceed 30.

- (ii) in paragraph (3), for “Where” substitute “Until 11th April 2011, where”;
- (iii) after paragraph (3), insert—

“(3A) On and after 11th April 2011, 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 the 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 2010/2011 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2010 with effect from Monday 11th April 2011.”;

- (iv) in paragraph (5) for “(3)” substitute “(3) and (3A)”, and before the expression “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 a pensioner member or a deferred member;”;

3. For rule 7B (additional pension benefit: continual professional development), substitute—

“Additional pension benefit

7B.—(1) Where an authority determines that the benefits listed in paragraph (5) are pensionable, and in any added pension benefit year pays any such pensionable benefits to a firefighter member, the authority shall credit the firefighter member with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraphs (3) and (4), 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 the 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 2010/2011 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2010 with effect from Monday 11th April 2011

(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 member’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 member’s continual professional development;

(a) 1971 c.56.

- (c) the difference between the firefighter member's basic pay in their 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;
- (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 in receipt of a pension under this Scheme or entitled to a deferred pension under rule 3 of Part 3;

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

- (a) the amount of a firefighter member's pension benefits determined under this rule for the purposes of this Scheme is taken into account for tax purposes, and
- (b) the firefighter member is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule 3, and

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

4. In Part 8 (determination of questions and appeals), in rule 5 (appeals on other issues) for “the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996” substitute “the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008(a).”.

5. In Part 10 (qualifying service and pensionable service), in rule 6 (calculation of pensionable service), in paragraph (5) for “(A/B) x 365,” substitute “(A/B)”.

6. In Part 11 (pensionable pay, pension contributions and purchase of additional service), in chapter 1 (pensionable pay and pension contributions)—

(a) in rule 1 (pensionable pay)—

(i) in paragraph (1)—

(aa) for “Subject to paragraph (3)” substitute “Subject to paragraphs (3) and (6)”;

(bb) in sub-paragraph (a) omit “other than payments in respect of his continual professional development (see rule 7B of Part 3), and”;

(cc) after paragraph (a) insert—

“(aa) the amount (if any) of any benefits which are pensionable under rule 7B(1) of Part 3, and”;

(ii) after paragraph (5) insert—

“(6) Where before 1st July 2013 and after that date, any allowance or supplement is being paid to a firefighter member which an authority treats as pensionable, but is not—

(a) pensionable pay within the meaning of paragraph (1)(a);

(b) additional pension benefit under rule 7A of Part 3 (long service); or

(c) a payment in respect of a firefighter's continual professional development under rule 7B,

that allowance or supplement shall continue to be treated as pensionable for so long as the firefighter receives it without any break in payment.”;

(a) S.I.2008/649.

- (b) in rule 2 (final pensionable pay) in paragraph (1A) for “an amount in respect of his continual professional development (see rule 7B of Part 3),” substitute “ an amount payable to him in respect of the benefits within rule 7B of Part 3,”.

7. In Part 13 (Firefighters’ Pension Fund), in rule 2 (payments and transfers into Firefighters’ Pension Fund) after paragraph (10) insert—

“(11) Where an authority exercises its discretion not to withdraw or abate the whole or any part of a pension under rule 3 (withdrawal of pension during service as a firefighter) of Part 9 (review, withdrawal and forfeiture of awards), the authority shall in the financial year in which payment is not withdrawn or abated, transfer into the FPF an amount equal to the amount of pension paid during that financial year to that person which might have been abated or withdrawn.”.

8. In Annex 2 (appeals to board of medical referees)—

- (a) in sub-paragraph (3)(a) of paragraph 4 after “desirable” insert “so as to provide the board with sufficient information”;
- (b) after paragraph 8, insert—

“**8A.**—(1) Where the parties have received a copy of the report supplied under paragraph 8 and —

- (a) the parties agree that the board has made an error of fact which materially affects the board’s decision;
- (b) the authority shall within 28 days of receipt of the report, supply the Secretary of State with two copies of a statement agreed between the parties setting out—
 - (i) the error of fact;
 - (ii) the correct fact, and

invite the board to reconsider its decision.

(2) The Secretary of State 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 Secretary of State 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 Secretary of State with a written report of its revised decision.

(5) The Secretary of State 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).”;

- (c) For paragraph (3) of paragraph 10 substitute—

“(3) Where—

- (a) the appellant gives notice to the board—
 - (i) withdrawing the appeal;
 - (ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under paragraph 6(2), and the notice is given less than 22 working days before the date appointed under paragraph 6(2); or
- (b) the appellant’s acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under paragraph 6(2) less than 22 working days before the date so appointed,

the authority may require the appellant to pay them such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 9(1), as the authority think fit.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 1 to the Firefighters’ Pension Scheme (England) Order 2006. Some of the amendments introduce new provisions to the New Firefighters’ Pension Scheme (England) (“the Scheme”) set out in that Schedule. Others make minor corrections to the Scheme.

Except as mentioned below the Order has effect from 1st July 2013. Power to give the Order retrospective effect is conferred by section 34 of the Fire and Rescue Services Act 2004.

The amendments made by paragraphs 1, 2(a), 4 and 5 of the Schedule are to make minor changes to the Scheme. The amendment made by paragraph 1 is to ensure that those who took up employment as a firefighter before 6th April 2006 and were either not eligible to be a member of the Firefighters’ Pension Scheme 1992 or, made an election not to pay pension contributions required by that scheme, are treated as a firefighter member of the Scheme when automatically enrolled into that Scheme. This amendment has retrospective effect from 31st December 2012.

The amendment made by paragraph 2(b)(i) is to make a correction so that is clear which pensionable service can count for the additional pension benefit: long service increment in rule 7A of Part 3. The amendment only includes service with an English Fire and Rescue Authority.

Paragraph 3 of the Schedule inserts a new rule 7B 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 paragraph 2(b) and paragraph 3 in relation to paragraphs (3) and (4) of the new rule 7B amend the method of uprating additional pension benefit for the long service increment (rule 7A of Part 3) and continuing professional development (rule 7B) 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 2010/2011. These amendments have effect from 11th April 2011.

Paragraph 6(a) of the Schedule amends the definition of pensionable pay to include payments which are pensionable under additional pension benefit (new rule 7B) and provide that payments which are not within the definition of pensionable pay in rule 1(1)(a) as amended, or additional pension benefits payable for long service or in respect of a firefighter’s continual professional development, should remain pensionable whilst the firefighter continues to receive them. Paragraph 6(b) amends the payments treated as final pensionable pay to exclude additional pension benefit payments payable within rule 7B of Part 3.

The amendments made by paragraph 7 of the Schedule require a fire and rescue authority to transfer into the Firefighters’ Pension Fund an amount equal to the amount of pension paid to a person in respect of whom the authority choose not to exercise its discretion to withdraw or abate the permitted part of that individual’s pension under rule 3 (withdrawal of pension during service as a firefighter) of Part 9 (review, withdrawal and forfeiture of awards).

The amendments made to Annex 2 (appeals to board of medical referees) by paragraph 8 of the Schedule enable—

– the board to reconsider its decision where the parties agree that it has made a material error of fact;

–the authority to recover some or all of the expenses of the board where the appellant has withdrawn the appeal or requested the date for an interview or examination to be cancelled or postponed less that 22 working days before the date appointed.

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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STATUTORY INSTRUMENTS

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