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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 215**

**FIRE SERVICES  
PENSIONS**

**The Firefighters' Pension Scheme  
(Scotland) Amendment Order 2018**

<i>Made</i>	- - - -	<i>27th June 2018</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>29th June 2018</i>
<i>Coming into force</i>	- -	<i>28th October 2018</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 34(1) to (4) and 60(2) of the Fire and Rescue Services Act 2004(1) and all other powers enabling them to do so.

In accordance with section 34(5) of that Act, they have consulted with such persons as they considered appropriate.

**Citation, commencement and effect**

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (Scotland) Amendment Order 2018.

(2) This Order comes into force on 28th October 2018 but the amendments made by—

- (a) article 2 and paragraph 1(b) of the schedule have effect from 9th April 2018;
- (b) article 2 and paragraph 1(c) of the schedule have effect from 9th April 2018.

**Amendment of the Firefighters' Pension Scheme (Scotland) Order 2007**

2. Schedule 1 of the Firefighters' Pension Scheme (Scotland) Order 2007(2) (in which the New Firefighters' Pension Scheme (Scotland) is set out) is amended in accordance with the schedule of this Order.

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(1) 2004 c.21. Section 34 was amended by paragraph 66(2) of schedule 7 of the Police and Fire Reform (Scotland) Act 2012 (asp 8), paragraph 27 of schedule 8 of the Public Service Pensions Act 2013 (c.25) and S.I. 2018/226. 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.S.I. 2007/199 is amended by S.S.I. 2008/160, S.S.I. 2010/65, S.S.I. 2010/333, S.S.I. 2012/107, S.S.I. 2013/186, S.S.I. 2014/60, S.S.I. 2014/110, S.S.I. 2014/149, S.S.I. 2015/141, S.S.I. 2015/143 and S.S.I. 2016/77.

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St Andrew's House, Edinburgh  
27th June 2018

*DEREK MACKAY*  
A member of the Scottish Government

SCHEDULE

Article 2

Amendment of Schedule 1 of the Firefighters' Pension Scheme (Scotland) Order 2007

1. In Part 3 (personal awards)—

(a) in rule 2 (award on ill-health retirement), in paragraph (4) for “The amount of the higher tier ill-health pension” substitute “The amount of the higher tier ill-health award”;

(b) in rule 7A (additional pension benefit: long service)—

(i) in paragraph (3), for “Where” substitute “Before 9th April 2018, where”;

(ii) after paragraph (3), insert—

“(3A) On and after 9th April 2018, the amount of additional pension benefit (as calculated in accordance with paragraph (2) and paragraph (3) and, if applicable, this paragraph and paragraph (3B)) shall be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension benefit were a pension to which the Pensions (Increase) Act 1971(3) applied and the beginning date for that pension were 1st July of the tax year immediately before the relevant tax year.

(3B) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2017/2018 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2017 with effect from Monday 9th April 2018.”;

(iii) in paragraph (5), for “paragraph (3)” substitute “paragraphs (3), (3A) and (3B)”;

(iv) in paragraph (5) before the definition of “relevant tax year” insert—

““the beginning date” means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act 1971;

“following relevant tax year” means the tax year after the relevant tax year, in relation to which the member is not a pensioner member or a deferred member;”;

(c) for rule 7B (additional pension benefit: continual professional development), substitute—

**“Additional pension benefit**

**7B.—(1)** Where the authority determines that the benefits listed in paragraph (5) are pensionable, and in any added pension benefit year pays any such pensionable benefits to a firefighter member, the authority shall credit the firefighter member with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraphs (3) and (4), the amount of additional pension benefit in respect of that year shall be determined on 1st July immediately following the year in question in accordance with guidance and tables provided by the Scheme Actuary.

(3) The amount of additional pension benefit determined in accordance with paragraph (2) shall be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension benefit were a pension to which the Pensions (Increase) Act 1971 applied and the beginning date for that pension were 1st July of the tax year immediately before the relevant tax year.

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(3) 1971 c.56.

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(4) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2017/2018 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2017 with effect from Monday 9th April 2018.

(5) The benefits referred to in paragraph (1) are—

- (a) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighter member’s duties under the contract of employment but are within the wider functions of the job;
- (b) the amount (if any) paid in respect of a firefighter member’s continual professional development;
- (c) the difference between the firefighter member’s basic pay in that person’s day to day role and any pay received whilst on temporary promotion or where the member is temporarily required to undertake the duties of a higher role;
- (d) any performance related payment which is not consolidated into standard pay.

(6) In this rule—

“additional pension benefit year” means the period of 12 months beginning with 1st July in which a firefighter is in receipt of any of the benefits listed in paragraph (5);

“the beginning date” means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act 1971;

“following relevant tax year” means the tax year after the relevant tax year, in relation to which the member is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule 3;

“relevant tax year” means a tax year in relation to which—

- (a) the amount of a firefighter member’s pension benefits determined under this rule for the purposes of this Scheme is taken into account for tax purposes; and
- (b) the firefighter member is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule 3; and

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

2. In Part 8 (determination of questions and appeals), in rule 5 (appeals on other issues) for “the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996” substitute “the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008(4)”.

3. In Part 10 (qualifying service and pensionable service), in rule 6 (calculation of pensionable service), in paragraph (5) for—

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

substitute—

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(4) S.I. 2008/649.

A  
B

4. In Part 11 (pensionable pay, pension contributions and purchase of additional service), in Chapter 1 (pensionable pay and pension contributions)—

(a) in rule 1 (pensionable pay)—

(i) in paragraph (1)—

(aa) in sub-paragraph (a) omit “other than payments in respect of the firefighter member’s continual professional development (see rule 7B of Part 3); and”;

(bb) after sub-paragraph (a) insert—

“(aa) the amount (if any) of any benefits which are pensionable under rule 7B(1) of Part 3; and”;

(b) in rule 2 (final pensionable pay), in paragraph (1A) for “an amount in respect of the firefighter member’s continual professional development (see rule 7B of Part 3),” substitute “an amount payable in respect of the benefits which are pensionable under rule 7B(1) of Part 3.”.

5. In schedule 2 (appeals to board of medical referees)—

(a) in paragraph 4, in sub-paragraph (3)(a), after “desirable” insert “so as to provide the board with sufficient information”;

(b) after paragraph 8, insert—

“**8A.**—(1) Where the parties have received a copy of the report supplied under paragraph 8 and they agree that the board has made an error of fact which materially affects the board’s decision, the authority shall, within 28 days of receipt of the report—

(a) supply the Scottish Ministers with two copies of a statement agreed between the parties setting out—

(i) the error of fact;

(ii) the correct fact, and

(b) invite the board to reconsider its decision.

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

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

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

(a) give written notice to the Scottish Ministers that it has confirmed its decision, or revised its decision (as the case may be); and

(b) if it has revised its decision, supply the Scottish Ministers with a written report of its revised decision.

(5) The Scottish Ministers shall supply the parties with a copy of the written notice confirming the board’s decision, or a copy of the written report of the board’s revised decision (as the case may be).”;

(c) for paragraph 10, sub-paragraph (3) substitute—

“(3) Where—

(a) the appellant gives notice to the board—

(i) withdrawing the appeal; or

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- (ii) requesting cancellation, postponement, or adjournment of the date appointed for an interview or medical examination under paragraph 6(2),  
and the notice is given less than 22 working days before the date appointed under paragraph 6(2); or
  - (b) the appellant's acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under paragraph 6(2) less than 22 working days before the date so appointed,
- the authority may require the appellant to pay them such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 9(1), as the authority think fit.”.

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## EXPLANATORY NOTE

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

This Order amends schedule 1 of the Firefighters' Pension Scheme (Scotland) Order 2007. Some of the amendments introduce new provisions to the New Firefighters' Pension Scheme (Scotland) (“the Scheme”) set out in that schedule. Others make minor corrections to the Scheme.

Except as mentioned below the Order has effect from 28th October 2018. Power to give the Order retrospective effect is conferred by section 34(3) of the Fire and Rescue Services Act 2004.

Paragraph 1 of the schedule inserts a new rule 7B which extends additional pension benefit so that it covers—

- payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job;
- any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role; and
- any non-consolidated performance related payment.

Any payments in respect of a firefighter member's continual professional development continue to be covered by additional pension benefit.

The amendments made by sub-paragraphs (ii), (iii) and (iv) of paragraph 1(b) and paragraph 1(c) in relation to paragraphs (3) and (4) of the new rule 7B amend the method of uprating additional pension benefit for the long service increment (rule 7A of Part 3) and continual professional development (rule 7B) from a specific index, Retail Price Index, to an index in accordance with the Pensions (Increase) Act 1971. There is a specific provision to provide that the Consumer Price Index is used for the tax year 2017/2018. These amendments have effect from 9th April 2018.

Paragraph 4(a) of the schedule amends the definition of pensionable pay to include payments which are pensionable under additional pension benefit (new rule 7B) and provide that payments which are not within the definition of pensionable pay in rule 1(1)(a) as amended, or additional pension benefits payable for long service or in respect of a firefighter's continual professional development, should remain pensionable whilst the firefighter continues to receive them. Paragraph 4(b) amends

the payments treated as final pensionable pay to exclude additional pension benefit payments payable within rule 7B of Part 3.

The amendments made to Annex 2 (appeals to board of medical referees) by paragraph 5 of the Schedule enable—

- the board to reconsider its decision where the parties agree that it has made a material error of fact; and
- the authority to recover some or all of the expenses of the board where the appellant has withdrawn the appeal or requested or caused the date for an interview or examination to be cancelled or postponed less than 22 working days before the date appointed.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.