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WELSH STATUTORY INSTRUMENTS

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**2009 No. 1226 (W.109)**

**FIRE AND RESCUE SERVICES, WALES**

**PENSIONS, WALES**

**The Firefighters' Pension (Wales)  
Scheme (Amendment) Order 2009**

*Made* - - - - 13 May 2009

*Laid before the National*

*Assembly for Wales* - - 15 May 2009

*Coming into force in accordance with article 1(2)*

The Welsh Ministers in exercise of the powers conferred upon the Secretary of State in section 26(1) to (5) 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 now vested in them(4), make the following Order:

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- (1) 1947 c. 41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21).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 continue 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)) and the Firefighters' Pension Scheme (Wales) (Amendment) Order 2007 (S.I. 2007/1074 (W.112)). 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 continues 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) The Fire Services Act 1947 (the "1947 Act") was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21) (the "2004 Act"). The Secretary of State's functions under subsections (1) to (5) of section 26 of the 1947 Act 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 section 36 of the 2004 Act and S.I. 2004/2918 (W.257) made thereunder. The powers of the Secretary of State under section 36 of the 2004 Act were exercisable by the National Assembly for Wales by virtue of section 62 of the 2004 Act. The functions of the National Assembly for Wales were transferred to the Welsh Ministers under section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

### **Title, commencement and application**

1.—(1) The title of this Order is the Firefighters' Pension (Wales) Scheme (Amendment) Order 2009.

(2) This Order comes into force on 9 June 2009, but—

(a) the amendment made by article 2 and paragraph 1 of the Schedule so far as it relates to new rule B5A (entitlement to two pensions) has effect from 1 April 2007; and

(b) the other amendments have effect from 1 July 2007.

(3) This Order applies in relation to Wales.

### **Amendment of the Firemen's Pension Scheme Order 1992**

2. Schedule 2 to the Firemen's Pension Scheme Order 1992<sup>(5)</sup> (in which is set out the Firefighters' Pension (Wales) Scheme), is amended in accordance with the Schedule to this Order.

13 May 2009

*Brian Gibbons*  
Minister for Social Justice and Local  
Government, one of the Welsh Ministers

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(5) S.I. 1992/129; amended by S.I. 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691, 2004/1912, 2006/1672 (W.160) and 2007/1074 (W.112). The Scheme was made under section 26 of the Fire Services Act 1947 (c. 41). That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21) (the "2004 Act"). Subsections (1) to (5) of section 26 continue in force, for the purposes of the scheme established under that section as the Firemen's Pension Scheme, by section 36 of the 2004 Act and S.I. 2004/2918 (W.257) made thereunder. The name of the scheme was changed, in relation to Wales, by article 4(1) of S.I. 2004/2918 (W.257).

SCHEDULE

Article 2

AMENDMENT OF THE FIREFIGHTERS' PENSION (WALES) SCHEME

1. In Part B (personal awards), after rule B5 (deferred pension), insert—

**“Entitlement to two pensions**

**B5A.**—(1) A regular firefighter who—

- (a) on taking up a different role; or
- (b) becoming entitled to a different rate of pay in his existing role,

suffers a reduction in the amount of his pensionable pay such that the amount to be taken into account in the calculation of the pension to which he will be entitled at normal pension age is less than it would otherwise have been, is entitled to two pensions.

(2) The amounts of the pensions shall be those found by applying the formulae set out in paragraphs (3) and (4) but, where the aggregate of those amounts exceeds that of the single award to which the firefighter would be entitled under paragraph (6) if he were to give notice under that paragraph or under paragraph (7) if he were to make an election under rule G3, his entitlement shall be to an amount equal to the amount of that single award.

(3) The amount of the first pension is that found by applying the formula—

$$A \times \frac{B}{C} \times \frac{D}{60}$$

where—

A is the firefighter's average pensionable pay for the year ending with his last day of service at the higher rate of pay;

B is the firefighter's pensionable service up to that day;

C is the firefighter's total pensionable service; and

D is the total number of 60ths that would have been used in the calculation of his single award had he given the instruction referred to in paragraph (6).

(4) The amount of the second pension is that found by applying the formula—

$$E \times \frac{F}{C} \times \frac{D}{60}$$

where—

C and D have the same meanings as in paragraph (3);

E is the firefighter's average pensionable pay for the year ending with his last day of service; and

F is—

(a) where the aggregate of—

- (i) the pensionable service used to ascertain the value of B in his case for the purpose of the formula in paragraph (3); and

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(ii) his pensionable service for the period commencing with his first day of service at the lower rate of pay and ending with his last day of service, exceeds 30, the difference between B and 30;

(b) in any other case, his pensionable service for the period commencing with his first day of service at the lower rate of pay and ending with his last day of service.

(5) Subject to paragraph (6), the pensions become payable on the date on which a pension would have become payable to the firefighter in whichever of the circumstances referred to in rules B1, B2, B3 and B5 applies in his case.

(6) A firefighter who is entitled to two pensions under this rule may, before leaving the employment of the fire and rescue authority by which he is employed, by written notice instruct the authority to make a single award which shall be calculated in accordance with whichever of rules B1, B2, B3 and B5 is applicable in his case.

(7) Where a firefighter who would be entitled to two pensions under paragraph (1) makes an election under rule G3, he shall be entitled instead to a single pension, calculated as if it were a deferred pension to which he was entitled under rule B5.

(8) In paragraph (1), “role”, in relation to a firefighter, means the role in which he is for the time being employed, being a role set out in “Fire and Rescue Services Rolemaps” issued by the National Joint Council for Local Authority Fire and Rescue Services in August 2005(6).

**Additional pension benefit: long service increment**

**B5B.**—(1) A regular firefighter who—

(a) in respect of a period that includes 30 June 2007 is entitled to a long service increment or to an interim or transitional payment connected with long service, and

(b) on or after 1 October 2007—

(i) retires from employment as a regular firefighter, or

(ii) becomes entitled to a deferred pension under rule B5,

shall be credited with an amount of additional pension benefit.

(2) Subject to paragraph (3), the amount of additional pension benefit is that calculated in accordance with the formula—

$$\frac{A + (B \times 2) \times \pounds 990}{60}$$

where—

A is the number in years (counting part of a year as the appropriate fraction) by which the firefighter’s pensionable service up to and including 30 June 2007 exceeds 15 but does not exceed 20; and

B is the number in years (counting part of a year as the appropriate fraction) by which his pensionable service up to and including 30 June 2007 exceeds 20.

(3) Where the Retail Prices Index for the month of September preceding the relevant tax year is higher than it was for September 2007, the amount of additional pension benefit

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(6) The document is accessible at [http://www/lge.gov.uk/conditions/firefighters/content/documents/fire\\_service\\_rolemaps.pdf](http://www/lge.gov.uk/conditions/firefighters/content/documents/fire_service_rolemaps.pdf).

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(as calculated in accordance with paragraph (2) and, if applicable, this paragraph) shall be increased by the same percentage as the percentage increase in the Retail Prices Index.

(4) Any increase in accordance with paragraph (3) shall be applied with effect from the first Monday of the relevant tax year.

(5) In this rule—

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

- (a) the amount of a firefighter’s pension benefits is calculated for the purposes of this Scheme; and
- (b) he is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule B3; and

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

#### **Additional pension benefit: continual professional development**

**B5C.**—(1) A regular firefighter who, in any CPD year beginning with the year commencing on 1 July 2007, receives CPD payments, shall be credited with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraph (3), the amount of additional pension benefit in respect of a CPD year shall be determined on 1 July immediately following the year in question in accordance with guidance and tables provided by the Scheme Actuary.

(3) Where the Retail Prices Index for the month of September preceding the relevant tax year is higher than it was for the month of September in the CPD year in question, the amount of additional pension benefit for that CPD year (as calculated in accordance with paragraph (2) and, if applicable, this paragraph) shall be increased by the same percentage as the percentage increase in the Retail Prices Index.

(4) Any increase in accordance with paragraph (3) shall be applied with effect from the first Monday of the relevant tax year.

(5) In this rule—

“CPD payments”, as regards a firefighter, means payments made to him by his employing authority in respect of his continual professional development;

“CPD year” means a period of 12 months beginning with 1 July in which a firefighter is in receipt of CPD payments;

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

- (a) the amount of a firefighter’s pension benefits is calculated for the purposes of this Scheme, and
- (b) he is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule B5;

and a tax year is a relevant tax year in relation to a particular CPD year if it is the tax year in which CPD payments for that CPD year are taken into account; and

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

#### **Additional pension benefit: supplementary provisions**

**B5D.**—(1) Subject to paragraphs (2) and (3), additional pension benefit under rule B5B or B5C is payable from normal pension age or, in the case of a regular firefighter to whom rule B1 (ordinary pension) applies, from the date of his retirement.

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(2) Where the firefighter resigns or is dismissed or makes an election under rule G3, additional pension benefit is payable at normal benefit age(7); and paragraphs (4) and (5) of rule B5 (deferred pension) shall apply in relation to that benefit as if it were a deferred pension to which he was entitled under that rule.

(3) Where the firefighter is required to retire on grounds of permanent disablement (rule A15), his additional pension benefit is payable immediately.

(4) For the purposes of rules B7 and B8, additional pension benefit shall be treated as if it were a pension payable under this Part.

(5) For the purposes of determining the amount of any survivor's pension under Part C, Part D or Part E or pension credit under Part IA, additional pension benefit shall be treated as if it were a pension payable under this Part.”.

2. In Part G (pensionable pay and contributions)—

(a) in rule G1 (pensionable pay and average pensionable pay)—

(i) for paragraph (1) substitute—

“(1) Subject to paragraph (2), the pensionable pay of a regular firefighter is the aggregate of—

- (a) the amount determined in relation to the performance of the duties of his role (whether as a whole-time or part-time employee); and
- (b) the amount (if any) paid to him in respect of his continual professional development.”;

(ii) in paragraph (3), for “paragraphs (5) to (7)”, substitute “paragraphs (5) to (7C)”; and

(iii) after paragraph (7) insert—

“(7A) The average pensionable pay of a regular firefighter who—

- (a) is entitled to a long service increment; and
- (b) retires after 30 September 2006 and before 1 October 2007, or becomes entitled to a deferred pension under rule B5 within that period,

shall be calculated—

- (i) as if his long service increment had accrued at the rate of £990 per annum (disregarding the reduction in the amount of the long service increment that had effect in relation to times on and after 1 October 2006), and
- (ii) disregarding any LS-related payment.

(7B) The average pensionable pay of a regular firefighter who—

- (a) is entitled to additional pension benefit under rule B5B (additional pension benefit: long service increment), and
- (b) retires on or after 1 October 2007,

shall be calculated on the basis of whichever of the following paragraphs yields the greater amount—

- (i) the calculation is made with regard to the amount credited to him under rule B5B, but without regard to his long service increment and any LS-related payment, or

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(7) By virtue of rule A2(1) of, and Part 1 of Schedule 1 to, the Scheme, “normal benefit age” (“*oedran buddion arferol*”) is 60.

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(ii) the calculation is made with regard to his long service increment and any LS-related payment, but without regard to the amount credited to him under rule B5B.

(7C) The average pensionable pay of a regular firefighter shall be calculated without reference to any additional pension benefit credited under rule B5C (additional pension benefit: continual professional development).

(7D) In paragraphs (7A) and (7B) “LS-related payment” means an interim or transitional payment made to a regular firefighter in connection with his long service.”; and

(b) in rule G3 (election not to pay pension contributions)—

(i) in paragraph (1), for “paragraph (8)”, substitute “paragraphs (1A) and (8)”; and

(ii) after paragraph (1) insert—

“(A1) An election not to pay contributions may not be made solely in respect of contributions relevant to additional pension benefit under rule B5C (additional pension benefit: continual professional development).”.

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## EXPLANATORY NOTE

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

This Order amends the Firefighters' Pension (Wales) Scheme (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) as it has effect in Wales (“the Scheme”). The amendment that introduces new rule B5A: entitlement to two pensions (made by article 2 and paragraph 1 of the Schedule) has effect from 1 April 2007. The other amendments have effect from 1 July 2007. 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 amendment that introduces new rule B5B relates to the discontinuance, with effect from the end of June 2007, of long service increments payable to firefighters who have at least 15 years' continuous service at that point. The amount of the increment, which was pensionable, was frozen, with effect from 7 November 2003, at the annual rate of £990 and reduced, with effect from 1 October 2006, to an annual rate of £495 (but some fire and rescue authorities made compensatory interim or transitional payments). The effect of the amendment that introduces the related new rule G1(7A) is that the pension of a regular firefighter who was entitled to a long service increment and either retires or becomes entitled to a deferred pension after 30 September 2006 but before 1 October 2007 will be calculated (in accordance with rule G1(3)) without regard to the reduction in the annual rate. The effect of the amendment that introduces new rule G1(7B) is that the pension of a regular firefighter who was entitled to a long service increment (or a compensatory interim or transitional payment) and either retires or becomes entitled to a deferred pension on or after 1 October 2007 will be calculated (in accordance with rule G1(3)) either with regard to the amount credited under new rule B5B and without regard to the firefighter's actual long service increment (and any compensatory interim or transitional payment) or with regard to the firefighter's actual long service increment (and any compensatory interim or transitional payment) and without regard to the amount credited under new rule B5B, according to whichever rule produces the more beneficial result for the firefighter.

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Other amendments are consequential on the introduction by the National Joint Council for Local Authority Fire and Rescue Services, with effect from 1 July 2007, of a new scheme of payments in respect of continual professional development. Under that scheme the payments are subject to annual review and therefore temporary in nature. For that reason, they would not ordinarily be regarded as pensionable for the purposes of the Scheme. However, the amendments have the effect of making the payments part of pensionable pay. This attracts, among other provisions, those of rule G2 of the Scheme, which require the making of pension contributions in respect of pensionable pay. But the amendment that introduces new rule G1(7C) provides for additional pension benefit credited in respect of continual professional development to be disregarded for the purposes of determining the amount of average pensionable pay (on which the amount of the ordinary pension is based).

The amendment to rule G3 of the Scheme ensures that a person cannot make an election to discontinue pension contributions only in respect of additional pension benefit under new rule B5C.

A Regulatory Impact Assessment prepared in conjunction with this Order can be obtained from the Fire and Rescue Branch, Welsh Assembly Government, Rhydycar, Merthyr Tydfil, CF48 1UZ, or by calling 01685 729227.