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## EXPLANATORY NOTE

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

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

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

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

The amendment made by paragraph 60, which inserts a new Part LA dealing with the Firefighters' Pension Fund, also has effect from 1 April 2006. New Part LA requires each fire and rescue authority to establish and maintain a Firefighters' Pension Fund ("the FPF") for the purposes of the Pension Scheme and in connection with rights and liabilities under earlier versions of the Scheme. Pension contributions made by firefighters and their employing authorities will be paid into the FPF and pension and related payments will be made out of the FPF.

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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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

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

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

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

persons who take up employment with a fire and rescue authority as regular firefighters on or after 6 April 2006,

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

the spouses, civil partners and dependants of those two classes of person.

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

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

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

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

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

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