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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 199**

**FIRE SERVICES  
PENSIONS**

**The Firefighters' Pension Scheme (Scotland) Order 2007**

<i>Made</i>	- - - -	<i>7th March 2007</i>
<i>Laid before Parliament</i>		<i>8th March 2007</i>
<i>Coming into force</i>	- -	<i>1st April 2007</i>

The Scottish Ministers, in exercise of the powers conferred by section 34(1) to (5) and (8) and 60(2) of the Fire and Rescue Services Act 2004(1), after consulting such persons as they considered appropriate in accordance with section 34(5) of that Act, hereby make the following Order:

**Citation, commencement, effect and extent**

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

(2) This Order extends to Scotland only.

**New pension scheme for firefighters in Scotland**

2. The New Firefighters' Pension Scheme (Scotland), set out in Schedule 1 to this Order, which makes provision for the payment of pensions and lump sums to and in respect of persons who are or have been employed by Scottish fire authorities as firefighters (including persons who die while so employed), shall have effect.

**1992 Scheme ceasing to have effect in Scotland, with transitional and savings provision**

3.—(1) Subject to paragraphs (2) and (3), the Firefighters' Pension Scheme set out in Schedule 2 to the Firemen's Pension Scheme Order 1992(2) ("the 1992 Scheme") shall not have effect in relation to a person who takes up employment with a Scottish fire authority on or after 6th April 2006.

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(1) 2004 c. 21, as amended by s.89(1) of, and paragraph 24 of schedule 3 to, the [Fire \(Scotland\) Act 2005 \(asp 5\)](#). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I.2005/849).

(2) S.I. 1992/129, amended by S.I. 1997/2309 and 2851, 1998/1010, 2001/3649, 2005/3228 and S.S.I. 2001/310, 2004/385, 2005/566 and 2006/342. 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 That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21).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 to the Firefighters' Pension Scheme by article 4(1) of that Order.

- (2) Paragraph (1) shall not apply to a person who—
- (a) transfers to the employment of a Scottish fire authority from employment with a fire and rescue authority in England or Wales or with the Northern Ireland Fire and Rescue Service Board; and
  - (b) immediately before 6th April 2006, was a member of the firefighters' pension scheme established by the authority from whose employment the person transfers.
- (3) Where at any time in the period beginning on 6th April 2006 and ending on the date on which this Order comes into force, a person becomes a member of the 1992 Scheme on taking up employment with a Scottish fire authority—
- (a) on the date on which this Order comes into force—
    - (i) the 1992 Scheme shall cease to have effect in relation to the person, subject to the provisions set out in Schedule 2 to this Order (transitional arrangements); and
    - (ii) the provisions of the New Firefighters' Pension Scheme (Scotland) shall have effect in relation to the person; and
  - (b) pensionable service that was reckonable service for the purposes of the 1992 Scheme shall be treated as pensionable service reckonable under the New Firefighters' Pension Scheme (Scotland).
- (4) The 1992 Scheme shall continue to have effect in relation to a person who, immediately before 6th April 2006, was a member of it or was entitled to, or in receipt of, an award under it.

St Andrew's House,  
Edinburgh  
7th March 2007

*GEORGE LYON*  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Article 2

### THE NEW FIREFIGHTERS' PENSION SCHEME (SCOTLAND)

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Signature  
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## PART 1

### CITATION AND INTERPRETATION

#### Citation

1. This Scheme (which, by virtue of article 1(1) of the Firefighters' Pension Scheme (Scotland) Order 2007 has effect from 6th April 2006) may be cited as the New Firefighters' Pension Scheme (Scotland).

#### Interpretation

2.—(1) In this Scheme—

“the 1992 Scheme” means the Firefighters' Pension Scheme 1992(3);

“the 1993 Act” means the Pension Schemes Act 1993(4);

“the 1999 Act” means the Welfare Reform and Pensions Act 1999(5);

“adoption leave” means leave under sections 75A and 75B of the Employment Rights Act 1996(6); and “ordinary adoption leave” and “additional adoption leave” shall be construed accordingly;

“amount”, in relation to a pension, means the annual amount of the pension;

“authority”, except in the definition of “independent qualified medical practitioner” and rule 12 of Part 12, means a Scottish fire authority;

“authority-initiated early retirement” means retirement before normal retirement age under rule 6 of Part 3;

“award”, unless a contrary indication appears, means a pension or lump sum under this Scheme, or the refund of pension contributions;

“cash equivalent” has the meaning given by section 94(1)(a) of the 1993 Act;

“child”, in relation to a scheme member, means—

(a) a child who is financially dependent on the scheme member, and is—

(i) a natural child, step-child or adopted child of the scheme member;

(ii) otherwise related to the scheme member; or

(iii) the child of the scheme member’s spouse, civil partner or nominated partner; or

(b) any child of the scheme member—

(i) who is born after the scheme member’s death; and

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(3) See S.I. 1992/129, to which there are amendments not relevant to this Order. The Scheme was made under section 26 of the Fire Services Act 1947 (c. 41) (“the 1947 Act”). It was renamed the Firefighters' Pension Scheme, and continued in force, on the repeal of the 1947 Act by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004, by article 3 of the Firefighters' Pension Scheme (England and Scotland) Order 2004 (S.I. 2004/2306).

(4) 1993 c. 48.

(5) 1999 c. 30.

(6) 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

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- (ii) with whom the child’s mother was pregnant at the date of the scheme member’s death;

“Compensation Scheme” means the Firefighters' Compensation (Scotland) Scheme 2006 set out in Schedule 1 to the Firefighters' Compensation (Scotland) Order 2006(7);

“contracted-out”, in relation to an employment or scheme, has the meaning given by section 8(1) of the 1993 Act;

“contributions equivalent premium” has the meaning given by section 55(2) of the 1993 Act; and any reference to a case in which a contributions equivalent premium has been paid includes a reference to a case in which such a premium is payable;

“contributions election” means an election under rule 5(1) of Part 2 not to make pension contributions;

“deferred member” has the meaning given by rule 1(3) of Part 2;

“disabled” and “disablement” have the meanings given by rule 3 of this Part;

“eligibility condition” means a condition set out in rule 2(1) of Part 2;

“final pensionable pay” shall be construed in accordance with rule 2 of Chapter 1 of Part 11;

“firefighter member” has the meaning given by rule 1(1) of Part 2;

“guaranteed minimum” is the amount determined for the purposes of sections 13 to 17 of the 1993 Act(8), and “guaranteed minimum pension” has the same meaning as in that Act; and any reference to the guaranteed minimum in relation to a pension under a pension scheme at a particular time is a reference to the amount certified by the Secretary of State as that minimum at that time;

“higher tier ill-health pension” means a pension of the description referred to in rule 2(3) of Part 3;

“ill-health retirement” means retirement under rule 2 of Part 3;

“independent qualified medical practitioner” means a medical practitioner holding a diploma in occupational medicine or an equivalent or higher qualification issued by a competent authority in an EEA State, or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine(9) or an equivalent institution of an EEA State; and for the purposes of this definition “a competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(10);

“injury” means any injury or disease, whether of body or mind;

“lower tier ill-health pension” means a pension of the description referred to in rule 2(2) of Part 3;

“maternity leave” means leave under sections 71 and 73 of the Employment Rights Act 1996(11); and “ordinary maternity leave” and “additional maternity leave” shall be construed accordingly;

“member-initiated early retirement” means retirement before normal retirement age under rule 5 of Part 3;

“nominated partner” has the meaning given by rule 1(6) of Part 2;

“normal benefit age” has the meaning given by rule 3(2) of Part 2;

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(7) S.S.I. 2006/338.

(8) 1993 c. 48. As to “guaranteed minimum pension” see section 8(2).

(9) The Faculty of Occupational Medicine is a registered charity no. 1035415.

(10) S.I. 2003/1250, to which there is an amendment not relevant to this Order.

(11) 1996 c. 18; sections 71 and 73 were substituted by section 7 of, and Part 1 of Schedule 4 to, the Employment Relations Act 1999 (c. 26) and amended by section 17 of the Employment Act 2002 (c. 22).



- “normal retirement age” has the meaning given by rule 3(1) of Part 2;
- “paternity leave” means leave under regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002<sup>(12)</sup>;
- “pension”, unless a contrary intention appears, means a pension under this Scheme;
- “pensionable pay” shall be construed in accordance with rule 1 of Part 11;
- “pensionable retained or volunteer service”, in relation to a retained or volunteer firefighter and any period, means the same proportion of whole-time service as that which the retained or volunteer firefighter’s actual pensionable pay for that period bears to the retained or volunteer firefighter’s reference pay for that period;
- “pensionable service” shall be construed in accordance with rules 2 to 5 of Part 10;
- “pensioner”, except in the definition of “pensioner member”, means a person who is in receipt of a pension;
- “pensioner member” has the meaning given by rule 1(4) of Part 2;
- “pension credit” means a credit under section 29(1)(b) of the 1999 Act, or corresponding Northern Ireland legislation;
- “pension credit benefit” has the meaning given by section 101B of the 1993 Act<sup>(13)</sup>;
- “pension credit member” has the meaning given by section 124(1) of the Pensions Act 1995<sup>(14)</sup>;
- “pension credit rights” has the meaning given by section 101B of the 1993 Act;
- “pension debit” means a debit under section 29(1)(a) of the 1999 Act;
- “pension debit member” means a person whose benefits or future benefits under this Scheme have been reduced under section 31 of the 1999 Act;
- “pension sharing order” means an order or provision mentioned in section 28(1) of the 1999 Act;
- “personal pension scheme” has the meaning given by section 1 of the 1993 Act;
- “qualifying service” has the meaning given by rule 1 of Part 10;
- “reference pay”, in relation to the pay of a retained or volunteer firefighter for any period, means the whole-time equivalent pay for that period of a regular firefighter employed in a similar role and with equivalent qualifying service;
- “regular employment” means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person’s capacity for employment arises;
- “regular firefighter” means a person employed (whether whole-time or part-time) by an authority—
- (a) as a firefighter, but not as a retained or volunteer firefighter;
  - (b) on terms under which the person is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to the person’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting); and
  - (c) otherwise than in a temporary capacity;
- “retained firefighter” and “volunteer firefighter” mean a person employed by an authority—

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<sup>(12)</sup> S.I. 2002/2788.

<sup>(13)</sup> Section 101B was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30).

<sup>(14)</sup> 1995 c. 26.

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- (a) as a firefighter, but not as a regular firefighter;
- (b) on terms under which the person is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to the person's role as a firefighter (whether instead of, or in addition to, engaging in fire fighting);
- (c) otherwise than in a temporary capacity; and
- (d) who is obliged to attend at such times as the officer in charge considers necessary and in accordance with the orders that the person receives,

and "retained or volunteer firefighter" shall be construed accordingly;

"role", in relation to a firefighter, except in rule 1(1) of Part 2 means the role in which the firefighter is for the time being employed, being a role set out in "Fire and Rescue Services Rolemaps" issued by the National Joint Council for Local Authority Fire and Rescue Services in August 2005(15);

"the Scheme Actuary" means the actuary for the time being appointed by the Scottish Ministers to provide a consulting service on actuarial matters relevant to this Scheme;

"scheme member" means a member of the Scheme as referred to in rule 1 of Part 2;

"serviceman" means a person who, immediately before undertaking relevant service in the armed forces, was a regular firefighter;

"state pensionable age" means pensionable age as determined in accordance with the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(16);

"survivor's pension" means a pension under rule 1 of Part 4; and

"transfer value payment" means a payment to another pension scheme or arrangement in respect of rights to benefits that have accrued to or in respect of a person under this Scheme.

(2) Where this Scheme requires anything to be done within a specified period after or from a specified day or event, the period begins immediately after the specified day or, as the case may be, the day on which the specified event occurs.

## **Disablement**

**3.—**(1) References in this Scheme to a person's being permanently disabled are references to the person being disabled at the time when the question arises for decision and to the person's disablement being at that time likely to be permanent.

(2) Disablement—

- (a) in relation to a firefighter member, means such incapacity, occasioned by infirmity of mind or body, as makes the firefighter member unable to perform any duties of the role in which the firefighter member was last employed; or
- (b) in relation to a child, means such incapacity, occasioned by infirmity of mind or body, as makes the child unable to earn a living.

(3) In determining whether a person's disablement is permanent, the authority shall have regard—

- (a) in every case, to whether the disablement will continue until the person's normal retirement age; and
- (b) in relation to a person who has taken a deferred pension, to whether the disablement will continue until the person's normal benefit age.

(4) Where—

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(15) The document is accessible at <http://www.lge.gov.uk/lge/core/page.do?pagelId=58940>.

(16) 1995 c. 26. See section 126 of that Act.

- (a) a person has left the Scheme with deferred entitlement to benefits before becoming disabled; and
  - (b) the date on which the person becomes disabled cannot be ascertained,
- the date shall be taken to be that on which the claim that the person is disabled is first made known to the authority.

## PART 2

### SCHEME MEMBERSHIP, CESSATION AND RETIREMENT

#### **Scheme membership**

1.—(1) Subject to paragraph (2), a person of any of the following descriptions is a firefighter member of this Scheme—

- (a) a person who, on or after 6th April 2006, takes up employment with an authority as a firefighter, and whose role on taking up that employment includes—
  - (i) resolving operational incidents; or
  - (ii) leading and supporting others in the resolution of operational incidents;
- (b) a person who—
  - (i) having taken up employment as a firefighter before 6th April 2006;
  - (ii) having continued in such employment until the date of the person’s election; and
  - (iii) having been a member of the 1992 Scheme,

elects to become a member of this Scheme; and

- (c) a person to whom article 3(3) refers.

(2) A person may not be a firefighter member of this Scheme if the person makes a contributions election (but may again become a firefighter member by virtue of rule 6(4) of this Part).

(3) A person is a deferred member of this Scheme if the person is entitled to a deferred pension under rule 3 of Part 3.

(4) A person is a pensioner member of this Scheme if the person is in receipt of a pension or other benefits under the Scheme in respect of the person’s pensionable service or by reason of service credited to the Scheme under Part 12.

(5) A person is a dependent member of this Scheme if the person is—

- (a) the spouse or civil partner of a deceased firefighter member;
- (b) the nominated partner of a deceased firefighter member;
- (c) a pension credit member in relation to a firefighter member;
- (d) the child of a person who is a member of the Scheme by virtue of sub paragraph (a) or (b) of paragraph (1), whose dependency on that person satisfies the conditions specified in paragraph 15(2) and (3) of Schedule 28 to the Finance Act 2004<sup>(17)</sup>; or
- (e) is in receipt of a portion of a firefighter’s pension allocated under rule 11 of Part 3.

(6) Subject to paragraph (8), for the purposes of paragraph (5), a firefighter member may nominate a person (a “nominated partner”) who—

- (a) has been living with the firefighter member, otherwise than as the firefighter member’s spouse or civil partner, in a long-term relationship; and

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(17) 2004 c. 12.

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- (b) at the date on which the question of the person’s status in relation to the firefighter member falls to be considered—
  - (i) is not the spouse or civil partner of any other person;
  - (ii) is registered with the scheme administrator as the firefighter member’s nominated partner; and
  - (iii) is financially dependent on the firefighter member or is, with the firefighter member, in a state of mutual financial dependency.
- (7) In paragraph (6)—
  - (a) “long-term relationship” means a relationship that has continued, to the exclusion of any other relationship, for the period of two years ending with the date on which the question of the person’s status in relation to the firefighter member falls to be considered, or such shorter period as the authority may in any particular case think fit; and
  - (b) “scheme administrator” has the meaning given by section 270 of the Finance Act 2004<sup>(18)</sup>.
- (8) A firefighter member may not make a nomination under paragraph (6) if (under Scots law) the firefighter member is prohibited from marrying or, as the case may be, becoming the civil partner of the person the firefighter member wishes to nominate.
- (9) A nomination ceases to have effect if the firefighter member or the person nominated marries or enters into a civil partnership (whether with each other or with another person).
- (10) Where a person who is—
  - (a) employed by more than one authority; or
  - (b) employed by a particular authority under more than one contract of employment,is entitled to be a member of this Scheme, that person shall be a member of it in respect of each employment; but shall not be a member by virtue of any employment in respect of which that person makes a contributions election that is not cancelled.

### **Eligibility conditions**

- 2.—(1) A firefighter member is eligible for a pension under this Scheme if the firefighter member—
- (a) has at least three months' qualifying service;
  - (b) transfers into the Scheme with personal pension rights which qualify the firefighter member for benefits under the Scheme; or
  - (c) reaches normal retirement age.
- (2) In paragraph (1)(b) “personal pension rights” has the meaning given by section 71 of the 1993 Act.

### **Normal retirement age and normal benefit age**

- 3.—(1) The normal retirement age of firefighter members is 60.
- (2) The normal benefit age of firefighter members is 65.

### **Last day of membership**

- 4.—(1) Where a firefighter member leaves the Scheme, the firefighter member’s last day of membership shall be taken to be—

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<sup>(18)</sup> See also Schedule 36 to the Finance Act 2004, amended by the Finance Act 2005 (c. 7), Schedule 10.

- (a) where the firefighter member leaves on retirement at normal retirement age, the firefighter member's last day of service; and
- (b) in any other case, subject to paragraph (2), the last day on which the firefighter member pays contributions.

(2) Where a firefighter member is on unpaid leave or absent without permission on the day on which the firefighter member leaves the Scheme, the firefighter member's last day of membership shall be taken to be such date as may be agreed with the authority.

### **Election not to make pension contributions**

5.—(1) A firefighter member may at any time, by giving notice in writing to the firefighter member's employing authority, elect to make no further pension contributions (referred to in this Scheme as a "contributions election").

(2) Subject to paragraph (3)—

- (a) a contributions election takes effect on the day on which begins the first pay period falling after the date on which the notice under paragraph (1) is received; and
- (b) that person's membership of the Scheme ceases on the day on which the contributions election takes effect.

(3) A person who makes a contributions election within three months of joining the Scheme, shall be treated as if that person had never been a member of it.

(4) A person whose membership of the Scheme ceases as mentioned in paragraph (2)(b) remains entitled to any deferred benefits accrued while that person was a member.

### **Rejoining the Scheme**

6.—(1) Subject to paragraphs (2) and (3), a person who has made a contributions election may cancel it by giving written notice to the authority.

(2) Paragraph (1) does not apply where the person—

- (a) is entitled to reckon 40 or more years of pensionable service for the purposes of the Scheme; or
- (b) has previously given notice under this rule, unless the authority have declined to accept it.

(3) The authority may resolve that a person's contributions election may not be cancelled unless that person has undergone a medical examination, at that person's own expense, and satisfied them as to that person's good health.

(4) Where an contributions election under rule 5(1) of this Part is cancelled—

- (a) the person shall resume the making of pension contributions; and
- (b) shall again be a firefighter member of the Scheme,

with effect from the day on which begins the first pay period falling after the date on which the notice under paragraph (1) of this rule is received.

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## 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 the firefighter member 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 that person's pensionable service by that person's 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, that person's ordinary pension shall be calculated by multiplying that person's final pensionable pay by that person's 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) of this Part applies.

#### **Award on ill-health retirement**

2.—(1) This rule applies to a firefighter member who leaves that employment by reason of permanent disablement<sup>(19)</sup> (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 the firefighter member 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 the firefighter member's 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 of this Part, becomes payable from normal benefit age.

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<sup>(19)</sup> See rule 3 of Part 1.

(3) A deferred pension shall be calculated by multiplying the person's pensionable service by the person's 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 the person was last employed notice in writing requesting early payment of the person's 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 the person's 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 their 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 of this Part is not being paid;
- (b) the person entitled to it is again employed by a Scottish fire authority in a role which entitles the person to rejoin this Scheme; and
- (c) the person rejoins the Scheme,

the person may, at any time before leaving the employment of the authority, by notice in writing given to the authority, instruct the authority to cancel their 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 the person is employed ("the employing authority"), the person must by notice in writing 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 the person's 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 or her 55th birthday, by notice in writing to the authority request early payment of their 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—

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- (a) multiplying the firefighter member's pensionable service by the firefighter member's 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 the firefighter member's pensionable retained or volunteer service by the firefighter member's 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 of this Part.

#### **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 the firefighter member's existing role, suffers a reduction in the amount of the firefighter member's pensionable pay such that the amount to be taken into account in the calculation of the pension to which the firefighter member 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 the member by the final pensionable pay to which the member would have been entitled had the member 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 the member by the final pensionable pay to which the member 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 of this Part applies in his or her case.

(6) A member who is entitled to two pensions under this rule may, by notice in writing to the member's 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, the member 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 of this Part as if it were a deferred pension to which the member 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 the firefighter member has accrued three months' qualifying service,

is entitled to a refund of the firefighter member's 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 the member's 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) of this Part applies, one quarter of the amount of the pension calculated in accordance with that paragraph; or
  - (b) in any other case, one quarter of the amount to which the person 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 the person 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.

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(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 of this Part, 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 of this Part; 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 person who has attained state pensionable age, together with any pension to which the person is entitled under rule 1 of Part 6 and any increase under the Pensions (Increase) Act 1971<sup>(20)</sup>, does not exceed the commutation limit specified for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule)<sup>(21)</sup>, the Scottish fire 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 the firefighter member is over 74, paragraphs 16A to 16C of Schedule 28 to the Finance Act 2004<sup>(22)</sup>,

allocate up to one-third of any pension to which the firefighter member 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

<sup>(20)</sup> 1971 c. 56.

<sup>(21)</sup> 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.

<sup>(22)</sup> Paragraphs 16A to 16C were inserted by the Finance Act 2005 (c. 7), Schedule 10, paragraph 28.

(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 the firefighter member is in good health and has a normal life expectancy; and

(b) give the authority written notice of allocation specifying—

(i) the portion;

(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; or

(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 the firefighter member can be made without contravening section 214 of the Finance Act 2004 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 the member in writing that they have accepted the member's 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; or

(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

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(b) the beneficiary pre-deceases the pensioner,  
the authority shall pay to the pensioner (distinguishing it from any other pension payable to the pensioner) the portion of pension that the pensioner 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.

(16) In paragraph (4), “reservists” has the same meaning as in rule 1 of Part 7.

### **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 of this Part have effect accordingly.

## **PART 4**

### **SURVIVORS' PENSIONS**

#### **CHAPTER 1**

#### **SURVIVING SPOUSES, CIVIL PARTNERS AND NOMINATED PARTNERS**

### **Pensions for surviving spouses, civil partners and nominated partners**

1.—(1) Subject to the following provisions of this rule, a pension is payable on the death of—

- (a) a firefighter member who satisfies an eligibility condition and dies while employed by an authority; or
- (b) a former firefighter member who—
  - (i) has been awarded a deferred pension under rule 3 of Part 3 which has not come into payment; or
  - (ii) is in receipt of a deferred pension under that rule; or
  - (iii) is in receipt of a pension under any of rules 1, 2, 5 and 6 of Part 3,

to the deceased’s spouse, civil partner or nominated partner for the remainder of their life (a “survivor’s pension”).

(2) A survivor’s pension is not payable if the deceased’s spouse, civil partner or nominated partner (as the case may be) is convicted of the murder of the deceased; but this is subject to paragraph (4).

(3) Subject to paragraph (5), where the deceased’s spouse, civil partner or nominated partner (as the case may be) is convicted of the culpable homicide or manslaughter of the deceased, the authority may, as they think fit, withhold the survivor’s pension—

- (a) in whole or in part; and
- (b) permanently or temporarily.

(4) Where a conviction of the description mentioned in paragraph (2) is quashed on appeal—

- (a) a survivor’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 pension accrued.

(5) Where—

- (a) a conviction of the description mentioned in paragraph (3) is quashed on appeal; and
- (b) the authority have withheld any part of the survivor's pension,

the authority's decision under paragraph (3) shall be treated as revoked and they shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of pension accrued from the day after that on which the deceased died.

(6) Nothing in paragraph (4) or (5) shall affect the application of paragraph (2) or (3) if the person whose conviction is quashed is subsequently convicted of the murder, culpable homicide or manslaughter of the deceased.

#### **Amount of survivor's pension: general**

2.—(1) Subject to rule 3 of this Part, the amount of a survivor's pension—

- (a) in respect of a firefighter member who satisfies an eligibility condition and dies while employed by an authority, is half of the higher tier ill-health pension to which the firefighter member would have been entitled under rule 2(3) of Part 3 had the firefighter member retired with the benefit of an ill-health award;
- (b) in any other case, subject to paragraphs (2) and (3), is half of the pension to which the deceased was entitled.

(2) Where a portion of the deceased's pension had been commuted under rule 9 of Part 3, the amount of the survivor's pension is half of the deceased's pension after commutation.

(3) Where the deceased had taken member-initiated early retirement, the amount of the survivor's pension is—

- (a) half of the amount of the pension which the deceased would have received if there had been no actuarial reduction; or
- (b) where a portion of the deceased's pension had been commuted, the amount found by dividing by 2 the product of A and B, where—

A is the amount which the deceased would have received if there had been no actuarial reduction; and

B is the fraction which represents the uncommuted portion of A expressed as a fraction of A.

#### **Amount of survivor's pension: special cases**

3.—(1) Subject to paragraph (2), where the person entitled to a survivor's pension under rule 1 of this Part is more than twelve years younger than the deceased on the day on which the deceased dies, a reduction of 2.5 per cent for each year by which the survivor's age exceeds, by more than twelve years, that of the deceased, shall be applied to the rule 2 amount.

(2) Where the application of paragraph (1) would result in the payment of a survivor's pension of less than 50 per cent of the rule 2 amount, the survivor's pension shall be 50 per cent of the rule 2 amount.

(3) Where—

- (a) a pension debit member satisfies an eligibility condition and dies while employed by an authority;
- (b) a survivor's pension is payable under rule 1 of this Part on the pension debit member's death; and

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(c) a pension sharing order or, in the case of a surviving civil partner, an order to similar effect, had effect on the day on which the pension debit member died,  
the amount of the survivor's pension shall be ascertained with regard to the terms of that order.

(4) In paragraphs (1) and (2), "the rule 2 amount" means the amount that would have been ascertained in accordance with rule 2 of this Part if that rule were not subject to paragraphs (1) to (3) of this rule.

(5) For the purposes of paragraph (1), a part of a year shall be treated as a whole year.

#### **Bereavement pension: survivors**

4.—(1) Subject to paragraph (2), a person entitled to a survivor's pension under rule 1 of this Part is also entitled, in respect of each of the 13 weeks following the 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 the deceased died, the weekly rate of the firefighter member's pensionable pay when the firefighter member died;
- (b) in any other case, the weekly rate of the deceased's pension or pensions (including any increase under the Pensions (Increase) Act 1971) when the deceased died.

(2) No entitlement arises under paragraph (1) where—

- (a) a contributions election 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.

#### **Commutation of pensions for surviving spouses, civil partners and nominated partner**

5.—(1) A pension payable under this Chapter may, if the person entitled to it so requests, be commuted for a lump sum if, after commutation, the lump sum would be a trivial commutation lump sum death benefit within the meaning of paragraph 20 of Schedule 29 to the Finance Act 2004.

(2) The amount of the lump sum shall be calculated in accordance with tables prepared by the Scheme Actuary and in force when the commutation takes effect.

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

## **CHAPTER 2**

### **CHILDREN'S PENSIONS**

#### **Child's pension**

6. Subject to rule 7 of this Part, a child is eligible for a child's pension if that child is the child of—

- (a) a firefighter member who satisfies one of the eligibility conditions and dies while employed by an authority; or
- (b) a pensioner member who is in receipt of a pension under this Scheme when the pensioner member dies; or
- (c) a deferred member who is entitled to a deferred pension under this Scheme which is not in payment when the deferred member dies.

#### **Child's pension: limitations and duration**

7.—(1) Subject to paragraphs (2) and (3), a child is not eligible if the child—

- (a) is aged 18 or older; or

- (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 the child 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, the child is dependent on the deceased by reason of permanent disablement.
- (4) A child is not eligible if the child 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 culpable homicide or manslaughter of the deceased, the authority may, as they think fit, withhold the child's pension—
- (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 pension 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 pension,
- 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 pension 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, culpable homicide or manslaughter of the deceased.
- (9) A child's pension ceases to be payable—
- (a) unless paragraph (2) or (3) applies, on the child's 18th birthday or on the occurrence of an event referred to in paragraph (1)(b) or (c), whichever first occurs; or
  - (b) where paragraph (2) applies, on the child's 23rd birthday or the day on which the child's full-time education or course ceases, whichever first occurs; or
  - (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 pension should not have been awarded.
- (10) Unless paragraph (9)(c) applies, a pension for which a child is eligible as mentioned in paragraph (3) is payable for life.

### **Amount of child's pension**

- 8.—**(1) The amount payable by way of a child's pension under this Chapter is—
- (a) where the deceased died while employed as a firefighter member and there is one eligible child, one quarter of the ill-health pension to which the member would have been entitled under rule 2 of Part 3 had the member retired with the benefit of a higher tier ill health award on the day after that on which the member died; or
  - (b) where the deceased died while employed by an authority as a firefighter member and there is more than one eligible child, one half of the ill-health pension to which the member

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would have been entitled under rule 2 of Part 3 had the member retired with the benefit of a higher tier ill health award on the day after that on which the member died, divided by the number of eligible children; or

- (c) in any other case, subject to paragraphs (2) and (3)–
  - (i) if there is one eligible child, one quarter of the pension to which the deceased was entitled on the day the deceased died (whether or not, in the case of a deferred pension, the pension had come into payment); or
  - (ii) if there is more than one eligible child, one half of the pension to which the deceased was entitled on the day the deceased died (whether or not, in the case of a deferred pension, the pension had come into payment) divided by the number of eligible children.

(2) Where a portion of the deceased’s pension had been commuted under rule 9 of Part 3, the amount is–

- (a) if there is one eligible child, one quarter of the uncommuted portion; or
- (b) if there is more than one eligible child, one half of the uncommuted portion, divided by the number of eligible children.

(3) Where the deceased had taken member-initiated early retirement, the amount is–

- (a) if there is one eligible child, one quarter of the amount of the pension which the deceased would have received if there had been no actuarial reduction; or
- (b) if there is more than one eligible child, one half of the amount of the pension which the deceased would have received if there had been no actuarial reduction, divided by the number of eligible children; or
- (c) where a portion of the deceased’s pension had been commuted, and there is one eligible child, the amount found by dividing by 4 the product of A and B; or
- (d) where a portion of the deceased’s pension had been commuted, and there is more than one eligible child, the amount found by dividing the product of A and B by 2 and then dividing the resultant amount by the number of eligible children.

(4) In paragraphs (3)(c) and (d)–

A is the amount which the deceased would have received if there had been no actuarial reduction; and

B is the fraction which represents the uncommuted portion of A expressed as a fraction of A.

### **Bereavement pension: children**

9.—(1) Where–

- (a) no person is entitled to a survivor’s pension under rule 1 of this Part; and
- (b) a child of the deceased is eligible for a child’s pension (“eligible child”),

the authority shall, subject to paragraph (3), pay to the eligible child the amount referred to in paragraph (2) in respect of each of the 13 weeks following the deceased’s death or, if shorter, each complete week of the period beginning on the day after the deceased’s death and ending on the day on which the child’s pension ceases to be payable.

(2) The amount is equal to that which the authority would have paid under paragraph (1) of rule 4 of this Part (bereavement pension: survivors) had a survivor’s pension been payable.

(3) Where there is more than one eligible child, the amount ascertained in accordance with paragraph (2) shall be divided equally between the eligible children; but–



- (a) a child's share shall cease to be paid to the child as soon as that child's pension ceases to be payable; and
- (b) the share to which the child would otherwise have been entitled shall be distributed equally among any remaining eligible children.

(4) Where a person in receipt of a survivor's bereavement pension dies before the end of the period for which that pension is payable ("the 13 week period"), the authority shall, subject to paragraph (6), pay to the eligible child (if any) a bereavement pension, in respect of each complete week of whichever is the shorter of—

- (a) the period beginning on the day after the survivor's death and ending at the end of the 13 week period; and
- (b) the period beginning on the day after the survivor's death and ending on the day on which the child's pension ceases to be payable.

(5) The amount of a bereavement pension under paragraph (4) is equal to that which the authority would have paid under paragraph (1) of rule 4 of this Part had a survivor's bereavement pension been payable for the part of the 13 week period that falls after the survivor's death.

(6) Where there is more than one eligible child, the amount ascertained in accordance with paragraph (5) shall be divided equally between the eligible children; but—

- (a) a child's share shall cease to be paid to the child as soon as that child's pension ceases to be payable; and
- (b) the share to which the child would otherwise have been entitled shall be distributed equally among any remaining eligible children.

#### **Pension for child where no survivor's pension paid**

**10.**—(1) Where—

- (a) no person is entitled to a pension under rule 1 of this Part as a survivor of the deceased; and
- (b) a child of the deceased is eligible for a child's pension under rule 6 of this Part,

the authority shall pay to the child, for so long as that child is an eligible child, the amount that would have been paid by way of survivor's pension under rule 2 of this Part if, in paragraph (1) of that rule, the words "Subject to rule 3" had been omitted.

(2) Where there is more than one eligible child, the amount referred to in paragraph (1) shall be divided equally between the eligible children; but—

- (a) a child's share shall cease to be paid as soon as that child's pension ceases to be payable; and
- (b) the share to which the child would otherwise have been entitled shall be distributed equally among any remaining eligible children.

#### **Child's pension in respect of pension debit member**

**11.** Where a pension debit member dies leaving a child, the reduction in the pension debit member's rights under this Scheme by virtue of section 31 of the 1999 Act shall be disregarded for the purposes of calculating any pension payable under this Chapter.

#### **Commutation of child's pension**

**12.**—(1) A pension payable under this Chapter may be commuted for a lump sum—

- (a) with the consent of the child's remaining parent or, if the child has none, the child's guardian or, if the child has none, the child itself if the child is over age 18; and

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- (b) if, when commuted, the lump sum would be a trivial commutation lump sum death benefit within the meaning of paragraph 20 of Schedule 29 to the Finance Act 2004.
- (2) The amount of the lump sum shall be calculated in accordance with tables prepared by the Scheme Actuary and in force when the commutation takes effect.
- (3) On the day on which a pension is commuted under this rule, all other entitlements of the child under this Scheme are extinguished to the extent that they derive from the deceased member.

## PART 5

### AWARDS ON DEATH

#### Death grant

1.—(1) On the death of a person while serving as a firefighter member, the authority shall pay a death grant of an amount ascertained in accordance with the following provisions of this rule (whether or not a pension is payable under any other Part).

(2) Subject to paragraphs (3) to (5) and, where paragraph (8) applies, paragraph (9), the amount is three times that of the deceased’s pensionable pay at the time of the deceased’s death, expressed as an annual rate.

(3) Where—

- (a) the deceased was a whole-time firefighter member at the time of the deceased’s death;
- (b) had the deceased lived, the deceased would have been entitled to two pensions under rule 7 of Part 3; and
- (c) the product of the following formula is greater than three times that of the deceased’s pensionable pay at the time of the deceased’s death, expressed as an annual rate—

$$3 \times \left\{ \frac{(A \times B)}{C} - \left( \frac{D}{E} \times F \right) \right\},$$

where

A is the amount of the deceased’s pensionable pay on the deceased’s last day of service that would have been used in the calculation of the deceased’s pension under rule 7(3) of Part 3;

B is the deceased’s pensionable service that would have been used in that calculation;

C is the deceased’s qualifying service;

D is the deceased’s pensionable service that would have been used in the calculation of the deceased’s pension under rule 7(4) of Part 3; and

E is the deceased’s pensionable pay at the time of the deceased’s death,

the amount of the death grant is that greater amount.

(4) Where the deceased was a part-time firefighter member at any time during the deceased’s period of service (whether or not the deceased was a whole-time firefighter member for part of that period), the amount of the death grant is the greater of—

- (a) three times the deceased’s pensionable pay at the time of the deceased’s death (which, if the deceased was then employed part-time, would be calculated at the part-time rate), expressed as an annual rate; and
- (b) the product of the formula

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$$\frac{F}{G} \times H \times 3,$$

where—

F is the deceased’s pensionable service;

G is the deceased’s qualifying service; and

H is the pensionable pay that the deceased would have received if, throughout the deceased’s period of service, the deceased had been a whole-time firefighter of equivalent role and length of service.

(5) Where the deceased—

- (a) had become entitled to two pensions under rule 7(1) of Part 3 at the time of the deceased’s death; and
- (b) had been a part-time firefighter member during the period of service in respect of which the deceased was entitled to a second pension under rule 7(4) of that Part (whether or not the deceased had been a whole-time member for part of that period),

the amount of the death grant is whichever is the greatest of—

- (i) three times the deceased’s pensionable pay at the time of the deceased’s death, expressed as an annual rate;
- (ii) the product of the formula specified in paragraph (3); and
- (iii) the product of the formula specified in paragraph (4).

(6) Where the deceased was absent from duty without pay immediately before the day on which the deceased died, the deceased’s pensionable pay for the purposes of this rule, subject to paragraph (8), shall be taken to be the amount, expressed as an annual rate, of the pay appropriate to the deceased’s role and conditioned hours on the last occasion that the deceased received it.

(7) In paragraph (6), “conditioned hours” means the number of hours that the deceased was required to work each week under the terms of the deceased’s contract of employment.

(8) The pensionable pay of a person who—

- (a) had made an election under rule 4 of Part 10 (reckoning of unpaid period of absence); and
- (b) dies before making any payment under that rule,

shall be taken to be the amount, expressed as an annual rate, of the pensionable pay that would have been paid if the period of the person’s absence from duty without pay had reckoned as pensionable service.

(9) Where paragraph (8) applies, the death grant shall be abated by the amount due to the authority under rule 4(1) of Part 10.

(10) Subject to paragraph (11), the death grant may be paid, in whole or in part, to such person or persons as the authority think fit.

(11) The authority must not pay any part of a death grant to a person who is convicted of the murder, culpable homicide or manslaughter of the deceased, but this is subject to paragraph (12).

(12) Where a conviction of the description mentioned in paragraph (11) is quashed on appeal, the authority may, if they have not then paid the death grant in full, pay part of it to the person whose conviction is quashed.

### **Post-retirement death grant**

2.—(1) Where—

- (a) a pension under any of rules 1 to 3, 5 or 6 of Part 3 is in payment; and

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(b) the pensioner dies within five years of the pension coming into payment, the authority shall pay, by way of post-retirement death grant, an amount equal to the difference between—

- (i) the amount that they would have paid to the pensioner in that five year period, disregarding any increase in the pension that might have become payable after the pensioner's death; and
- (ii) the amount paid to the pensioner before the pensioner's death (including any lump sum that the pensioner may have received on commutation under rule 9 or 10 of Part 3).

(2) Paragraphs (9) to (11) of rule 1 of this Part shall apply in relation to a grant under this rule as they apply in relation to a death grant.

## PART 6

### PENSION SHARING ON DIVORCE

#### **Pension credit member's entitlement to pension**

1.—(1) A pension credit member is entitled to a pension for life which becomes payable—

- (a) when the pension credit member attains the age of 65; or
- (b) if it is later, when the pension sharing order under which the pension credit member is entitled to the pension credit takes effect.

(2) The pension must be of such an amount that its actuarial value is equal to the member's pension credit, as calculated from tables prepared by the Scheme Actuary and in accordance with regulations made under paragraph 5(b) of Schedule 5 to the 1999 Act.

#### **Commutation of whole of pension credit benefits**

2.—(1) In the circumstances described in regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(23)</sup> (commutation of pension credit benefit: small pensions), the authority may, with the agreement of the pension credit member, commute for a lump sum the whole of the pension to which a pension credit member is entitled under rule 1 of this Part if, after commutation, the lump sum would be a trivial commutation lump sum death benefit within the meaning of paragraph 20 of Schedule 29 to the Finance Act 2004.

(2) The lump sum under paragraph (1) is the actuarial equivalent of the pension at normal benefit age, calculated from tables prepared by the Scheme Actuary.

#### **Commutation of part of pension credit benefits**

3.—(1) Subject to paragraph (3), a pension credit member may commute for a lump sum a portion of the pension to which the pension credit member is entitled or prospectively entitled under rule 1 of this Part (“the commuted portion”).

(2) The commuted portion must not exceed—

- (a) one quarter of the amount of the pension; or
- (b) the annual rate of the pension for the first year that it is payable, disregarding—
  - (i) the reduction resulting from the application of this rule; and
  - (ii) any reduction resulting from the application of any other provision of this Scheme.

<sup>(23)</sup> S.I. 2000/1054, amended by S.I. 2000/2691.

(3) Paragraph (1) does not apply if the pension debit member from whose rights the pension credit member's pension credit is derived has received a lump sum under rule 9 of Part 3 (commutation: general) before the date on which the pension sharing order takes effect.

(4) A person who wishes to commute a portion of a pension under paragraph (1) must give the authority written notice of commutation, not later than the day before the pension comes into payment and not earlier than four months before—

- (a) the date on which the person attains normal benefit age; or
- (b) the date on which the pension sharing order takes effect,

whichever is the later.

(5) Notice of commutation must specify the commuted portion.

(6) A person's notice of commutation takes effect on the date on which the pension under rule 1 of this Part becomes payable.

(7) When a person's notice of commutation takes effect, the authority shall—

- (a) reduce the pension by the commuted portion;
- (b) calculate the lump sum by multiplying by 12 the amount of the person's pension represented by the commuted portion at the date of retirement; and
- (c) pay the person the lump sum as soon as reasonably practicable after—
  - (i) the date on which the person attains normal benefit age; or
  - (ii) the date on which the pension sharing order takes effect,

whichever is the later.

#### **Application of general rules**

**4.—**(1) The provisions of this Scheme specified in paragraph (2) apply to pension credit members and awards payable to or in respect of them; but except where other provision is made by this Part or a contrary intention appears—

- (a) this Scheme shall not apply to pension credit members and benefits payable to or in respect of them, except if and to the extent that they are also members of this Scheme in another capacity or dependants of a member; and
- (b) benefits payable to or in respect of a pension credit member may not be aggregated with benefits payable to or in respect of the pension credit member—
  - (i) in any other capacity; or
  - (ii) as a pension credit member, deriving from any other pension debit member.

(2) The provisions are—

- rule 2 of Part 8 (determinations and decisions by Scottish fire authority);
- rule 5 of Part 9 (withdrawal of pension on conviction of certain offences);
- rule 1 of Part 13 (authorities responsible for payment of awards);
- rule 2 of that Part (deduction of tax and lifetime allowance charges);
- rule 3 of that Part (payment of awards);
- rule 5 of that Part (payments for minors and persons incapable of managing their affairs); and
- rule 6 of that Part (payment of awards: further supplementary provision).

#### **Post-retirement death grant: pension credit members**

**5.—**(1) Where—

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- (a) a pension credit member dies within five years of the pension under rule 1 of this Part coming into payment and before the pension credit member's 75th birthday; and
- (b) there is a difference between—
  - (i) the amount that is five times the pension, calculated at the annual rate effective on the day that it came into payment; and
  - (ii) the aggregate of—
    - (aa) the instalments of pension that have been paid; and
    - (bb) any lump sum received on commutation under rule 3 of this Part,

the authority shall pay a post-retirement death grant of the amount of that difference.

(2) The grant may be paid, in whole or in part, to such person or persons as the authority think fit.

(3) For the purposes of paragraph (1), any increases which, if the pension had continued in payment, would have been taken into account, shall be disregarded.

## PART 7 RESERVISTS

### Interpretation of Part

1. In this Part—

“the 1996 Act” means the Reserve Forces Act 1996<sup>(24)</sup>;

“forces period” means the period during which a person undertakes relevant service in the reserve forces;

“former authority”, in relation to a reservist, means the authority by which the reservist was employed immediately before the reservist's forces period began;

“qualifying injury” means an injury, received by a person in the performance of the person's duties as a firefighter, which is not wholly or mainly due to the person's own serious and 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 the Reserve Forces Act 1980<sup>(25)</sup> or Part 7 of the 1996 Act; and

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

### Continuity of employment

2.—(1) For the purposes of this Scheme, a reservist shall be treated as having continued, throughout the reservist's forces period—

- (a) to be a firefighter; and
- (b) for the purposes of the reservist's pensionable service under Part 10, to be employed by the reservist's former authority.

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<sup>(24)</sup> 1996 c. 14.

<sup>(25)</sup> 1980 c. 9.

(2) Where, before the reservist's forces period, a reservist had elected to purchase additional service under Chapter 2 of Part 11 by periodical contributions, the reservist's forces period is not reckonable as pensionable service unless the contributions payable in respect of it are paid (whether during the reservist's forces period or, if the authority have agreed that contributions may be discontinued as mentioned in paragraph (2) of rule 8 of Part 11 (discontinuance period not exceeding six months), in accordance with that paragraph).

(3) For the purposes of calculating the amount of a reservist's pension contributions under rule 3 of Part 11—

- (a) the pay that the reservist would have received from the reservist's former authority during the reservist's forces period shall be regarded as the reservist's pay for that period (the reservist's "notional pay"); and
- (b) in respect of any period during the reservist's forces period in which the aggregate of—
  - (i) the reservist's actual pay; and
  - (ii) any payments the reservist receives under section 4 of the 1996 Act,

is less than the reservist's notional pay for that first-mentioned period, the reservist shall be treated as having no pensionable pay (and, accordingly, no liability to make pension contributions)(26).

#### **Awards on death or permanent disablement**

**3.—(1)** A reservist who, at the end of the reservist's forces period, is permanently disabled(27) for performing the duties of a firefighter by reason of an infirmity that—

- (a) is unrelated to any injury received during the reservist's forces period; and
- (b) is not a qualifying injury,

is entitled to an award under rule 2 of Part 3 (award on ill-health retirement).

(2) Where a reservist dies—

- (a) during the reservist's forces period;
- (b) from the effects of an injury which rendered the reservist incapable of performing the duties of a firefighter; or
- (c) while receiving a pension under this Scheme,

an award shall be payable in accordance with paragraphs (3) and (4).

(3) Where the reservist's death—

- (a) is not the result of a qualifying injury; and
- (b) occurs during the reservist's forces period,

a survivor's pension under Chapter 1 of Part 4 is payable to the reservist's spouse, civil partner or nominated partner (as the case may be) as if the reservist were a firefighter member entitled as mentioned in rule 1(1)(a) of that Part.

(4) Where the reservist's death occurs during the reservist's forces period and is not the result of a qualifying injury—

- (a) a child's pension is payable under Chapter 2 of Part 4 as if—
  - (i) the reservist were a firefighter member who died while employed by an authority; and
  - (ii) paragraphs (1)(c), (2) and (3) of rule 8 of that Part were omitted; and

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(26) See, as to pension payments, regulation 5 of the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (S.I. 2005/859).

(27) See rule 3 of Part 1.

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- (b) a death grant is payable under rule 1 of Part 5.

#### **Reservists who do not resume employment with their former authority**

4. A reservist who does not resume employment with the reservist's former authority within one month of the end of the reservist's forces period shall be treated as having left the authority's employment at the end of the reservist's forces period.

## **PART 8**

### **DETERMINATION OF QUESTIONS AND APPEALS**

#### **Interpretation of Part 8**

1. In this Part—

“IQMP” means independent qualified medical practitioner; and

“rule 3 response” means an IQMP's response under rule 3(2) of this Part and the provisions of Annex 2.

#### **Determinations and decisions by Scottish fire authority**

2.—(1) The question whether a person is entitled to any and, if so, what awards, shall be determined in the first instance by the authority.

(2) Subject to paragraph (6), before deciding, for the purpose of determining that question or any other question arising under this Scheme—

- (a) whether the person is disabled;
- (b) whether any disablement is likely to be permanent;
- (c) whether the person has become capable of performing any duties of the role from which the person retired on grounds of ill-health;
- (d) whether the person is or has become capable of undertaking regular employment; or
- (e) any other issue wholly or partly of a medical nature,

the authority shall obtain the written opinion of an IQMP selected by them.

(3) The IQMP must certify in the IQMP's opinion under paragraph (2)—

- (a) that the IQMP has not previously advised, or given an opinion on, or otherwise been involved in, the particular case for which the opinion has been requested; and
- (b) that the IQMP is not acting, and has not at any time acted, as the representative of the employee, the authority, or any other party in relation to the same case.

(4) An IQMP's opinion under paragraph (2) shall be binding on the authority unless it is superseded by his or her rule 3 response or the outcome of an appeal under rule 4 of this Part.

(5) Where, in consequence of an opinion given under paragraph (2), an employee has retired on grounds of ill-health, the IQMP who gave the opinion may, if so requested by the authority for the purposes of a review under rule 1(1) of Part 9, give a further opinion.

(6) If—

- (a) the person concerned wilfully or negligently fails to submit to medical examination by the IQMP selected by the authority; and
- (b) the IQMP is unable to give an opinion on the basis of the medical evidence available to the IQMP,



the authority may make a decision on the issue—

- (i) on such other medical evidence as they think fit; or
  - (ii) without medical evidence.
- (7) Within 14 days of making a decision or determination under this rule, the authority shall—
- (a) give written notice of it to the person concerned; and
  - (b) in the case of a decision on an issue wholly or partly of a medical nature, unless paragraph (6) applies, supply the person with a copy of the opinion obtained under paragraph (2).

### **Review of medical opinion**

3.—(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 2 of this Part;
- (b) the authority receive that evidence—
  - (i) where a copy of an opinion was supplied in accordance with paragraph (7) of rule 1 of this Part, 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 the IQMP to reconsider the IQMP's opinion.

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

(3) An IQMP's rule 3 response shall be binding on the authority unless it is superseded by the outcome of an appeal under rule 4 of this Part.

(4) As soon as reasonably practicable after receiving a rule 3 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);
- (b) if they have revised their decision, supply the person with written notice of the revised decision; and
- (c) supply the person with a copy of the rule 3 response.

### **Appeals against decisions based on medical advice**

4.—(1) A person who wishes to appeal against an authority's decision on an issue of a medical nature may do so to a Board of medical referees in accordance with the provisions of Annex 2.

(2) Subject to paragraph (3), where a decision—

- (a) is made with regard to an opinion obtained under rule 2(2) of this Part or medical evidence relied on as mentioned in rule 2(6) of this Part; or
- (b) is reconsidered under rule 3(4) of this Part with regard to a rule 3 response,

the authority shall, within 14 days of making, confirming or revising the decision (as the case may be), send to the person concerned the documents mentioned in paragraph (4).

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(3) Nothing in paragraph (2) requires the supply of documents that have already been supplied under rule 2(7) or 3(5) of this Part.

(4) The documents are—

- (a) a copy of the opinion, rule 3 response or evidence (as the case may be);
- (b) an explanation of the procedure for appeals under this rule; and
- (c) a statement that, if the person wishes to appeal against the authority's decision on an issue of a medical nature, the person must give written notice to the authority, stating the person's name and address and the grounds of appeal, not later than 28 days after the person receives the last of the documents required to be supplied to the person under this paragraph, or within such longer period as the authority may allow.

### **Appeals on other issues**

5. Where—

- (a) a person disagrees with an authority's determination under rule 2 of this Part; and
- (b) the person's disagreement does not involve an issue of a medical nature,

the person may, by notice in writing 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(28)(resolution of disputes) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996(29).

## **PART 9**

### **REVIEW, WITHDRAWAL AND FORFEITURE OF AWARDS**

#### **Review of ill-health pension**

1.—(1) So long as a person—

- (a) has been in receipt of an ill-health pension for less than 10 years; and
- (b) is under state pensionable age,

the authority shall consider, at such intervals as they think proper, whether the person has become capable—

- (i) of performing any duty appropriate to the role from which the person retired on grounds of ill-health; and
- (ii) of undertaking regular employment.

(2) The authority shall, at such intervals as they think proper, consider in relation to a person whose deferred pension is being paid early by virtue of rule 3(4) of Part 3 (early payment of deferred pension on permanent disablement), the same matters as they are required to consider in relation to persons of the description mentioned in paragraph (1).

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(28) 1995 c. 26. The arrangements that apply for the purposes of the Scheme take the form of a disputes resolution procedure. The procedure is set out in Fire Service Circular 2/1997 issued by the Home Office on 4th February 1997.

(29) S.I. 1996/1270.

### **Consequences of review**

2.—(1) If, on such consideration as is mentioned in rule 1(1) of this Part, it is found that a person who is in receipt of a higher tier ill-health pension has become capable of undertaking regular employment, the person's entitlement to that pension shall cease with immediate effect.

(2) Subject to paragraph (3), a lower tier ill-health pension shall continue to be paid to a person who ceases to be entitled to a higher tier ill-health pension.

(3) If—

- (a) on such consideration as is mentioned in rule 1(1) of this Part, it is found that a person who is in receipt of a lower tier ill-health pension has become capable of performing the duties appropriate to the role from which the person retired on grounds of ill-health; and
- (b) the authority make the person an offer of employment in that role ("a paragraph (3)(b) offer"),

the person's entitlement to a lower tier ill-health pension shall cease, with immediate effect, whether or not the person accepts or declines the offer.

(4) A person who accepts or declines a paragraph (3)(b) offer becomes entitled to a deferred pension under rule 3 of Part 3.

(5) If, on such consideration as is mentioned in rule 1(2) of this Part, it is found that a person whose deferred pension is being paid early has become capable of undertaking regular employment, the person's entitlement to early payment of the deferred pension shall cease with immediate effect.

### **Withdrawal of pension during service as firefighter**

3.—(1) Subject to paragraph (2), the authority by which a pension under Part 3 is payable may withdraw the whole or any part of the pension for any period during which the person entitled to it is again employed as a firefighter by any authority.

(2) Where a person who is entitled to pensions under this Scheme in respect of both regular and retained service or volunteer service (whether from the same authority or from different authorities)—

- (a) resumes regular service, but does not resume retained service or volunteer service; or
- (b) resumes retained service or volunteer service, but does not resume regular service,

paragraph (1) applies only as regards the pension referable to the person's previous retained service or, as the case may be, the person's previous regular service.

(3) An authority may abate a pension to which a person is entitled under Part 3 so long as the person is employed (in whatever capacity) by any authority.

(4) A person who—

- (a) is entitled to a pension under Part 3; and
- (b) accepts an offer of employment with an authority (in whatever capacity),

shall, as soon as reasonably practicable after accepting that offer, give notice in writing to each authority by which a pension is payable to that person under Part 3, specifying the name of the person's employing authority.

### **Withdrawal of early payment of deferred pension**

4. A person who, on dismissal from an authority's employment, becomes entitled to a deferred pension under rule 3 of Part 3, shall not be entitled to early payment of the deferred pension before reaching the age of 65, unless the authority by which the pension is payable determine otherwise.

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### **Withdrawal of pension on conviction of certain offences**

5.—(1) Where paragraph (2) applies, the authority by which a pension under Part 3 or 4 is payable may withdraw the pension in whole or in part and permanently or temporarily as they think fit.

(2) This paragraph applies where—

- (a) the pensioner has been convicted of an offence referred to in paragraph (3), and, in the case of a pension under Part 4, that the offence was committed after the death on which the pensioner became entitled to it; or
- (b) that the pensioner has been convicted of an offence, committed in connection with the pensioner's employment by an authority, which is certified by the Scottish Ministers—
  - (i) as gravely injurious to the interests of the State; or
  - (ii) as likely to lead to serious loss of confidence in the public service.

(3) The offences mentioned in paragraph (2)(a) are—

- (a) an offence of treason; and
- (b) one or more offences under the Official Secrets Acts 1911 to 1989<sup>(30)</sup> for which the pensioner has been sentenced, on the same occasion—
  - (i) to a term of imprisonment of at least 10 years; or
  - (ii) to two or more consecutive terms amounting in aggregate to at least 10 years.

(4) The authority may, at any time and to such extent as they think fit—

- (a) apply for the benefit of any dependant of the pensioner; or
- (b) restore to the pensioner,

so much of any pension as has been withdrawn under this rule.

### **Forfeiture of award**

6. A person who has been convicted of an offence under subsection (6) of section 34 of the Fire and Rescue Services Act 2004<sup>(31)</sup> (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.

## **PART 10**

### **QUALIFYING SERVICE AND PENSIONABLE SERVICE**

#### **Qualifying service**

1. For the purposes of this Scheme, the following periods are periods of a person's qualifying service—

- (a) the period during which the person is a firefighter member of the Scheme and for which the person receives pensionable pay;
- (b) any period during which the person—
  - (i) is a firefighter member of the Scheme;
  - (ii) is on unpaid leave other than unauthorised absence;
  - (iii) has made an election under rule 4(1) of this Part; and

<sup>(30)</sup> 1911 c. 28, 1920 c. 75, 1939 c. 121, 1989 c. 6.

<sup>(31)</sup> 2004 c. 21.

- (iv) has paid such contributions as are required to be paid under that rule in respect of that period;
- (c) in relation to the second pension under rule 7 of Part 3 (entitlement to two pensions), the period of qualifying service taken into account in calculating the first pension under that rule;
- (d) any period of additional service purchased under Part 11;
- (e) a period credited on acceptance of a transfer under Part 12;
- (f) where the person was a member of the 1992 Scheme, the period of service used for determining the person's eligibility for an award under that Scheme; and
- (g) any period of service that may be credited to the firefighter member resulting from maternity, paternity or adoption leave.

### **Reckoning of pensionable service**

2.—(1) Subject to paragraph (6), for the purposes of this Scheme, a person's pensionable service accrues as pension contributions are paid, and consists of—

- (a) any period in respect of which the person has paid pension contributions as a member of this Scheme;
  - (b) any period of service taken into account for the purposes of an award under rule 3 (deferred pension) or rule 7 (entitlement to two pensions) of Part 3 where, on again taking up employment with an authority—
    - (i) the person becomes a member of the Scheme; and
    - (ii) in accordance with rule 4 of Part 3 (cancellation of deferred pension), the award under rule 3 or rule 7 is cancelled;
  - (c) any period which the person is entitled to reckon as pensionable service under rule 4 (reckoning of unpaid period of absence) or rule 5 (reckoning of maternity, paternity and adoption leave, etc) of this Part or under any of rules 5 to 9 of Part 11;
  - (d) any period of pensionable service taken into account for the purposes of an ill-health award under rule 2 of Part 3, other than any period included by way of enhancement, where—
    - (i) the award is cancelled under rule 2 of Part 9; and
    - (ii) the person remains a member of this Scheme (whether or not as an employee of the authority which made the award);
  - (e) if the person rejoins this Scheme on again taking up employment with an authority, any period of service as a former member of the Scheme, in respect of which—
    - (i) no pension has been paid;
    - (ii) no refund of pension contributions has been made; and
    - (iii) no transfer value payment has been made; and
  - (f) any period of service credited to the Scheme as pensionable service on acceptance of a transfer into the Scheme under Part 12.
- (2) The pensionable service of a firefighter member may not exceed 45 years.
- (3) A person may not—
- (a) buy additional service if that would increase the person's pensionable service to more than 40 years by normal retirement age; or
  - (b) transfer service into the Scheme if the aggregate of—
    - (i) that service;

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- (ii) the person's prospective service to normal retirement age; and
  - (iii) any service already accrued in the Scheme,
- would exceed 40 years by normal retirement age.

(4) Any additional period of service purchased or in the process of being purchased under Part 11 is reckonable as pensionable service; but where only a portion of the pension contributions payable in respect of a period of additional service have been paid, only the equivalent portion of the period is reckonable as pensionable service.

(5) Subject to paragraph (6), an additional period of service purchased or in the process of being purchased under Part 11 is to be taken into account for the purposes of determining—

- (a) the amount of pension payable to the firefighter member or to the firefighter member's survivors; and
- (b) the amount of service a firefighter member has or may accrue in the Scheme.

(6) An additional period of service is not to be taken into account in assessing—

- (a) the amount of the higher tier ill-health pension included in a higher tier ill-health award under Part 3; or
- (b) the amount of a death grant under Part 5.

### **Non-reckonable service**

3. The following periods are not reckonable as pensionable service—

- (a) any period of unpaid leave, other than a period that is reckonable by virtue of rule 4 of this Part;
- (b) any period of service that has been taken into account for the purposes of a pension under rule 3 of Part 3 (deferred pension) that has not been cancelled under rule 4 of that Part;
- (c) any period of absence resulting from sickness or injury attributable to the person's misconduct which the authority determine should be unpaid leave;
- (d) any period of additional maternity, or adoption leave in respect of which the person entitled has declined to pay the required contributions; and
- (e) any period of service that is pensionable service by virtue of any other provision of this Part.

### **Reckoning of unpaid period of absence**

4.—(1) A firefighter member may reckon as pensionable service all or part of a period of absence without pay if the firefighter member elects to pay the pension contributions that the firefighter member would have paid in accordance with Part 11 and the contributions the firefighter member's employing authority would have paid if a notional funding system applied, in respect of that period if it had been a period of absence with pay.

(2) An election under paragraph (1) is to be made by notice in writing given to the employing authority not later than six months from the end of the period of unpaid leave for which contributions are due.

(3) An authority may treat as paid the employer's pension contributions that would otherwise fall to be paid by the employee as a result of the firefighter member's election as calculated under paragraph (1).

(4) Contributions falling to be paid by the employee under this rule must be paid within six months of the date on which the notice under paragraph (2) is given.

### **Reckoning of maternity, paternity and adoption leave, etc**

- 5.—(1) A female firefighter member is entitled to reckon as pensionable service any period of—
- (a) paid maternity leave;
  - (b) unpaid ordinary maternity leave; and
  - (c) unpaid maternity leave in respect of which she has paid pension contributions in accordance with rule 4 of Part 11.
- (2) A firefighter member is entitled to reckon as pensionable service any period of—
- (a) paternity leave;
  - (b) ordinary adoption leave;
  - (c) paid additional adoption leave; and
  - (d) unpaid additional adoption leave in respect of which the firefighter member has paid pension contributions in accordance with rule 4 of Part 11.
- (3) Where there is a period of pensionable service both before and after a period of maternity or adoption leave in respect of which a person is entitled to pay pension contributions but does not do so, those periods shall be treated for the purposes of this Scheme as if they were continuous.

### **Calculation of pensionable service**

- 6.—(1) Paragraphs (3) to (5) are subject to rule 2(2) and (3) of this Part.
- (2) For the purposes of paragraphs (3) and (4), a period which comprises 365 completed days including 29th February shall be treated as a completed year.
- (3) The pensionable service of a whole-time regular firefighter member shall be calculated in accordance with the formula—

$$A \left( \frac{B}{365} \right) \text{ years,}$$

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.

- (4) The pensionable service of a part-time regular firefighter member shall be calculated as a proportion of whole-time service by applying the formula—

$$\frac{A}{B} \times C,$$

where—

A is the person's weekly contractual hours;

B is the weekly whole-time equivalent conditioned hours; and

C is the period of the person's part-time service in years (calculated in accordance with the formula in paragraph (3), and with regard to paragraph (2)).

- (5) The pensionable service of a retained or volunteer firefighter for any year or part of a year of the retained or volunteer firefighter's service shall be assessed as a proportion of whole-time service in accordance with the formula—

$$\frac{A}{B} \times 365.$$

where—

A is the actual pensionable pay received in that year; and

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B is the retained or volunteer firefighter's reference pay for that year.

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

- (a) it is necessary to determine the firefighter member's 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 an authority of a transfer value payment, the firefighter member is entitled to reckon a period of pensionable service ("the credited period") by reason of employment for a period ("the previous employment period") which includes that date,

the credited period counts as pensionable service reckonable by reason of 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.

## PART 11

### PENSIONABLE PAY, PENSION CONTRIBUTIONS AND PURCHASE OF ADDITIONAL SERVICE

#### CHAPTER 1

#### PENSIONABLE PAY AND PENSION CONTRIBUTIONS

##### **Pensionable pay**

1.—(1) Subject to paragraph (3) and rule 3(3) of this Part, the pensionable pay of a firefighter member is the aggregate of—

- (a) the firefighter member's pay in relation to the performance of the duties of the firefighter member's role, other than any allowance or emoluments that are paid to the firefighter member on a temporary basis; and
- (b) the firefighter member's permanent emoluments (including, in the case of a retained firefighter, any retaining allowance).

(2) Where a firefighter member surrenders the right to receive part of the firefighter member's pensionable pay in exchange for the provision by the firefighter member's employing authority of any non-cash benefit, the amount forgone shall continue to be treated as part of the firefighter member's pensionable pay for all purposes of this Scheme (including determining pension contributions and calculating awards).

(3) A firefighter member's pensionable pay in any tax year shall be taken not to include any amount in excess of the permitted maximum for that year.

(4) For the purposes of this rule and rule 2 of this Part, the permitted maximum for a tax year is £108,600: but in relation to a tax year other than the tax year ending in 2007, this is subject to paragraph (5).

(5) Where the retail price index for the month of December in the tax year preceding the tax year in question is higher than it was for the previous December the permitted maximum for the tax year in question shall be the amount arrived at—

- (a) by increasing the permitted maximum for the previous tax year by the same percentage as the percentage increase in the retail prices index; and
- (b) if the result is not a multiple of £600, by rounding it up to the nearest amount which is a multiple of £600.



### **Final pensionable pay**

2.—(1) For the purpose of calculating pensions under this Scheme, the final pensionable pay of a firefighter member is the aggregate of pensionable pay received in respect of the 365 pensionable pay days ending with the relevant date, but this is subject to the following paragraphs of this rule.

(2) Subject to paragraph (3), “the relevant date” for the purposes of paragraph (1)—

(a) in relation to a firefighter member who is entitled to two pensions under rule 7 of Part 3, means—

(i) as regards the first pension, the date on which the firefighter member was last paid at the higher rate (before changing roles and accepting a reduction in pensionable pay); or

(ii) as regards the second pension, the last day of the firefighter member’s membership of the Scheme<sup>(32)</sup> or, if the firefighter member dies in service, the date of the firefighter member’s death; and

(b) in any other case, means the date of the firefighter member’s last day of pensionable service or, if the firefighter member dies in service, the date of the firefighter member’s death.

(3) Where a firefighter member’s final pensionable pay would have been more than the amount calculated in accordance with paragraph (1) if the relevant date had occurred on the corresponding day in either of the two periods of 365 pensionable pay days preceding the first day of the period of 365 pensionable pay days ending with the relevant date (as defined in paragraph (2) without reference to this paragraph), that corresponding day in whichever of those periods produces the higher amount shall be treated as the relevant date for the purposes of paragraph (1).

(4) Subject to paragraph (7), where a firefighter member is entitled to count only part of a year as a period of membership of the Scheme (“the membership period”), the firefighter member’s final pensionable pay is the amount of pensionable pay received in the membership period multiplied by 365 and divided by the number of days in the membership period.

(5) For the purposes of paragraph (1), any reduction of pensionable pay as a result of—

(a) sick leave; or

(b) stoppage of pay by way of punishment; or

(c) ordinary maternity leave, ordinary adoption leave or paternity leave; or

(d) paid additional maternity leave or additional adoption leave; or

(e) unpaid periods in respect of which the firefighter member has paid pension contributions; or

(f) unpaid additional maternity leave or additional adoption leave in respect of which pension contributions have been paid,

shall be disregarded.

(6) The final reference pay of a retained or volunteer firefighter shall be determined by reference to the equivalent whole-time rate of pay for a regular firefighter of similar service, role and experience.

(7) A firefighter member’s final pensionable pay in any tax year shall be taken not to include any amount in excess of the figure which is the permitted maximum for that year.

### **Pension contributions**

3.—(1) A firefighter member shall pay pension contributions to the authority at the rate of 8.5% of the firefighter member’s pensionable pay for the time being.

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(32) See rule 4 of Part 2.

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(2) The contributions payable under paragraph (1) may be deducted by the authority from each instalment of pensionable pay as it becomes due, but this is subject to any other method of payment that may be agreed between the authority and the member.

(3) For the purposes of this rule, the pensionable pay of a firefighter member during a period of maternity, paternity or adoption leave shall be the pay that the person receives for that period including the value of any statutory maternity, paternity or adoption pay under the Social Security Contributions and Benefits Act 1992(33).

#### **Optional pension contributions during maternity and adoption leave**

4.—(1) A firefighter member who—

- (a) is on maternity or adoption leave, which would not otherwise count as pensionable service under rule 2 of Part 10; and
- (b) who, for the whole or part of the leave period, is not entitled to receive pay (including any statutory maternity or adoption pay under the Social Security Contributions and Benefits Act 1992),

may elect to pay pension contributions in respect of that leave period.

(2) The contributions shall be calculated by applying rule 3 of this Part to the pensionable pay (including any statutory maternity or adoption pay under the Social Security Contributions and Benefits Act 1992) received immediately before the start of the unpaid period in question.

(3) Subject to paragraph (6), an election must be made by giving written notice to the authority before the expiry of the period of 30 days (or such longer period as the authority may allow) beginning with\_

- (a) the day on which the firefighter member returns to work; or
- (b) if the firefighter member does not return to work after the leave period, the day the firefighter member ceases to be employed by the authority.

(4) On receipt of the notice, the authority shall calculate the amount of contributions due and shall give notice in writing of that amount to the person concerned.

(5) Where the full amount of contributions due has not been paid within six months of the date of the notice given under paragraph (4), the person concerned shall be entitled to reckon as pensionable service such proportion of the period in respect of which contributions were due as the amount of contributions paid bears to the total amount of contributions due.

(6) Where a person dies before the end of the period of 30 days referred to in paragraph (3) without having given the required notice—

- (a) the person shall be deemed to have given the notice; and
- (b) the authority—
  - (i) shall give to the person's personal representatives a statement of the amount of contributions due; and
  - (ii) may collect the contributions by deducting their amount from the amount of the death grant payable under Part 5.

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(33) 1992 c. 4.

## CHAPTER 2

### PURCHASE OF ADDITIONAL SERVICE

#### **Purchase of additional service**

5.—(1) A person who satisfies the conditions specified in paragraph (2) may, in accordance with the following provisions of this Chapter, elect to purchase additional service for the purpose of securing increased benefits under this Scheme.

(2) The conditions are that the person—

- (a) is a firefighter member of the Scheme;
- (b) is not a pension credit member; and
- (c) would be entitled to reckon less than 40 years' pensionable service at normal retirement age.

(3) Additional service may be purchased as years or part of a year, but the aggregate of—

- (a) the period purchased;
- (b) the person's pensionable service up to the date of the purchase; and
- (c) the person's prospective service from that date to normal retirement age,

must not exceed 40 years.

(4) Additional service may be purchased—

- (a) by payment of a lump sum calculated in accordance with tables provided by the Scheme Actuary; or
- (b) subject to paragraphs (5) and (6), by deduction from the person's pensionable pay of periodical contributions of such percentage of that pay as shall be determined by the Scheme Actuary.

(5) An authority may permit a part-time regular firefighter to purchase additional service by periodical contributions at a rate that bears to the percentage determined by the Scheme Actuary the same proportion as the part-time regular firefighter's pensionable pay bears to the pensionable pay of a full-time regular firefighter in the same role.

(6) An authority may permit a retained or volunteer firefighter to purchase additional service by periodical contributions; and in such a case they shall calculate the amount of the contributions by applying the rate determined by the Scheme Actuary to the firefighter's reference pay.

#### **Election to purchase additional service**

6.—(1) An election to pay a lump sum—

- (a) must be made by written notice given to the authority not later than 12 months after the date on which the person last became employed by the authority as a firefighter; and
- (b) if the sum is not paid within three months after the date on which notice was given, shall be treated as not having been made.

(2) An election to pay periodical contributions must be made by notice in writing given to the authority at least two years before the person's normal retirement age, but no such election may be made where the person and the authority have agreed that the person will leave the scheme with an entitlement under any of rules 1, 2, 3, 5 and 6 of Part 3.

(3) Unless paragraph (1)(b) applies, an election under this rule—

- (a) takes effect on the day on which the written notice is received by the authority; and

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- (b) is irrevocable once the lump sum has been paid or, as the case may be, the first contribution has been deducted.

### **Duration of periodical contributions and premature cessation**

7.—(1) Subject to paragraph (2), where a person has elected under rule 6 of this Part to pay periodical contributions, they are payable from his or her next birthday and continue to be payable until normal retirement age.

(2) Paragraph (1) ceases to apply to a person who leaves their employment before normal retirement age—

- (a) where the person is entitled to a pension under rule 3 of Part 3 (deferred pension), on the person's last day of service;
- (b) where the person becomes entitled to a second pension under rule 7 of that Part (entitlement to two pensions), on the person's last day of service in the second period of employment;
- (c) on the date on which the person ceases to be employed by any authority; or
- (d) on the date on which any contributions election takes effect.

(3) Where a sub-paragraph of paragraph (2) applies, the period of additional service purchased up to the date referred to in that sub-paragraph shall be treated as if it were the period ascertained in accordance with the formula—

$$A \times \frac{B}{C},$$

where—

- A is the number of 60ths of additional service which the person elected to purchase;
- B is the period in respect of which contributions have been made; and
- C is the period in respect of which contributions would, but for the cessation of the person's employment, have been made in accordance with the election.

(4) The period of additional service calculated in accordance with paragraph (3) shall be treated—

- (a) Where the person qualifies for an ordinary pension (rule 1 of Part 3), as part of the pensionable service on which the ordinary pension is calculated;
- (b) where the person qualifies for a deferred pension (rule 3 of Part 3), as part of the pensionable service on which the deferred pension is calculated;
- (c) where the person takes member-initiated early retirement (rule 5 of Part 3), as part of the award to which the actuarial reduction is applied;
- (d) where the person takes authority-initiated early retirement (rule 6 of Part 3), as part of the person's pensionable service; or
- (e) where, on commencing a second period of employment with the same authority, the person becomes entitled to two pensions (rule 7 of Part 3)—
  - (i) to the extent that it is attributable to the first period of employment, as part of the service on which the first pension is calculated; and
  - (ii) to the extent that it is attributable to the second period of employment, as part of the service on which the second pension is calculated.

(5) The period of additional service calculated in accordance with paragraph (3) shall not be treated as part of the pensionable service on which—

- (a) the amount of any higher tier ill-health pension is calculated under rule 2 of Part 3; or

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- (b) the notional ill-health pension calculated where a survivor's pension is awarded on the person's death in service is calculated (rule 2(1) of Part 4).
- (6) Additional service purchased by the payment of periodical contributions shall accrue annually in accordance with the contributions paid.

### **Discontinuance and resumption of periodical contributions**

- 8.—(1) An authority may—
- (a) at the request of a firefighter member who has elected to purchase additional service by the payment of periodical contributions; and
  - (b) solely on the grounds of his or her financial circumstances,
- agree to discontinue the making of deductions from his or her pay by way of such contributions.
- (2) Where the firefighter member and the authority agree that deductions should be discontinued for a period not exceeding six months (“the discontinuance period”), the authority shall resume the making of deductions as soon as reasonably practicable after the end of that period or, at the request of the firefighter member, at such time before the end of that period as may be agreed.
- (3) Where the firefighter member and the authority agree that deductions should be discontinued for a period of six months or more, the member's election under rule 6 of this Part shall be treated as cancelled with effect from the date of the agreement.
- (4) The period of additional service purchased up to the date on which the last contribution was deducted shall be treated as if it were the period ascertained in accordance with the formula—

$$A \times \frac{B}{C},$$

where—

- A is the number of 60ths of additional service which the firefighter member elected to purchase;
- B is the period in respect of which contributions have been made; and
- C is the period in respect of which contributions would have been made in accordance with the election (disregarding for this purpose any deemed cancellation under paragraph (3)).

- (5) Subject to paragraph (6), where—
- (a) deductions were discontinued under paragraph (2); and
  - (b) the firefighter member wishes to purchase additional service referable to the discontinuance period,
- a deduction of an amount equal to the aggregate of the contributions that would otherwise have been made in respect of that period shall be made on the same occasion as the first resumed deduction is made.

(6) Where the firefighter member's rate of pay at the end of the discontinuance period is less than at the beginning of that period, deductions in respect of the discontinuance period shall be made at the rate that would have applied if deductions had been made from the firefighter member's salary during that period.

### **Periodical contributions in respect of periods of unpaid service or absence**

- 9.—(1) A firefighter member who—
- (a) has elected to purchase additional service in respect of a period of unpaid service or unpaid leave which falls within the period in respect of which contributions are payable in accordance with rule 7(1) of this Part; and

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(b) complies with the requirements of paragraph (2),  
is entitled to require the authority to treat that period of unpaid service or unpaid leave as a period of pensionable service.

(2) The requirements of this paragraph are that the firefighter member must, not later than one month after the end of the period of unpaid service or leave (as the case may be), require the authority to deduct from the firefighter member's pay an amount equal to the aggregate of the contributions that would have been made in respect of that period if it had been a period of paid service.

(3) In paragraphs (1) and (2) "unpaid leave" means adoption leave, additional adoption leave, additional maternity leave or ordinary maternity leave or other absence without pay (including absence while participating in a strike).

- (4) Contributions payable under paragraph (2) may be paid—
- (a) during the unpaid leave period;
  - (b) within six months of returning to duty after the end of that period; or
  - (c) within such longer period as the authority may allow.

#### **Effect of purchasing additional service by lump sum payment**

**10.**—(1) Subject to paragraph (2), where a period of additional service has been purchased by way of a lump sum payment, the firefighter member's pensionable service shall be increased by that period as regards any award payable to the firefighter member under this Scheme.

(2) A period of additional service purchased by way of a lump sum payment shall not be treated as part of the pensionable service on which the amount of any higher tier ill-health pension is calculated under rule 2 of Part 3.

(3) If the firefighter member takes member-initiated early retirement the period of additional service shall be part of the total to which the actuarial reduction is applied under rule 5 of Part 3.

(4) If the firefighter member takes authority-initiated early retirement the period of additional service shall be part of the pensionable service on which the pension is calculated under rule 6 of Part 3.

## **PART 12**

### **TRANSFERS INTO AND OUT OF THE SCHEME**

#### **CHAPTER 1**

##### **INTERPRETATION OF PART 12 AND ENTITLEMENT TO TRANSFER VALUE PAYMENT**

#### **Interpretation of Part 12**

**1.** In this Part—

"guaranteed cash equivalent transfer value payment" means a payment of the description mentioned in rule 4(2) of this Part; and

"public sector transfer arrangements" means arrangements approved by the Secretary of State as providing reciprocal arrangements for the payment and receipt of transfer values between this Scheme and other occupational pension schemes.

### **Entitlement to transfer value payment**

**2.—(1)** This Part supplements the rights conferred by Chapter IV of Part IV of the 1993 Act (transfer values) (“Chapter IV”).

(2) A firefighter member or deferred member—

(a) to whom Chapter IV applies<sup>(34)</sup>; and

(b) who is not a pension credit member or pensioner member of this Scheme,

is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of the firefighter member or deferred member under this Scheme.

(3) Subject to the provisions of this Part, any former firefighter member, other than a pensioner member, is entitled to require such a payment as if such rights had accrued to or in respect of the former firefighter member by reference to the pensionable service the former firefighter member is entitled to count under this Scheme (and references in this Part to the former firefighter member’s accrued rights or benefits are to be read accordingly).

(4) Paragraph (3) does not apply if the contributions the former member has paid during the period of service ending with the former member’s ceasing to be a firefighter member are refunded under rule 8 of Part 3 and, where applicable, in accordance with Chapter V of Part IV of the 1993 Act.

(5) Paragraphs (2) and (3) do not apply to rights that are directly attributable to a pension credit.

## **CHAPTER 2**

### **TRANSFERS OUT OF THE SCHEME**

#### **Applications for statements of entitlement**

**3.—(1)** A member who requires a transfer value payment to be made must apply in writing to the authority for a statement of the amount of the cash equivalent of the member’s accrued benefits under the Scheme at the guarantee date (“a statement of entitlement”).

(2) In this Chapter, “the guarantee date” means any date that—

(a) falls within the required period;

(b) is chosen by the authority;

(c) is specified in the statement of entitlement; and

(d) is within the period of ten days ending with the date on which the member is provided with the statement of entitlement.

(3) In counting the period of ten days referred to in paragraph (2)(d), Saturdays, Sundays, Christmas Day, New Year’s Day and Good Friday are excluded.

(4) In paragraph (2) “the required period” means—

(a) the period of three months beginning with the date of the member’s application for a statement of entitlement; or

(b) such longer period (not exceeding six months beginning with that date) as may reasonably be required if, for reasons beyond the control of the authority, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

(6) Where, in any period of twelve consecutive months, a member—

(a) has made, and not withdrawn, two applications for a statement of entitlement; and

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<sup>(34)</sup> See section 93(1)(a) of the Pension Schemes Act 1993 (c. 48).

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(b) makes a third (or subsequent) application,  
the authority shall not be required to entertain the application if it is not accompanied by a payment of such amount as the authority may reasonably require.

#### **Applications for transfer value payments**

4.—(1) A member who has applied for and received a statement of entitlement under rule 3 of this Part may apply in writing to the authority for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of paragraph (9)).

(3) An application under paragraph (1) must be made before the end of the period of three months beginning with the guarantee date, and the payment must be made no later than—

- (a) six months after that date; or
- (b) if it is earlier, the date on which the member reaches normal benefit age.

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) Subject to paragraph (6), an application by a person who is entitled to apply for a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of the 1993 Act may only be made before—

- (a) the beginning of the period of one year ending with the date on which the member reaches normal benefit age; or
- (b) the end of the period of six months beginning with the day after that on which the member's pensionable service ends, provided that service ends at least one year before normal benefit age,

whichever is the later.

(6) An application for a transfer value payment to be made under public sector transfer arrangements may only be made—

- (a) before the first anniversary of the day on which the member becomes eligible to be a firefighter member of the scheme to which the transfer is to be made; and
- (b) before the member reaches normal benefit age.

(7) An application by a person who is not entitled to apply for a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of the 1993 Act may only be made—

- (a) on or before the first anniversary of the day on which the applicant ceases to be a firefighter member of this Scheme; and
- (b) before the member reaches normal benefit age.

(8) An application under this rule may be withdrawn by notice in writing, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

(9) If the payment is made later than six months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—

- (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or
- (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the



period from the guarantee date to the date when the payment is made at an annual rate of one per cent above base rate.

(10) In this rule—

“base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in descending sequence of seven, is fourth in the sequence; and “the reference banks” means the seven largest persons for the time being who—

- (a) have permission under Part IV of the Financial Services and Markets Act 2000 (permission to carry on regulated activities)<sup>(35)</sup> to accept deposits;
- (b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits; and
- (c) quote a base rate in sterling,

and for the purpose of this definition the size of a person at any time is to be determined by reference to the gross assets denominated in sterling of that person, together with any subsidiary (as defined in section 736 of the Companies Act 1985 (“subsidiary”, “holding company” and “wholly owned subsidiary”))<sup>(36)</sup>, as shown in the audited end-of-year accounts last published before that time.

### **Ways in which transfer value payments may be applied**

5.—(1) A member who is entitled to a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of the 1993 Act may only require the authority to apply the cash equivalent transfer value payment in one or more of the ways permitted under section 95 of that Act.

(2) A member who is not entitled to a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of the 1993 Act may only require the authority to apply the guaranteed cash equivalent transfer value payment in one of the ways permitted under section 95 of that Act.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (4) applies.

(4) The benefits attributable to—

- (a) the member’s accrued rights to a guaranteed minimum pension; or
- (b) the member’s accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the guaranteed cash equivalent transfer value payment if section 96(2) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member’s other rights).

(5) A transfer payment may only be made to—

- (a) a pension scheme that is registered under Chapter 2 of Part 4 of the Finance Act 2004; or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that Act).

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<sup>(35)</sup> 2000 c. 8, to which there are amendments not relevant to this Order.

<sup>(36)</sup> 1985 c. 6; section 736 was substituted for section 736 as originally enacted by section 144(1) of the Companies Act 1989 (c. 40).

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### **Calculating amounts of transfer value payments**

6.—(1) Subject to paragraph (3), the amount of the guaranteed cash equivalent transfer value payment is to be calculated in accordance with guidance and tables provided by the Scheme Actuary for use at the guarantee date.

(2) In preparing those tables the Scheme Actuary must use such factors as the Scheme Actuary considers appropriate, having regard to section 97 of the 1993 Act and regulations under that Act (whether or not the payment is in respect of a person entitled to a guaranteed cash equivalent transfer value payment under that Act).

(3) If the amount calculated in accordance with paragraph (1) is less than the minimum transfer value, the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value instead.

(4) In paragraph (3) “the minimum transfer value”, in relation to any person, means the sum of—

- (a) any transfer value payments that have been made to the Scheme in respect of the person; and
- (b) any contributions paid by the person under rule 3 of Part 11.

(5) If the transfer value payment is made under public sector transfer arrangements, the amount of the transfer value payment shall be calculated—

- (a) in accordance with those arrangements rather than paragraphs (1) to (3); and
- (b) by reference to the guidance and tables provided by the Scheme Actuary for the purposes of this paragraph that are in use on the date used for the calculation.

### **Effect of transfers-out**

7. Where a transfer value payment is made under this Chapter in respect of a person’s rights under this Scheme, those rights are extinguished.

## **CHAPTER 3**

### **TRANSFERS INTO THE SCHEME**

### **Applications for acceptance of transfer value payment from another scheme**

8.—(1) Subject to the provisions of this Part, a firefighter member may apply for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of the firefighter member under—

- (a) another occupational pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004; or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part<sup>(37)</sup>; or
- (c) a personal pension scheme,

to be accepted by the authority for the purposes of this Scheme.

(2) Paragraph (1) does not apply to rights that are directly referable to a pension credit.

(3) Paragraph (1) does not apply if the member is on unpaid leave that does not count as pensionable service.

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<sup>(37)</sup> See section 169(2) of the Finance Act 2004 (c. 12).

### **Procedure for applications under rule 8**

- 9.**—(1) An application under rule 8 of this Part—
- (a) must be made in writing;
  - (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment; and
  - (c) subject to paragraph (2), must be made—
    - (i) before the beginning of the period of one year ending with the date on which the member reaches normal retirement age; and
    - (ii) in the case of a transfer value payment from a non-occupational pension scheme, during the period of one year beginning with the day on which the member becomes eligible to be a firefighter member, or such longer period as the authority may allow.
- (2) In the case of a transfer value payment to be made under public sector transfer arrangements, the application under rule 8 of this Part—
- (a) must be made during the period of one year beginning with the day on which the member becomes eligible to be a firefighter member, or such longer period as the authority may allow; and
  - (b) must be received by the authority before the applicant reaches the age which is the normal pension age under the scheme by which the transfer value payment is to be made.

### **Acceptance of transfer value payments**

- 10.**—(1) Subject to paragraph (3) below and paragraphs (2) and (3) of rule 2 of Part 10 (reckoning of pensionable service), where an application is duly made by a member under rule 8 of this Part, the authority may accept the transfer value payment.
- (2) If the authority accept the payment, the member is entitled to count the period calculated in accordance with rule 11 of this Part as pensionable service for the purposes of this Scheme.
- (3) The authority may not accept a transfer value payment if—
- (a) it would be paid otherwise than under public sector transfer arrangements;
  - (b) it would be applied in whole or in part in respect of the member's or the member's spouse's or civil partner's entitlement to a guaranteed minimum pension; and
  - (c) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the Scheme Actuary for the purposes of this paragraph.

### **Calculation of transferred-in pensionable service**

- 11.**—(1) Subject to paragraph (3), the period of pensionable service that a member is entitled to count under rule 10(2) of this Part shall be calculated as at the date on which the transfer value payment is received by the authority and in accordance with guidance and tables provided by the Scheme Actuary for the purpose.
- (2) For the purposes of that calculation, the member's pensionable earnings are to be taken to be the amount of those earnings as at—
- (a) two months after the application under rule 8 of this Part is received; or
  - (b) the date on which the transfer value payment is received,
- whichever is the later; and, in a case where the transfer value payment is received earlier than two months after that application is received, any necessary adjustment shall be made to that calculation to reflect any change in the amount of those earnings.

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(3) If the transfer payment is accepted under public sector transfer arrangements, the period that the member is entitled to count shall be calculated—

- (a) subject to paragraph (4), in accordance with those arrangements; and
- (b) by reference to the guidance and tables provided by the Scheme Actuary for the purposes of this paragraph, that are in use on the date that is used by the transferring scheme for calculating the transfer value payment.

(4) If the period that the member would be entitled to count would be greater if the transfer value payment were accepted otherwise than under public sector transfer arrangements—

- (a) those arrangements shall not apply; and
- (b) paragraph (1) of this rule shall apply instead.

## CHAPTER 4

### TRANSFERS BETWEEN FIRE AUTHORITIES

#### **Transfer of payments and pension history between fire authorities**

**12.—**(1) Subject to both the calculation of a transfer payment under Chapter 2 and to paragraph (7) of this rule, where a firefighter member—

- (a) leaves the employment of an authority (the “former authority”);
- (b) without a break of service, takes up employment as a firefighter with another authority (the “new authority”); and
- (c) in that capacity continues to be a member of this Scheme,

the former authority shall in addition to providing a cash transfer value calculated under Chapter 2 of this Part, not later than six months after the firefighter member left their employment, supply the new authority with a certificate showing the pensionable service the firefighter member was entitled to reckon as at the date on which the firefighter member left the former authority’s employment (“the material date”).

(2) At the same time as the former authority supply a certificate under paragraph (1), they shall send a copy of it to the person concerned, together with a statement of its effects on completion of the transfer.

(3) Subject to paragraph (7), if the person concerned is dissatisfied with the information specified in a certificate under paragraph (1), the person may, within three months after being supplied with a copy of it, ask the former authority to determine the accuracy of the information contained in it.

(4) A person who makes a request under paragraph (3) shall send a copy of it to the person’s new authority.

(5) A request under paragraph (3) shall be considered by means of the arrangements for the resolution of disagreements implemented by the authority pursuant to the requirements of section 50 of the Pensions Act 1995<sup>(38)</sup> (resolution of disputes) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996<sup>(39)</sup>; and the authority shall either confirm the certificate or issue a new certificate.

(6) If the person concerned does not make a request under paragraph (3), the certificate as supplied, and if the person does make such a request, the certificate as confirmed or the new certificate issued (as the case may be), is conclusive as to the pensionable service the person was entitled to reckon at the material date.

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<sup>(38)</sup> 1995 c. 26.

<sup>(39)</sup> S.I. 1996/2788.

(7) If, after the material date but before a certificate has been supplied under paragraph (1), the person concerned—

- (a) claims a pension or lump sum under this Scheme;
- (b) claims a pension or lump sum under the Compensation Scheme; or
- (c) dies,

that paragraph ceases to apply.

(8) If an event mentioned in any sub paragraphs (a) to (c) of paragraph (7) occurs before the certificate in question has become conclusive, the certificate ceases to have effect and paragraph (3) ceases to apply.

(9) As soon as reasonably practicable after a certificate has become conclusive, the new authority shall give effect to it by crediting the person concerned with the pensionable service shown in the certificate.

(10) For the purposes of this rule, at least the former authority or the new authority must be a Scottish fire authority.

## CHAPTER 5

### MIS-SOLD PENSIONS AND RESTITUTION PAYMENTS

#### **Interpretation of Chapter 5**

**13.—**(1) In this Chapter—

“calculated amount” means the amount which, in accordance with rule 15 of this Part, an authority calculate would need to be made as a restitution payment in respect of the firefighter concerned;

“relevant methods and assumptions” means the methods and assumptions notified by the Scheme Actuary for the calculation of cash equivalent values for occupational pension schemes; and

“relevant period”, in relation to a firefighter, means the total of any periods of opted out and, where appropriate, transferred-out service.

(2) For the purposes of this Chapter—

- (a) a person shall be taken to have opted out if the person had made a contributions election and for any period during which the person was a firefighter the person instead made contributions to a personal pension scheme; and
- (b) a person shall be taken to have transferred out if an authority have made a transfer value payment in respect of the person under Chapter 2 of this Part to the administrator of a personal pension scheme.

#### **Mis-sold pensions**

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

- (a) has opted out or transferred out, or both; and
- (b) has suffered actionable loss as a result of a contravention which is actionable under section 150 of the Financial Services and Markets Act 2000<sup>(40)</sup> (actions for damages).

(2) A firefighter to whom this rule applies who has given notice—

- (a) under rule 6 of Part 2 cancelling his or her contributions election; or

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<sup>(40)</sup> 2000 c. 8, to which there are amendments not relevant to this Order.

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(b) under rule G3(5) of the 1992 Scheme (cancellation of election not to pay contributions), may give written notice to the authority that the firefighter wishes them to accept a transfer value payment in order to create or restore the firefighter's pensionable service.

(3) Paragraph (4) or (5) applies where, within twelve months of the date of a notice given under paragraph (2) or such longer period as the authority may allow, the authority have accepted a transfer value payment in relation to the firefighter who gave the notice (whether or not the firefighter has ceased to be a firefighter after the date of the notice) not exceeding the calculated amount.

(4) Where the amount of the transfer value payment is equal to the calculated amount—

- (a) the whole of the relevant period shall be treated as pensionable service; and
- (b) for the purposes of calculating any award under this Scheme, the firefighter who gave the notice shall be treated as having made pension contributions throughout that period.

(5) Where the amount of the transfer value payment is less than the calculated amount—

- (a) the authority shall, in accordance with the relevant methods and assumptions, calculate the period of pensionable service that the transfer value payment represents, and treat that period as pensionable service;
- (b) for the purposes of calculating any award under this Scheme, the firefighter who gave the notice shall be treated as having made pension contributions throughout that period; and
- (c) that period shall be treated as a continuous period with the same final date as the final date of the relevant period.

(6) Where a firefighter who is being credited under paragraph (4) or (5) with a period of pensionable service has previously been credited, in respect of the relevant period, with—

- (a) an additional period of pensionable service calculated in accordance with this Part; or
- (b) an additional period of reckonable service calculated in accordance with Part 4 of Schedule 6 to the 1992 Scheme (amount of transfer value),

the authority may adjust the amount of the transfer value payment that they accept under this rule to ensure that no part of the additional period of pensionable or reckonable service that was previously credited is included in the period of pensionable service credited under paragraph (4) or (5).

### **Calculation of amount of restitution payment**

**15.**—(1) An authority shall, in accordance with paragraph (2), calculate the restitution payment that would need to be made to them in respect of a person to whom rule 14 of this Part applies to create or restore the person's position to what it would have been if the person had not opted-out or, where relevant, transferred-out.

(2) The restitution payment is an amount equal to the sum of—

- (a) the capitalised value at the material date, determined in accordance with the relevant methods and assumptions, which would produce a service credit equal to the person's total period of opted out service, including the capitalised value of any rights under the Pensions (Increase) Act 1971 and the Pensions (Increase) Act 1974<sup>(41)</sup>; and
- (b) in the case of a firefighter who also transferred out, the greater of—
  - (i) any transfer value paid by an authority to the administrator of a personal pension scheme in respect of the firefighter's transferred-out service under Chapter 2 of this Part, increased by interest calculated at a rate approved by the Scheme Actuary over the period from the date of payment of that transfer value to the assumed calculation date; and

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(41) 1974 c. 9.

- (ii) the cash equivalent transfer value that would be payable by the authority in respect of that transferred-out service if they were to pay a cash equivalent transfer value in respect of that service determined in accordance with the relevant methods and assumptions applicable immediately after the assumed calculation date.
- (3) In this rule—
- “assumed calculation date” means the date on which it is assumed, for the purpose of calculating a restitution payment, that a transfer value will be paid to the authority; and
  - “material date” means the date on which the authority receive a notice under rule 14 of this Part.

## PART 13

### PAYMENT OF AWARDS

#### **Authorities responsible for payment of awards**

1.—(1) An award payable to or in respect of a person by reason of the person having been employed as a regular firefighter is payable by the authority by whom the person was last so employed.

(2) An award payable under Part 6 (pension sharing on divorce) to or in respect of a pension credit member, and any sum paid in commutation of such an award, is payable by the authority which employed the pension debit member from whose rights the pension credit member’s award is derived when the pension sharing order took effect.

#### **Deduction of tax and lifetime allowance charges**

2. Where any payment that an authority are required to make under this Scheme is chargeable to tax or subject to a recovery charge under the Finance Act 2004(42), they shall deduct the amount of tax charged or to be recovered from the payment.

#### **Payment of awards**

3.—(1) Subject to paragraph (2), while an award is payable under this Scheme it shall be paid monthly in arrears.

(2) The authority may—

- (a) delay payment, in whole or part, to the extent necessary for determining any question as to their liability; and
- (b) where they are of the opinion that, by reason of the amount of the award, its payment monthly in arrears would be impracticable, discharge their liability in respect of it by making payments at such reasonable intervals as they think fit.

(3) Lump sums under Part 5 and, subject to paragraphs (4) and (5), pensions under Part 4 are payable from the day after the date of the death.

(4) A pension under Part 4 in respect of a posthumous child is payable from the date of the child’s birth.

(5) Where—

- (a) the authority are not informed of the death of a pensioner; and
- (b) a pension to which the pensioner was entitled has continued in payment,

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(42) 2004 c. 12.

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the authority may recover all or part of the overpayment, as they think fit; and may recover it by set-off against any other award payable under this Scheme in respect of the deceased.

(6) Where a person is entitled under rule 8 of Part 3 to the repayment of the person's aggregate pension contributions, the authority are not obliged to make payment—

- (a) until the expiration of a year from the date of the person's retirement; or
- (b) until the person requests payment,

whichever is the earlier.

#### **Pensions under more than one contract of employment**

4. Where a person is a member of this Scheme in respect of more than one contract of employment (whether with the same or different authorities), each employment shall be treated separately for pension purposes.

#### **Payments for minors and persons incapable of managing their affairs**

5.—(1) Any sum payable to a minor in respect of an award may, if the authority think fit, be paid to such other person as they may determine, who shall, in accordance with any directions given by the authority, apply it for the minor's benefit.

(2) If it appears to the authority that a person entitled to payment of an award is, by reason of mental disorder or otherwise, incapable of managing their affairs—

- (a) they may pay the award or any part of it to a person having the care of the person entitled, or such other person as they may determine; and
- (b) insofar as they do not pay the award in that manner, they may apply it in such manner as they think fit for the benefit of the person entitled or the person's dependants.

#### **Payment of awards: further supplementary provision**

6.—(1) On the death of a person to whom there was due, in respect of an award, a sum not exceeding the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965(43), the authority may, without requiring the production of probate or any other proof of entitlement—

- (a) where only one person appears to be beneficially entitled to the personal estate of the deceased, pay the sum to that person; or
- (b) in any other case, either pay the sum to one of the persons appearing to be so entitled or distribute it among all or any of them in such proportions as the authority may determine.

(2) An assignment of, or charge on, an award is void to the extent that it is in favour of a person other than a dependant of the person entitled to the award.

(3) On the bankruptcy of a person entitled to an award, the award does not pass to any trustee or other person acting on behalf of the creditors.

(4) Subject to paragraphs (5) and (6), where as a result of fraud, theft or negligence on the part of a firefighter in connection with the firefighter's employment, there has been a loss to the funds of an authority, the authority may withhold all or part of any sums becoming due to the firefighter from the authority in respect of an award.

(5) The total amount withheld under paragraph (4) must not exceed the amount of the loss; and in the event of any dispute as to the amount of the loss, nothing may be withheld unless the loss has become recoverable from the person entitled to the award under the order of a competent court.

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(43) 1965 c. 32.



(6) There shall not in any case be withheld any part of a sum due that is not attributable to service as an employee of an authority.

(7) Where an amount is withheld under paragraph (4), the authority shall provide the person entitled to the award with a certificate showing the amount withheld.

## PART 14

### MISCELLANEOUS PROVISIONS

#### **Guaranteed minimum pensions, etc.**

1.—(1) Subject to paragraph (8), paragraphs (2) to (5) of this rule apply where a member has an entitlement to a guaranteed minimum pension under section 14 of the 1993 Act (the “guaranteed minimum”).

(2) If, apart from this rule—

- (a) no pension would be payable to the member under this Scheme; or
- (b) the weekly rate of the pension payable would be less than the guaranteed minimum,

a pension, the weekly rate of which is equal to the guaranteed minimum, is payable to the member for life from the date on which the member reaches state pensionable age.

(3) Subject to paragraph (4) if, when the member reaches state pensionable age—

- (a) the member is still in employment which entitles the member to be a member of this Scheme (“scheme employment”); or
- (b) where the member is not in scheme employment, the member consents to a postponement of the member’s entitlement under paragraph (2),

paragraph (2) does not apply until the member leaves employment.

(4) If the member—

- (a) continues in employment for a further period of five years after reaching state pensionable age; and
- (b) does not then leave it,

the member is entitled from the end of that period to so much of the member’s pension under this rule as equals the guaranteed minimum, unless the member consents to a further postponement of the entitlement.

(5) Where paragraph (3) or (4) applies, the amount of the pension to which the member is entitled under this rule shall be increased in accordance with section 15 of the 1993 Act.

(6) This paragraph applies where a person has ceased to be in employment that is contracted-out by reference to the Scheme, and either—

- (a) all the person’s rights to benefits under the Scheme, except the person’s rights in respect of the person’s guaranteed minimum or the person’s rights under section 9(2B) of the 1993 Act<sup>(44)</sup> (“the person’s contracting out rights”), have been transferred under Part 12; or
- (b) the person has no rights to benefits under the Scheme apart from the person’s contracting out rights.

(7) Subject to paragraph (8), where paragraph (6) applies—

- (a) from the date on which the person reaches state pensionable age, the person is entitled to a pension payable for life at a weekly rate equal to the person’s guaranteed minimum; and

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<sup>(44)</sup> Subsection (2B) was inserted by section 136(3) of the Pensions Act 1995 (c. 26).

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(b) from the date on which the person reaches normal retirement age the person is entitled to a lump sum and pension in respect of the person's rights under section 9(2B) of the 1993 Act, but a person falling within paragraph (6) is not to be regarded as a pensioner for the purposes of Part 5 (awards on death).

(8) This rule does not apply if–

- (a) any part of the person's pension is withdrawn permanently under rule 5 of Part 9 following the person's conviction of an offence of a description specified in paragraph (3) of that rule (treason and certain offences under the Official Secrets Acts 1911 to 1989); or
- (b) the pension is commuted under rule 10 of Part 3 (commutation: small pensions).

### **Survivors' guaranteed minimum pensions**

2.—(1) Subject to paragraph (3), this rule applies in relation to a firefighter member's surviving spouse or civil partner who has a guaranteed minimum pension under section 17 of the 1993 Act in relation to benefits under Chapter 1 of Part 4 of this Scheme in respect of the deceased member.

(2) If apart from this rule–

- (a) no pension is payable to the surviving spouse or civil partner under this Scheme; or
- (b) the weekly rate of the pension payable is less than his or her guaranteed minimum,

a pension, of which the weekly rate is equal to the guaranteed minimum, is payable to the surviving spouse or civil partner from the date on which the deceased died until the death of the surviving spouse or civil partner.

(3) This rule does not apply if–

- (a) any part of the firefighter member's pension has been withdrawn permanently under rule 5 of Part 9 following the firefighter member's conviction of an offence of a description specified in paragraph (3) of that rule (treason and certain offences under the Official Secrets Acts 1911 to 1989); or
- (b) the firefighter member's pension has been commuted under rule 10 of Part 3; or
- (c) the survivor's pension has been commuted under rule 5 of Part 4.

### **Information for authorities**

3.—(1) An authority may by notice in writing require any person who is in receipt of a pension or may have an entitlement to a pension or a lump sum under this Scheme to provide the authority with such supporting evidence as the authority may reasonably require to establish–

- (a) the identity of that person; and
- (b) the person's continuing or future entitlement to the payment of any amount under this Scheme.

(2) A notice under paragraph (1) shall specify the date by which the supporting evidence is to be provided.

(3) Where a person fails to comply with the requirements of a notice given in accordance with paragraph (1), the authority may withhold the whole or part of any amount that they consider to be payable under the Scheme.

### **Annual benefit statements**

4.—(1) An authority shall issue an annual benefit statement to each of their firefighter, deferred and pension credit members.

(2) The first such statements must be issued on or before 1st April 2008, and subsequent statements must be issued on or before each 1st April thereafter.

(3) An annual benefit statement shall contain an illustration of the amount of benefit entitlement, in respect of the rights that may arise under the Scheme, which—

- (a) has been accrued by the member at the relevant date; and
- (b) in the case of a firefighter member, is capable of being accrued by the firefighter member if the firefighter member remains in the Scheme until the firefighter member's normal retirement date.

(4) The illustration shall be calculated—

- (a) in the case of a firefighter member, on the member's pay (or, in the case of a part time firefighter member, the whole-time equivalent) for the twelve-month period ending with the relevant date;
- (b) in the case of a deferred member, on the member's final pay; and
- (c) in the case of a pension credit member, in accordance with rule 1 of Part 6, as if the pension credit member were to become entitled to the pension on the pension credit member's 65th birthday.

(5) For the purposes of this rule, the relevant date—

- (a) in the case of a pension credit member, is that of the pension credit member's 65th birthday; or
- (b) in any other case, is 31st March of the period in respect of which the statement is issued, or such later date as the authority may choose.

#### **Death of retained or volunteer firefighter before Firefighters' Pension Scheme (Scotland) Order 2007 in force**

5.—(1) This rule applies where a retained or volunteer firefighter dies on or after 6th April 2006 and before the Firefighters' Pension Scheme Amendment (Scotland) Order 2007<sup>(45)</sup> comes into force.

(2) Chapters 1 and 2 of Part 4 of this Scheme (survivors' pensions), rule 1 of Part 5 of this Scheme (death grant) and rule 3 of Part 11 (pension contributions) shall have effect in respect of the retained or volunteer firefighter as if—

- (a) the retained or volunteer firefighter had become a member of this Scheme—
  - (i) where that firefighter was employed by an authority immediately before 6th April 2006, on that date; or
  - (ii) in any other case, on the date on which that firefighter took up employment with the authority;
- (b) the retained or volunteer firefighter had not made a contributions election; and
- (c) the retained or volunteer firefighter's qualifying service and that firefighter's pensionable service began on whichever is the later of—
  - (i) the date on which that firefighter took up employment; and
  - (ii) 6th April 2006,and ended on the date of that firefighter's death.

(3) Where—

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<sup>(45)</sup> S.S.I. 2007/

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- (a) in anticipation of the coming into force of this Scheme, the retained or volunteer firefighter nominated a nominated partner; and
  - (b) the nomination was received and accepted by the authority before that firefighter died,
- that firefighter's nominated partner shall be entitled to the same benefits under this Scheme as if the nomination had effect for the purposes of this Scheme.
- (4) The authority shall deduct from the death grant payable by virtue of paragraph (2) the amount of the pension contributions that would have been payable under rule 3 of Part 11; and rule 1 of that Part shall have effect for determining that firefighter's pensionable pay for that purpose.
  - (5) The authority shall notify the personal representatives of the amount deducted.

**Death on or before 31st March 2007 of retained or volunteer firefighter employed before 6th April 2006**

6.—(1) This rule applies where a retained or volunteer firefighter employed by an authority immediately before 6th April 2006 dies on or before 31st March 2007 without having made an election as to membership of this Scheme.

(2) Chapters 1 and 2 of Part 4 of this Scheme (survivors' pensions), rule 1 of Part 5 of this Scheme (death grant) and rule 3 of Part 11 (pension contributions) shall have effect in respect of the retained or volunteer firefighter as if—

- (a) that firefighter had elected to become a member of this Scheme on 6th April 2006 and had not made a contributions election; and
- (b) that firefighter's qualifying service and that firefighter's pensionable service began on 6th April 2006 and ended on the date of that firefighter's death.

(3) Where—

- (a) in anticipation of the coming into force of this Scheme, the retained or volunteer firefighter nominated a nominated partner; and
  - (b) the nomination was received and accepted by the authority before that firefighter died,
- that firefighter's nominated partner shall be entitled to the same benefits under this Scheme as if the nomination had effect for the purposes of this Scheme.

(4) The authority shall deduct from the death grant payable by virtue of paragraph (2) the amount of the pension contributions that would have been payable under rule 3 of Part 11; and rule 1 of that Part shall have effect for determining his or her pensionable pay for that purpose.

(5) The authority shall notify the personal representatives of the amount deducted.

Part 3, rule 2

ANNEX 1

ILL-HEALTH PENSIONS

1.—(1) Except in a case to which sub paragraph (2) applies, the annual amount of the lower tier ill-health pension to which a person is entitled on ill-health retirement shall be calculated by multiplying the person's pensionable service by the person's final pensionable pay and dividing the resultant amount by 60.

(2) Where a person is subject to ill-health retirement, the annual amount of the person's lower tier ill-health pension shall be calculated by multiplying the person's pensionable service by the person's reference pay and dividing the resultant amount by 60.

(3) For the purposes of sub paragraph (2) the pensionable service of a retained firefighter is the same proportion of whole time service as that which his or her actual annual pensionable pay bears to the retained firefighter's reference pay.

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2. The annual amount of the higher tier ill-health pension of a whole-time firefighter shall be calculated in accordance with the formula—

$$\left(A \times \frac{2}{100}\right) \times B \times \frac{C}{60}$$

where—

A is the pensionable service accrued in the Scheme before the whole-time firefighter's ill-health retirement;

B is—

- (a) the pensionable service that the firefighter would have accrued from the date of the firefighter's ill health retirement until the firefighter's normal retirement age had the firefighter continued to be a contributing member of the Scheme (the firefighter's "prospective service"); or
- (b) if the aggregate of the firefighter's actual pensionable service and the firefighter's prospective service is more than 40 years, the difference between 40 years and the firefighter's actual pensionable service; and

C is the firefighter's final pensionable pay.

3. The annual amount of the higher tier ill-health pension of a member who—

- (a) is or has been a part-time employee; or
- (b) is a retained or volunteer firefighter,

shall be calculated in accordance with the formula—

$$\left(A \times \frac{2}{100}\right) \times \left(\frac{A}{B} \times C\right) \times \frac{D}{60}$$

where—

A is the pensionable service accrued in the Scheme before the member's ill-health retirement;

B is the member's qualifying service;

C is the pensionable service that the member would have accrued from the date of the member's ill-health retirement until the member's normal retirement age had the member continued to be a contributing member of the Scheme as a whole-time employee; and

D—

- (i) in the case of a part time firefighter, is the final pensionable pay that the firefighter would have received if the firefighter had been a whole time employee throughout his or her period of employment; and
- (ii) in the case of a retained or volunteer firefighter, is the firefighter's final reference pay.

Part 8, rule 4

## ANNEX 2

### APPEALS TO BOARD OF MEDICAL REFEREES

1.—(1) Subject to sub-paragraph (2), written notice of appeal against a decision on an issue of a medical nature stating—

- (a) the appellant's name and address; and
- (b) the grounds of the appeal,

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must be given to the authority within 28 days of the date on which the appellant receives the documents referred to in rule 4(4) of Part 8; and where the appellant receives those documents on different dates, they shall be treated for this purpose as received on the later or latest of those dates.

(2) Where—

- (a) notice of appeal is not given within the period specified in sub paragraph (1); but
- (b) the authority are of the opinion that the person's failure to give it within that period was not due to the person's own default,

they may extend the period for giving notice to such length, not exceeding six months from the date mentioned in sub-paragraph (1), as they think fit.

**2.—**(1) On receiving a notice of appeal, the authority shall supply the Scottish Ministers with three copies of—

- (a) the notice of appeal;
- (b) the notice of the relevant decision;
- (c) the opinion, rule 3 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 Scottish Ministers shall refer an appeal to a board of medical referees (“the board”).

**3.—**(1) The board shall consist of not less than three medical practitioners appointed by, or in accordance with arrangements made by, the Scottish Ministers.

(2) One member of the board shall be a specialist in a medical condition relevant to the appeal.

(3) One member of the board shall be appointed as chairman.

(4) Where there is an equality of votes among the members of the board, the chairman shall have a second or casting vote.

**4.—**(1) As soon as reasonably practicable after referring an appeal to the board, the Scottish Ministers 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 Scottish Ministers—

- (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 the reviewing member's 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 Scottish Ministers shall—

- (a) where the reviewing member has notified the Scottish Ministers 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 the appellant that, if the appellant’s appeal is unsuccessful, the appellant may be required to pay the authority’s costs; and
- (ii) require the appellant to notify them, within 14 days of the date of their notice, whether the appellant intends to pursue or withdraw the appeal.

(6) An authority which notifies an appellant under paragraph (5)(b) shall inform the Scottish Ministers of the appellant’s response to their request under sub paragraph (b)(ii) of that paragraph; and the Scottish Ministers shall notify the board accordingly.

5. Where an appeal is to be pursued, the board shall secure that the appellant and the authority (“the parties”) have been informed—

- (a) that the appeal is to be determined by the board; and
- (b) of an address to which communications relating to the appeal may be delivered to the board.

6.—(1) Subject to sub-paragraph (4), the board—

- (a) shall interview and medically examine the appellant at least once; and
- (b) may interview or medically examine the appellant or cause the appellant to be interviewed or medically examined on such further occasions as the board thinks necessary for the purpose of determining the appeal.

(2) The board shall appoint, and give the parties not less than 2 months' notice of, the time and place for every interview and medical examination; and if the board is satisfied that the appellant is unable to travel, the place shall be the appellant’s place of residence.

(3) The appellant shall attend at the time and place appointed for any interview and medical examination by the board or any member of the board or any person appointed by the board for that purpose.

(4) If—

- (a) the appellant fails to comply with sub paragraph (3); and
- (b) the board is not satisfied that there was reasonable cause for the failure,

the board may dispense with the interview and medical examination required by paragraph (1)(a) or, as the case may be, with any further interview or medical examination, and may determine the appeal on such information as is then available.

(5) Any interview under this paragraph may be attended by persons appointed for the purpose by the authority or by the appellant or by each of them.

7.—(1) Where either party intends to submit written evidence or a written statement at an interview held under paragraph 6, the party shall, subject to sub-paragraph (2), submit the evidence or statement to the board and to the other party not less than 28 days before the date appointed for the interview.

(2) Where any written evidence or statement has been submitted under sub-paragraph (1) less than 28 days before the date appointed for the interview, any written evidence or statement in response may be submitted by the other party to the board and the party submitting the first mentioned evidence or statement at any time up to, and including, that date.

(3) Where any written evidence or statement is submitted in contravention of sub-paragraph (1), the board may postpone the date appointed for the interview and require the party who submitted the evidence or statement to pay such reasonable costs of the board and of the other party as arise from the postponement.

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- 8.**—(1) The board shall supply the Scottish Ministers with—
- (a) a written report of its decision on the relevant medical issues; and
  - (b) if the board is of the opinion that the appeal was frivolous, vexatious or manifestly ill founded, a statement to that effect (which may form part of the report).
- (2) The Scottish Ministers shall supply the parties with a copy of the report and of any separate statement under paragraph (1)(b).
- 9.**—(1) There shall be paid to the board and the reviewing member—
- (a) such fees and allowances (including those payable to the reviewing member for work undertaken on the review of documents under paragraph 4(2)) as are determined in accordance with arrangements made by the Scottish Ministers; or
  - (b) where no such arrangements have been made, such fees and allowances as the Scottish Ministers may from time to time determine.
- (2) The fees and allowances payable under sub paragraph (1) shall—
- (a) be paid by the authority; and
  - (b) be treated for the purposes of paragraph 10 as part of the authority’s expenses.
- 10.**—(1) Subject to paragraph 7(3) and sub paragraphs (2) to (5) below, the expenses of each party to the appeal shall be borne by that party.
- (2) Where the board—
- (a) determines an appeal in favour of the authority; and
  - (b) states that, in its opinion, the appeal was frivolous, vexatious or manifestly ill founded,
- 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 9(1), as the authority think fit.
- (3) Where—
- (a) the appellant gives notice to the board withdrawing the appeal; and
  - (b) the notice is given less than 22 working days before the date appointed for an interview or medical examination under paragraph 6(2),
- 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 9(1), as the authority think fit.
- (4) Where the board—
- (a) determines an appeal in favour of the appellant; and
  - (b) does not otherwise direct,
- the authority shall refund to the appellant the amount specified in sub-paragraph (5).
- (5) The amount is the total of—
- (a) any personal expenses actually and reasonably incurred by the appellant in respect of any interview under paragraph 6; and
  - (b) if any such interview was attended by a qualified medical practitioner appointed by the appellant, any fees and expenses reasonably paid by the appellant in respect of such attendance.
- (6) For the purposes of sub-paragraphs (2) and (4) any question arising as to whether the board’s determination is in favour of the authority or of the appellant shall be decided by the board or, in default, by the Scottish Ministers.



11. Any notice, information or document which an appellant is entitled to receive for any purpose of this Annex shall, unless the contrary is proved, be treated as having been received by the appellant if it was posted in a letter addressed to the appellant at the appellant's last known place of residence.

## SCHEDULE 2

Article 3(3)(a)(i)

### TRANSITIONAL ARRANGEMENTS

#### **Regular firefighters who became members of the 1992 scheme on or after 6th April 2006**

1.—(1) The following provisions of this paragraph apply in relation to regular firefighters who became members of the 1992 Scheme on or after 6th April 2006 and before the coming into force of this Order.

(2) Where, before the coming into force of this Order, the firefighter made an election under rule G3 of the 1992 Scheme (election not to pay pension contributions), that election shall be treated on and after the coming into force of this Order as an election under rule 5 of Part 2 of the New Firefighters' Pension Scheme (Scotland) (referred to in this Schedule as “the new scheme”).

(3) The period of the firefighter's service as a member of the 1992 Scheme shall be treated as a period of qualifying service under rule 1(a) of Part 10 of the new scheme.

(4) The period of the firefighter's pensionable service accrued under the 1992 Scheme shall be treated as pensionable service accrued under rule 2(1)(a) of Part 10 of the new scheme.

(5) Where, on or after 6th April 2006, the Scottish fire authority accepted a transfer value in respect of the firefighter under rule F7 (receipt of transfer value) of the 1992 Scheme—

(a) the amount accepted shall be treated as a transfer value payment accepted under rule 10 of Chapter 3 of Part 12 of the new scheme, irrespective of paragraphs (2) and (3) of rule 2 of Part 10; and

(b) rule 11 of Chapter 3 of Part 12 shall apply as if, for paragraph (2), there were substituted—  
“(2) For the purposes of that calculation, the member's pensionable earnings are to be taken to be the amount of those earnings as at the date on which the transfer value payment is received.”.

#### **Options for active members of the 1992 Scheme**

2.—(1) Sub paragraph (2) applies in relation to each person who—

(a) was a member of the 1992 Scheme both before 6th April 2006 and immediately before the coming into force of this Order; and

(b) was not at any time before the coming into force of this Order in receipt of a pension or entitled to a deferred pension under that Scheme.

(2) A Scottish fire authority shall, not later than 31st January 2007, give to each person to whom this sub paragraph applies a written statement—

(a) of the pensionable service that the authority would treat the person as having accrued in the new scheme (calculated in accordance with paragraph 3) if he or she were to elect to transfer his or her accrued rights under the 1992 Scheme to the new scheme; and

(b) that, if the person wishes to make that election, the person must do so by written notice to the authority not later than 31st March 2007.

(3) A person's notice under sub paragraph (2)(b) must state—

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- (a) the date, which may be either 6th April 2006 or such later date as the person specifies in the notice, on which the person wishes to be treated as becoming a member of the new scheme; and
  - (b) whether the person wishes—
    - (i) to retain the person's accrued rights in the 1992 Scheme; or
    - (ii) to transfer those rights subject to paragraph 3, to the new scheme.
- (4) A Scottish fire authority must not accept a person's election to transfer the person's accrued rights if the aggregate of—
- (a) the person's pensionable service treated as accrued as mentioned in sub paragraph (2)(a); and
  - (b) the person's prospective pensionable service, on the assumption that the person continues to be a member of the new scheme until the person reaches the age of 60, would exceed 45 years by the time of the person's 60th birthday.
- (5) Where a Scottish fire authority accept a person's election to transfer the person's accrued rights the authority shall—
- (a) within 28 days after the date on which they receive the person's notice under sub paragraph (2)(b), make all the arrangements necessary to give effect to the person's election; and
  - (b) within 28 days of making those arrangements, supply the person with a written statement of the pensionable service credited in the new scheme in consequence of the transfer of the person's accrued rights.
- (6) A person whose election to transfer his or her accrued rights has been accepted shall be treated—
- (a) where 6th April 2006 is specified in the person's notice under sub paragraph (2)(b), as having ceased to be a member of the 1992 Scheme on 5th April 2006;
  - (b) where a date later than 6th April 2006 is specified in the person's notice under sub paragraph (2)(b), as having ceased to be a member of the 1992 Scheme on the day before that later date; and
  - (c) as having become a member of the new scheme on the day after that on which the person is treated as having ceased to be a member of the 1992 Scheme.
- (7) Where a person is treated as becoming a member of the new scheme on 6th April 2006—
- (a) pensionable service that the person has accrued in the 1992 Scheme on and after that date shall be disregarded for the purposes of the 1992 Scheme;
  - (b) the person's pensionable and qualifying service on and after that date shall be treated as having accrued in the new scheme; and
  - (c) the authority shall refund to the person the amount of the difference between the pension contributions—
    - (i) that the person made, as a member of the 1992 Scheme, in respect of the period beginning on 6th April 2006 and ending on the date on which all necessary arrangements to give effect to the person's election have been made; and
    - (ii) that the person would have made, as a member of the new scheme, in respect of that period.
- (8) In the case of a person mentioned in sub paragraph (6)(b) who specifies in his or her notice under sub paragraph (2)(b) a date later than 6th April 2006, sub paragraph (7) shall apply as if—
- (a) references to 6th April 2006 (in whatever terms) were references to that later date; and

- (b) where that later date is on or after the coming into force of this Order, paragraph (c) were omitted.
- (9) Where a person in relation to whom sub paragraph (2) applies had elected under rule G6 of the 1992 Scheme to purchase increased benefits—
  - (a) the person’s election under that rule shall, notwithstanding paragraph (5)(b) of that rule, be treated as revoked with effect from 6th April 2006 or, where the person specifies a later date in his or her notice under paragraph (2)(b), that later date;
  - (b) nothing in sub paragraph (a) shall affect the person’s entitlement to make an election under rule 6 of Chapter 2 of Part 11 of the new scheme (election to purchase additional service); and
  - (c) for the purposes of rule 5(4) of that Chapter, the calculation under sub paragraph (a) or, as the case may be, the determination under sub paragraph (b), shall be made on the basis of the person’s age at the time of the person’s election under rule G6 of the 1992 Scheme.

### **Calculation of transferred-in pensionable service**

3. For the purposes of calculating the pensionable service that a person is treated as having accrued in the new scheme on the transfer of their accrued rights under the 1992 Scheme, fire and rescue authorities—

- (a) shall have regard to guidance and tables provided by the Scheme Actuary for the purposes of this Schedule; and
- (b) shall disregard Chapter 3 of Part 12 of the new scheme (transfers into the Scheme).

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## **EXPLANATORY NOTE**

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

This Order makes provision for a new pension scheme for and in respect of firefighters employed by fire and rescue authorities in Scotland (“the new Scheme”). The new Scheme, which is set out in Schedule 1 to the Order, has effect from 6th April 2006 and replaces the Firefighters' Pension Scheme set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992 (“the 1992 Scheme”). Power to give the new Scheme retrospective effect is conferred by section 34 of the Fire and Rescue Services Act 2004.

Part 1 of the new Scheme contains general introductory provisions including definitions of terms used in the Scheme.

The new Scheme is available to all firefighters employed by fire and rescue authorities in Scotland, whether whole-time or part time and whether regular, retained or volunteer, who satisfy one of the eligibility conditions set out in Part 2 of the Scheme. Part 2 also deals with other classes of membership of the Scheme.

Part 3 makes provision for the payment of pensions to firefighter members. It introduces Annex 1, which provides for the calculation of ill health pensions.

Part 4 deals, in Chapter 1, with pensions for surviving spouses, civil partners and nominated partners and, in Chapter 2, with pensions for children.

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Part 5 provides for the payment of death grants and post-retirement death grants.

Part 6 deals with pension sharing on divorce.

Part 7 contains provisions relevant to firefighters who serve in the armed forces.

Part 8, to which Annex 2 to the Scheme is relevant, provides for the determination of questions and appeals arising under the Scheme.

Part 9 deals with the review, withdrawal and forfeiture of awards.

Part 10 contains provisions about qualifying service and pensionable service.

Part 11 deals with pensionable pay, pension contributions and the purchase of additional service.

Part 12 provides for transfers into and out of the Scheme.

Part 13 provides for the payment of awards.

Part 14 contains miscellaneous provisions, including provisions about annual benefit statements (rule 4).

The new Scheme differs from the 1992 Scheme in the following major respects:

- (a) it is open to retained and volunteer firefighters;
- (b) pensions can be paid to a nominated partner as well as a spouse or civil partner;
- (c) the normal retirement age will be 60; under the 1992 Scheme it is 55 (with some exceptions);
- (d) the age at which deferred pensions will normally be paid will be 65; under the 1992 Scheme it is 60;
- (e) firefighter members may request early payment of pension from age 55, subject to actuarial reduction;
- (f) fire and rescue authorities may for economical, effective and efficient management reasons pay pensions from age 55 without actuarial reduction; under the 1992 Scheme,
- (g) payment could be made in similar circumstances from age 50 provided that the firefighter had at least 25 years' pensionable service;
- (h) pension will accrue at 1/60th per year. A firefighter member will be able to accrue more than 40 years' pensionable service;
- (i) a firefighter member will be able to commute up to a quarter of the firefighter's pension for a lump sum and there will be a single commutation factor regardless of age or sex with each £1 of pension commuted providing a lump sum of £12;
- (j) enhancements for the higher tier ill health retirement pension will be based on a formula where accrued pensionable service is increased by 2% and then multiplied by the amount of prospective service to the normal retirement age. This will ensure that enhancements are more evenly graduated than under the 1992 Scheme;
- (k) where a firefighter member is subject to a reduction in pay because of a change in role that member will qualify for a split pension. At the point of reduction the first pension will be closed and therefore based on the higher pay rate and a new pension started. When the member retires both pensions will be payable;
- (l) the death grant when a firefighter member dies in service will be three times pensionable pay at the date of death; under the 1992 Scheme it is two times pensionable pay;
- (m) any pension paid to an adult survivor who is 12 or more years younger than the firefighter member will be reduced by 2.5% for every year or part year above the 12 years, up to a maximum of 50%; there is no such restriction under the 1992 Scheme;
- (n) the member's contribution rate will be 8.5%; under the 1992 Scheme, for members who joined before 6th April 2006, the rate was 11%.

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Service transferred from the 1992 Scheme will be transferred at a special rate up to and including 31st March 2007.

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.