

FIREFIGHTERS' PENSION COMMITTEE

**NEW FIREFIGHTERS' PENSION SCHEME (ENGLAND) ORDER 2006:
AMENDMENTS**

Note by DCLG

1. In FPC(07)2, we reported on errors that had appeared in the printed version of the Firefighters' Pension Scheme (England) Order 2006 which needed correcting. These were mainly errors in layout, numbering and typography.
2. In the event the Stationery Office reprinted the Order which dealt with the errors. However there remain to be dealt with some corrections referred to in FPC(07)2 plus some additional problems which we have since identified. We propose therefore to instruct our lawyers to prepare an amendment order.
3. The draft instructions are attached and the Committee is invited to consider and comment.

June 2007

NEW FIREFIGHTERS' PENSION SCHEME

AMENDMENTS (ADDITIONAL TO THOSE SET OUT IN THE DRAFT FIREFIGHTERS' PENSION SCHEME (ENGLAND) (AMENDMENT) ORDER 2007 - Copy Annexed [It should be noted that some of these amendments are no longer required because the 2006 Order was reprinted with corrections.]

Rule	Amendment	Reason
Part 1, rule 2	Definition of "child". Delete "a scheme member" and replace by "a firefighter member, a deferred member and a pensioner member".	Scheme member is not defined and could include all the categories covered by Part 2, rule 1 including dependent and credit members whose children might not be eligible for benefits.
Part 1, rule 2	Definition of "nominated partner". Amend to refer to read "rule 1(6) of Part 2.	
Part 2, rule 1(1)	Delete "entitled to be".	This was a point raised by the JCSI. Membership of the NFPS is automatic, although a member may make an election not to make pension contributions under rule 5(1). "Entitled" suggests that the firefighter must take some action to establish membership and this is misleading.
	Provision to make clear that a retained firefighter employed before 6 th April 2006 may be a member of the Scheme. It could be achieved by deleting rule 1(1)(b)(iii).	A retained firefighter appointed before 6 th April 2006 is not covered by rule 1(1) because he/she was not eligible for membership of the 1992 Scheme..
Part 2, rule 1(5)(a), (b) & (c)	After "firefighter member" add "deferred member and pensioner member"	As provided the person would only be classified as a "dependent member" if the Scheme member had died in service as a member. This is not the case. The provision in Part 4, rule 6 is correct.
Part 2, rule 1(6)	In line 1, after "a firefighter member" add "a deferred member and a pensioner member".	As provided only an active member can nominate a partner. This is not intended and it needs to be extended to cover

	Consequential changes to the subsequent references to “firefighter member” in (6), (7) and (8) will be required.	deferred and pensioner members.
Part 2, rule 1(6)(a) and (b)	Move the words “in a long-term relationship” from (a) to (b)	As drafted a member would not be able to nominate an unmarried partner until the relationship had lasted two years. It is implicit in (7)(a) that a decision on whether the relationship is long-term will be made when the question has to be considered, i.e. when the member dies. The provision therefore needs to be moved to the list of criteria in (6)(b).
Part 2, rule 1(7)	Add “at least” before “two years”.	As written, the rule requires a relationship to have been for a period of exactly two years.
Part 2, rule 1(10)	For “is entitled to be a member” substitute “is a firefighter member”	
Part 2, rule 2(1)(b)	Amend to reflect the provisions of section 71 of the Pension Schemes Act 1993 to provide that a transfer payment in respect of the member’s rights under a personal pension scheme has been made to the Scheme which qualifies him for benefits under the Scheme.	As drafted the NFPS did not accurately reflect the provisions of section 71 of the 1993, the proposed amendment will rectify this. No change will be required to the interpretation of “personal pension scheme” in Part 1, rule 2(1).
Part 3, rule 2 and Annex 1	Add a rule dealing with the calculation of a higher tier pension awarded to a firefighter member who is entitled to two pensions under rule 7 of Part 3. The higher tier pension should be best of either an unenhanced first pension and a second pension enhanced in accordance with paragraphs 2 or 3 of Annex 1; or a single pension calculated in accordance with rule 7(7) and Annex 1.	We have identified a need to provide arrangements for calculating a higher tier pension in the case of a firefighter member who is entitled to two pensions under rule 7 of Part 3.
Part 3, rule 7(4)	The second pension will be the final	The amendment will be consistent with (7)(a).

	pensionable pay as at the last day of service.	
Part 3, rule 9	A provision is required on the lines of rule B7(10) of the FPS to ensure that if a pension is terminated under rule 2(3) of Part 9 account is taken of an earlier commutation so that any subsequent pension and lump sum can be reduced accordingly.	There is no provision to require an authority to take account of an earlier commutation in the case of a person who has retired on health grounds and the ill-health award has been cancelled, or who has received early payment of a deferred award. On cancellation these awards become deferred pensions, or if the person resumes service as a firefighter, the earlier service counts again as pensionable service.
Part 3, rule 9(9)(b)	Amend reference to Part 7A of the Compensation Scheme.	Increases in awards under Part 7 of the FCS applies to the FPS 1992 and Part 7A to the NFPS.
Part 3, rule 11(4)	Amend reference to Part 7 of the Compensation Scheme to Part 7A.	It is Part 7A of the Compensation Scheme which deals with reservists
Part 4, rule 2(1)(a)	Amend reference to “rule 2(4)” of Part 3 to “rule 2(3)”	The reference is incorrect.
Part 5, rule 1(4)	After “part-time” add “retained or volunteer”	The provision needs to refer also to retained and volunteer firefighters.
Part 5, rule 1(8)(b)	Amend reference to “paragraph (2)” to “paragraph (1)”	The reference is incorrect.
Part 5, rule 1(8)(b) & (9)	Amend to provide that the case of a person who dies having made only part payment is treated in the same way as a person who dies before any payment is made.	There is an anomaly in that in the case of a person who makes an election under rule 4 of Part 10 (reckoning of unpaid period of absence) but dies before any payment is made, the duty is reckoned as pensionable service, but there is no comparable provision in the case of a person who has part paid at death.
Part 5, rule 2(1)	In paragraph (b)(ii) delete “including” and substitute “excluding”.	On reflection, including the commuted lump sum in the calculation means that there is unlikely to be any post retirement death grant once the pensioner is in the third year of retirement. In consequence the provision could be regarded as creating an expectation which might not be

		delivered. We considered whether there might be a cap on the amount which would be received from the uncommuted pension but took the view that this would make it more complex for administrators. Neither the PCSPS nor the LGPS include the commuted lump sum in the calculation.
Part 6	Insert a provision providing for the payment of a lump sum death grant where a pension credit member dies before pension credit benefit becomes payable. An amount equal to the annual rate of the pension to which the member would have been entitled if he/she had attained the normal benefit age under rule 3 of Part 3 (deferred pension) on the date of his/her death multiplied by 2.25 should be payable to the member's personal representative. The provision would be equivalent to Rule IA3 of the FPS 1992.	Rule IA3 of the FPS provides for the payment of a lump sum death grant where the pension credit member dies before any benefits become payable. A similar provision is required in the NFPS.
Part 6, rule 3(2)(b)	Delete	The provision, which reflects the equivalent provision in the FPS, is not required because it is the pension rather than the value of the pension which is commuted.
Part 6, rule 5	Omit (1)(b)(ii)(bb)	To maintain consistency with the treatment of the death grant for pensioners under Part 5, rule 2, the requirement to take into account "any lump sum received on commutation" should be removed.
Part 7, rule 2(2)	Add "additional" after "his forces period is not reckonable as"	Additional pensionable service is purchased under Chapter 2 of Part 11, not pensionable service.
Part 7, rule 2(3)	Add a provision that would set out an explanation of how pensionable service and pay will count for retained and volunteer	Rule 2(3) works for regular firefighters but there needs to be a separate explanation of how pensionable service and pay will count for retained and volunteer firefighters.

	firefighters. It should be average pensionable pay divided by reference pay for the previous 12 months.	
Part 7, rule 3(2)	Delete (b). Neither (3) nor (4) allow an award where there is a qualifying injury.	
Part 8, rule 3(1)(b)(i)	Amend reference to “rule1” to “rule 2”.	
Part 9	Insert a provision allowing for a reduction of award in case of default.	Rule K3 provides a fire and rescue authority with the discretion to reduce any ill-health award by up to half its full amount where a person has brought about or contributed to his infirmity by his own default. A similar provision is included at Part 9, rule 2 of the Firefighters’ Compensation Scheme. To ensure consistency between the provisions of the NFPS and the FCS similar provision is needed in Part 9 of the NFPS.
Part 10, rule 2(1)(d)	Before “ill health” the words “lower tier” and delete “other than any period included by way of enhancement”.	Under two tier ill-health arrangements, there is no enhancement. If a person is permanently disabled from regular employment he/she is entitled to a higher tier pension.
Part 10, rule 2(6)(b)	Add after “Part 5”, “rule 1”	The death grant under Part 5, rule 2 takes into account pension which has been purchased and should not be excluded.
Part 10, rule 4(1)	After Part 11 add “and Part 13”	The employer’s contribution is covered by rule 2(2) of Part 13.
Part 10, rule 4(2)	Amend “unpaid leave” to read “absence without pay”	The scheme makes a distinction between “leave” which implies the employer’s consent, and unapproved absence.
Part 11, rule 1(5)	Amend “December” to “September”	Formerly, HM Treasury set the earnings cap for pension schemes and no action was needed on the part of scheme administrators. From April 2006. with the new tax regime for pensions, the decision to maintain the earnings cap is a

		matter for a scheme regulator, and the necessary provision is included in Part 11, rule 1(5) for an annual increase in the cap for the NFPS. However we had wrongly assumed that HM Treasury had worked from the RPI increase from end of December each year, when it was September.
Part 11, rule 2(2)(a)(i)	Delete words in brackets.	The wording of the provision is not consistent with Part 3, rule 7.
Part 11, rule 2(6)	Amend to read “The final pensionable pay of ...shall be the determined by reference to the final pensionable pay of a regular firefighter employed in a similar role and with equivalent qualifying service”	The amendment is needed to clarify the intention with regard to calculating the pension of retained and volunteer firefighters.
Part 11, rule 4(1)(a)	Add after “rule 2” the words “or 5”	Part 10, rule 5 also permits service to be purchased to cover unpaid maternity and adoption leave.
Part 11, rule 5(2)(b)	Delete	A pension credit member is not a firefighter member and consequently the provision is not required.
Part 11, rule 7(5)(b)	A child’s pension under Part 4, rule 8(1) needs to be added after “a survivor’s pension”	
Part 12, rule 4(6)(a)	Delete “firefighter”	The firefighter may not be transferring as a firefighter to the other Club Scheme.
Part 12, rule 9(2)(a)	Delete “or such longer period as the authority may allow”	The Public Sector Transfer Club does not allow for any discretion on member schemes on extending the period during which a member may ask for a transfer. The FPS already reflects the Club rule (Rule f7(2))
Part 12, rule 10(3)(a)	Delete	The provision effectively defeats the intention of Chapter 3 to allow transfers in from non-Club schemes.
Part 12, rule 12	after “pensionable service” add “and qualifying service”	The certificate should show also “qualifying service” as this defines eligibility for benefits and, in some cases, the amount of the benefit.

Part 12, rule 12	Amend (1) to make clear that in addition to a “firefighter member” information should be provided when a person who has made a contribution election under rule 5 of Part 2.	As provided for in the Scheme, when a person who has made a contribution election any deferred pension to which they are entitled would remain with the authority with which they were employed at the time they made the election. It would be administratively simpler if it transferred with them.
Part 13, rule 2(5)	Amend to repeal (b)	A person with a higher tier award will be entitled also to a lower tier ill-health pension so the effect of (5)(b) would be to remove requirement to make a payment to the FPF in respect of the lower tier award if the person also had a higher tier award.
Part 13, rule 3(4) and (5)(b)	Delete	There appears to be duplication here as (4) and (5) have similar effect. In the case of a lower tier award it is material that the person is offered employment, the person loses the pension whether or not the recipient accepts the job.
Part 14, rule 1(1)	Delete “regular”	The provision relates to all firefighters, not only regular firefighters.
Annex 1, paragraph 1(2)	Add after “Where a person” the words “who is a retained or volunteer firefighter”; and “final” before “reference pay”.	As drafted (2) does not make clear that it is applicable to retained and volunteer firefighters.
Annex 1, paragraph 1(3)	After “retained” add “or volunteer”	
Annex 1, paragraphs 2 & 3		

This Statutory Instrument corrects errors in S.I. 2006/3432 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2007 No. XXXX

FIRE AND RESCUE SERVICES, ENGLAND

PENSIONS, ENGLAND

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

<i>Made</i> - - - -	XXXX 2007
<i>Laid before Parliament</i>	XXXX 2007
<i>Coming into force</i> -	XXXX 2007

This Order is made in exercise of the powers conferred by sections 34 and 60 of the Fire and Rescue Services Act 2004⁽¹⁾.

In accordance with section 34(5) of that Act, the Secretary of State for Communities and Local Government consulted such persons as she considered appropriate before making the Order⁽²⁾.

The Secretary of State for Communities and Local Government makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (England) (Amendment) Order 2007 and shall come into force on XXXX, but shall have effect from 6th April 2006.

(2) This Order applies in relation to England only⁽³⁾.

Amendment of the Firefighters' Pension Scheme (England) Order 2006

2.—(1) Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006⁽⁴⁾ is amended as follows.

(2) In Part 1, in rule 2 (interpretation), in paragraph (1)—

- (a) in the definition of “nominated partner”, for “rule 1(2)” substitute “rule 1(6)”; and
- (b) in the definition of “transfer value payment”, for “him” substitute “a person”.

⁽¹⁾ 2004 c.21.

⁽²⁾ Other consultations were undertaken by the First Secretary of State, whose responsibilities in relation to firefighters' pensions became responsibilities of the Secretary of State for Communities and Local Government with effect from 5th May 2006. See also S.I. 2006/1926.

⁽³⁾ Powers under sections 34 and 60 of the Fire and Rescue Services Act 2004 are vested, as regards Wales, in the National Assembly for Wales by virtue of section 62 of that Act.

⁽⁴⁾ S.I. 2006/3432.

- (3) In Part 2, in rule 1(scheme membership), in paragraph (9), for “in to” substitute “into”.
- (4) For Part 3 (personal awards), substitute the Part set out in the Schedule to this Order.
- (5) In Part 4 (survivors’ pensions)—
- (a) in Chapter 1, in rule 2 (amount of survivor’ pension: general), for “rule 2(4)” substitute “rule 2(3)”; and
 - (b) in Chapter 2, in rule 7 (child’s pension: limitations and duration), in paragraphs (3) and (4), for “firefighter member” substitute “deceased”.
- (6) In Part 7 (reservists)—
- (a) in rule 2 (continuity of employment), in paragraph (3), for the words after sub-paragraph (b)(ii) substitute—
 - “is less that his notional pay for that first-mentioned period,
 - he shall be treated as having no pensionable pay (and, accordingly, no liability to make pension contributions)”; and
 - (b) in rule 3 (awards on death or permanent disablement), in paragraph (2), for “paragraph (3) or (4)” substitute “paragraphs (3) and (4)”.
- (7) In Part 8 (determination of questions and appeals), in rule 4 (appeals against decisions based on medical advice), in paragraph (4)(b) omit “(“the explanation”)”.
- (8) In Part 10 (qualifying service and pensionable service), in rule 1 (qualifying service), in paragraph (b)(iv) omit “paragraph (2) of”.
- (9) In Part 11 (pensionable pay, pension contributions and purchase of additional service)—
- (a) for “Chapter 3” substitute “Chapter 1”;
 - (b) in rule 2 (final pensionable pay), in paragraph (4), for “paragraph (6)” substitute “paragraph (7)”; and
 - (c) for “Chapter 4” substitute “Chapter 2”;
 - (d) in rule 9 (periodical contributions in respect of unpaid service or absence), in paragraph (1)(a), for “rule 8(1)” substitute “rule 7(1)”.
- (10) In Part 12 (transfers into and out of the scheme), for “Chapter 5”, “Chapter 6”, “Chapter 7”, “Chapter 8” and “Chapter 9” substitute “Chapter 1”, “Chapter 2”, “Chapter 3”, “Chapter 4” and “Chapter 5”, respectively.
- (11) In Annex 1 (ill-health pensions), in paragraph 2, before “The annual amount of the higher tier ill-health pension of a member” insert “**3.**”.

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

Name
Minister of State

Date Department for Communities and Local Government

“PART 3
PERSONAL AWARDS

Ordinary pension

1.—(1) Subject to paragraph (2), this rule applies to a person who satisfies an eligibility condition and retires, having reached normal retirement age, or state pensionable age.

(2) This rule does not apply to a firefighter member whose notice of retirement states that he is retiring for the purpose of taking up employment with another authority.

(3) A person to whom this rule applies becomes entitled on retiring to an ordinary pension calculated, subject to paragraph (4), by multiplying his pensionable service by his final pensionable pay and dividing the resultant amount by 60.

(4) Where a person to whom this rule applies becomes entitled on retiring to a pension in respect of service as a retained or volunteer firefighter, his ordinary pension shall be calculated by multiplying his final pensionable pay by his pensionable retained or volunteer service and dividing the resultant amount by 60.

(5) Where a firefighter member is entitled to more than one ordinary pension, those pensions shall not be aggregated unless rule 7(6) applies.

Award on ill-health retirement

2.—(1) This rule applies to a firefighter member who leaves his employment by reason of permanent disablement⁽⁵⁾ (referred to in this Scheme as “ill-health retirement”).

(2) Every firefighter member to whom this rule applies and who satisfies an eligibility condition is entitled, on retiring, to a lower tier ill-health pension calculated in accordance with paragraph 1 of Annex 1 to this Scheme.

(3) A firefighter member—

- (a) who is entitled to a lower tier ill-health pension,
- (b) who has at least five years of qualifying service, and
- (c) in respect of whom an independent qualified medical practitioner has expressed the opinion, obtained in accordance with rule 2(2) of Part 8, that he is permanently disabled from undertaking regular employment,

is also entitled, on retiring, to a higher tier ill-health pension calculated in accordance with paragraph 2 or 3 of Annex 1, as his circumstances require.

Deferred pension

3.—(1) This rule applies to a firefighter member who—

- (a) satisfies an eligibility condition; and
- (b) before reaching normal retirement age—
 - (i) resigns or is dismissed from the authority’s employment; or
 - (ii) makes a contributions election.

(2) A person to whom this rule applies is entitled to a deferred pension which, subject to paragraph (4) and rule 5, becomes payable from normal benefit age.

(5) See rule 3 of Part 1.

(3) A deferred pension shall be calculated by multiplying the person's pensionable service by his final pensionable pay and dividing the resultant amount by 60.

(4) Subject to rule 4 of Part 9 (withdrawal of early payment of deferred pension), where—

- (a) a person to whom this rule applies gives to the authority by whom he was last employed written notice requesting early payment of his deferred pension, and
- (b) the authority are satisfied, having obtained the opinion of an independent qualified medical practitioner in accordance with rule 2(2) of Part 8, that the person is permanently disabled from undertaking regular employment,

the authority shall pay the deferred pension from the date of the person's disablement or, if that date cannot be ascertained, the date of his request for early payment.

(5) Where a deferred pension is paid early in accordance with paragraph (4), it shall be subject to review under rule 1(2) of Part 9 (review of ill-health pension).

(6) A person who cancels his deferred pension under rule 4 ceases to be entitled to it.

Cancellation of deferred pension

4.—(1) Where—

- (a) a deferred pension awarded under rule 3 is not being paid; and
- (b) the person entitled to it is again employed by an authority in a role which entitles him to rejoin this Scheme, and
- (c) he rejoins the Scheme,

he may, at any time before leaving the authority's employment, by written notice given to the authority, instruct the authority to cancel his deferred pension.

(2) Where an authority cancel a deferred pension, they shall add to the pensionable service used for the calculation of the pension to which the person becomes entitled on leaving the service, the pensionable service used for the calculation of the deferred pension.

(3) Where the authority from which a person is entitled to receive a deferred pension ("the first authority") is not the authority by which he is employed ("the employing authority"), he must by written notice given to the first authority instruct them—

- (a) to cancel the deferred pension, and
- (b) to make arrangements with the employing authority for the transfer of his pensionable service in accordance with rule 12 of Chapter 4 of Part 12.

Pension on member-initiated early retirement

5.—(1) This rule applies to a firefighter member who—

- (a) satisfies an eligibility condition; and
- (b) before reaching normal benefit age is awarded a deferred pension.

(2) A person to whom this rule applies may, on or after his 55th birthday, by written notice to the authority request early payment of his deferred pension.

(3) The authority may refuse a request under paragraph (2) if the rate of the pension (after the actuarial reduction mentioned in paragraph (4)(b) or, as the case may be, paragraph (5)(b)), is likely to be less than the guaranteed minimum pension that would be payable from state pensionable age.

(4) A deferred pension paid before normal benefit age to a firefighter member whose service is as a regular firefighter shall be calculated by—

- (a) multiplying his pensionable service by his final pensionable pay and dividing the resultant amount by 60, and

- (b) applying to the amount ascertained in accordance with sub-paragraph (a) the appropriate actuarial reduction factor notified by the Scheme Actuary.
- (5) A deferred pension paid before normal benefit age to a firefighter member whose service is as a retained or volunteer firefighter shall be calculated by—
- (a) multiplying his pensionable retained or volunteer service by his final reference pay as in rule 2(6) of Part 11 and dividing the resultant amount by 60, and
 - (b) applying to the amount ascertained in accordance with sub-paragraph (a) the appropriate actuarial reduction factor notified by the Scheme Actuary.

Pension on authority-initiated early retirement

- 6.—(1) An authority may, having regard to—
- (a) the economical, effective and efficient management of their functions, and
 - (b) the costs likely to be incurred in the particular case,
- determine that a firefighter member who is at least 55 but under normal retirement age should be retired from the service.
- (2) The pension of a person in respect of whom a determination is made under paragraph (1) shall be calculated in accordance with rule 1.

Entitlement to two pensions

- 7.—(1) Subject to paragraph (6), a firefighter member who—
- (a) satisfies an eligibility condition; and
 - (b) on taking up a different role within the authority or becoming entitled to a different rate of pay in his existing role, suffers a reduction in the amount of his pensionable pay such that the amount to be taken into account in the calculation of the pension to which he will be entitled at normal retirement age is less than it would otherwise have been,
- is entitled to two pensions.
- (2) The pensions shall be calculated as mentioned in paragraphs (3) and (4) and shall become payable as mentioned in paragraph (5).
- (3) The amount of the first pension is that found by multiplying the member's pensionable service up to (but not including) the day on which paragraph (1) first applies to him by the final pensionable pay to which he would have been entitled had he retired on that day, and dividing the resultant amount by 60.
- (4) The amount of the second pension is that found by multiplying the member's pensionable service on and after the day on which paragraph (1) first applies to him by the final pensionable pay to which he is entitled on that day, and dividing the resultant amount by 60.
- (5) Subject to paragraph (6), the pensions become payable on the date on which a pension would have become payable to the member in whichever of the circumstances referred to in rules 1, 2, 3, 5 and 6 applies in his case.
- (6) A member who is entitled to two pensions under this rule may, by written notice to his employing authority, before leaving that employment, instruct the authority to make a single award which shall be calculated in accordance with paragraph (7).
- (7) The single award under paragraph (6) shall be calculated by—
- (a) multiplying the aggregate of the periods of pensionable service used for the purposes of paragraphs (3) and (4) by the final pensionable pay used for the purposes of paragraph (4), and
 - (b) dividing the resultant amount by 60.

(8) If the member makes a contributions election, he shall be entitled to a single pension, calculated as mentioned in paragraph (3); and that pension shall be treated for the purposes of rule 3(4) to (6) and rule 4 as if it were a deferred pension to which he was entitled under rule 3.

Refund of aggregate pension contributions

8.—(1) A firefighter member who—

- (a) leaves an authority's employment without satisfying an eligibility condition; or
- (b) remains in the service but makes a contributions election before he has accrued three months' qualifying service,

is entitled to a refund of his aggregate pension contributions less—

- (i) the amount of any tax required to be deducted, and
- (ii) such part of any contributions equivalent premium paid in respect of the member as is permitted by or under section 61 of the 1993 Act.

(2) In paragraph (1), "aggregate pension contributions" means all of the payments made by the member to his employing authority by way of pension contributions.

Commutation: general

9.—(1) Subject to paragraphs (3) and (4), a person entitled or prospectively entitled to any pension under this Part may commute a portion of it ("the commuted portion") for a lump sum.

(2) The lump sum shall be calculated by multiplying by 12 the amount of the person's pension represented by the commuted portion at the date of retirement.

(3) A person taking ill-health retirement may not commute any portion of a higher tier ill-health pension.

(4) The commuted portion must not exceed—

- (a) in a case to which rule 5(4) or (5) applies, one quarter of the amount of the pension calculated in accordance with that paragraph;
- (b) in any other case, one quarter of the amount to which he is entitled by way of pension.

(5) In order to commute a portion of a pension a person must—

- (a) not earlier than four months before the date on which he intends to retire, but
- (b) not later than the day before the pension comes into payment,

give the authority written notice of commutation specifying the commuted portion.

(6) Notice of commutation takes effect on the day of the person's retirement ("the effective date").

(7) The authority shall—

- (a) from the effective date, reduce the person's pension by the commuted portion, and
- (b) as soon as reasonably practicable after the effective date, pay the lump sum.

(8) In relation to a deferred pension, a pension on member-initiated early retirement, a pension on authority-initiated early retirement, or either or both of the two pensions referred to in rule 7, paragraphs (6) and (7) of this rule have effect as if references to the day of retirement and the effective date were references to the date on which the pension comes into payment.

(9) For the purposes of this rule—

- (a) the pension of a pension debit member shall be taken to be the amount of the pension after reduction in accordance with rule 12; and

- (b) no account shall be taken of any increase under rule 2 or 3 of Part 7 of the Compensation Scheme in an award to a serviceman.

Commutation: small pensions

10.—(1) Where the amount of any pension payable under this Part to a member who has attained state pensionable age, together with any pension to which he is entitled under rule 1 of Part 6 and any increase under the Pensions (Increase) Act 1971⁽⁶⁾, does not exceed the commutation limit specified for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule)⁽⁷⁾, the fire and rescue authority may commute the pension under this Part for a lump sum.

(2) The amount of a lump sum under this rule is the actuarial equivalent of the pension, calculated from tables prepared by the Scheme Actuary.

(3) Where a member is entitled to more than one pension under this Part, the pensions shall be treated as one for the purposes of this rule.

(4) On the day on which a pension is commuted under this rule, all other entitlements of the member under this Part are extinguished.

Allocation of pension

11.—(1) A firefighter member may, in accordance with paragraphs (6) and (7), but subject to—

- (a) section 214 of the Finance Act 2004 and paragraphs (4) and (5), and
- (b) where he is over 74, paragraphs 16A to 16C of Schedule 28 to the Finance Act 2004⁽⁸⁾,

allocate up to one-third of any pension to which he is entitled or prospectively entitled under this Part.

(2) The persons to whom a portion of a pension may be allocated are—

- (a) the firefighter member's spouse, civil partner or nominated partner, or
- (b) with the consent of the authority, any other person who is substantially dependent on the firefighter member.

(3) The authority may withhold consent under paragraph (2)(b) if they are not satisfied that the person is substantially dependent on the firefighter member.

(4) For the purposes of paragraph (1), an authority shall disregard any increase under rule 2 or 3 of Part 7 of the Compensation Scheme (awards to, or on death of, servicemen) in—

- (a) awards to—
 - (i) reservists, or
 - (ii) reservists who do not resume service with their former authority; and
- (b) awards paid under the Compensation Scheme.

(5) Where more than one portion of a particular pension is allocated under this rule, the total of the allocated portions of that pension must not exceed the portion of that pension retained by the firefighter member.

(6) The firefighter member must—

- (a) satisfy the authority that he is in good health and has a normal life expectancy; and
- (b) give the authority written notice of allocation specifying—
 - (i) the portion,

⁽⁶⁾ 1971 c.56.

⁽⁷⁾ As to "the lump sum rule", see section 166 of the Finance Act 2004 (c.12). As to the commutation limit, see paragraph 7(4) of Part 1 of Schedule 29 to that Act.

⁽⁸⁾ Paragraphs 16A to 16C were inserted by the Finance Act 2005 (c.7), Schedule 10, paragraph 28.

- (ii) the name and address of the intended beneficiary, and
- (iii) the sex of the beneficiary.

(7) The notice of allocation, which may be sent by post, must be given—

- (a) if the pension is a deferred pension, not earlier than two months before the pension comes into payment;
- (b) in any other case, not earlier than two months before the firefighter member's intended retirement.

(8) Where the authority are satisfied that—

- (a) the firefighter member has complied with paragraphs (6) and (7), and
- (b) the allocation proposed by him can be made without contravening section 214 of the Finance Act or, as the case may be, paragraphs 16A to 16C of Schedule 28 to that Act,

they shall, as soon as reasonably practicable after receiving the member's notice of allocation, notify him in writing that they have accepted his proposal.

(9) Where a proposal is accepted, the notice of allocation only takes effect—

- (a) if it refers to a deferred pension, where the pension comes into payment within two months of the date of receipt of the notice;
- (b) in any other case, where the firefighter member entitled to the pension retires within two months of the date of receipt of the notice.

(10) If a notice of allocation takes effect, it does so on the day on which the pension comes into payment or, as the case may be, on the day on which the member retires.

(11) Where—

- (a) a notice of allocation has taken effect,
- (b) the pension to which it relates has become payable, and
- (c) the beneficiary survives the pensioner,

the authority shall, from the date of the pensioner's death, pay the beneficiary a pension which is the actuarial equivalent of the allocated portion.

(12) Where more than one portion has been allocated under this rule, a separate calculation shall be made under paragraph (13) in respect of each allocation.

(13) The actuarial equivalent of an allocated portion shall be calculated in accordance with tables prepared by the Scheme Actuary and in force when the notice of allocation takes effect; and the calculation shall be made by reference to the ages of the pensioner and the beneficiary at the date on which the notice of allocation was given.

(14) Where—

- (a) a notice of allocation has taken effect, and
- (b) the beneficiary pre-deceases the pensioner,

the authority shall pay to the pensioner (distinguishing it from any other pension payable to him) the portion of pension that he had allocated ("the failed allocation pension").

(15) Where paragraph (14) applies, the pensioner is not entitled to recover from the authority the amount of any deduction made in respect of the failed allocation pension.

Pension debit members

12. Where a pension debit member is entitled to an award under this Part—

- (a) the award shall be calculated by reference to the member's rights under this Scheme as reduced by virtue of section 31 of the 1999 Act and in accordance with such tables and other guidance as are provided for the purpose by the Scheme Actuary, and
- (b) rules 9 to 11 have effect accordingly."

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 to correct errors in the New Firefighters' Pension Scheme (England) ("the new Scheme") set out in that Schedule. The Order has effect from 6th April 2006, which is the date from which the new Scheme has effect. Power to give the Order retrospective effect is conferred by section 34 of the Fire and Rescue Services Act 2004.

The amendments specified in paragraphs (2)(a), (5)(a), (8) and (9)(b) and (d) of article 2 correct cross-references.

The amendments specified in paragraphs (3), (6), (9)(a) and (c), (10) and (11) of article 2 correct layout, numbering and typographical errors.

The amendments specified in paragraphs (2)(b), (5)(b), (6)(b) and (7) rectify other drafting errors.

Paragraph (4) of article 2 substitutes Part 3 of the Scheme, so that the rules in that Part are numbered correctly. The opportunity has been taken to amend rule 5(5)(a) so that it refers to the final reference pay of a retained or volunteer firefighter.

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.