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STATUTORY INSTRUMENTS

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**2006 No. 1810**

**FIRE AND RESCUE SERVICES, ENGLAND  
PENSIONS, ENGLAND**

**The Firefighters' Pension Scheme  
(Amendment) (England) Order 2006**

<i>Made</i>	- - - -	<i>10th July 2006</i>
<i>Laid before Parliament</i>		<i>17th July 2006</i>
<i>Coming into force</i>	- -	<i>7th August 2006</i>

The Secretary of State, in exercise of the powers conferred by 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), makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (Amendment) (England) Order 2006.

(2) This Order shall come into force on 7<sup>th</sup> August 2006, but shall have 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 1st March 1992.

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

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- (1) 1947 c. 41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21).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 to have effect, in relation to England and Scotland, 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 article 3 of S.I. 2004/2306. The name of the scheme was changed to the Firefighters' Pension Scheme, by article 4(1) of S.I. 2004/2306. 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 to have effect, for the purposes of the Firefighters' Pension Scheme, by virtue of S.I. 2004/2306.

(5) The amendments made by article 2 and the following paragraphs of Schedule 1 have effect from 6th 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),
- (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 40 (election to purchase increased benefits),
- (k) paragraph 41 (payment of periodical contributions for increased benefits), and
- (l) paragraph 42 (pension debit members: restriction on replacement of debited rights).

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

(7) In this Order—

“the Compensation Scheme” means the Firefighters' Compensation Scheme (England) 2006 set out in the Schedule to the Firefighters' Compensation Scheme (England) Order 2006(4); and

“the Pension Scheme” means the Firefighters' Pension Scheme, set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992(5), as it has effect in England(6).

### **Amendment of the Pension Scheme**

2. The Pension Scheme shall be amended in accordance with Schedule 1.

### **Transitional provision**

3.—(1) The amendments made by article 2 and paragraphs 6 (ill-health awards), 50 (review of ill-health and certain deferred pensions) and 61 (ill-health pension) of Schedule 1 shall not have effect in relation to a person in respect of whom a determination or decision relevant to the termination of his employment on grounds of ill-health (whether under Part H or Part K of the Pension Scheme) has been made before 1st April 2006.

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

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(4) S.I. 2006/1811.

(5) S.I. 1992/129; amended by 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691 and 2004/1912. The Scheme was made under section 26 of the Fire Services Act 1947 (c. 41). That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21). Subsections (1) to (5) of section 26 were continued in force, for the purposes of the scheme established under that section as the Firemen’s Pension Scheme, by S.I. 2004/2306. The name of the scheme was changed, in relation to England and Scotland, by article 4(1) of S.I. 2004/2306.

(6) 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.

#### **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 England.

(2) A reference in any document (whether made, served or issued before, on or after 1st April 2006) to a provision of the Pension Scheme that ceases to have effect by virtue of paragraph (1) shall, unless a contrary intention appears, 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.

Signed by authority of one of Her Majesty’s Principal Secretaries of State

*Phil Woolas*  
Minister of State  
Department for Communities and Local  
Government

10th July 2006

## SCHEDULE 1

## Article 2

## AMENDMENT OF THE FIREFIGHTERS' PENSION SCHEME (ENGLAND 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,
      - (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 England.”(7).
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 he is entitled to reckon at least two years' pensionable service, 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)(8), 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—

(7) As to the Compensation Scheme, see the definition in Part I of Schedule 1. See also S.I. 2006/1811.

(8) Rule B3 was amended by S.I. 2005/2980, Sch. para.14.

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

becomes entitled on retiring—

- (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 outside the fire and rescue service.

(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 outside the fire and rescue service.

(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) in paragraph (2)(b), for “rules B1 to B4”, substitute “rules B1 to B3”; and
- (b) 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 (7), for “6 months after his retirement”, substitute “the day before the pension comes into payment”;
- (b) for paragraph (8), substitute—

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- “(8) Notice of commutation takes effect on the date of the person’s retirement.”;
- (c) 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.”;
- (d) 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).”;
- (e) 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)(9), 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”.

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(9) 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.

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—

**“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(10), 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)(11), 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)(12)—

- (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),”;
- (c) in paragraph (3), for “or other award mention”, substitute “mentioned”.

18. For rule C6 (widow’s requisite benefit and temporary pension)(13), 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)(14), and

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

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

(11) Paragraph (2A) was inserted by S.I. 2005/3228, Sch.1, para.3.

(12) Rule C5 was substituted by S.I. 2005/2980, Sch., para 24 and S.I. 2005/3228, Sch.1, para.7.

(13) Rule C6 was substituted by S.I. 2005/2980, Sch., para.25 and amended by S.I. 2005/3228, Sch.1, para 8.

(14) 1971 c. 56.

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- (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)(15), substitute—

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

- C7.—**(1) This rule applies where—
- (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)(16)—

- (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)(17), 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).

(15) Rule C7 was amended by S.I. [2005/3228](#), Sch 1, para.9.

(16) Rule C8 was amended by S.I. [2005/3228](#), Sch.1, para.10.

(17) Rule D5 was amended by S.I. [2005/2980](#), Sch. para.28 and [2005/3228](#), Sch.1, para.14 and Sch.2, para.1.



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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)(18), substitute—

**“Lump sum in lieu of surviving spouse’s or civil partner’s pension**

**E5.**—(1) Subject to 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)(19), the fire and rescue authority may commute 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 for a lump sum the pension or so much of it as may be commuted without exceeding the commutation limit.

(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 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) Subject to rule E7, where—

- (a) a child is entitled to an allowance under Part D, and
- (b) the fire and rescue authority are satisfied that there are sufficient reasons, and
- (c) a surviving parent or the child’s guardian or, if he has neither, the child himself consents, and
- (d) the deceased died before his 75th birthday,

the fire and rescue authority may commute for a lump sum the allowance or so much of it as may be commuted without exceeding the commutation limit for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule).

(2) 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.”.

(18) Rule E5 was amended by S.I. [2005/3228](#), Sch 1, para.17.

(19) 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.

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- 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).”(20);
  - (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)(21)—
- (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—
    - (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.

(20) 2004 c. 12.

(21) Rule E8 was amended by S.I. 2005/3228, Sch.1, para.18.

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(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)(**22**)—

(a) for paragraph (1)(a), substitute—

“(a) (i) on 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)(**23**); 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”;

(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 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”.

**36.** For rule F8 (transfer payments between fire and rescue authorities)(**24**), substitute—

**“Transfer payments to Scottish and Welsh fire and rescue authorities**

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

(a) takes up employment as a regular firefighter with a Scottish or Welsh 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 Welsh 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.”

**37.** In rule G1 (pensionable pay and average pensionable pay), in paragraph (4)—

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

(22) Rule F5 was amended by S.I. 2005/2980, Sch. para.41.

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

(24) Paragraph (1A) was inserted by S.I. 2005/2980, Sch. para 45.



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.”.

40. In rule G6 (election to purchase increased benefits), in paragraph (1), omit “and rule G9”.
41. 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)(25), 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.”.
42. Omit rule G9 (pension debit members: restriction on replacement of debited rights).
43. 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 B3(7)”.
44. In rule I2 (awards to servicemen)(26)—
  - (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”.
45. In rule I3 (awards on death of servicemen)(27)—
  - (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”.
46. Omit rule I4 (servicemen who resume service as regular firefighters).
47. 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)”.
48. 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.”(28).
49. 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).
50. 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,

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

(26) Rule I2 was amended by S.I. 2005/2980, Sch. para.58.

(27) Rule I3 was amended by S.I. 2005/2980, Sch. para.59 and 2005/3228, Sch.1, para.19.

(28) 1971 c. 56.

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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.”.

**51.** Omit rule K2 (reassessment of injury pension).

**52.** In rule K3 (reduction of award in case of default)(**29**), in paragraph (1), omit “or injury”.

**53.** In rule K5 (withdrawal of pension on conviction of certain offences)(**30**), in paragraph (4), omit “, other than an injury pension.”.

**54.** In rule L1 (authorities responsible for payment of awards)(**31**), omit paragraphs (2), (5) and (6).

(29) Rule K3 was amended by S.I. [2005/2980](#), Sch. para.72.

(30) Rule K5 was amended by S.I. [2005/2980](#), Sch. para.74.

(31) Rule L1 was amended by S.I. [2005/2980](#), Sch. para.75.

55. Omit rule L2 (expenses and receipts of fire and rescue authorities).
56. In rule L3 (payment of awards)(32), in paragraph (7), omit “other than an injury gratuity under rule B4,”.
57. In rule L4 (prevention of duplication)(33)—
- (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).
58. Omit rules L4A (prevention of duplication: other injury awards for persons who are both regular and retained firefighters)(34) and L4B, (prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters)(35).
59. 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(36), 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 Welsh fire and rescue authorities under provisions of the Firefighters' Pension Scheme as it has effect in Scotland or the Firefighters' (Wales) Pension Scheme 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).

(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));

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

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

(34) Rule L4A was inserted by S.I. 2005/2980, Sch., para.79.

(35) Rule L4B was inserted by S.I. 2005/2980, Sch., para.79, and amended by S.I. 2005/3228, Sch.1, para.26.

(36) See section 21 of the Local Government Act 2003 (c. 26) and, in particular, subsection (4)(e).

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- (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 Welsh 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; and
  - (e) where paragraph (1) of rule K1A (consequences of review) applies, the amount of the difference referred to in paragraph (3) of that rule.
- (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 Secretary of State requires the authority to pay to him 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 Secretary of State 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 Scheme (Amendment) (England) Order 2006 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 Secretary of State 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 Secretary of State 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 Scheme (Amendment) (England) Order 2006 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 Secretary of State 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 up employment in the fire and rescue service in England—

- (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 up employment in the fire and rescue service in England,

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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 Secretary of State—

- (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 27 of the Audit Commission Act 1998<sup>(37)</sup>;
- (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 Secretary of State 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 Secretary of State in September in the financial year before the year in question (“the estimate”); and
- (b) if the authority revise the information referred to in those sub-paragraphs after they send the estimate to the Secretary of State, may send that revised information to the Secretary of State 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 Secretary of State in July in the financial year following the year in question (“the un-audited information”).

(5) The authority shall send to the Secretary of State 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 revise the information referred to in sub-paragraphs (e) and (f) of paragraph (1) after they have sent the un-audited information to the Secretary of State, that information as revised.

(6) For the purposes of this rule, the auditor issues his certificate and opinion when, in accordance with section 9 of the Audit Commission Act 1998<sup>(38)</sup>—

<sup>(37)</sup> 1998 c. 18. See regulations 7 and 10 of the Accounts and Audit Regulations 2003 (S.I. 2003/533, amended by 2004/556 and 2006/564).

<sup>(38)</sup> 1998 c. 18.

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- (a) he enters on the authority's statement of accounts for the relevant year—
  - (i)
  - (ii) his opinion on the statement; or
- (b) where he makes a report to the authority under section 8 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 him, it appears to the Secretary of State 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, he 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 him, it appears to the Secretary of State 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 him 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 him, zero,he may pay to the authority such amount as he 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 Secretary of State pays an amount to the authority under paragraph (2), any amount paid or payable to him in relation to the year in question under rule LA6(1) shall not be payable and, if already paid, the Secretary of State 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;
  - (b) 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 Secretary of State 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 him, it appears to the Secretary of State 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, he shall require the authority to pay to him 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 him, it appears to the Secretary of State that—

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- (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 him under paragraph (1) in relation to the year in question; or
    - (ii) where no such amount was paid or payable by the authority, zero,he may require the authority to pay to him such amount as he may by notice specify.
- (3) The aggregate of the amounts paid to the Secretary of State 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 Secretary of State requires the authority to pay an amount to him by virtue of paragraph (2), any amount paid or payable by the Secretary of State to the authority under rule LA5(1), shall not be payable and, if already paid, the authority shall repay it to the Secretary of State.
- (5) The Secretary of State shall give to the authority, on or before 3rd March in the year in question, written notice of the amount of any payment that he requires the authority to make under paragraph (1) or (2).
- (6) An amount payable or repayable by the authority to the Secretary of State 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 him, it appears to the Secretary of State 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"), he 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 Secretary of State;
- (c) where no amount was paid or payable by him to the authority in relation to the year in question under rule LA5(1) or (2), he shall pay to the authority the amount of the un-audited deficit; and
- (d) any amount paid or payable to him in relation to that year under rule LA6(1) or (2), shall not be payable and, if already paid, the Secretary of State 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 Secretary of State 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

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- (2) (“the un-audited total”), he 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 Secretary of State;
  - (c) where no amount was paid or payable by him to the authority in relation to the year in question under paragraph (1)(a) or (c) or rule LA5(1) or (2), he shall pay to the authority the amount of the audited deficit; and
  - (d) any amount paid or payable to him 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 Secretary of State shall repay it to the authority.
- (3) An amount payable or repayable by the Secretary of State 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 Secretary of State 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 him, it appears to the Secretary of State 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 him by the authority in relation to that year under rule LA6(1) or (2) (“the LA6 total”), he shall require the authority to pay to him 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 Secretary of State shall repay it to the authority;
  - (c) where no amount was paid or payable to him by the authority in relation to the year in question under rule LA6(1) or (2), he shall require the authority to pay to him the amount of the un-audited surplus; and
  - (d) any amount paid or payable by him 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 Secretary of State.
- (2) Where, having taken into account the audited information and any other relevant information available to him, it appears to the Secretary of State 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 him 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”), he shall require the authority to pay to him 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

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paragraph (1)(a) or (c) or rule LA6(1) or (2) and, if already paid, the Secretary of State shall repay it to the authority;

- (c) where no amount was paid or payable to him by the authority in relation to the year in question under paragraph (1)(a) or (c) or rule LA6(1) or (2), he shall require the authority to pay to him the amount of the audited surplus; and
- (d) any amount paid or payable by him 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 Secretary of State.

(3) The Secretary of State 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 he requires the authority to make under paragraph (1)(a) or (c).

(4) An amount payable or repayable by the authority to the Secretary of State, or vice versa, under paragraph (1), shall be paid or repaid in July in the second year.

(5) The Secretary of State 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 he requires the authority to make under paragraph (2)(a) or (c).

(6) An amount payable or repayable by the authority to the Secretary of State, 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 Secretary of State with such information relevant to the exercise of his functions under this Part as he may, by written notice to the authority, require.

(2) An authority shall respond to a request under paragraph (1) within such period as the Secretary of State shall specify in his notice under that paragraph, or such longer period as he 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 Secretary of State from time to time for the purposes of this Part.”.

**60.** In Schedule 1 (interpretation), in Part I (glossary of expressions)(**39**)—

- (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 (England) 2006, set out in Schedule 1 to the Firefighters’ Compensation Scheme (England) Order 2006.”;
- (b) omit the entry (both columns) for the expression “qualifying injury”.

**61.** In Schedule 2 (personal awards)(**40**)—

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

(39) Part 1 of Schedule 1 was amended by S.I. 2005/2980, Sch., para.81, and 2005/3228, Sch.1, para.27.

(40) Schedule 2 was amended by S.I. 2005/2980, Sch., para.82.

## “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

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

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

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

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—

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- (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 sub-paragraphs (d) and (e); and
- (d) in Part VII (reduction of pension at state pensionable age) omit paragraph 4.

**62.** In Schedule 3 (awards on death: spouses)(41)—

- (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.”.

**63.** 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”.

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

**65.** In Schedule 9 (appeals), in paragraph 8(2A)(42), for “10”, substitute “21”.

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

(41) Schedule 3 was amended by S.I. 2005/2980, Sch., para.83.

(42) 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)</i>	<i>(2)</i>
<i>Provision of Pension Scheme</i>	<i>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 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
In Schedule 1, Part I, the entry relating to "qualifying injury"	In Part 1, rule 2(1)

**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 England ("the Pension Scheme"). Subject to the exceptions mentioned below, the amendments to the Pension Scheme, which are set out in Schedule 1 to this

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Order, have effect from 6th 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, 50 and 61 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 1st 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 outside the fire and rescue service 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). 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).

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 59, which inserts a new Part LA dealing with the Firefighters' Pension Fund, also has effect from 1st 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 Secretary of State 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 Secretary of State 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, which is set out in the Schedule to the Firefighters' Compensation Scheme (England) Order 2006 ([SI. 2006/1811](#)). Schedule 2 to the Order lists the provisions of the Pension Scheme that cease to have effect, as to England, having been superseded by corresponding provisions of the Firefighters' Compensation Scheme.

The effect of the amendment to paragraph 8(2A) of Schedule 9 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.

The amendment of rule A3 and the substitution of rule G2(1) anticipate the making of a new pension scheme by order under section 34 of the Fire and Rescue Services Act 2004. 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 6th April 2006,

persons who, having made an election under rule G3(1) not to pay pension contributions, cancel that election on or after 6th 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 6th 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 6th April 2006.

The opportunity has been taken to correct two errors that arose in amending instruments made in 2005. 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 7 of Schedule 1 to the Firefighters' Pension Scheme (Civil Partnership Amendments) (England and Scotland) Order 2005 (S.I.2005/3228). 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 second error relates to article 1(3)(c) of the Firefighters' Pension Scheme (Amendment) (England) Order 2005 (S.I. 2005/2980). That provision gave retrospective effect, from 1st March 1992 (the date on which the Pension Scheme came into force), to rule C5 of the Pension Scheme. It should have given similar retrospective effect to rule C6 of the Pension Scheme, which relates to the requisite benefit and temporary pensions awarded to surviving spouses and civil partners. That rule was amended in 2005 to reflect the fact that the surviving spouse of a deceased firefighter may be either a widow or a widower. Rule C6, as now substituted, is given retrospective effect from 1st March 1992.

The text of the Firefighters' Pension Scheme, as amended by the provisions of this Order, may be viewed at [www.communities.gov.uk/firepensions](http://www.communities.gov.uk/firepensions).

A full regulatory impact assessment has not been produced for this Order, as it has no impact on the costs of business, charities or voluntary bodies.