



**NATIONAL ASSEMBLY FOR WALES**

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**STATUTORY INSTRUMENTS**

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**2007 No. 1074 (W.112)**

**FIRE AND RESCUE SERVICES, WALES**

**PENSIONS, WALES**

**The Firefighters' Pension Scheme (Wales) (Amendment) Order 2007**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Firefighters' Pension Scheme (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) as it has effect in Wales ("the Pension Scheme"). Subject to the exceptions mentioned below, the amendments to the Pension Scheme, which are set out in Schedule 1 to this Order, have effect from 6 April 2006. The power to give retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

The amendments made by paragraphs 6, 51 and 62 of Schedule 1 to the Order, which relate to ill-health awards, have effect, subject to transitional provisions contained in article 3 of the Order, from 1 April 2006. Rule B3 and Part III of Schedule 2 to the Pension Scheme, which provide for the payment and calculation of pensions awarded to regular firefighters whose employment ceases by reason of ill-health, are substituted. Firefighters who are found by an independent qualified medical practitioner to be capable of undertaking employment for not less than 30 hours a week on average over a 12-month period (whether or not they in fact take up any employment) will be entitled to a lower tier ill-health pension. Those who are found to be incapable of undertaking such employment will be entitled to both a lower tier ill-health pension and a higher tier ill-health pension. There is no change in the method of calculating the newly-styled "higher tier" ill-health pension (paragraph 4 of Part III of Schedule 2 to the Pension Scheme). Nor is there any change in the method of calculating the newly-styled "lower tier" ill-health pension for those regular firefighters who have less than 5 years' pensionable service (paragraph 3 of that Part). The method of calculating other "lower tier" ill-health pensions (paragraph 2 of that Part) has the effect that a pensioner who has 5 or more years' pensionable service will be entitled to immediate payment of an amount calculated as if he had been entitled to immediate payment of a deferred pension under rule B5 of the Pension Scheme (the calculation is set out in Part VI of Schedule 2 to the Pension Scheme).

Rule K1 is replaced by new rules K1 and K1A. The new rules allow a fire and rescue authority to terminate a higher tier ill-health pension where, on a review of the pensioner's condition, it is established that he is capable of undertaking employment for not less than 30 hours a week on average over a 12-month period. The pensioner's lower tier ill-health pension will be unaffected unless, on a review of his condition, it is established that he is capable of performing the duties of the role from which he retired and he accepts or declines the authority's offer to take up employment in that role. If the pensioner declines such an offer, he becomes entitled to a deferred pension and his entitlement to a lower tier ill-health pension is terminated.

The amendment made by paragraph 60, which inserts a new Part LA dealing with the Firefighters' Pension Fund, also has effect from 1 April 2006. New Part LA requires each fire and rescue authority to establish and maintain a Firefighters' Pension Fund ("the FPF") for the purposes of the Pension Scheme and in connection with rights and

liabilities under earlier versions of the Scheme. Pension contributions made by firefighters and their employing authorities will be paid into the FPF and pension and related payments will be made out of the FPF.

The new Part LA makes provision for the National Assembly for Wales to make payments into the FPF to meet any deficits which result from more being paid out in pensions and related payments than was paid in through contributions and for the National Assembly for Wales to request the repayment of any surpluses in the FPF which result from more being paid in through contributions than is paid out in pensions and related payments. These payments will in the first instance be made on the basis of estimates. Adjustments for any remaining deficit or surplus will be made following the submission by the fire and rescue authority of their un-audited and audited accounts.

The majority of the other amendments made by the Order have the effect of removing from the Pension Scheme provisions relating to non-contributory compensation for death and injury, or are consequential on the removal of those provisions. The provisions removed from the Pension Scheme are re-enacted in the Firefighters' Compensation Scheme (Wales), which is set out in the Schedule to the Firefighters' Compensation Scheme (Wales) Order 2007 (SI. 2007/1073 (W.111)). Schedule 2 of this Order lists the provisions of the Pension Scheme that cease to have effect, as to Wales, having been superseded by corresponding provisions of the Firefighters' Compensation Scheme (Wales).

The effect of the amendment to paragraph 8(2A) of Schedule 9 to the Pension Scheme is that a person who withdraws his appeal to a board of medical referees within 21 days of the date appointed for the interview or medical examination may be required to pay the fire and rescue authority an amount not exceeding that payable by the authority in respect of the board's fees and allowances. The current provision refers to withdrawal within 10 days of the appointed date.

There are other amendments which are for consistency with the new pension scheme for firefighters employed by fire and rescue authorities in Wales, under section 34 of the Fire and Rescue Services Act 2004. This is introduced with effect from 6 April 2006 by S.I. 2007/1072 (W.110).

These include the amendment of rule A3 and the substitution of rule G2(1). The rule A3 amendments provide for the Pension Scheme to cease to have effect on the day on which the new scheme is brought into operation as respects-

- persons who take up employment with a fire and rescue authority as regular firefighters on or after 6 April 2006,
- persons who, having made an election under rule G3(1) not to pay pension contributions, cancel that election on or after 6 April 2006, and
- the spouses, civil partners and dependants of those two classes of person.

It is envisaged that the new scheme will require those classes of person to become members of it.

The paragraph substituted in rule G2 has the effect of requiring persons who take up employment with a fire and rescue authority as firefighters on or after 6 April 2006 to make pension contributions at a lower rate than is required of firefighters whose employment began before that date.

Other amendments relate to changes in the regulation of pension schemes and tax changes brought about by the Finance Act 2004 (c.12), as amended by the Finance Act 2005 (c.7). These amendments have effect from 6 April 2006.

The opportunity has been taken to correct an error that arose in an amending instrument made in 2006. Rule C5 of the Pension Scheme (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership) was substituted by paragraph 24 of Schedule 1 to the Firefighters' Pension (Wales) Scheme (Amendment) Order 2006 (S.I. 2006/1672 (W.160)). In paragraph (2) of the substituted rule, the words ", subject in the case of a civil partner, to paragraph (3)," were included in error and are now omitted.

The opportunity has also been taken to update the definition of the expression "personal pension Scheme" in Schedule 1 to the Pension Scheme. In consequence, paragraph (7)(c) of rule F6A has been omitted. The expressions "retained member" and "volunteer member of the fire and rescue service" have been replaced with the expressions "retained firefighter" and "volunteer firefighter", which are defined in the same terms.

A regulatory appraisal has been carried out in connection with this Order and is available from the Fire and Rescue Branch, Community Safety Division, National Assembly for Wales, Rhydycar, Merthyr Tydfil, CF48 1UZ (telephone 01685 729000).

**2007 No. 1074 (W.112)**

**FIRE AND RESCUE SERVICES, WALES**

**PENSIONS, WALES**

**The Firefighters' Pension Scheme (Wales) (Amendment) Order 2007**

*Made* 28 March 2007

*Coming into force* 29 March 2007

The National Assembly for Wales, in exercise of the powers conferred by section 26 of the Fire Services Act 1947(1) and section 12 of the Superannuation Act 1972(2), as applied by section 16(3) of that Act(3), and sections 36, 53, 60 and 62 of the Fire and Rescue Services Act 2004(4), makes the following Order:

**Title, commencement, interpretation and application**

1.-(1) This Order is called the Firefighters' Pension (Wales) Scheme (Amendment) Order 2007.

(2) This Order comes into force on 29 March 2007, but has effect as specified in paragraphs (3) to (6).

(3) The amendment made by article 2 and paragraph 18 of Schedule 1 (spouse's or civil partner's requisite benefit and temporary pension) has effect from 1 March 1992.

(4) The amendment made by article 2 and paragraph 2 of Schedule 1 (short service award) has effect from 21 November 2005.

(5) The amendments made by article 2 and the following paragraphs of Schedule 1 have effect from 6 April 2006-

- (a) paragraph 1 (exclusive application of Scheme to regular firefighters),
- (b) paragraph 10 (commutation - general provision),
- (c) paragraph 11 (commutation - small pensions),
- (d) paragraph 12 (allocation),
- (e) paragraph 14 (deduction of tax from certain awards),
- (f) paragraph 24 (lump sum death grant),
- (g) paragraph 27 (lump sum in lieu of surviving spouse's or civil partner's pension),

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(1) 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 were continued in force, 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 the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004 (S.I. 2004/2918 (W.257)). The name of the scheme was changed to the Firefighters' Pension (Wales) Scheme, by article 4(1) of that Order. The scheme was further amended by the Firefighters' Pension (Wales) Scheme (Amendment) Order 2006 (S.I. 2006/1672 (W. 160)). 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).

(2) 1972 c.11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7).

(3) Section 16 was continued in force, for the purposes of the Firemen's Pension Scheme (renamed the Firefighters' Pension (Wales) Scheme by the Fire and Rescue Services Act 2004 (Firefighters Pension Scheme) (Wales) Order 2004 (S.I. 2004/2918 (W.257)).

(4) 2004 c.21

- (h) paragraph 28 (lump sum in lieu of child's allowance),
- (i) paragraph 29 (limitation on discretion to commute pension or allowance for lump sum),
- (j) paragraph 41 (election to purchase increased benefits),
- (k) paragraph 42 (payment of periodical contributions for increased benefits), and
- (l) paragraph 43 (pension debit members: restriction on replacement of debited rights).

(6) The remaining provisions of this Order have effect from 1 April 2006.

(7) In this Order-

"the Assembly" means the National Assembly for Wales";

"the Compensation Scheme" means the Firefighters' Compensation Scheme (Wales) 2007 set out in the Schedule to the Firefighters' Compensation Scheme (Wales) Order 2007(1); and

"the Pension Scheme" means the Firefighters' Pension Scheme set out in Schedule 2 to the Firemen's Pension Scheme Order 1992(2) (renamed in relation to Wales as the Firefighters' Pension (Wales) Scheme, as it has effect in Wales (3).

(8) The amendments made by this Order apply only in relation to the Firefighters' Pension (Wales) Scheme as it has effect in Wales(4).

**Amendment of the Pension Scheme**

2. The Pension Scheme is amended in accordance with Schedule 1.

**Transitional provision**

3.-(1) The amendments made by article 2 and paragraphs 6 (ill-health awards), 51 (review of ill-health and certain deferred pensions) and 62 (ill-health pension) of Schedule 1 do not have effect in relation to a person in respect of whom a determination or decision relevant to the termination of that person's employment on grounds of ill-health (whether under Part H or Part K of the Pension Scheme) has been made before 1 April 2006.

(2) In a case to which paragraph (1) applies, rules B3 and K1 of the Pension Scheme continue to have effect in relation to the person concerned in the form in which they exist immediately before that date.

**Revocation and consequential provision**

4.-(1) So much of article 2(2) of the Firemen's Pension Scheme Order 1992 as relates to the provisions specified in column (1) of Schedule 2 to this Order (provisions of the Pension Scheme superseded by the Compensation Scheme) is revoked as to Wales.

(2) A reference in any document (whether made, served or issued before, on or after 1 April 2006) to a provision of the Pension Scheme that ceases to have effect by virtue of paragraph (1) is, unless a contrary intention appears, to be construed on and after that date as a reference to the corresponding provision of the Compensation Scheme specified in column (2) of Schedule 2.

(1) S.I. 2007/1072 (W.110).

(2) S.I. 1992/129; amended by 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691, 2004/1912 and 2006/1672 (W. 160).

(3) The Secretary of State's functions under section 26 of the Fire Services Act 1947, in so far as they were exercisable in relation to Scotland, were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c.46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750). The Secretary of State's functions under section 3(5) of the Fire Services Act 1947, in so far as they were exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry for the Fire Services Act 1947 in Schedule 1.

(4) The National Assembly for Wales preserved the scheme established under section 26 of the Fire Services Act 1947 (known in Wales as the Firefighters' Pension (Wales) Scheme) by virtue of S.I. 2004/2918 (W.257).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>(1)</sup>.

28 March 2007

*D. Elis-Thomas*

The Presiding Officer of the National Assembly

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(1) 1998 c.38.

## SCHEDULE 1

Article 2

### AMENDMENT OF THE FIREFIGHTERS' PENSION (WALES) SCHEME (WALES ONLY)

1. In rule A3 (exclusive application to regular firefighters)-

- (a) in paragraph (1), for "paragraphs (3) and (4)", substitute "paragraphs (3) to (5)"; and
- (b) after paragraph (4), add-

"(5) This Scheme ceases to apply in relation to-

- (a) a person who takes up employment with a fire and rescue authority on or after 6th April 2006,
- (b) a person who, having made an election under rule G3(1) not to pay pension contributions, cancels that election on or after 6th April 2006, and
- (c) the spouse, civil partner, eligible child or other dependant of such a person,

on the day on which a scheme, other than the Compensation Scheme, is brought into operation under section 34 of the Fire and Rescue Services Act 2004, as regards Wales."(1).

2. Omit rule A9 (qualifying injury).

3. In rule A10 (disablement)-

- (a) in paragraph (2), for "Subject to paragraph (3), disablement", substitute "Disablement"; and
- (b) omit paragraph (3).

4. Omit rule A11 (death or infirmity resulting from injury).

5. For rule B2 (short service award), substitute-

**"Short service award**

**B2.**-(1) This rule applies, unless immediately before his retirement an election under rule G3(1) not to pay pension contributions had effect, to a regular firefighter who-

- (a) retires on or after normal pension age; and
- (b) is not entitled to any other award under this Part.

(2) A person to whom this rule applies becomes entitled on retiring-

- (a) if-
  - (i) he is entitled to reckon at least two years' pensionable service, or
  - (ii) a transfer value in respect of his rights under a personal pension scheme has been paid to the scheme,

to a short service pension calculated in accordance with Part II of Schedule 2, and

- (b) in any other case, to a short service lump sum of an amount equal to the aggregate of his pension contributions."

6. For rule B3 (ill-health award)(2), substitute-

**"Ill health awards**

**B3.**-(1) This rule applies to a regular firefighter who is required to retire under rule A15 (compulsory retirement on grounds of disablement) unless, immediately before his retirement, an election under rule G3(1) not to pay pension contributions had effect.

(2) A regular firefighter who is entitled-

- (a) to reckon at least two years' pensionable service; or
- (b) to an award under the Compensation Scheme,

becomes entitled on retiring-

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(1) As to the Compensation Scheme, *see* Paragraph 61 of this Schedule.

(2) Rule B3 was amended by S.I. 2006/1672 (W.160), Sch. 1 para. 14.

- (i) where paragraph (3) applies, to a lower tier ill-health pension calculated in accordance with paragraph 2 or 3 (as the case may be) of Part III of Schedule 2;
- (ii) where paragraph (4) applies, to the pensions referred to in paragraph (5).

(3) This paragraph applies where, in the opinion of an independent qualified medical practitioner, obtained in accordance with rule H1, the firefighter is capable of undertaking regular employment.

(4) This paragraph applies where, in the opinion of an independent qualified medical practitioner, obtained in accordance with rule H1, the firefighter is incapable of undertaking regular employment.

(5) The pensions are-

- (a) a lower tier ill-health pension calculated in accordance with paragraph 2 or 3 (as the case may be) of Part III of Schedule 2; and
- (b) a higher tier ill-health pension determined in accordance with paragraph 4 of that Part.

(6) A firefighter who is not entitled to a pension under paragraph (2), becomes entitled on retiring to a short service lump sum of an amount equal to the aggregate of his pension contributions.

(7) In paragraphs (3) and (4) "regular employment" means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of his capacity for employment arises."

7. Omit rule B4 (injury award).

8. In rule B5 (deferred pension)-

(a) for paragraph (1) substitute-

"**B5.**(1) This rule applies to a regular firefighter-

- (a) who is entitled to reckon at least 2 years' pensionable service, or
- (b) in respect of whom a transfer value attributable to his rights under a personal pension scheme has been paid into the scheme, or
- (c) who is entitled to reckon pensionable service by virtue both of service as a regular firefighter and of a period of other employment which together amount to 2 years or more, or
- (d) who has an earlier period of service as a regular firefighter which, disregarding breaks in service of not more than a month, is continuous and which after-
  - (i) deducting from it-
    - (aa) any period during which an election under rule G3 not to pay contributions had effect, and
    - (bb) any period of maternity or adoption leave which does not count as pensionable service as a result of rule F2A or G2A, and
  - (ii) aggregating the remainder with his pensionable service,

amounts to 2 years or more.";

(b) in paragraph (2)(b), for "rules B1 to B4", substitute "rules B1 to B3"; and

(c) for paragraph (3)(b), substitute-

"(b)that pension is terminated under rule K1A(3) otherwise than on his re-employment with his Fire and Rescue Authority,".

9. In rule B6 (repayment of aggregate pension contributions)-

(a) in paragraph (1)-

- (i) after "regular firefighter" (in the first place where those words appear), insert "with less than 2 years' pensionable service"; and
- (ii) in sub-paragraph (b), for "rules B1 to B5", substitute "rules B1 to B3, B5"; and

(b) after paragraph (2), insert-

"(3) Where aggregate pension contributions are repaid under paragraph (2), the fire and rescue authority shall transfer from their Firefighters' Pension Fund to any other fund maintained by them an amount equal to the aggregate of the amounts that they have paid by way of employer's contributions under rule G2(3) in respect of the firefighter concerned."

10. In rule B7 (commutation - general provision)-

(a) in paragraph (2), for "A", substitute "Subject to paragraph (2A), a";

(b) after paragraph (2) insert-

"(2A) A person who retires with an ill-health award may not commute any portion of a higher tier ill-health pension.";

(c) in paragraph (7), for "6 months after his retirement", substitute "the day before the pension comes into payment";

(d) for paragraph (8), substitute-

"(8) Notice of commutation takes effect on the date of the person's retirement.";

(e) in paragraph (9), for sub-paragraph (b), substitute-

"(b) within three months of the date of his retirement, pay him the lump sum; but where payment of the pension had commenced before commutation, that sum shall be reduced 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 the date of retirement.";

(f) for paragraph (10), substitute-

"(10) Where-

(a) notice of commutation relating to an ill-health pension has taken effect;

(b) the pension is terminated under rule K1A(3); and

(c) the person later becomes entitled to another pension, other than an injury pension, for the purposes of which he is entitled to reckon the period of pensionable service that was reckonable for the purposes of the ill-health pension,

the other pension shall be reduced by the amount by which the ill-health pension would have been reduced if it had not been terminated.

(10A) Where paragraph (10)(c) applies and notice of commutation is given in respect of the other pension, the portion of it that may be commuted is reduced by the amount of the reduction under paragraph (10)."; and

(g) in paragraph (11), for "or I4", substitute "or rule 2 or 3 of Part 7 of the Compensation Scheme".

#### **11. In rule B8 (commutation - small pensions)-**

(a) in paragraph (1), for the words from "does not exceed" to the end, substitute "does not exceed the commutation limit for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule)(1), the fire and rescue authority may commute the pension for a lump sum."; and

(b) in paragraph (2), for "gratuity", substitute "lump sum".

#### **12. In rule B9 (allocation)-**

(a) omit paragraph (4);

(b) for paragraph (7), substitute-

"(7) A person's notice of allocation, which may be sent by post, must be given before, but not earlier than two months before, the date on which he intends to retire.";

(c) for paragraph (10), substitute-

"(10) A notice of allocation which has been accepted takes effect only if the person who gave it retires within two months of giving it.";

(d) omit paragraph (11);

(e) in paragraph (12), for the words from "the later" to "took effect", substitute-

"the date from which the pension is payable"; and

(f) in paragraph (16), for "or I4", substitute "or rule 2 or 3 of Part 7 of the Compensation Scheme".

**13. In rule B10 (limitation of commuted or allocated portion of pension), in paragraph (2), for "or I4", substitute "or rule 2 or 3 of Part 7 of the Compensation Scheme".**

**14. For rule B11 (deduction of tax from certain awards), substitute-**

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(1) As to the lump sum rule, *see* section 166 of the Finance Act 2004. As to the commutation limit, *see* paragraph 7(4) of Part 1 of Schedule 29 to that Act.

## **"Deduction of tax and lifetime allowance charge**

**B11.** A fire and rescue authority shall deduct from any payment which is chargeable to tax, or subject to a lifetime allowance charge within the meaning of the Finance Act 2004(1), the amount of tax charged or the amount of charge to be recovered."

**15.** In rule C1 (spouse's ordinary pension)-

- (a) in paragraph (1)(c), after "injury pension", insert "under the Compensation Scheme";
- (b) in paragraph (2), omit ", subject to paragraph (3),";
- (c) in paragraph (2A)(2), for "Subject to paragraph (3), the", substitute "The"; and
- (d) omit paragraphs (3) to (6).

**16.** Omit rules C2 (spouse's special award) and C3 (spouse's augmented award).

**17.** In rule C5 (limitation on award to widow by reference to date of marriage)(3)-

- (a) in paragraph (1), omit ", a special award under rule C2, an augmented award under rule C3";
- (b) in paragraph (2), omit "or other award" and ", subject in the case of a civil partner, to paragraph (3),"; and
- (c) in paragraph (3), for "or other award mention", substitute "mentioned".

**18.** For rule C6 (widow's requisite benefit and temporary pension)(4), substitute-

### **"Spouse or civil partner's requisite benefit and temporary pension**

**C6.-(1)** This rule applies, with effect from 1st March 1992, where-

- (a) a person entitled to reckon less than 2 years' pensionable service who is or has been a regular firefighter and by whom pension contributions have at any time been payable under rule G2 dies, leaving a surviving spouse or civil partner, after the beginning of the tax year in which he attained or would have attained state pensionable age, and
- (b) rule C4 does not apply.

(2) Where this rule applies the surviving spouse or civil partner is entitled-

- (a) in respect of the first 13 weeks following the death, to a temporary pension, and
- (b) after the last of those 13 weeks, to a requisite benefit pension.

(3) The weekly amount of the temporary pension is A - B, where-

A is the weekly amount, immediately before the deceased died, of his pensionable pay or, as the case may be, his pension or pensions (including any increase under the Pensions (Increase) Act 1971)(5), and

B is the weekly amount of any children's allowances payable in respect of his death.

(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 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".

(5) If-

- (a) the deceased dies while serving as a regular firefighter, and
- (b) the amount of the capitalised value of the requisite benefit pension, as calculated by the Government Actuary, is less than that of his average pensionable pay,

the surviving spouse or civil partner is entitled to a lump sum equal to the difference between those amounts."

**19.** For rule C7 (spouse's award where no other award payable)(6), substitute-

### **"Award to spouse or civil partner where no other award payable**

**C7.-(1)** This rule applies where-

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(1) See section 214 of the Finance Act 2004 (c.12).

(2) Paragraph (2A) was inserted by S.I. 2006/1672 (W.160), Sch. 2 para. 3.

(3) Rule C5 was substituted by S.I. 2006/1672 (W.160), Sch. 1 para.24.

(4) Rule C6 was substituted by S.I. 2006/1672 (W.160), Sch. 1 para.25.

(5) 1971 c.56.

(6) Rule C7 was amended by S.I. 2006/1672 (W.160), Sch. 2 para. 9.

- (a) a person by whom pension contributions have at any time been payable under rule G2 dies, while serving as a regular firefighter, before the end of the tax year preceding that in which he would have attained state pensionable age,
  - (b) he leaves a spouse or civil partner, and
  - (c) rules C1, C4 and C6 do not apply.
- (2) Where this rule applies, the surviving spouse or civil partner is entitled-
- (a) in respect of the first 13 weeks following the death, to a temporary pension calculated as if rule C6(2)(a) and (3) had applied; and
  - (b) to a lump sum of an amount equal to the deceased's average pensionable pay."

**20. In rule C8 (limitations where spouses living apart)(1)-**

- (a) in paragraph (1), for "rules C1 to C7", substitute "rules C1 and C4 to C7";
- (b) in paragraphs (2) and (3), for "an award under rule C1, C2, C3 or C4", substitute "a pension under rule C1 or C4"; and
- (c) in paragraph (5), omit ", C2, C3".

**21. In rule D1 (child's ordinary allowance), in paragraph (1)(c), after "injury pension", insert "under the Compensation Scheme".**

**22. Omit rules D2 (child's special allowance) and D3 (child's special gratuity).**

**23. In rule D5 (child's allowance or special gratuity: limitations)(2), omit paragraph (7).**

**24. In rule E1 (lump sum death grant), in paragraph (1), for the words after "payable", substitute-**  
 "unless, at the time of his death-

- (a) he was 75 or more, or
- (b) an election under rule G3 not to pay pension contributions had effect."

**25. Omit rule E2 (adult dependent relative's special pension).**

**26. In rule E4 (payment of balance of contributions to estate), in paragraph (2)(b)-**

- (a) after "injury pension", insert "under the Compensation Scheme"; and
- (b) for "rule B4", substitute "that Scheme".

**27. For rule E5 (gratuity in lieu of surviving spouse's pension)(3), substitute-**

**"Lump sum in lieu of surviving spouse's or civil partner's pension**

**E5.-(1)** Subject to paragraph (2) and rule E7, where the amount of any pension payable under Part C, together with any increase under the Pensions (Increase) Act 1971, does not exceed the commutation limit for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule)(4), the fire and rescue authority may commute the whole or any part of the pension for a lump sum.

(2) Where-

- (a) a surviving spouse or civil partner is entitled to a pension under rule C1, and
- (b) the fire and rescue authority are satisfied that there are sufficient reasons, and
- (c) the surviving spouse or civil partner consents, and
- (d) the deceased spouse or civil partner died before his 75th birthday,

the fire and rescue authority may commute the whole or any part of the pension for a lump sum.

(3) A fire and rescue authority may under this rule commute a pension for a lump sum only when the pension first becomes payable.

(4) The payment of a lump sum on the commutation of the whole or any part of a pension under this rule must be made before the date on which the deceased would have attained the age of 75.

(5) A lump sum under this rule shall be calculated in accordance with such guidance as is provided for the

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(1) Rule C8 was amended by S.I. 2006/1672, Sch. 2, para. 10.

(2) Rule D5 was amended by S.I. 2006/1672, Sch. 2, para. 14.

(3) Rule E5 was amended by S.I. 2006/1672, Sch. 1, para. 32.

(4) As to "the lump sum rule", see section 166 of the Finance Act 2004. As to the commutation limit, see paragraph 7(4) of Part 1 of Schedule 29 to that Act.

purpose by the Government Actuary."

**28.** For rule E6 (gratuity in lieu of child's allowance), substitute-

**"Lump sum in lieu of child's allowance**

**E6.**-(1) Where the amount of a child's allowance under Part D, together with any increase under the Pensions (Increase) Act 1971, does not exceed the commutation limit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (trivial commutation lump sum death benefit)(1), the fire and rescue authority may, subject to the provisions of this rule and rule E7, commute the whole or any part of the allowance for a lump sum.

(2) The allowance may not be commuted unless-

- (a) the fire and rescue authority are satisfied that there are sufficient reasons, and
- (b) a surviving parent or the child's guardian or, if he has neither, the child himself consents, and
- (c) the deceased died before his 75th birthday.

(3) The payment of a lump sum on the commutation of the whole or any part of an allowance under this rule must be made before the date on which the deceased would have attained the age of 75.

(3) A lump sum under this rule shall be calculated in accordance with Part III of Schedule 5."

**29.** In rule E7 (limitation on discretion to commute pension or allowance for gratuity)-

(a) for paragraph (2), substitute-

"(2) The fire and rescue authority may not under rule E5 or E6 commute the whole or any part of a pension or allowance for a lump sum the actuarial value of which exceeds-

- (a) the permitted amount, or
- (b) the commutation limit specified for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule) in paragraph 7(4) of that Part (trivial commutation lump sum)."(2);
- (b) in paragraph (3), for "other gratuity", substitute "lump sum paid";
- (c) in paragraph (4), omit ", gratuity"; and
- (d) in paragraph (5), for "or I4", substitute "or rule 2 or 3 of Part 7 of the Compensation Scheme".

**30.** In rule E8 (increase of pensions and allowances during first 13 weeks)(3)-

- (a) in paragraph (1), omit ", special";
- (b) in paragraph (2), after "pension", insert "under this Scheme or the Compensation Scheme";
- (c) for paragraph (4), substitute-

"(4) For the purposes of paragraph (3)(b), any reduction in the deceased's pension under Part VIII of Schedule 2 (reduction of pension related to uprating of widow's pensions) shall be disregarded.";

- (d) in paragraph (5)-
  - (i) omit ", special"; and
  - (ii) after "allowance", insert "under this Scheme and to a child's special allowance under the Compensation Scheme"; and
- (e) in paragraph (7), after "payable", insert "under this Scheme or an injury pension under the Compensation Scheme".

**31.** In rule F1 (reckoning of and certificates as to pensionable service), in paragraph (6), after "gratuity", insert "under this Scheme, or a pension or gratuity under the Compensation Scheme".

**32.** In rule F2 (current service), for paragraphs (3) and (4), substitute-

"(3) A regular firefighter may, by written notice given to his employing authority within six months of returning to duty after a period of absence without pay (excluding absence for maternity, paternity or adoption leave), require them to reckon as pensionable service all or part of that period (the "reckonable period").

(4) Where notice is given under paragraph (3), the firefighter shall, within 6 months of giving that notice, pay to the authority-

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(1) As to the lump sum rule, *see* section 166 of the Finance Act 2004 (C.12).

(2) 2004 c.12.

(3) Rule E8 was amended by S.I. 2006/1672, Sch. 2, para.19.

- (a) the contributions (including any such additional or further contributions as are mentioned in rule G4) that he would have been liable to pay in respect of the reckonable period (in accordance with rule G2(1)) if he had been paid at his normal rate; and
- (b) subject to paragraph (5), such amount as shall be notified to him by the authority as the amount that would have been payable by them, in accordance with rule G2(3), in respect of his service for that period if he had been paid at his normal rate.

(5) A fire and rescue authority may pay the amount notified under sub-paragraph (b) of paragraph (4); and where they do so, the requirements of that sub-paragraph shall cease to apply.

(6) Nothing in paragraph (3) requires a fire and rescue authority to reckon as pensionable service any reckonable period where-

- (a) in a case to which paragraph (5) applies, the requirements of paragraph (4)(a) have not been met;
- (b) in any other case, the requirements of paragraph (4)(a) and (b) have not been met.

(7) Any periods of pensionable service before and after any period of maternity or adoption leave in respect of which the person has the right to pay, but does not pay, contributions under rule G2A, shall be treated as continuous."

**33.** In rule F3 (previous service reckonable without payment), in paragraph (b), for "in the circumstances and within the period mentioned in rule K1(1) to (4) (cancellation of ill-health pension)", substitute "following an offer of employment under rule K1A(2)(b)".

**34.** In rule F5 (period during which injury pension was payable)(1)-

(a) for paragraph (1)(a), substitute-

"(a)

- (i) in retiring from a brigade before 1st October 2004, or from employment with a fire and rescue authority before 1st April 2006, became entitled to an injury pension under rule B4 (as it existed before that date)(2); or
- (ii) on retiring from employment with a fire and rescue authority on or after 1st April 2006, becomes entitled to an injury pension under the Compensation Scheme, and"; and

(b) in paragraph (1)(b), for "in the circumstances and within the period mentioned in rule K1(1) to (4)", substitute "following an offer of employment under rule K1A(2)(b)".

**35.** In rule F6A (previous service reckonable following actionable loss), in paragraph (7)-

- (a) at the end of sub-paragraph (b), insert "and"; and
- (b) omit sub-paragraph (c).

**36.** In rule F7 (receipt of transfer value), in paragraph (2), after "authority" insert ", not later than 12 months after the date on which he takes up employment with them,".

**37.** For rule F8 (transfer payments between fire and rescue authorities), substitute-

**"Transfer payments to Scottish and English fire and rescue authorities**

**F8.**-(1) Where, on or after 1st April 2006, a person who retired from a Welsh fire brigade before 1st October 2004 or from a Welsh fire and rescue authority after 30th September 2004 ("the first employment")-

- (a) takes up employment as a regular firefighter with a Scottish or English fire and rescue authority; and
- (b) becomes entitled under rule F4 (previous service reckonable on payment) to reckon as pensionable service the period he was entitled to reckon when he retired,

the authority responsible for the person in the first employment shall, subject to paragraph (2), pay to the Scottish or English fire and rescue authority (as the case may be) a sum calculated in accordance with Part III of Schedule 6.

(2) No sum may be paid in respect of any pension credit rights."

**38.** In rule G1 (pensionable pay and average pensionable pay), in paragraph (4)-

(a) for sub-paragraph (a), substitute-

"(a) for the purposes of rule C7 (award to spouse or civil partner where no other award payable), the date

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(1) Rule F5 was amended by S.I. 2006/1672, Sch.1, Para. 41.

(2) Rule B4 is revoked by paragraph 7 of this Schedule.

of the person's last day of service as a regular firefighter,"; and  
(b) in sub-paragraph (b), after "purposes", insert "of this Scheme".

**39. In rule G2 (pension contributions)-**

(a) for paragraph (1), substitute-

"(1) A regular firefighter shall, except while an election under rule G3 has effect, pay pension contributions to the fire and rescue authority at the rate specified in paragraph (1A).

(1A) The rate is-

(a) for a person who takes up employment with the authority on or after 6th April 2006, 8.5 per cent of his pensionable pay;

(b) in any other case, 11 per cent of his pensionable pay."; and

(b) after paragraph (2), add-

"(3) For each financial year beginning with the financial year commencing on 1st April 2006, each fire and rescue authority shall, by transfer to their Firefighters' Pension Fund from any other fund maintained by them, make an annual contribution towards the discharge of their future liability for the payment of pensions under this Scheme.

(4) The annual contribution shall be such percentage of the authority's estimate of the aggregate of the pensionable pay, for the year in respect of which the contribution is made, of those firefighters employed by the authority who are required by paragraph (1) to make pension contributions in that year, as shall have been notified to them for that year by the Assembly.

(5) Where a firefighter elects under rule G3(1) not to pay pension contributions, nothing in paragraphs (3) and (4) shall require an authority to make a contribution in respect of their future liability for the payment of his pension as regards-

(a) in the financial year in which notice of that election is given, the part of the year that falls after the first date after the notice is received on which an instalment of pay falls due; and

(b) any later period in which the election not to pay pension contributions has effect."

**40. In rule G3 (election not to pay pension contributions)-**

(a) in paragraph (2), for "paragraph (3)", substitute "paragraphs (3) and (3A)";

(b) after paragraph (3), insert-

"(3A) Where-

(a) a person gives notice under paragraph (1) within 3 months of taking up employment with the authority as a regular firefighter; and

(b) no transfer of pension rights from another pension scheme has been made in respect of him,

the election shall be treated as given on his first day of employment and the fire and rescue authority shall repay the pension contributions paid by him."; and

(c) after paragraph (4), insert-

"(4A) Where aggregate pension contributions are repaid under paragraph (3A), the fire and rescue authority shall transfer from their Firefighters' Pension Fund to any other fund maintained by them an amount equal to the aggregate of the amounts that they have paid by way of employer's contributions under rule G2(3) in respect of the firefighter concerned."

**41. In rule G6 (election to purchase increased benefits), in paragraph (1), omit "and rule G9".**

**42. In rule G7 (payment of periodical contributions for increased benefits)-**

(a) in paragraph (1), for "paragraphs (2) to (4)", substitute "paragraphs (2) and (3)"; and

(b) for paragraphs (3) to (4)(1), substitute-

"(3) If the fire and rescue authority are satisfied that payment of the periodical contributions is causing, or is likely to cause, financial hardship they may consent to the discontinuance of payment for such period as they think fit."

**43. Omit rule G9 (pension debit members: restriction on replacement of debited rights).**

**44. In rule H1 (determination by fire authority), in paragraph (2), for sub-paragraphs (c) and (d), substitute-**

"(c) whether the person would be able to undertake regular employment within the meaning given by rule

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(1) Paragraph (3A) was inserted by S.I. 2004/1912.

B3(7)".

45. In rule I2 (awards to servicemen)-

- (a) in paragraph (3), omit "or by a qualifying injury"; and
- (b) in paragraph (4), for "Paragraph 1 of Schedule 10", substitute "Schedule 6 to the Compensation Scheme".

46. In rule I3 (awards on death of servicemen)-

- (a) in paragraph (3), omit "or by a qualifying injury"; and
- (b) in paragraph (4), for "Paragraphs 2 and 3 of Schedule 10 have", substitute "Schedule 6 to the Compensation Scheme has".

47. Omit rule I4 (servicemen who resume service as regular firefighters).

48. In rule IA4 (application of general rules), in paragraph (2), for "rule L2 (expenses and receipts of fire and rescue authorities)", substitute "rule LA1 (establishment, maintenance and operation of Firefighters' Pension Fund)".

49. In rule J1 (guaranteed minimum pensions), for paragraph (6), substitute-

"(6) For the purposes of paragraph (5), a pension includes any increase in it under the Pensions (Increase) Act 1971."

50. Omit rules J3 (whole-time member of brigade who is not a regular firefighter), J4 (part-time member of brigade) and J5 (members of brigade other than regular firefighters: supplementary).

51. For rule K1 (cancellation of ill-health and injury pensions), substitute-

**"Review of ill-health and certain deferred pensions**

**K1.**-(1) So long as a person-

- (a) has been in receipt of an ill-health pension for less than 10 years, and
- (b) is under the age of 60,

the fire and rescue authority shall consider, at such intervals as they think proper, whether he has become capable of carrying out any duty appropriate to the role from which he retired on grounds of ill-health.

(2) So long as a person-

- (a) has been in receipt of a higher tier ill-health pension for less than 10 years; and
- (b) is under the age of 60,

the authority shall also consider, at such intervals as they think proper, whether he has become capable of undertaking regular employment.

(3) So long as a person-

- (a) is in receipt of payments in respect of a deferred pension under rule B5; and
- (b) is under the age of 60,

the authority shall also consider, at such intervals as they think proper, whether he has become capable-

- (i) of carrying out any duty appropriate to the role from which he retired on grounds of ill-health; or
- (ii) of undertaking regular employment.

(4) In this Part, "regular employment" means employment for at least 30 hours a week on average over a period of 12 consecutive months beginning with the date on which the issue of his capacity for undertaking employment arises.

**Consequences of review**

**K1A.**-(1) If, on such consideration as is mentioned in rule K1(2), it is found that a person has become capable of undertaking regular employment, the authority shall immediately terminate his higher tier ill-health pension.

(2) A lower tier ill-health pension shall continue to be paid to a person whose higher tier ill-health pension is terminated as mentioned in paragraph (1) unless-

- (a) on such consideration as is mentioned in rule K1, it is found that he has become capable of performing the duties appropriate to the role from which he retired on grounds of ill-health; and
- (b) the authority make him an offer of employment in that role ("a paragraph (2)(b) offer").

(3) Entitlement to a lower tier ill-health pension shall cease, with immediate effect, where a person accepts or declines a paragraph (2)(b) offer.

(4) A person who declines a paragraph (2)(b) offer shall then become entitled to a deferred pension under rule B5."

52. Omit rule K2 (reassessment of injury pension).

53. In rule K3 (reduction of award in case of default)(1), in paragraph (1), omit "or injury".

54. In rule K5 (withdrawal of pension on conviction of certain offences)(2), in paragraph (4), omit ", other than an injury pension,".

55. In rule L1 (authorities responsible for payment of awards)(3), omit paragraphs (2), (5) and (6).

56. Omit rule L2 (expenses and receipts of fire and rescue authorities).

57. In rule L3 (payment of awards)(4), in paragraph (7), omit "other than an injury gratuity under rule B4,".

58. In rule L4 (prevention of duplication)(5)-

(a) in paragraph (1), at the end insert "or the Compensation Scheme";

(b) in paragraph (2), omit sub-paragraph (d);

(c) in paragraph (4), for "rule B4", substitute "the Compensation Scheme"; and

(d) omit paragraph (5).

59. Omit rules L4A (prevention of duplication: other injury awards for persons who are both regular and retained firefighters)(6) and L4B, (prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters)(7).

60. After Part L, insert the following Part-

## "PART LA

### FIREFIGHTERS' PENSION FUND

#### **Establishment, maintenance and operation of Firefighters' Pension Fund, etc.**

**LA1.**-(1) For the purposes of this Scheme, and in connection with rights acquired and liabilities incurred under the 1973 Scheme or previous Firemen's Pension Schemes and transferred to a fire and rescue authority, each fire and rescue authority shall establish and maintain, in accordance with proper practices, a pension fund, which shall be known as their Firefighters' Pension Fund (in this Part referred to as the FPF).

(2) Without prejudice to the generality of paragraph (1), there shall be credited to the FPF or, where a transfer is made to the FPF from any other fund maintained by the authority, credited to the FPF and debited to that other fund-

(a) sums receivable from firefighters in respect of periods treated as reckonable by virtue of paragraphs (3) or (5) of rule F2 (current service);

(b) sums receivable under rule F7 (receipt of transfer value);

(c) sums receivable from Scottish or English fire and rescue authorities under provisions of the Firefighters' Pension Scheme as it has effect in Scotland or England equivalent to rule F8 (transfer payments between fire and rescue authorities); and

(d) the amount of the authority's annual contributions under paragraph (3) of rule G2 (pension contributions).

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(1) Rule 13 was amended by S.I. 2005/2980, Sch. Para. 59 and 2005/3228, Sch. 1, para. 19.

(2) 1971 c.56.

(3) Rule K3 was amended by S.I. 2005/2980, Sch. Para. 72.

(4) Rule K5 was amended by S.I. 2005/2980, Sch. Para. 74.

(5) Rule L1 was amended by S.I. 2005/2980, Sch. para. 75.

(6) Rule L3 was amended by S.I. 2005/2980, Sch., para. 77.

(7) Rule L4 was amended by S.I. 2005/2980, Sch., para. 78.

(3) Without prejudice to the generality of paragraph (1), there shall be payable out of the FPF or, if a transfer is made from the FPF to any other fund maintained by the authority, debited to the FPF and credited to that other fund-

- (a) sums payable under rule B6(3) (aggregate of employer's contributions paid under rule G2(3));
- (b) awards payable under any provision of this Scheme (including the commuted portion of a pension to which rule B7 (commutation: general provision) applies);
- (c) sums payable under rule F8 (transfer payments to Scottish and English fire and rescue authorities);
- (d) sums payable under rule F9 (payment of transfer values) by way of transfer values or cash or part cash equivalents.

(4) Every amount paid or repaid to or by an authority under this Part shall be credited or, as the case may be, debited, to their FPF.

(5) In this Part-

- (a) references to the total amount payable out of an authority's FPF do not include references to any amount which the Assembly requires the authority to pay to it under any of rules LA5 to LA8; and
- (b) references to the total amount credited to the authority's FPF do not include references to any amount which the Assembly pays to the authority for crediting to their FPF under any of rules LA5 to LA8.

### **Special payments and transfers into Firefighters' Pension Fund**

**LA2.**-(1) Each fire and rescue authority shall make transfers into their FPF in accordance with paragraphs (2) to (8).

(2) In respect of each firefighter employed by the authority who retires on or after 1st April 2005 and before 1st April 2006 with an entitlement to immediate payment of an ill-health award under rule B3 (ill-health award), the authority shall, as soon as reasonably practicable after the date on which the Firefighters' Pension (Wales) Scheme (Amendment) Order 2007 comes into force, transfer into the FPF an amount equal to that firefighter's average pensionable pay.

(3) In respect of each firefighter employed by the authority who retires on or after 1st April 2006 with an entitlement to immediate payment of a higher tier ill-health award under rule B3, the authority shall transfer into the FPF such amount as shall be determined and notified to them by the Assembly as the higher tier ill-health charge applicable in respect of that pension.

(4) In respect of each firefighter employed by the authority who retires on or after 1st April 2006-

- (a) with an entitlement to immediate payment of a lower tier ill-health award under rule B3 (ill-health awards); and
- (b) with no entitlement to a higher tier ill-health award,

the authority shall transfer into the FPF such amount as shall be determined and notified to them by the Assembly as the lower tier ill-health charge applicable in respect of that pension.

(5) The amount to be transferred under paragraph (3) or (4) shall be transferred in three equal instalments.

(6) The first instalment shall be transferred-

- (a) on the date on which the employee retires; or
- (b) if the employee retired before the date on which the Firefighters' Pension (Wales) Scheme (Amendment) Order 2007 comes into force, as soon as reasonably practicable after the date on which it comes into force.

(7) The second instalment shall be transferred on 1st April in the financial year that follows the financial year in which the first instalment was transferred.

(8) The third instalment shall be transferred on 1st April in the financial year that follows the financial year in which the second instalment was transferred.

### **Transfer from Firefighters' Pension Fund**

**LA3.**-(1) Where, in consequence of a review under rule K1 (review of ill-health and certain deferred pensions)-

- (a) a higher tier ill-health pension is cancelled before all the instalments of the higher tier ill-health charge in respect of that pension have been transferred in accordance with rule LA2; and
- (b) a lower tier ill-health pension continues to be paid,

the amount referred to in paragraph (2) shall be transferred from the FPF to any other fund maintained by the authority.

- (2) The amount is an amount equal to the difference between-
- (a) the aggregate of such instalments of the higher tier ill-health charge as have been transferred in accordance with rule LA2; and
  - (b) the aggregate amount that would have been transferred if-
    - (i) the lower tier ill-health charge had always applied in respect of the pension, and
    - (ii) instalments of that charge had been transferred on the dates on which instalments of the higher tier ill-health charge were transferred.

(3) For the purposes of ascertaining the amount to be transferred in accordance with paragraph (2), the fire and rescue authority shall request the Assembly to determine the amount of the notional lower tier ill-health charge in respect of the pension concerned.

(4) Where a person declines an offer of employment under paragraph (2)(b) of rule K1A (consequences of review) and does not again take employment with a Welsh fire and rescue authority-

- (a) rule LA2(3) or (4) (as the case may be) shall be disregarded in his case (to the extent that it remains to be complied with); and
- (b) the authority which made the offer-
  - (i) shall not make any transfer into the FPF in respect of him as regards any time after the date on which they receive notice that the offer has been rejected; and
  - (ii) shall transfer from the FPF to any other fund maintained by them an amount equal to the aggregate of the instalments that have been transferred to the FPF in respect of the pension that has been terminated.

(5) Where-

- (a) a higher tier ill-health pension or a lower tier ill-health pension is wholly and permanently withdrawn under rule K5 (withdrawal of pension on conviction of certain offences); and
- (b) the former recipient of that pension does not again take employment with a Welsh fire and rescue authority,

rule LA2(3) or (4) (as the case may be) shall be disregarded in his case (to the extent that it remains to be complied with); and the authority shall transfer from the FPF to any other fund maintained by them an amount equal to the aggregate of the instalments that have been transferred to the FPF in respect of the pension that has been terminated.

#### **Excess amounts - information**

**LA4.**-(1) Beginning with the financial year ending on 31st March 2007, a fire and rescue authority shall, in relation to each financial year, send the following information in writing to the Assembly-

- (a) the total amount that the authority estimate will be payable out of their FPF in that year;
- (b) the total amount that the authority estimate will be credited to their FPF in that year;
- (c) the authority's un-audited statement of accounts for that year, prepared and approved in accordance with regulations under section 39 of the Public Audit (Wales) Act 2004(1);
- (d) the authority's statement of accounts for that year, as it is after the authority's auditor issues his certificate and opinion, including or together with that certificate and opinion;
- (e) the total amount payable out of the authority's FPF in that year; and
- (f) the total amount credited to the authority's FPF in that year.

(2) In relation to the financial year ending on 31st March 2007, the authority shall send the information referred to in sub-paragraphs (a) and (b) of paragraph (1) to the Assembly in September 2006 ("the initial estimate").

(3) In relation to each financial year ending on or after 31st March 2008, the authority-

- (a) shall send the information referred to in sub-paragraphs (a) and (b) of paragraph(1) to the Assembly in September in the financial year before the year in question ("the estimate"); and
- (b) if the authority revises the information referred to in those sub-paragraphs after they send the estimate to the Assembly, may send that revised information to the Assembly in September during the year in question ("the revised estimate").

(4) The authority shall send the information referred to in sub-paragraphs (c), (e) and (f) of paragraph (1) to the Assembly in July in the financial year following the year in question ("the un-audited information").

(5) The authority shall send to the Assembly as soon as reasonably practicable after the authority's auditor issues his certificate and opinion on the authority's accounts for the year in question ("the audited information")-

(a) the information referred to in sub-paragraph (d) of paragraph (1); and

(b) if the authority revises the information referred to in sub-paragraphs (e) and (f) of paragraph (1) after it has sent the un-audited information to the Assembly, that information as revised.

(6) For the purposes of this rule, the auditor issues his certificate and opinion when, in accordance with section 23 of the Public Audit (Wales) Act 2004-

(a) he enters on the authority's statement of accounts for the relevant year-

(i) a certificate that he has completed the audit in accordance with that Act, and

(ii) his opinion on the statement; or

(b) where he makes a report to the authority under section 22 of that Act at the conclusion of the audit, he includes the certificate and opinion referred to in subparagraph (a) in that report instead of making an entry on the statement.

#### **Excess amounts - estimated deficits**

**LA5.**-(1) Where, having taken into account the initial estimate or, as the case may be, the estimate, and any other relevant information available to it, it appears to the Assembly that the total amount likely to be payable out of a fire and rescue authority's FPF in the year in question will exceed the total amount likely to be credited to the authority's FPF in that year, the Assembly shall pay to the authority an amount equal to 80 per cent of the likely deficit.

(2) Subject to paragraph (3), where, having taken into account any revised estimate and any other relevant information available to it, it appears to the Assembly that-

(a) the total amount likely to be payable out of the authority's FPF in the year in question will exceed the total amount likely to be credited to the authority's FPF in that year; and

(b) 80 per cent of the likely deficit is more than-

(i) the amount paid or payable by the National Assembly to the authority by virtue of paragraph (1) in relation to the relevant year; or

(ii) where no such amount was paid or payable by the National Assembly, zero,

it may pay to the authority such amount as it thinks fit.

(3) The aggregate of the amounts paid to an authority under paragraphs (1) and (2) in relation to a particular year shall not exceed 80 per cent of the authority's likely deficit for that year.

(4) Where the Assembly pays an amount to the authority under paragraph (2), any amount paid or payable to the Assembly in relation to the year in question under rule LA6(1) shall not be payable and, if already paid, the Assembly shall repay it to the authority.

(5) An amount payable to the authority under paragraph (1) shall be paid-

(a) where the year in question ends on 31st March 2007, on or before that date; where the year in question ends on or after 31st March 2008, in July in the year in question.

(6) Any amount payable or repayable by the Assembly to an authority under paragraph (2) or (4) shall be paid or repaid before the end of the year in question.

#### **Excess amounts - estimated surpluses**

**LA6.**-(1) Where, having taken into account the initial estimate or, as the case may be, the estimate, and any other relevant information available to it, it appears to the Assembly that the total amount likely to be credited to a fire and rescue authority's FPF in the year in question will exceed the total amount likely to be payable out of their FPF in that year, the Assembly shall require the authority to pay to it an amount equal to 80 per cent of the likely surplus.

(2) Subject to paragraph (3), where, having taken into account any revised estimate and any other relevant information available to it, it appears to the Assembly that-

(a) the total amount likely to be credited to the authority's FPF in the year in question will exceed the total amount likely to be payable out of the authority's FPF in that year; and

(b) 80 per cent of the difference between those total amounts is more than-

- (i) the amount paid or payable by the authority to it under paragraph (1) in relation to the year in question; or
- (ii) where no such amount was paid or payable by the authority, zero,

the Assembly may require the authority to pay to the Assembly such amount as the Assembly may by notice specify.

(3) The aggregate of the amounts paid to the Assembly under paragraphs (1) and (2) in relation to a particular year shall not exceed 80 per cent of the authority's likely surplus for that year.

(4) Where the Assembly requires the authority to pay an amount to the Assembly by virtue of paragraph (2), any amount paid or payable by the Assembly to the authority under rule LA5(1), shall not be payable and, if already paid, the authority shall repay it to the Assembly.

(5) The Assembly shall give to the authority, on or before 3rd March in the year in question, written notice of the amount of any payment that the Assembly requires the authority to make under paragraph (1) or (2).

(6) An amount payable or repayable by the authority to the Assembly under paragraph (1), (2) or (4) shall be paid or repaid in March in the year in question.

#### **Excess amounts - actual deficits**

**LA7.-(1)** Where, having taken into account the un-audited information and any other relevant information available to the Assembly, it appears to the Assembly that the total amount likely to be payable out of a fire and rescue authority's FPF in the year in question exceeds the total amount likely to be credited to the authority's FPF in that year-

- (a) where the likely deficit ("the un-audited deficit") exceeds the total of any amounts paid or payable to the authority in relation to that year under rule LA5(1) or (2) ("the LA5 total"), the Assembly shall pay to the authority the amount of the un-audited deficit less the LA5 total;
- (b) where the un-audited deficit is less than the LA5 total, the amount of the LA5 total less the un-audited deficit shall not be payable under rule LA5(1) or (2) and, if already paid, the authority shall repay that amount to the Assembly;
- (c) where no amount was paid or payable by the Assembly to the authority in relation to the year in question under rule LA5(1) or (2), it shall pay to the authority the amount of the un-audited deficit; and
- (d) any amount paid or payable to the Assembly in relation to that year under rule LA6(1) or (2), shall not be payable and, if already paid, the Assembly shall repay it to the authority.

(2) Where, having taken into account the audited information and any other relevant information available to him, it appears to the Assembly that the total amount paid or payable out of a fire and rescue authority's FPF in the year in question exceeds the total amount credited or to be credited to their FPF in that year-

- (a) where the difference between those total amounts ("the audited deficit") exceeds the total of any amounts paid (but not repaid or repayable) or payable to the authority in relation to that year under paragraph (1)(a) or (c) or rule LA5(1) or (2) ("the un-audited total"), the Assembly shall pay to the authority the amount of the audited deficit less the un-audited total;
- (b) where the audited deficit is less than the un-audited total, the amount of the un-audited total less the audited deficit shall not be payable under paragraph (1)(a) or (c) or rule LA5(1) or (2) and, if already paid, the authority shall repay it to the Assembly;
- (c) where no amount was paid or payable by the Assembly to the authority in relation to the year in question under paragraph (1)(a) or (c) or rule LA5(1) or (2), it shall pay to the authority the amount of the audited deficit; and
- (d) any amount paid or payable to the Assembly in relation to the year in question under rule LA6(1) or (2) or rule LA8(1)(a) or (c), shall not be payable and, if already paid, the Assembly shall repay it to the authority.

(3) An amount payable or repayable by the Assembly to an authority, or vice versa, under paragraph (1), shall be paid or repaid in July in the financial year following the year in question ("the second year").

(4) An amount payable or repayable by the Assembly to an authority, or vice versa, under paragraph (2), shall be paid or repaid in July in the financial year following the second year.

#### **Excess amounts - actual surpluses**

**LA8.-(1)** Where, having taken into account the un-audited information and any other relevant information available to the Assembly, it appears to the Assembly that the total amount credited to a fire and rescue authority's FPF in the year in question exceeds the total amount paid out of the authority's FPF in that year-

- (a) where the difference between those total amounts ("the un-audited surplus") exceeds the total of any amounts paid or payable to the Assembly by the authority in relation to that year under rule LA6(1) or (2) ("the LA6 total"), the Assembly shall require the authority to pay to it the amount of the un-audited surplus less the LA6 total;
  - (b) where the un-audited surplus is less than the LA6 total, the amount of the LA6 total less the un-audited surplus shall not be payable under rule LA6(1) or (2) and, if already paid, the Assembly shall repay it to the authority;
  - (c) where no amount was paid or payable to the Assembly by the authority in relation to the year in question under rule LA6(1) or (2), it shall require the authority to pay to it the amount of the un-audited surplus; and
  - (d) any amount paid or payable by the Assembly to the authority in relation to that year under rule LA5(1) or (2), shall not be payable and, if already paid, the authority shall repay it to the Assembly.
- (2) Where, having taken into account the audited information and any other relevant information available to it, it appears to the Assembly that the total amount credited to a fire and rescue authority's FPF in the year in question exceeds the total amount payable out of the authority's FPF in that year-
- (a) where the difference between those total amounts ("the audited surplus") exceeds the total of any amounts paid (but not repaid or repayable) or payable to the Assembly by the authority in relation to that year under paragraph (1)(a) or (c) or rule LA6(1) or (2) ("the un-audited LA6 total"), the Assembly shall require the authority to pay to it, out of their FPF, the amount of the audited surplus less the un-audited LA6 total;
  - (b) where the audited surplus is less than the un-audited LA6 total, the amount of the un-audited LA6 total less the audited surplus shall not be payable under paragraph (1)(a) or (c) or rule LA6(1) or (2) and, if already paid, the Assembly shall repay it to the authority;
  - (c) where no amount was paid or payable to the Assembly by the authority in relation to the year in question under paragraph (1)(a) or (c) or rule LA6(1) or (2), the Assembly shall require the authority to pay to it the amount of the audited surplus; and
  - (d) any amount paid or payable by the Assembly to the authority in relation to that year under rule LA5(1) or (2) or rule LA7(1)(a) or (c) shall not be payable and, if already paid, the authority shall repay it to the Assembly.
- (3) The Assembly shall give to the authority, on or before 3rd July in the financial year after the year in question ("the second year"), written notice of the amount of the payment that the Assembly requires the authority to make under paragraph (1)(a) or (c).
- (4) An amount payable or repayable by the authority to the Assembly, or vice versa, under paragraph (1), shall be paid or repaid in July in the second year.
- (5) The Assembly shall give to the authority, on or before 3rd July in the financial year that is the second financial year after the year in question ("the third year"), written notice of the amount of any payment that the Assembly requires the authority to make under paragraph (2)(a) or (c).
- (6) An amount payable or repayable by the authority to the Assembly, or vice versa, by virtue of paragraph (2), shall be paid or repaid in July in the third year.

**Duty to provide information**

**LA9.**-(1) A fire and rescue authority shall provide the Assembly with such information relevant to the exercise of the Assembly's functions under this Part as it may, by written notice to the authority, require.

(2) An authority shall respond to a request under paragraph (1) within such period as the Assembly shall specify in its notice under that paragraph, or such longer period as the Assembly may in any particular case allow.

**Duty to have regard to guidance**

**LA10.** A fire and rescue authority shall have regard to such guidance as may be issued by the Assembly from time to time for the purposes of this Part."

**61.** In Schedule 1 (interpretation), in Part I (glossary of expressions)(1)-

- (a) after the entry for the expression "club scheme", insert-
  - (i) in the first column "Compensation Scheme"; and
  - (ii) in the second column, "the Firefighter's Compensation Scheme (Wales) 2007, set out in Schedule 1 to

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(1) Part 1 of Schedule 1 was amended by S.S. 2006/1672 (W.160), Sch. 1, para. 81 and Sch. 2, para. 28.

the Firefighters' Compensation Scheme (Wales) Order 2007.";

- (b) in the second column of the entry for the defined expression "personal pension scheme", for "in section 84(1) of the Social Security Act 1986", substitute "by section 1 of the 1993 Act";
- (c) omit the entry (both columns) for the expression "qualifying injury";
- (d) omit the definitions of the expressions "Retained member" and "Volunteer member of the fire and rescue service"; and
- (e) after the definition of "Relevant service in the armed forces", insert-

"Retained firefighter" and  
"volunteer firefighter"

A person employed by an authority-

- (a) as a firefighter, but not as a regular firefighter,
- (b) on terms under which he is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to his role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting),
- (c) otherwise than in a temporary capacity, and
- (d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that he receives."

**62. In Schedule 2 (personal awards)(1)-**

- (a) for Part III (ill-health pension), substitute-

**"PART III**

**ILL-HEALTH PENSION**

1.-(1) Paragraphs 2 to 5 have effect subject to Parts VIA, VII and VIII of this Schedule.

(2) Where the person concerned has the role of Station Manager B or a superior role, any calculation relevant for the purposes of this Part shall be made as if his normal pension age were 60.

2. Subject to paragraph 3, the amount of a lower tier ill-health pension, is an amount equal to that which the person concerned would have received if his employment had ceased in circumstances in which he would have been entitled to immediate payment of a deferred pension (calculated in accordance with Part VI of this Schedule).

3. Where the person concerned has less than 5 years' pensionable service, the amount of the lower tier ill-health pension is that found by applying the formula-

$(A \times B) \div 60$ , where-

A is the person's average pensionable pay; and

B is the greater of one year and the period in years of his pensionable service.

4.-(1) The amount of a person's higher tier ill-health pension is the amount determined by deducting from the amount ascertained in accordance with sub-paragraph (2) or paragraph 5, as his circumstances require, the amount of his lower-tier ill-health pension.

(2) The amount referred to in sub-paragraph (1) as to be ascertained in accordance with this sub-paragraph is-

- (a) if the person concerned has at least 5 but not more than 10 years' pensionable service, the amount found by applying the formula-

$(2 \times A \times C) \div 60$ , where-

A is the person's average pensionable pay; and

C is the period in years of his pensionable service; or

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(1) Schedule 2 was amended by S.I. 2006/1672 Sch 1, para. 82.

(b) if the person concerned has more than 10 years' pensionable service, the greater of the amounts found by applying the formulae-

$\{(20 \times A) \div 60\}$ ; and

$\{(7 \times A \div 60) + (A \times D \div 60) + (2 \times A \times E \div 60)\}$ , where-

A is the person's average pensionable pay;

D is the period in years of his pensionable service up to and including 20 years,

and

E is the period in years by which his pensionable service exceeds 20 years.

**5.-(1) Where-**

(a) if the person had continued to serve until he reached normal pension age, he would have become entitled to an ordinary or short service pension ("the notional retirement pension"), and

(b) the amount ascertained in accordance with paragraph 4(2) exceeds the amount of the notional retirement pension,

the amount referred to in paragraph 4(1) as to be ascertained in accordance with this paragraph is that of the notional retirement pension.

(2) The notional retirement pension is to be calculated by reference to the person's actual average pensionable pay.":

(b) omit Parts IV (short service or ill-health gratuity) and V (injury awards);

(c) in Part VIA (calculation of awards for part-time service), in paragraph 1, omit subparagraphs (d) and (e); and

(d) in Part VII (reduction of pension at state pensionable age) omit paragraph 4.

**63. In Schedule 3 (awards on death: spouses)(1)-**

(a) in Part I (spouse's ordinary pension), in paragraph 1(2)(a), after "applies, the", insert "higher tier";

(b) omit Part II (spouse's special pension); and

(c) in Part IV (pension for surviving spouse of post-retirement marriage), in paragraph 1-

(i) in sub-paragraph (1), omit "a special award under rule C2 or an augmented award under rule C3,"; and

(ii) for sub-paragraph (2), substitute-

"(2) For the purposes of this paragraph, paragraph 1 of Part I has effect as if the reference in sub-paragraph (1)(a) to the base pension were a reference to the appropriate proportion of the base pension.".

**64. In Schedule 4 (awards on death -children)-**

(a) in Part I (child's ordinary allowance)-

(i) in paragraph 1(4)(a), after "applies, the", insert "higher tier"; and

(ii) in paragraph 2(2), for ", rule B9(12) (allocation) or paragraph 2 of Part V of Schedule 2 (reduction in injury award)", substitute "or rule B9(12) (allocation)";

(b) omit Part II (child's special allowance); and

(c) in Part IV (reduction in child's allowance during full-time remunerated training)-

(i) in paragraph 1(1), omit ", D2"; and

(ii) in paragraph 2(2), for "one of the relevant provisions, that is to say paragraph 1(2)(b) and (3)(b) of Part I and paragraphs 2(b) and 3(b) of Part II of this Schedule, applies", substitute "either sub-paragraph (2)(b) or (3)(b) of paragraph 1 of Part I of this Schedule applies".

**65. In Schedule 5 (awards on death-additional provisions), omit Part I (adult dependent relative's special pension).**

**66. In Schedule 9 (appeals), in paragraph 8(2A)(2), for "10", substitute "21".**

**67. Omit Schedule 10 (servicemen: increased awards).**

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(1) Schedule 3 was amended by S.I. 2006/1672, Sch.1, para. 83.

(2) Paragraph 8(2A) was inserted by S.I. 2004/1912.

SCHEDULE 2

Article 4

PROVISIONS OF THE PENSION SCHEME SUPERSEDED BY PROVISIONS OF THE COMPENSATION SCHEME

<i>(1) Provision of Pension Scheme</i>	<i>(2) Corresponding provision of Compensation Scheme</i>
Rule A9 (qualifying injury)	In Part 1, rule 7
Rule A10 (disablement)	In Part 1, rule 8
Rule A11 (death or infirmity resulting from Injury)	In Part 1, rule 9
Rule B4 (injury award)	In Part 2, rule 1
Rule C2 (spouse's special award)	In Part 3, rule 1
Rule C3 (spouse's augmented award)	In Part 3, rule 2
Rule D2 (child's special allowance)	In Part 4, rule 1
Rule D3 (child's special gratuity)	In Part 4, rule 2
Rule E2 (adult dependent relative's special pension)	In Part 5, rule 1
Rule E8 (increase of pensions and allowances during first 13 weeks)	In Part 5, rule 5
Rule I4 (servicemen who resume service as regular firefighters)	In Part 7, rule 4
Rule J3 (whole-time member of brigade who is not a regular firefighter)	In Part 8, rule 1
Rule J4 (part-time member of brigade)	In Part 8, rule 2
Rule J5 (members of brigade other than regular firefighters - supplementary)	In Part 8, rule 3
Rule K2 (reassessment of injury pension)	In Part 9, rule 2
Rules L4A and L4B (prevention of duplication)	In Part 10, rules 4 and 5
In Schedule 1, Part I, the entry relating to "qualifying injury"	In Part 1, rule 2(1)
In Schedule 2, Part V (injury awards)	Schedule 1
In Schedule 3, Part II (spouse's special pension)	Schedule 2
In Schedule 4, Part II (child's special allowance)	Schedule 3
In Schedule 5, Part I (adult dependent relative's special pension)	Schedule 4
Schedule 10 (servicemen - increased awards)	Schedule 6

**2007 No. 1074 (W.112)**

**FIRE AND RESCUE SERVICES, WALES**

**PENSIONS, WALES**

The Firefighters' Pension Scheme (Wales) (Amendment) Order 2007

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