

**FIREFIGHTERS' PENSION COMMITTEE**

**DRAFT 1992 AMENDMENT ORDER**

**Note by DCLG**

The Committee has previously considered possible amendments to the Firefighters' Pension Scheme 1992 as a prelude to consolidation of the Scheme. DCLG have been preparing a draft order and this is now being finalised before submission to Ministers prior to consultation, as required by section 34(5) of the Fire and Rescue Services Act 2004.

The summary of the proposals set out in the draft order is at Annex 1, and the draft order is at Annex 2.

The Committee is invited to note.

*Department for Communities  
And Local Government  
January 2011*

## FIREFIGHTERS' PENSION SCHEME AMENDMENT ENGLAND ORDER 2011

## SUMMARY OF PROPOSALS

**Pensionable Pay - Definition**

**Amend the definition of pensionable pay to ensure allowances and temporary emoluments are not treated as pensionable. Provide a new Additional Pension Benefit which would allow for allowances and temporary emoluments to be pensionable on a more limited basis**

**Background**

Pensionable pay is defined in Rule G1 of the FPS (similar definition in Part 11, rule 1 of the NFPS). The definition which was originally included in the 1992 version of the scheme rules, and in force until 2004, was that the pensionable pay of a regular firefighter is "the amount determined in relation to the performance of the duties of his rank". The definition was amended with the substitution of "rank" with "role" in 2004 to reflect the changes within the Fire and Rescue Service as part of the modernisation agenda. The current wording of Rule G1 is

*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.*

In 2008/9 it became clear that, as FRAs respond to the need for changes to meet new operational demands, new allowances and emoluments were being introduced on a localised basis. These allowances and emoluments were frequently being designated as pensionable even though some were clearly of a temporary nature as defined above.

**Reasons for concern**

The assessment of the value of the scheme, including the level of contributions from employees and employers required to finance the scheme, is based on the cost of providing the benefits to be paid to an average new entrant over the course of his/her career. Any new element of pensionable pay immediately creates an additional pension liability which includes, not only a future cost in terms of an increased level of pension payments, but a past cost that has not been covered by pension contributions and which cannot be covered by future pension contributions.

The impact of these past service costs is most severe when scheme members receive new or increased pensionable payments in the latter stages of their active service. The extra benefits derived can be considerable: for example, a firefighter aged 49 who receives a pensionable allowance in his final year of service and retires with 30 years'

pensionable service will receive additional pension of £666 for every extra £1000 of pensionable pay before commutation, or £500 plus £3040 lump sum. The pension costs of such payments made at the end of a firefighter's service cannot be reflected in the contributions paid over the working life of the member but will create an index-linked liability for, possibly, decades in the future. Whilst this is a very good return for the investment by the employee who might expect to receive pension payments worth well over £10,000 for just £110 of pension contributions, it is a very poor outcome for the taxpayer.

Because the FPS and NFPS are unfunded schemes, pension costs have to be met from a pension account maintained by each FRA into which all employee and employer contributions are paid with any deficit covered by a "top-up" grant drawn from the total Central government funding of the Fire and Rescue Service. Any additional net pension costs, i.e. those that cannot be covered by employee and/or employer contributions, might not immediately feed through into the "top-up" grant required (ie the cash deficit), but does nevertheless represent an additional threat to the long term affordability and sustainability of both the 1992 and 2006 Schemes.

Aside from the cost implications, the implications for scheme members in receipt of an allowance must also be considered. An important consideration when determining whether an allowance or emolument should be pensionable is the likelihood of whether, once awarded, it will continue to be a permanent feature of a person's aggregate pensionable pay. Both the FPS and the NFPS are "final salary schemes". This means that the scheme benefits are based on the pensionable pay in the best of the final three years of pensionable service (termed average pensionable pay in the FPS and final pensionable pay in the NFPS). A member who has paid pension contributions on an element of pay which then ceases before the final three years of pensionable service gains no benefit from those contributions. This was the situation that would have arisen following the abolition of the Long Service Increment and became a possibility with the introduction of the Continual Professional Development allowance; and precipitated the introduction of the LSI and CPD Additional Pension Benefit provisions.

Clearly, allowances or emoluments that are paid in addition to a firefighters' basic pay for the role and are temporary in nature, i.e. are specifically time limited; do not normally feature in pay; are subject to review and withdrawal, **should not be pensionable**.

### Consultations

Concerns over the interpretation of scheme rules with regard to pensionable pay and the proliferation of new pensionable allowances was raised with the Firefighters' Pensions Committee (FPC) in 2009 and options were considered. Subsequently, we carried out wider consultation on the options with the FRS. The outcome of the consultation was subsequently discussed with the FPC.

### Options

In our discussions/consultations we identified 2 options.

Option 1: Introduce an approvals process to assess and mitigate against cost implications for the schemes.

This option would allow FRAs to continue to determine whether new allowances or emoluments should be pensionable (having regard to the scheme regulations on pensionable pay) with the result that any such allowances featuring in average/final pensionable pay at retirement would be reflected in pension benefits. However, as regulator of the finance arrangements, CLG would need to be consulted at an early stage when any proposals which may affect pension costs were being considered. FRAs would be required to provide sufficient information to CLG to enable it to consult the Government Actuary's Department about the impact on the pension fund and calculate an additional contribution which would be levied on the relevant FRA to cover the past service costs should they still decide to proceed with making the allowance pensionable.

Option 2: Adopt Additional Pension Benefit (APB) arrangements similar to those introduced in 2007 for CPD payments.

This option would involve applying a more restrictive definition of pensionable pay so that only basic annual pay for role would be pensionable under "final salary" arrangements and that APB arrangements should apply to all pensionable allowances or emoluments. The amount of additional contributions paid in a year would receive an actuarially valued pension which would be index-linked and come into payment on retirement alongside the main pension benefits.

The general view was that:

- adopting APB arrangements would allow any new pension liability to be borne by the employer and the member in direct proportion to the value of the allowance or emolument;
- the option would provide FRAs with the necessary flexibility to determine emoluments and allowances locally for their staff.
- members who receive temporary allowances which did not feed into their final salary would still receive a benefit
- adequate protection should be put in place to ensure that any benefits already accrued for scheme members would be protected.
- there were some allowances and emoluments, such as Flexible Duty Allowance, London Weighting and pay for Temporary Promotion, that had long been treated as pensionable and some protection for members in receipt of these might be necessary..

The main reservations related to the position of those currently in receipt of pensionable payments which would not be pensionable by APB arrangements after the change.

Protection of accrued benefits

There is no intention of adversely affecting the pension of a scheme member who has a legitimate expectation that their final pensionable pay we have proposed that where a person is receiving an allowance which is treated as pensionable at the time the

Scheme is amended it should continue to be regarded as part of pensionable pay. No retrospection is proposed.

### Age Discrimination

**To meet requirements of age discrimination legislation, allow for members who accrue 30 years' service before age 50 and cannot access their pensions to stop paying contributions. Contributions will continue to be paid from age 50 and if the person opts not to re-start paying, provides for average pensionable pay for pension purposes to be pay at that point.**

### Background

Members of the Firefighters' Pension Scheme 1992 (FPS) alleging indirect age discrimination because they joined the FPS before age 20 and must pay contributions for more than 30 years, whereas any colleague who joined at age 20 or above would pay contributions for only 30 years before being able to draw their pension at age 50.

Senior Counsel has advised that this is not itself discriminatory but that the potential discrimination arises because the additional pension contributions made by such a person are not taken into account for the purposes of the calculation of that member's pension as the maximum period of service which may be taken into account for this purpose is capped at 30 years. However, it is not discriminatory once the person reaches age 50 because he/she has the choice as to whether to retire with a pension or to remain in employment and continue to pay contributions.

On the probabilities, therefore, there is no benefit to be gained from resisting the claims as we would lose.

### Options

We have considered with the Government Actuary's Department the various options, e.g. allowing such members to accrue more than 30 years' pensionable service or paying reduced contributions. Allowing a person to accrue additional pension would be expensive for the Scheme as a significant number of members continue working beyond age 50, and after accruing 30 years' pensionable service and this is taken into account in the valuation of the 1992 Scheme.

Alternatively, we could allow members to pay a reduced contribution but our actuarial advice is that all liabilities are accrued once a member reaches 30 years' service and that this includes the effect of future salary increases; therefore it seems to us that it would be difficult to justify any reduced level of contribution if we were challenged on the level of contribution.

We have, therefore, reached the conclusion that the most reasonable, and least expensive, option would be to allow such members a contributions holiday from the point at which they reach the 30 years' reckonable service point until age 50. Then the person would be able to choose between retirement with pension or continued employment and payment of contributions.

As a Chief Fire Officer cannot retire without the permission of their fire and rescue authority, we have also to ensure that we avoid any claim by a chief officer that the scheme continues to discriminate against them. To deal with this, we would propose that members should have the option not to continue paying contributions at age 50 but that if they exercise the option their final pensionable pay should be that at age 50.

The employing authority would continue to pay contributions.

#### Cost to the pension scheme

GAD have estimated that since 1<sup>st</sup> December 2006, when the relevant Employment Directive came into effect, about 350 members are affected and the cost of refunding contributions would be £1.7m. In addition there are about 3,000 members who have the potential to accrue more than 30 years' service before age 50 and the future cost of giving them a contributions holiday would be approx £16.5m.

The FPS is now a closed Scheme so that the liability is finite.

#### Medical Appeals

**To allow for the Independent Qualified Medical Practitioner (IQMP) to review his opinion if further medical evidence is provided by the scheme member so as to avoid unnecessary referrals to a Board of Medical Referees (BMR);**

**To provide for a member of the BMR to review medical papers when an appeal is received to ensure that there is a sufficiency of evidence to enable an appeal to be heard; and**

**To allow the BMR to review its opinion if the appellant and fire and rescue authority are satisfied that the board has made an error of fact which materially affects its decision.**

The purpose of these amendments is to ensure that the procedures for considering medical questions under the FPS and that there are not unnecessary appeals from the decisions of IQMPs to BMRs, or from BMRs to the High Court by way of Judicial Review. Such appeals are expensive and time consuming and should be unnecessary if the parties agree that, for example, new evidence justify reconsideration.

#### Appeals on non-medical issues

**To repeal the provision which provides for appeal to the Crown Court if an authority does not admit a person's claim to an award or any payment in respect of an award.**

Rule H3 of the FPS provides for appeal to the Crown Court if an authority does not admit a person's claim to an award or to any payment in respect of an award. This may have been appropriate when there were no other arrangements for appealing a decision of an authority but this is no longer the case, There are now arrangements in place under pensions legislation which require schemes to have dispute resolution arrangements in place, from which a scheme member can apply to the Pension Ombudsman.

## **Commutation**

**To provide that, in circumstances where a member is retired at the instigation of the FRA, the limit on the amount of pension that may be commuted for a lump sum may be increased to a quarter of the pension at the FRA's discretion.**

**To provide that where FRA's decide to exercise their discretion, the additional costs will be met from the FRA's own funds and not from the pension account.**

Under Rule B7, members who have reached normal pension age (55) or have accrued at least 30 years' service are able to commute up to a quarter of their pension for a lump sum. In all other circumstances the amount that the member may commute is limited under rule B7(5) such that the lump sum cannot exceed 2.25 times the amount of pension.

FRA's are able to require a member who has reached the age of 50 or above and who has 25 or more years' service to retire. However, the limit on the amount of lump sum that might apply in these circumstances means that members are reluctant to retire voluntarily. FRA's have asked for discretion to disapply the limit in certain circumstances. This has been agreed but the additional costs must be met from the FRA's own funds rather than from the pension account.

## **Pensions Tax**

**To amend terminology to be consistent with HM Revenue and Customs rules and definitions.**

The Finance Act 2004 included tax simplification measures which defined the different forms of pension payments (pensions; lump sums; dependants' pensions etc) and how they should be treated for tax purposes.

## **General "Tidying" Amendments**

**To make necessary corrections to scheme rules.**

The opportunity has been taken to review the scheme rules and make corrections to previous drafting; remove obsolete provisions; generally update terminology; bring consistency (where possible) with the NFPS.

## STATUTORY INSTRUMENTS

2011 No.

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

The Firefighters' Pension Scheme (Amendment) (England)  
(No. 2) Order 2011

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State, in exercise of the powers conferred by section 26(1) of the Fire Services Act 1947(1) and section 12(2) of the Superannuation Act 1972, as applied by section 16(3)(3) of that Act, makes the following Order:

**Citation and commencement**

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (Amendment) (England) (No. 2) Order 2011.

(2) This Order shall come into force on xxx 2011, but the amendment made by article 2 and—

- (a) paragraph 7(b) of the Schedule so far as it relates to rule G2 (pension contributions); and
- (b) paragraph 7(f) of the Schedule so far as it relates to new rule G3A (exemption from payment of pension contributions—30 years pensionable service before age 50),

shall have effect from 1st December 2006; and

- (c) paragraph 14(a)(iv) of the Schedule so far as it relates to rule LA2 (special payments and transfers into Firefighters' Pension Fund),

shall have effect from 1st April 2011.

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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 26 continues to have effect, for the purposes of the Firefighters' Pension Scheme, by virtue of S.I. 2004/2306.

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

2. Schedule 2 to the Firemen's Pension Scheme Order 1992(4) (in which it sets out the Firefighters' Pension Scheme), as it has effect in England(5), shall be amended in accordance with the Schedule to this Order.

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

*Name*

Minister of State

Date

Department for Communities and Local Government

## SCHEDULE

Article 2

### Amendment of the Firefighters' Pension Scheme (England Only)

1. In Part A (interpretation)—

(a) in rule A3 (exclusive application to regular firefighters)—

(i) in paragraph (1), for “the Social Security Act 1975” substitute “the 1993 Act”;

(ii) omit paragraph (3);

(iii) for paragraph (5) substitute —

“(5) This Scheme applies to a person who takes up employment with a fire and rescue authority on or before 5th April 2006 and remains in continuous pensionable service.”  
; and

(b) omit rules A4 to A8, A12, A14 and A15.

2. In Part B (personal awards)—

(a) in rule B1 (ordinary pension), after paragraph (3) add—

“(4) Paragraph (2)(b) shall not apply to a chief fire officer appointed after the date that the Order amending this rule comes into force.”;

(b) in rule B2 (short service award)—

(i) in paragraph (1)(a), for “retires on or after normal pension age” substitute “retires at or after normal pension age”;

(ii) in paragraph (2)(a), for “Part II of Schedule 2; and” substitute “for Part 2 of Schedule 2;”; and

(iii) for paragraph (2)(b), substitute—

“(b) subject to sub-paragraph (c), in any other case, to a short service refund lump sum of an amount equal to the aggregate of his pension contributions; and

(c) where a person is not entitled to a short service refund lump sum under paragraph 5 of Part 1 (lump sum rule) of Schedule 29 to the Finance Act 2004(6), he is entitled to a deferred pension under rule B5.”;

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(4) S.I. 1992/129; amended by 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691, 2004/1912, 2006/1810 and 3433 and 2008/214. 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.

(5) 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 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by 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 to that Order. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to the Welsh Ministers.

(6) 2004 c.12.

- (c) in rule B3 (ill health awards)—
  - (i) in paragraph (1), for “who is required to retire under rule A15 (compulsory retirement on grounds of disablement)” substitute “who retires by reason of permanent disablement(7)”;
  - (ii) for paragraph (2), substitute—
 

“(2) A regular firefighter who is entitled—

    - (a) to reckon at least two years’ pensionable service becomes entitled on retiring 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 3 of Schedule 2; or
    - (b) to reckon at least five years’ pensionable service becomes entitled on retiring where paragraph (4) applies, to the pensions referred to in paragraph (5).”;
    - (iii) omit paragraph (6); and
    - (iv) in paragraph (7), for “beginning with the date on which the issue of his capacity for employment arises” substitute “beginning at the time when the question of his disablement arises for decision”;
- (d) in rule B5 (deferred pension)—
  - (i) in paragraph (1)(c), for “a period of other employment” substitute “a period of linked qualifying service”;
  - (ii) after paragraph (1)(d)(i)(bb), insert—
 

“(4B) any period of absence from duty without pay, reckoned as pensionable service under rule F2(3), and”;

    - (iii) in paragraph (1)(d)(ii), for “2 years or more.” substitute “2 years or more, or”;
    - (iv) after paragraph (1)(d)(ii), insert—
 

“(e) in respect of whom rule B2(c) applies (where a person is not entitled to a short service refund lump).”;

      - (v) omit paragraph (5);
  - (e) in rule B5A (entitlement to two pensions)—
    - (i) in paragraph (2), for “The amounts” substitute “Subject to paragraph (4A), the amounts”; and
    - (ii) after paragraph (4) insert—
 

“(4A) Where a firefighter is entitled to —

      - (a) a lower tier ill-health pension under rule B3(3),
      - (b) a higher tier ill-health pension under rule B3(4), or
      - (c) a deferred pension under rule B5,

the amount of the first and second pension shall be calculated in accordance with Part 3 or Part 6 (as the case may be) of Schedule 2 and apportioned by applying the formula in paragraph (3) as modified by paragraph (4B).

(4B) For the purpose of the calculation in paragraph (4A), in paragraph (3)—

      - (a) in the case of the first pension, A is the firefighter’s average pensionable pay for the year ending with his or her last day of service at the higher rate of pay that the firefighter’s pensionable service up to that day, bears to the whole of his or her pensionable service; and
      - (b) in the case of the second pension, A is the firefighter’s average pensionable pay for the year ending with his or her last day of service that the firefighter’s pensionable service up to that day, bears to the whole of his or her pensionable service.”.
    - (f) in rule B5B (additional pension benefit: long service increment)—

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(7) Within the meaning of rule A10 (disablement).

(i) in paragraph (2), after the formula substitute—

“Where—

A is the number in years (counting part of a year as the appropriate fraction) by which the firefighter’s continuous pensionable service in the employment of a fire and rescue authority up to and including 30th 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 continuous pensionable service in the employment of a fire and rescue authority up to and including 30th June 2007, exceeds 20.”;

(ii) for paragraph (3), substitute—

“(3) Where the Consumer 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 (as calculated in accordance with paragraph (2) and, if applicable, this paragraph) shall be increased by any increase under Pensions (Increase) Act 1971(8)”; and

(iii) in paragraph (5)(b), for “rule B5” substitute “rule B3”;

(g) for rule B5C (additional pension benefit: continual professional development), substitute—

**“Additional pension benefit**

**B5C.**—(1) Where a fire and rescue authority determines that the benefits listed in paragraph (5) are pensionable, and in any financial year pays any such pensionable benefits to a regular firefighter, the authority shall credit the firefighter 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 that year shall be determined in accordance with guidance and tables provided by the Scheme Actuary.

(3) Where the Consumer Prices Index for the month of September in any financial year is higher than it was for the month of September in the previous financial year, the amount of additional pension benefit accrued at the end of any financial year shall be increased by any increase under the Pensions (Increase) Act 1971.

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

(5) Paragraph (1) applies where a fire and rescue authority determines that any of the benefits listed in this paragraph are pensionable—

(a) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighter’s day to day role but are within the wider functions the job;

(b) the amount (if any) paid in respect of a firefighter’s continual professional development;

(c) the difference between the firefighter’s basic pay in their day to day role and any pay received whilst on temporary promotion or where he or she is temporarily required to undertake the duties of a higher role;

(d) any performance related payment.

(6) 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

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(8) 1971 c. 56.

(b) the firefighter is not in receipt of a pension under this scheme or entitled to a deferred pension under rule B3;

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

(h) in rule B5D (additional pension benefits: supplementary provisions), in paragraph (3) omit “(rule A15)”;

(i) omit rule B6 (repayment of aggregate pension contributions);

(j) in rule B7 (commutation-general provision)—

(i) in paragraph (2), for “may commute for a lump sum” substitute “may commute for a pension commencement lump sum,”;

(ii) in paragraph (3), for “Government Actuary” substitute “Scheme Actuary”;

(iii) in paragraph (5), for “In the case of” substitute “Subject to paragraph (5A), in the case of”;

(iv) after paragraph (5), insert—

“(5A) Subject to paragraph (4), a fire and rescue authority may pay a lump sum in excess of two and a quarter times the full amount of the pension.”;  
and

(v) in paragraph (11), for “serviceman” substitute “reservist”.

(k) in rule B8 (commutation-small pensions)—

(i) in paragraph (1)—

(aa) for “a person who has attained state pensionable age” substitute “a person who has reached the age of 60 but has not reached the age of 75”; and

(bb) for “a lump sum” substitute “a trivial commutation lump sum”;

(ii) in paragraph (2), for “Government Actuary” substitute “Scheme Actuary”; and

(iii) after paragraph (3), add—

“(4) On the day on which the pension is commuted under this rule, all other entitlements to a pension under this Scheme are extinguished.”;

(l) in rule B9 (allocation)—

(i) in paragraph (7), for “the date on which he intends to retire” substitute “the day before the pension comes into payment”; and

(ii) in paragraph (13), for “Government Actuary” substitute “Scheme Actuary”;

(iii) in paragraph (16), for “serviceman” substitute “reservist”; and

(m) in rule B12 (pension debit members), in sub-paragraph (a), for “Government Actuary” substitute “Scheme Actuary”.

### 3. In Part C (award on death-spouses)—

(a) in rule C1 (spouse’s ordinary pension), for paragraph (2) substitute—

“(2) Where this rule applies the surviving spouse is entitled to an ordinary pension calculated in accordance with Part 1 of Schedule 3.”;

(b) in rule C4 (spouse’s accrued pension), omit paragraph (2);

(c) in rule C6 (spouse’s or civil partner’s requisite benefit and temporary pension), for paragraph (5) substitute—

“(5) Subject to paragraph (6), 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 Scheme Actuary, is less than that of his average pensionable pay,

the surviving spouse or civil partner is entitled to a defined benefits lump sum death benefit equal to the difference between those amounts.

(6) Where the firefighter received an award under rule B2(2)(b) (short service refund lump sum), the surviving spouse or civil partner is not entitled to an award under paragraph (5).”;

(d) in rule C7 (award to spouse or civil partner where no other award payable)—

(i) for paragraph (1)(c), substitute—

“(c) rules C1 and C4 do not apply.”; and

(ii) for paragraph (2)(b), substitute—

“(b) subject to sub-paragraph (c), to a defined benefits lump sum death benefit equal to the deceased’s average pensionable pay;

(c) where the firefighter received an award under rule B2(2)(b) (short service refund lump sum), the surviving spouse or civil partner is not entitled to an award under sub-paragraph (c).”;

(e) in rule C8 (limitation where spouses living apart), in paragraph (7), in both places where it occurs for “gratuity” substitute “defined benefits lump sum death benefit”;

(f) in rule C9 (effect of remarriage), in paragraph (2), in both places where it occurs for “gratuity” substitute “defined benefits lump sum death benefit”; and

(g) in rule C10 (pension debit members)—

(i) after “C5”, omit “C6”; and

(ii) for “Government Actuary” substitute “Scheme Actuary”.

4. In Part D (awards on death—children), for rule D5 (child’s allowance or special gratuity-limitations), substitute—

**“Child’s allowance: limitations and duration**

**D5.**—(1) Subject to paragraphs (2) and (3), a child is not eligible if he or she—

(a) is 18 or older;

(b) has ceased full-time education and is in paid employment; or

(c) is married or has entered into a civil partnership.

(2) A child aged 18 but not more than 23 is eligible if he or she is in full-time education or attending a course of at least one year’s duration.

(3) A child aged 18 or more is eligible if, when the deceased dies, he or she is dependent on the deceased by reason of permanent disablement.

(4) A child is not eligible if he or she is convicted of the murder of the deceased, but this is subject to paragraph (6).

(5) Subject to paragraph (7), where the child is convicted of the manslaughter of the deceased, the authority may as they think fit, withhold the child’s allowance

(a) in whole or in part, and

(b) permanently or temporarily.

(6) Where a conviction of the description mentioned in paragraph (4) is quashed on appeal—

(a) a child’s pension shall be payable from the day after that on which the deceased died, and

(b) the authority shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of allowance accrued.

(7) Where—

(a) a conviction of the description mentioned in paragraph (5) is quashed on appeal, and

(b) the authority have withheld any part of the child’s allowance,

The authority's decision under paragraph (5) shall be treated as revoked and they shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of allowance accrued from the day after that on which the deceased died.

(8) Nothing in paragraph (6) or (7) shall affect the application of paragraph (4) or (5) if the child whose conviction is quashed is subsequently convicted of the murder or manslaughter of the deceased.

(9) A child's allowance ceases to be payable—

(a) unless paragraph (2) or (3) applies, on his or her 18th birthday or on the occurrence of the event referred to in paragraph (1)(b) or (c), whichever first occurs;

(b) where paragraph (2) applies, on his or her 23rd birthday or the day on which his or her full-time education or course ceases, whichever first occurs;

(c) Where paragraph (3) applies, when the authority are satisfied—

(i) that the child is no longer permanently disabled; or

(ii) that the child's allowance should not have been awarded.

(10) Unless paragraph (9)(c) applies, an allowance for which a child is eligible as mentioned in paragraph (3) is payable for life.”.

**5. In Part E (awards on death-additional provisions)—**

(a) in rule E1 (lump sum death grant)—

(i) in paragraph (2), for “gratuity” substitute “lump sum”; and

(ii) after paragraph (5), add—

“(6) The grant is to be paid before the end of the period of two years beginning with the earlier of the day on which the Scheme administrator knew of the member's death and the day on which the Scheme administrator could first reasonably be expected to have known of it.”;

(b) in rule E3 (dependent relative's gratuity)—

(i) in paragraph (2)(b), after “Scheme” insert “in respect of the same firefighter”; and

(ii) in paragraph (3), for—

(aa) “gratuity” substitute “defined benefits lump sum”; and

(bb) “gratuities” substitute “lump sums”;

(c) in rule E4 (payment of balance of contributions to estate)—

(i) in paragraph (2)(f), for “Government Actuary” substitute “Scheme Actuary”; and

(ii) for paragraph (4), substitute—

“(4) The Fire and Rescue Authority shall pay a post retirement death grant to the deceased's personal representatives.

(5) A “post retirement death grant” is an amount representing the difference between the aggregate of the relevant amounts and the deceased's aggregate pension contributions.”;

(d) in rule E5 (lump sum in lieu of surviving spouse's or civil partner's pension)—

(i) in paragraph (1)—

(aa) for “Part 1 of Schedule 29”, substitute “Part 2 of Schedule 29”; and

(bb) after “commute”, omit “whole or part of the”;

(ii) in paragraph (2)(a), for “rule C1” substitute “Part C (awards on death-spouses);

(iii) in paragraph (5), for “Government Actuary” substitute “Scheme Actuary”; and

(iv) after paragraph (5), add—

“(6) On the day on which a pension is commuted under this rule, all other entitlements under the Scheme of the person entitled to the pension are extinguished to the extent that they derive from the deceased member.”;

- (e) in rule E6 (lump sum in lieu of child's allowance)—
  - (i) in paragraph (1), after “commute” omit “whole or part of the”; and
  - (ii) after paragraph (4), add—
 

“(5) On the day on which a pension is commuted under this rule, all other entitlements under the Scheme of the person entitled to the pension are extinguished to the extent that they derive from the deceased member.”;
- (f) in rule E7 (limitation on discretion to commute pension or allowance for gratuity)—
  - (i) in paragraph (2), after “commute” omit “whole or part of the”;
  - (ii) in paragraph (2)(b), for “Part 1 of Schedule 29”, substitute “Part 2 of Schedule 29”;
  - and
  - (iii) in paragraph (4), for “Government Actuary” substitute “Scheme Actuary”;
- (g) for rule E8 (increase of pensions and allowances during first 13 weeks), substitute—

**“Bereavement pension: survivors**

- E8.**—(1) Subject to paragraph (2), a person entitled to a pension under rule C1 (spouse's ordinary pension) is also entitled in respect of each of the 13 weeks following death, to a bereavement pension of an amount equal to the difference between the weekly rate at which the survivor's pension is paid and—
- (a) if the deceased was a firefighter member when he or she died, the weekly rate of his or her pensionable pay when he or she died;
  - (b) in any other case, the weekly rate of his or her pension or pensions ( including any increase under the Pensions (Increase) Act 1971) when he or she died.
- (2) No entitlement arises under paragraph (1) where—
- (a) an election not to make pension contributions under rule G3 has effect at the date of the deceased's death or
  - (b) the deceased was entitled to a deferred pension that had not come into payment.”.

**6. In Part F (pensionable service and transfer values)—**

- (a) in rule F1 (reckoning of and certificates as to pensionable service)—
  - (i) in paragraphs (1), (6)and (7), for “serviceman” substitute “reservist”;
  - (ii) in paragraph (3), omit “F6”; and
  - (iii) in paragraph (6), in both places where it occurs, for “gratuity” substitute “lump sum”;
- (b) in rule F2 (current service)—
  - (i) in paragraph (1)—
    - (aa) in sub-paragraphs (a) and (b), for “except a period during which pension contributions were not payable under rule G2, and” substitute “except a period during which an election under rule G3 had effect, and”;
    - (bb) in sub-paragraph (c), for “immediately before that date.” substitute “immediately before that date, and”; and
    - (cc) after sub-paragraph (c) add—
 

“(d) any period of service during which pension contributions are not payable where rule G3A applies.”;
  - (ii) in paragraph (4)(a), omit “(including any such additional or further contributions as are mentioned in rule G4)”;
- (c) after rule F2, insert—

**“Reckoning of service for purposes of awards**

**F2A.**—(1) Subject to paragraph (3), for the purpose of calculating an award payable to or in respect of an employee of a fire and rescue authority by reference to any period in years (including a period of pensionable or other service) the period shall be reckoned as—

A+ (B divided by 365) years

where—

A is the number of completed years in the period, and

B is the number of completed days in any remaining part of a year,

and accordingly a part of a year which includes 29th February in a leap year and comprises 365 days shall be treated as a whole year.

(2) Where, for the purpose of calculating an award payable to or in respect of a regular firefighter—

(a) it is necessary to determine his or her pensionable service reckonable by reason of service or employment before or after a particular date (“the material date”), and

(b) by virtue of the receipt by a fire and rescue authority of a transfer value, he or she is entitled to reckon a period of pensionable service (“the credited period”) by reason of service or employment for a period (“the previous employment period”) which includes that date,

the credited period counts as pensionable service reckonable by reason of service or employment before and after the material date in the same proportion as that between the parts of the previous employment period falling before and after the material date.

(3) Subject to rule B13 and Part 6A of Schedule 2, any period of service as a part-time employee of a fire and rescue authority shall be treated as service as a whole-time employee of a fire and rescue authority when calculating a person's pensionable service.”;

(d) in rule F4 (previous service reckonable on payment), omit paragraphs (1), (2), (4) and (5);

(e) omit rule F6 (war service);

(f) in rule F6A (previous service reckonable following actionable loss)—

(i) in each paragraph where it occurs, for “reckonable service” substitute “pensionable service”;

(ii) in paragraph (1)(b), for “section 62 of the Financial Services Act 1986” substitute “section 150 of the Financial Services and Markets Act 2000(9)”;

(g) in rule F6B (calculation of amount of restitution payment), in paragraphs (2)(b)(i) and (3), for “Government Actuary” substitute “Scheme Actuary”;

(h) in rule F8 (transfer payments to Scottish and Welsh fire and rescue authorities), in paragraph (1), in both places where it occurs, for “Scottish or Welsh fire and rescue authority” substitute “Scottish or Welsh fire and rescue authority or the Northern Ireland Fire and Rescue Services Board”; and

(i) in rule F9 (payment of transfer values)—

(i) in paragraphs (1)(b), for “an approved scheme” substitute “a registered scheme or a qualifying recognised overseas pension scheme within the meaning of section 169 (recognised transfers) of the 2004 Act” (“an overseas pension scheme”); and

(ii) in paragraph 7(b), for “an approved scheme” substitute “a registered scheme or an overseas pension scheme”.

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(9) 2000 c.8; section 150 was amended by S.I. 2005/381 and by the Financial Services Act 2010 (c.28), section 24 and Schedule 2.

7. In part G (pensionable pay and contributions)—
- (a) in rule G1 (pensionable pay and average pensionable pay)—
- (i) in paragraph (1), for “Subject to paragraph (2)” substitute “Subject to paragraphs (2) and (9)”;
- (ii) for paragraph (1)(b) substitute—
- “(b) the amount of any payment representing a locally agreed allowance”;
- (iii) in paragraph (2)(b), after “payable,” substitute—
- “the person’s pay shall be taken not to include any excess, in any tax year, over the figure which is the permitted maximum for that year; and
- (c) “the permitted maximum” shall be such amount as may be determined by the Secretary of State.”;
- (iv) for paragraph (4), substitute—
- “(4) The relevant date—
- (a) for the purposes of rule C7 (spouses’ or civil partner’s award where no other award payable), and the Compensation Scheme, the date of the person’s last day of service as a regular firefighter,
- (b) for the purposes of rule G3A(3), the day before the person’s 50th birthday, and
- (c) for all other purposes of this Scheme, the date of the person’s last day of service in a period during which contributions were payable under rule G2.”;
- (v) in paragraph (7C), omit “: continual professional development”; and
- (vi) after paragraph (8), add—
- “(9) Where on xxxxx 2011 any allowance or supplement is in payment to a firefighter which—
- (a) a fire and rescue authority treats as pensionable, but
- (b) is not pensionable pay within paragraph (1) or additional pension benefit within the meaning of rule B5B or B5C,
- that allowance or supplement shall continue to be treated as pensionable for so long as the firefighter receives it without any break in payment.”.
- (b) in rule G2 (pension contributions)—
- (i) for paragraph (1) substitute—
- “**G2.**—(1) A regular firefighter shall except—
- (a) while an election under rule G3 has effect; or
- (b) where rule G3A applies,
- pay pension contributions to the fire and rescue authority at the rate specified in paragraph (1A).”; and
- (ii) after paragraph (4), insert—
- “(4A) The Secretary of State shall consult with the Scheme Actuary before making a notification under paragraph (4).”;
- (c) in rule G2A (optional pension contributions during maternity and adoption leave), after paragraph (2), insert—
- “(2A) But in calculating the pay on which the contributions are made, any amount the firefighter receives on account of a day’s work carried out under regulation 12A of the Maternity and Parental Leave etc. Regulations 1991(10) or regulation 21A of the Paternity and Adoption Leave Regulations 2002(11) that exceeds any maternity, paternity or parental leave pay due for that day, shall be disregarded.”;

(10) S.I. 1999/3312; regulation 12A was inserted by S.I. 2006/2014.

(11) S.I. 2002/2788; regulation 21A was inserted by S.I. 2006/2014.

(d) after rule G2A insert—

**“Aggregate pension contributions for the purposes of awards**

**G2B.**—(1) A regular firefighter’s aggregate pension contributions comprise—

- (a) all payments made by him or her to a fire and rescue authority that fall within paragraph (2),
- (b) all payments made by him or her in accordance with a notice under rule F2 (current service),
- (c) all payments made by him or her in accordance with an election under rule G2A,
- (d) all payments made by him or her in accordance with an election under rule G6, and
- (e) if paragraph (3) applies, the amount of the notional award described in paragraph (4).

(2) The payments that fall within this paragraph are payments under this Scheme or a previous Scheme that relates to a period of service which the regular firefighter is, or was immediately before electing under rule G3 not to pay pension contributions, entitled to reckon as pensionable service and have not been refunded to him, including payments made—

- (a) by way of rateable deductions from pay,
- (b) by way of such additional and further payments as were mentioned in articles 57 to 59 of the 1973 Scheme, or
- (c) in accordance with such an undertaking as is mentioned in Part 1 of Schedule 6.

(3) This paragraph applies where the regular firefighter is, or was immediately before electing under rule G3 not to pay pension contributions, entitled to reckon pensionable service by reason of a period of service or employment otherwise than as a regular firefighter (“the previous employment period”).

(4) The notional award mentioned in paragraph (1)(e) is the award by way of return of contributions or analogous payment that would have been paid to him or her if, at the end of the previous employment period, he or she had voluntarily retired in circumstances entitling him or her to such an award under the applicable superannuation arrangements.”;

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

- (i) in paragraph (1), for “Subject to paragraphs (1A) and (8) substitute “Subject to paragraph (1A)”;
- (ii) in paragraph (1A), omit “continual professional development”;
- (iii) in paragraph (2), for “Subject to paragraphs (3) and (3A), an election” substitute “An election”; and
- (iv) omit paragraphs (3) to (8);

(f) after rule G3, insert—

**“Exemption from payment of pension contributions—30 years pensionable service before age 50**

**G3A.**—(1) This rule applies to a regular firefighter who—

- (a) has reckoned 30 years pensionable service; and
- (b) is aged 48 or over.

(2) Subject to paragraph (3), rule G2 ceases to apply to such a person until such time as he or she reaches the age of 50.

(3) But where rule G2 ceases to apply, a firefighter may elect not to pay contributions under rule G3.”;

(g) omit rule G4 (continued payment of additional and further contributions); and

(h) in rule G6 (election to purchase increased benefits), for paragraph (4) substitute—  
“(4) An election to pay periodical contributions must be made at least 2 years before the person’s normal pension age, but no such election may be made if the fire and rescue authority so resolve, unless the person has at their own expense undergone a medical examination and satisfied the authority as to his or her good health.”.

**8. In Part H (determination of questions and appeals)—**

(a) after rule H1 (determination by fire authority) insert—

**“Review of medical opinion**

**H1A.**—(1) Where—

(a) new evidence on an issue wholly or partly of a medical nature is presented to the authority by a person in respect of whom a decision has been made under rule H1,

(b) the authority receive that evidence—

(i) where a copy of an opinion was supplied in accordance with paragraph (2) of rule H1 within 28 days of the receipt by that person of that copy, and

(ii) in any other case, within 28 days of the receipt by that person of notice of the authority’s decision, and

(c) the authority and the person concerned agree that the IQMP should be given the opportunity of reviewing his or her opinion in the light of the new evidence,

the authority shall send a copy of the new evidence to the IQMP and invite him or her to reconsider his or her opinion.

(2) An IQMP’s response to an invitation under paragraph (1) shall be in writing.

(3) An IQMP’s rule H1A response shall be binding on the authority unless it is superseded by the outcome of an appeal under rule H2.

(4) As soon as reasonably practicable after receiving a rule H1A response, the authority shall reconsider their decision.

(5) Within 14 days of that reconsideration, the authority shall—

(a) give written notice to the person concerned that they have confirmed their decision or revised their decision (as the case may be), and

(b) if they have revised their decision, supply the person concerned with written notice of the revised decision, and

supply the person concerned with a copy of the rule H1A response.”; and

(b) for rule H3 (appeal to Crown Court or Sheriff), substitute—

**“Appeals on other issues**

**H3.** Where —

(a) a person disagrees with an authority’s determination under rule H1, and

(b) the person’s disagreement does not involve an issue of a medical nature,

he or she may, by written notice given to the authority within 28 days of receipt of the determination, require the authority to deal with the disagreement by means of the arrangements implemented by them pursuant to the requirements of section 50 of the Pensions Act 1995(12) (requirement for dispute resolution arrangements) and the

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(12) 1995 c.26; section 50 was substituted by section 273 of the Pensions Act 2004 (c.35) and amended by the Pensions Act 2007 (c.22).

Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008(13).”.

**9. In Part I (servicemen)—**

- (a) in this Part, in each place where it occurs, for “serviceman” or “servicemen” substitute “reservist” or “reservists” as the case may be;
- (b) in rule I1 (preliminary), in paragraph 1, for “the armed forces” substitute “the reserve forces”;
- (c) for rule I2 (awards to servicemen), substitute—

**“Awards on permanent disablement**

**I2.** A reservist who, at the end of his or her forces period, is permanently disabled for performing the duties of a firefighter by reason of an infirmity that—

- (a) is unrelated to any injury received during his or her forces period; and
- (b) is not a qualifying injury,

is entitled to an award under rule B3 (ill health awards).”;

- (d) in rule I3 (awards on death of servicemen), omit paragraph (3);
- (e) in rule I5 (servicemen who do not resume service in their former brigade), omit paragraph (3); and
- (f) in rule I7 (pension contributions), for paragraph (2) substitute—

“(2) A reservist shall for those purposes be treated as having received no pensionable pay (and accordingly is not liable to pay contributions) in respect of any period during which his or her service pay is less than the pensionable pay described in paragraph (1)”;

- (g) after rule I7, add—

**“Interpretation of Part**

**I8.** In this Part—

“the 1996 Act” means the Reserve Forces Act 1996(14);

“qualifying injury” means an injury, received by a person in the performance of his or her duties as a firefighter, which is not wholly or mainly due to his or her own culpable negligence or misconduct;

“relevant service in the reserve forces” means service in the forces specified in section 1(2) of the 1996 Act—

- (a) in pursuance of a training obligation under Part 3 of that Act, or
- (b) by virtue of a call out for permanent service or a recall under Part 2 of the Reserve Forces Act 1980(15) or Part 7 of the 1996 Act; and

“reservist” means a person who, immediately before a forces period, was a firefighter.”.

**10. In Part IA (pension credit members)—**

- (a) in rule IA1 (pension credit member’s entitlement to pension), in paragraph (1), for “Government Actuary” substitute “Scheme Actuary”;
- (b) in rule IA2 (commutation of the pension credit benefits)—
  - (i) in paragraph (4), for “Government Actuary” substitute “Scheme Actuary”;
  - (ii) for paragraph (7), substitute—

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(13) S.I. 2008/649.

(14) 1996 c.14.

(15) 1980 c.9; prospectively repealed by the 1996 Act as from a date to be appointed.

“(7) Notice of commutation takes effect on the day on which the pension under rule IA1 becomes payable and no later than 3 months after the date on which the person becomes entitled.”;

(iii) for paragraph (8), substitute—

“(8) When a person’s notice of commutation takes effect, the relevant fire and rescue authority shall reduce the pension, as from the effective date, by the commuted portion”;

(c) in rule IA3 (death grants where pension credit member dies before pension credit benefits payable), for “Government Actuary” substitute “Scheme Actuary”.

**11.** In Part J (special cases), in rule J1 (guaranteed minimum pensions), for paragraph (2)(d) substitute—

“(d) in the case of a person who dies at any time after 4th December 2005 and leaves a civil partner, the civil partner is entitled to a pension at a weekly rate equal to half of that part of the deceased’s guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years up to and including the tax year 1996-97.”.

**12.** In Part K (revision and withdrawal of awards)—

(a) in rule K1 (review of ill-health and certain deferred pensions), in paragraph (3)(a) for “rule B5” substitute “rule B5(4)(b)”;

(b) in rule K1A (consequences of review), after paragraph (4) add—

“(5) If, on such consideration as is mentioned in rule K1(3), it is found that a person whose deferred pension is being paid early has become capable of undertaking regular employment, his entitlement to early payment of the deferred pension shall cease with immediate effect.”;

(c) for rule K4 (withdrawal of pension during service as a regular firefighter) substitute—

**“Withdrawal of pension whilst employed by a fire and rescue authority**

**K4.** The fire and rescue authority by whom a pension is payable may, in their discretion, withdraw the whole or any part of the pension, except a pension under Part C (awards on death—spouses and civil partners), for any period during which the person entitled to it is again employed by any authority in whatever capacity.”; and

(d) after rule K5 (withdrawal of pension on conviction of certain offences), add—

**“Forfeiture of award**

**K6.** A person who has been convicted of an offence under subsection (6) of section 34 of the Fire and Rescue Services Act 2004(16) (acts or omissions for purposes of obtaining awards or other sums), forfeits the whole or part of an award or sum obtained by the person under this Scheme, as the authority think fit.”.

**13.** In Part L (payment of awards and financial provisions)—

(a) in rule L3 (payment of awards)—

(i) in paragraph (1)(b), omit “in advance”; and

(ii) in paragraphs (7) and (8), in each place where it occurs, for “gratuity” substitute “lump sum”; and

(b) in rule L4 (prevention of duplication)—

(i) in paragraph (1), for “or the Compensation Scheme” substitute “and the Compensation Scheme”; and

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(16) 2004 c.21.

(ii) in paragraph (3), omit “and rule L4B”.

**14. In Part LA (Firefighters’ Pension Fund)—**

(a) in rule LA2 (special payments and transfers into Firefighters’ Pension Fund)—

(i) in paragraph (1), for “paragraphs (2) to (8)” substitute “paragraphs (2) to (10)”;

(ii) in paragraph (4)—

(aa) in sub-paragraph (b) for “ill-health award,” substitute “ill-health award; or”;  
and

(bb) after sub-paragraph (b), insert—

“(c) with an entitlement to payment of a deferred pension under rule B5(4)(b),”.

(iii) in paragraph (6)—

(aa) in sub-paragraph (a), omit “or”;

(bb) in sub-paragraph (b), for “comes into force.” substitute “comes into force; or”;  
and

(cc) after sub-paragraph (b), add—

“(c) on the date on which a deferred pension under rule B5(4)(b) comes into payment.”; and

(iv) after paragraph (8), add—

“(9) Where an authority exercises its discretion not to withdraw the payment in whole or in part of any pension under rule K4 (withdrawal of pension whilst employed by a fire and rescue authority), the authority shall in the financial year in which payment is not withdrawn, transfer into the FPF an amount equal to the amount of pension paid during that financial year to that person.

(10) Where an authority pays an increased lump sum under rule B7(5A) (commutation—general provision), in respect of a firefighter, the authority shall in the financial year in which payment is made transfer into the FPF an amount equal to the difference between the commuted portion of a quarter of the full amount of the pension and the commuted lump sum of two and a quarter times the full amount of the pension paid during that financial year to that firefighter.”;

(b) in rule LA3 (transfer from firefighters’ pension fund), for paragraph (5)(a) substitute—

“(a) a higher tier ill-health pension or a lower tier ill-health pension, or a deferred pension under rule B5(4)(b) is wholly and permanently withdrawn under rule K5 (withdrawal of pension on conviction of certain offences); and”; and

(c) after rule LA 10 (duty to have regard to guidance), add—

**“Requirement for periodical actuarial reviews of the Scheme**

**LA11.**—(1) The Secretary of State shall periodically instruct the Scheme Actuary to carry out an actuarial review of the Scheme.

(2) The review will be based on actuarial assumptions determined by the Secretary of State, after consultation with the Scheme Actuary.

(3) The effective date of the first actuarial review will be 31st March 2011.

(4) The effective date of each subsequent actuarial review will be determined by the Secretary of State, but must be no later than four years after the effective date of the previous review.

(5) The Secretary of State shall instruct the Scheme Actuary to produce a report on the actuarial review setting out—

(a) the overall cost of providing benefits under the Scheme ;

(b) the value of the benefits accrued by members in the Scheme; and

(c) a statement of any changes in the cost of providing benefits under the Scheme.

- (6) After consultation with—
- (a) the Scheme Actuary;
  - (b) representatives of fire and rescue authorities; and
  - (c) such other persons appearing to the Secretary of State to represent persons likely to be affected by any proposed Scheme changes resulting from the actuarial review,

the Secretary of State shall implement any necessary Scheme changes to take effect no later than 24 months after the effective date of the actuarial review.”.

**15.** In Schedule 1 (interpretation), in Part 1 (glossary of expressions)—

- (a) after the expression “The 1999 Act”, insert—

““The 2004 Act”	The Finance Act 2004(17).”;
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- (b) in the meaning of the expression “Aggregate pension contributions”, for “rule A8” substitute “rule G2B (aggregate pension contributions for the purposes of awards)”;

- (c) omit the expression “Approved scheme”;

- (d) for the meaning of the expression “Brigade”, substitute “A fire brigade established under the Fire Services Act 1947.”;

- (e) for the meaning of the expressions “Cash equivalent”, “part cash equivalent”, substitute “The first expression means a cash equivalent mentioned in section 94(1)(a) of the 1993 Act; the second expression means a variation of rights mentioned in section 98(1) of the 1993 Act.”;

- (f) for the meaning of the expression “Club scheme”, substitute “A scheme providing reciprocal arrangements for the payment and receipt of transfer values between the Scheme and [other occupational pension schemes] a member scheme of the Public Sector Transfers Club”;

- (g) after the expression “Compensation Scheme”, insert—

““Defined benefits lump sum death benefit”	Construe in accordance with section 168 and paragraph 13 of Part 2 of Schedule 29 to the 2004 Act.”;
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- (h) after the expression “Injury”, insert—

““Linked qualifying service”	Construe in accordance with section 179 of the 1993 Act(18).”;
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- (i) after the expression “Pension”, insert—

““Pension commencement lump sum”	Construe in accordance with section 166 and paragraph 1 of Part 1 of Schedule 29 to the 2004 Act.”;
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- (j) after the expression “Principal Act”, insert—

““Registered scheme”	Construe in accordance with Part 1 of Schedule 36 to the 2004 Act.”;
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- (k) omit the expression “Relevant service in the armed forces”;

- (l) after the expression “Retire”, insert—

““Reservist”	The meaning given in rule I8.”;
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- (m) after the expression “Reservist”, insert—

““Scheme Actuary”	The actuary appointed by the Secretary of State to provide a
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(17) 2004 c.12.

(18) Section 179 was amended by the Pensions Act 2004 (c.35).

consulting service on actuarial matters relevant to the Scheme.”;

(n) after the expression “Service pension”, insert—

““Short service refund lump sum”

Construe in accordance with section 166 and paragraph 5 of Part 1 of Schedule 29 to the 2004 Act.”;

(o) after the expression “Tax year”, insert—

““Trivial commutation lump sum”

Construe in accordance with section 166 and paragraph 7 of Part 1 of Schedule 29 to the 2004 Act.”; and

(p) omit the expression “War service”.

**16.** In Schedule 2 (personal awards), in Part 6A (calculation of awards for part-time service), in paragraph (2)(1), for the meaning of A substitute—

“A is the amount of that award calculated under the relevant Part that the person would have received had he or she been a whole time employee of a fire and rescue authority”.

**17.** In Schedule 3 (awards on death-spouses)—

(a) in Part 1 (spouse’s ordinary pension), in paragraph 1(2)(a), in both places where it occurs, for “pension” substitute “award”; and

(b) in Part 3 (spouse’s accrued pension), omit paragraph 1(1)(f) and (2)(e).

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

(a) in Part 1 (child’s ordinary allowance), in paragraph 1(1)(4)(a), for “higher tier health pension” substitute “higher tier health award”; and

(b) omit Part 4 (reduction in child’s allowance during full-time remunerated training).

**19.** In Schedule 5 (awards on death-additional provisions), in Part 3 (gratuity in lieu of child’s allowance), in paragraph 2, for “Government Actuary” substitute “Scheme Actuary”.

**20.** In Schedule 6 (pensionable service and transfer values), in Part 2 (service reckonable on receipt of transfer value), in Part 3 (transfer payments between fire authorities) and in Part 4 (amount of transfer value), in each place where it occurs, for “Government Actuary” substitute “Scheme Actuary”.

**21.** Omit Schedule 7 (war service).

**22.**—(1) In Schedule 8 (purchase of increased benefits), in Part 1 (payments)—

(a) in paragraph 1(1), for “normal pension age” substitute “role”;

(b) in paragraph 1(2)(b), for “represents; and” substitute “represents.”;

(c) omit paragraph 1(2)(c);

(d) in paragraph 3(1), for “normal pension age” substitute “role”;

(e) in paragraph 3(2)(b), for “disentitlement; and” substitute “disentitlement.”;

(f) omit paragraph 3(2)(c); and

(g) in paragraphs 2 and 4, for “Government Actuary” substitute “Scheme Actuary”.

(2) In Part 2 (calculation of appropriate amount), in paragraph 3, for “Government Actuary” substitute “Scheme Actuary”.

**23.**—(1) In Schedule 9 (appeals), in Part 1 (appeal to board of medical referees)—

(a) in paragraph 1(1) for “within 14 days”, substitute “within 28 days”;

(b) for paragraph 2 substitute—

“2.—(1) On receiving a notice of appeal, the authority shall supply the Secretary of State with three copies of—

- (a) the notice of appeal,
- (b) the notice of the relevant decision,
- (c) the opinion, response or evidence (as the case may be) supplied to the appellant, and
- (d) every other document in their possession or under their control which appears to them to be relevant to the issue that is the subject of the appeal.

(2) The Secretary of State shall refer an appeal to a board of medical referees (“the board”).”;

- (c) after paragraph 2A insert—

“2B.—(1) As soon as reasonably practicable after referring an appeal to the board, the Secretary of State shall supply the board's administrator with three copies of every document supplied under paragraph 2(1).

(2) The board shall arrange for one of their number to review those documents (“the reviewing member”).

(3) As soon as reasonably practicable after concluding the review, the reviewing member shall give written notice to the Secretary of State—

- (a) of any other information which the reviewing member considers would be desirable for the purpose of enabling the board to determine the appeal, and
- (b) if it be the case, that it is his opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded.

(4) On receipt of the reviewing member's notice the Secretary of State shall—

- (a) where the reviewing member has notified the Secretary of State of the desirability of obtaining other information, require the authority to use their best endeavours to obtain that information, and
- (b) where the notice contains an opinion of the description mentioned in sub-paragraph (3)(b), send a copy of it to the authority.

(5) An authority which receives a copy of a reviewing member's opinion shall, as soon as reasonably practicable—

- (a) send a copy of it to the appellant, and
- (b) by written notice to the appellant—
  - (i) advise him that, if his appeal is unsuccessful, he may be required to pay the authority's costs, and
  - (ii) require him to notify them, within 14 days of the date of their notice, whether he intends to pursue or withdraw the appeal.

(6) An authority which notifies an appellant under sub-paragraph (5)(b) shall inform the Secretary of State of the appellant's response to their request under sub-paragraph (b)(ii); and the Secretary of State shall notify the board accordingly.”;

- (d) in paragraph 3, for “The board shall secure”, substitute “Where an appeal is to be pursued, the board shall secure”;
- (e) in paragraph 4, in sub-paragraph (2)(b) for “not less than 21 days’ notice of”, substitute “not less than two months’ notice of”;
- (f) after paragraph 6, insert—

“6A.—(1) Where the appellant and the fire and rescue authority have received a copy of the report supplied under paragraph 6 and—

- (a) the appellant and the authority (“the parties”) agree that the board has made an error of fact which materially affects the board’s decision;

(b) the authority shall within 28 days of receipt of the report, supply the Secretary of State with two copies of a statement agreed between the parties setting out—

- (i) the error of fact;
- (ii) the correct fact, and

invite the board to reconsider its decision.

(2) The Secretary of State shall within 14 days of receipt of the statement supply a copy of it to the board.

(3) As soon as reasonably practicable after receiving the statement, the board shall reconsider its decision.

(4) Within 14 days of that reconsideration the board shall—

- (a) give written notice to the Secretary of State that it has confirmed its decision, or revised its decision (as the case may be), and
- (b) if it has revised its decision, supply the Secretary of State with a written report of its revised decision.

(5) The Secretary of State shall supply to the appellant and the authority a copy of the written notice confirming the board's decision, or a copy of the written report of the board's revised decision (as the case may be).";

(g) in paragraph 8—

- (i) for sub-paragraph (2) substitute—

“(2) Where the board—

- (a) decides in favour of the fire and rescue authority, and
- (b) reports that in its opinion the appeal was frivolous, vexatious or manifestly ill-founded,

the fire and rescue authority may require the appellant to pay them such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 7(1), as the authority think fit.”; and

- (ii) for sub-paragraph (2A) substitute—

“(2A) Where—

(a) the appellant gives notice to the board —

- (i) withdrawing the appeal;
- (ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under paragraph 4(2), and

the notice is given less than 22 working days before the date appointed under paragraph 4(2); or

(b) the appellant's acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under paragraph 4(2) less than 22 working days before the date so appointed,

the authority may require the appellant to pay them such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 7(1), as the authority think fit.”; and

(2) Omit Part 2 (appeal tribunals).

**24.**—(1) In Schedule 11 (special cases)—

- (a) omit Part 3 (calculation of pensionable service where person ceased to serve before 1st May 1975); and
- (b) omit Part 4 (modification for persons serving on 10th July 1956).

(2) In Part 5 (application to persons affected by local government reorganisation or combination scheme)—

- (a) in paragraph 2(2)—

- (i) in sub-paragraph (a), for “the first brigade, and” substitute “the first brigade.”; and
- (ii) omit sub-paragraph (b).
- (b) in each place where it occurs, for “brigade” substitute “fire and rescue authority”; and
- (c) in each place where it occurs, for “rank” substitute “role”.

**EXPLANATORY NOTE**

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