



## SCOTTISH PUBLIC PENSIONS AGENCY

The Chief Executives, Fife Council and Dumfries & Galloway Council  
Clerks to the Joint Boards  
Firemasters

7 Tweedside Park  
Tweedbank  
Galashiels TD1 3TE

Telephone: 01896 893223  
Fax: 01896 893230  
Jim.preston@scotland.gsi.gov.uk

Our ref: AZN/1

20 May 2004

Dear Sir or Madam

### **SCOTTISH FIRE SERVICE CIRCULAR No 3/2004**

### **FIREFIGHTERS PENSION SCHEME**

### **THE FIREMEN'S PENSION SCHEME ORDER 1992 (FPS)**

This circular advises Fire Authorities of the following matters.

1. Update on the New Pension Arrangements
2. Amendments to the Firemen's Pension Scheme
3. Employment of Regular Firefighters as Retained Firefighters - Pension Implications

***It should be brought to the attention of your fire authority, pension managers, brigade medical officers/occupational health managers and Human Resources; and in relation to annexes A and B to all members of the FPS.***

### **1. UPDATE ON THE NEW PENSION ARRANGEMENTS**

Annex A provides answers to questions about the new pension arrangements.

### **2. AMENDMENTS TO THE FIREMEN'S PENSION SCHEME ORDER 1992 - LATEST DRAFT**

The draft Scottish Statutory Instrument (SSI) amending the Firemen's Pension Scheme Order 1992 has been prepared and issued for consultation. This is based on a final draft prepared by the Office of the Deputy Prime Minister following responses made to its consultation last year. Details of the ODPM's consultation and the comments received can be viewed (if you have received this circular by e-mail) by opening the attached link [odpm\\_informant](#) or by visiting the ODPM website at [www.odpm.gov.uk](http://www.odpm.gov.uk) and clicking on Fire, then Fire Services, then Pensions and then Consultations.

A copy of the draft SSI together with an explanatory note is attached. (Please see Annex B). The aim is to bring this order into operation from 1 October which will allow Fire Authorities to make the necessary arrangements (if they have not already done so) to appoint a qualified medical advisor by 1 October. Guidance regarding this particular matter was issued under Scottish Fire Circular 2/2003 on 28 January 2003.

The consultation period ends on 11 June 2004 and if you wish to make any comments regarding the proposals these should be addressed to myself or Dorothy Hamilton either by writing to the above address or by e-mail at the addresses shown below.

### **3. EMPLOYMENT OF REGULAR FIREFIGHTERS AS RETAINED FIREFIGHTERS - PENSION IMPLICATIONS**

Queries have arisen regarding the employment of regular whole-time firefighters as retained firefighters. This paper highlights the implications for pensions and other benefits when regular whole-time firefighters have additional retained contracts of employment. (Please see Annex C).

If you have any queries on the information in the circular you can contact either myself on tel no. 01896 893230 e-mail [James.Preston@scotland.gsi.gov.uk](mailto:James.Preston@scotland.gsi.gov.uk) or Dorothy Hamilton on tel no. 01896 893224 e-mail [Dorothy.Hamilton@scotland.gsi.gov.uk](mailto:Dorothy.Hamilton@scotland.gsi.gov.uk)

Yours faithfully



Jim Preston

**Update on the New Pension Arrangements –**

Included in the Executive's commitment to introduce modernisation of the Fire service is the development of new pension arrangements more suited to the fire service of the future and reflecting changes in the relevant tax and regulatory framework for pensions generally.

At present no decision has been made about the new pension arrangements. A Project Group has been set up by the ODPM who are responsible for the Fire service in England, to develop proposals for a new modernised scheme. Representatives from the Scottish Executive are included in the membership of the Project Team's working groups and it is planned that a UK wide consultation document will be issued in the summer of 2004 with a view to a new scheme being introduced by 2006.

**The following Q&A may help address some of the more common questions raised by FPS members.**

**When will details of the new scheme be available?**

*Options are still being considered for the new scheme. No consultation paper on the new scheme has been published by ODPM. It is expected that the consultation paper for the firefighters new pension arrangements will not be available before June 2004. After which people will have at least 3 months within which to comment.*

**Will the proposed new scheme replace the existing scheme or will it be for new recruits only?**

*No decisions have been made about the new pension arrangements as yet. It is possible that the existing scheme will continue in parallel to any new scheme but closed to new entrants. If this is the case members of the existing scheme may be able to decide whether to transfer to the new scheme to take advantage of the benefits. If the new scheme replaces the existing scheme then the benefits of members of the existing scheme would be fully protected.*

**What changes to the pension arrangements are likely to be included in the new scheme?**

*Options have not yet been finalised, but issues such as pensions for unmarried partners and the retention of widows or widowers pensions on remarriage are being considered for the new pension scheme. The Civil Partnership Bill (which concerns registration of same sex couples) is likely to impact on the existing scheme as well.*

**What is happening about a pension scheme for Retained firefighters?**

*At present Retained firefighters do not have access to all of the provisions of the existing scheme. The exceptions being access to ill-health and injury benefits if the Retained firefighter is injured in the performance of fire fighting duties. The Government is committed to introducing an appropriate pension scheme for the Retained, recognising the variety of personal circumstances involved, and proposals will be included in the consultation document issued in respect of the new pension arrangements.*

## **What changes are the Department of Work and Pensions (DWP) and the Inland Revenue proposing?**

*The Inland Revenue proposals will have a direct impact on all pension schemes and they are as follows:*

- *Scheme members will be able to accumulate a lifetime allowance for tax-privileged pension savings of £1.5m from April 2006 and rising to £1.8m in 2010;*
- *To value the lifetime allowance a single valuation factor for defined benefit schemes (such as the FPS) will be used of £20 for every £1 of pension;*
- *A recovery charge of 25% on funds in excess of the lifetime allowance will be made;*
- *The option to commute up to 25% of the value of the pension benefits will be permitted;*
- *The minimum age for taking benefits will rise from age 50 to 55 by 2010;*
- *The age for taking deferred pensions will rise from age 60 to 65;*
- *Pension scheme members will be able to draw pension and continue to be employed; and*
- *People will be able to join any type and any number of pension schemes at any time.*

*DWP published the Pensions Bill on 12th February 2004. The FPS is not a funded scheme and so will not be directly affected by all the proposals. However, the Bill provides a better deal for people who choose to draw their state pension late - including a new option to take a lump sum. All pension scheme members will want to be aware of this.*

## **How will the changes set out above affect the existing firefighters' pension scheme?**

*The changes will need to be taken into account by all pension schemes. For example, under the tax changes to pensions firefighters recruited from April 2006 will not be able to receive a pension before they reach the age of 55 (at present 50 years) and deferred pensions will be paid from age 65 (at present 60 years). Originally this was going to be from April 2005, but the Chancellor announced the new date in his budget speech. It is not yet clear how all the changes may or may not affect existing firefighters. However, it is unlikely that the changes will impact on those who are in the later stages of their service, and therefore should not affect their retirement plans.*

## **What other plans are there for amending the existing scheme?**

*Changes are needed to meet existing legal requirements and to avoid claims of discrimination. The Pensions Sub Committee (of the Central Fire Brigades Advisory Council) had been discussing the need for amendment to the current scheme prior to the modernisation programme. These changes should ensure that the current Pension Scheme is flexible enough to deal with the changes to the service overall prior to the introduction of a new pension scheme.*

*These changes include:*

- *A change in the definition of firefighter allowing people to remain in the pension scheme if they undertake roles other than fire fighting. At present, a firefighter no longer engaged in full operational duties is unable to remain in the scheme.*
- *An obligation on fire authorities to use independent medical assessment before approving applications for early retirement on ill health grounds.*
- *Tidying up provisions to take account of maternity, adoption and paternity leave and benefits paid to dependants.*

- *The extension of the FPS to recognise part-time service by regular firefighters.*
- *Clarification of the term pensionable pay.*
- *A revision of the responsibilities of Medical Appeal Boards and how costs might be apportioned in the future when boards are cancelled or postponed at short notice.*

**Amendments to the Firemen's Pension Scheme - Latest Draft** –

The draft amendment order 2004 has been completed to take account of comments already received following the ODPM consultation exercise. Once consultation in Scotland has been completed it is expected that the order will be made to come into effect on 1<sup>st</sup> October 2004.

A brief explanation of the amendments is included below.

**Rule A 7 (Paragraph 1)**

This provides for part-time service to count towards pensionable service.

**Rule A8 (Paragraph 2)**

This allows for unpaid leave relating to additional maternity leave and additional adoption leave to count as pensionable service where the firefighter has opted to pay pension contributions under Rule G2A of the Scheme.

**Rule A 9 (Paragraph 3)**

With the change in the definition of a regular firefighter to include part-timers it is now inappropriate for Rule A9(2) to apply to part-timers. This Rule has been amended to apply to retained and volunteer firefighters.

**Rule A10 (Paragraph 4)**

This amends the definition of permanently disabled so that a disablement will be deemed to be permanent if it lasts until the date of compulsory retirement in accordance with Rule A13.

**Rules A13 and A14 (Paragraph 5 and 6)**

This removes references to "whole-time" firefighters and replaces it with "regular" firefighters. This will include part-time firefighters according to Rule A9.

**Rule B5 (Paragraph 7)**

Firefighters who have opted not to pay pension contributions during additional unpaid maternity leave and/or additional unpaid adoption leave will not have this period counted as pensionable service for the purpose of determining entitlement to a deferred pension.

**Rule B7 (Paragraph 8)**

Specifies "pensionable years" to make clear that, in the case of a person who has part-time service, a quarter of the full amount of pension means a quarter of the full amount of that pension after it has been reduced to reflect part-time service.

**Rule B9 (Paragraph 9)**

This specifies that a firefighter on retirement, must have a normal life expectancy before he will be eligible to allocate part of his pension to a beneficiary.

**Rule B13 (Paragraph 10)**

This allows for the calculation of awards for part-time firefighters and part-time service.

**Rule C1 (Paragraph 11)**

This enables a Spouse's ordinary pension and/or widow's requisite benefit and temporary pension) to be paid when a firefighter has at least 2 years pensionable service. This was previously 3 years.

**Rule F1 (Paragraph 12)**

This allows for paid maternity, paternity and adoption leave to be included as pensionable service.

---

**Rule F2 (Paragraph 13)**

Where unpaid additional maternity and unpaid additional paternity leave has been taken and the firefighter has opted not to pay pension contributions during this period, this service will not count as pensionable service.

---

**Rule F2A (Paragraph 14)**

Allows for ordinary maternity leave, paid additional maternity leave, paternity leave, ordinary adoption, paid additional adoption leave to count as pensionable service. This also allows for unpaid additional maternity and adoption leave to count as pensionable service where the firefighter opts to pay the pension contributions during these periods.

---

**Rule G1 (Paragraph 15)**

This allows pensionable pay to be defined as whole-time and part-time pay.

---

**Rule G2A (Paragraph 16)**

This allows for periods of additional unpaid maternity and adoption leave to count as pensionable service where the firefighter has opted to pay pension contributions under Rule G2A.

---

**Rule G7 (Paragraph 17)**

This sets a deadline for receipt by Authorities of pension contributions paid by way of a lump sum.

---

**Rule H1 (Paragraph 18)**

This makes the appointment of an Independent Qualified Medical Practitioner (IQMP) by an Authority to consider entitlement to awards and obtaining a written opinion from the IQMP a mandatory requirement. It also makes the opinion of the IQMP binding on the Authority.

---

**Rule H2 (Paragraph 19)**

This extends the responsibility of a board of medical referees to any issues covered by Questions (a) to (f) of Rule H1(2) and does not limit to medical issues only.

---

**Rule I3 (Paragraph 20)**

This allows for an award to be made to a qualifying child on the death of a serviceman where he died during his service or from an injury sustained during that service.

---

**Rule J3 (Paragraph 21)**

This amends Rule J3 to extend the references to whole-time regulars to include part-time regulars.

---

**Rule J4 (Paragraph 22)**

This amends the reference to Part-time members of a brigade to distinguish between Part-time regular, retained and volunteer.

---

**Rule K1 (Paragraph 23)**

This enables a review of all cases where a firefighter has received early payment of a deferred pension due to disablement.

---

**Rule K4 (Paragraph 24)**

This excludes pensions awarded under Part C, Awards on death from withdrawal by the Authority.

---

**Rule L4 (Paragraph 25)**

This enables children whose parents were both firefighters to receive appropriate benefits relating to the service of each parent.

---

**Schedule 1 (Paragraph 26)**

Adds additional definitions to the Glossary of Expressions relating to Regular firefighter, Independent Qualified Medical Practitioner, Adoption leave, Maternity leave, Paternity leave, Retained member of a brigade and Volunteer member of a brigade.

---

**Schedule 2 (Paragraph 27, 28 and 29)**

These add reference to new Part IIIA (calculation of awards for part-time service) to the reference in Parts I, II, III, V and VI.

---

**Schedule 3 and 4 (Paragraph 30, 31,32 and 33)**

This enables Spouse's ordinary pension and Child's ordinary allowance to be calculated with regard to part-time service.

---

**Schedule 9 (Paragraph 34)**

Amended to differentiate between interview and medical examination by the medical referees and specifies the sum to be paid by the appellant where an appeal is withdrawn within ten days of the appointed date

---

**Schedule 9 (Paragraph 35)**

Allows for a party, before an appeal tribunal, to be represented by an authorised advocate.

---



2004 No. \*

## PENSIONS

## The Firemen's Pension Scheme (Scotland) Amendment Regulations 2004

<i>Made - - - - -</i>	<i>*2004</i>
<i>Laid before Parliament</i>	<i>*2004</i>
<i>Coming into force - - -</i>	<i>*2004</i>

The Scottish Ministers, in exercise of the powers conferred by section 26 of the Fire Services Act 1947(1), section 8 of the Fire Services Act 1959 ( 2), sections 12 and 16 of the Superannuation Act 1972 (3) and of all other powers enabling them in that behalf, and after consultation with the Scottish Central Fire Brigades Advisory Council, hereby make the following Order:

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Firemen's Pension Scheme (Amendment) Order 2004.

(2) This Order shall come into force on \*, except that the amendments that relate to, or are incidental to,—

- (a) rules C1 and C6 shall have effect from 6th April 1997;
- (b) rules F2A, G1 and G2A, in so far as they relate to maternity leave, shall have effect from 23rd June 1994;
- (c) rules F2A, G1 and G2A, in so far as they relate to adoption or paternity leave, shall have effect from 8th December 2002; and
- (d) rule I3 and paragraphs (4) and (5) of rule J4 shall have effect from 1st March 1992.

**1** 1947 c.41; section 26 was amended and extended by the Fire services Act 1951 (c.27), section 1; by the Reserve and auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65), section 42; by the Superannuation Act 1972 (c.11), sections 12 and 16; and by the Police and Firemen's Pensions Act 1997 (c.52), section 1 (3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland act 1998 (Transfer of functions to the Scottish Ministers etc) Order 1999 (" the 1999 Order"), article 2 and Schedule 1, (SI 1999/1750); approval of the Treasury is not required by virtue of the 1999 Order, article 2.

**2** 1959 c.44

**3** 1972 c.11; section 16 applies section 12 with the necessary modifications to orders under section 26 of the Fire Services Act 1997.

(3) This Order shall extend to Scotland only.

### **Amendment of the Firemen's Pension Scheme**

2. The Firemen's Pension Scheme set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (4) shall be amended in accordance with the Schedule to this Order.

TAVISH SCOTT

A member of the Scottish Executive

St Andrew's House  
Edinburgh

## SCHEDULE

Article 2

### AMENDMENTS TO THE FIREMEN'S PENSION SCHEME

#### *Part A: General provisions and retirement*

1. In rule A7 (reckoning of service for purposes of award), add at the end—

i(4) Subject to rule B13 and Part VIA of Schedule 2, any period of service as a part-time member of a brigade shall be treated as service as a whole-time member of a brigade when calculating a person's pensionable service.î.

2. In rule A8 (aggregate pension contributions for purposes of awards), after paragraph (1)(a), insert—

i(aa)all contributions made by him in accordance with an election under rule G2A (optional pension contributions during maternity and adoption leave),î.

3. In rule A9 (qualifying injury), in paragraph (2), for "part-time" substitute "retained or volunteer".

4. In rule A10 (disablement), after paragraph (1), insert—

i(1A) In determining whether a disablement is permanent, a fire authority shall have regard to whether the disablement will continue until the age at which the person would otherwise be required to retire in accordance with rule A13.î.

5. In rule A13 (compulsory retirement on account of age), for paragraph (1) substitute—

i(1) This rule applies to every regular firefighter.î.

6. In rule A14 (compulsory retirement on grounds of efficiency of brigade)—

(a) for "A whole-time member of a brigade" substitute "A regular firefighter";

(b) delete paragraph (a); and

(c) in paragraph (c), after "under G3" insert "or a failure to make an election under rule G2A".

#### *Part B: Personal awards*

7. In rule B5 (deferred pension), for paragraph (1)(a) substitute—

i(a) has an earlier period of service as a regular firefighter which, disregarding breaks in service of not more than a month, is continuous and which, after deducting from it—

---

4 SI 1992/129 as amended by SI 1997/2309 and 2851, 1998/1010 and SSI2001/310

- (i) any period during which an election under rule G3 not to pay contributions had effect, and
  - (ii) any period of maternity or adoption leave which does not count as pensionable service as a result of rules F2A or G2A,
- and aggregating the remainder with his pensionable service, amounts to 2 years or more, or

8. In rule B7 (commutation – general provision), in paragraph (5)(a), after “years” insert “pensionable”.

9. In rule B9 (allocation)—

- (a) in paragraph (6), for “as to his good health” substitute “that he has a normal life expectancy”;
- (b) in paragraph (7), delete sub-paragraph (a);
- (c) delete paragraph (9);
- (d) in paragraph (12), for “even if” substitute “unless”;
- (e) after paragraph (12), insert—
  - i(12A) Where the beneficiary dies after a pension, which has been reduced under paragraph (12), becomes payable, that reduction shall cease from the date of the beneficiary’s death.
- (f) in paragraph (13), in sub-paragraph (a), delete “and” and delete sub-paragraph (b); and
- (g) delete paragraphs (14) and (15).

10. After rule B12 (pension debit members), insert—

#### **Part-time members**

**B13.** Where a person is entitled to an award under this Part and some or all of his service, by virtue of which his pensionable service is reckonable, was part-time service, his award shall be calculated in accordance with Part VIA of Schedule 2.

#### *Part C: Awards on death – spouses*

11. In rule C1 (spouse’s ordinary pension) and C6 (widow’s requisite benefit and temporary pension), for “3 years” substitute “2 years” in each place where it appears.

#### *Part F: Pensionable service and transfer values*

12. In rule F1 (reckoning of and certificates as to pensionable service), in paragraph (3), after “rule” insert “F2A,”.

13. In rule F2 (current service)—

- (a) for paragraph (2)(c) substitute—
  - i(c) subject to paragraph (3) and rule F2A, any period of absence from duty without pay, or
  - (d) any period of maternity or adoption leave in respect of which the person has the right to, but does not, pay contributions under rule G2A.
- (b) in paragraph (3), after “period of absence”, insert “(excluding absence for maternity, paternity or adoption leave)”; and
- (c) after paragraph (3), insert—
  - i(4) Any periods of pensionable service before and after any period of maternity or adoption leave in respect of which the person has the right to, but does not pay, contributions under rule G2A shall be treated as continuous.

14. After rule F2 (current service), insert—

#### **Maternity, paternity and adoption leave**

**F2A.—**(1) A woman serving as a regular firefighter 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 to the fire authority in accordance with rule G2A,

taken on or after 23rd June 1994.

- (2) A person serving as a regular firefighter 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 he has paid pension contributions to the fire authority in accordance with rule G2A.<sup>1</sup>

*Part G: Pensionable pay and contributions*

15.—(1) In rule G1 (pensionable pay and average pensionable pay)—

- (a) in paragraph (1), for “his pay” substitute “the pay he receives (whether as a whole-time or part-time member of a brigade)”;
- (b) after paragraph (2), insert—
  - i(2A) For the purposes of rule G2, the pensionable pay of a regular firefighter during a period of maternity, paternity or adoption leave shall be deemed to be the pay to which the person is entitled for that period including any statutory maternity, paternity or adoption pay under the Social Security Contributions and Benefits Act 1992<sup>(5)</sup>.<sup>1</sup>; and
- (c) for paragraph (6) substitute—
  - i(6) For the purposes of paragraphs (3) and (5), any reduction of pensionable pay as a result of any—
    - (a) sick leave;
    - (b) stoppage of pay by way of punishment;
    - (c) ordinary maternity, ordinary adoption or paternity leave;
    - (d) paid additional maternity or additional adoption leave; or
    - (e) unpaid additional maternity or additional adoption leave where contributions have been paid under rule G2A,shall be disregarded.<sup>1</sup>

16. After rule G2 (pension contributions), insert—

**iOptional pension contributions during maternity and adoption leave**

**G2A.**—(1) A regular firefighter who—

- (a) is on maternity or adoption leave, which would not otherwise count as pensionable service under rule F2A; 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 G2 to the pensionable pay (including any statutory maternity or adoption pay under the Social Security Contributions and Benefits Act 1992) received by him immediately before the start of the unpaid period in question.

(3) An election must be made by giving notice in writing to the fire authority before the expiry of the period of 30 days (or such longer period as the fire authority may allow) beginning with—

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

(4) Where the person dies before the end of the period in paragraph (3) without having given the required notice, he shall be deemed to have given the notice and to have paid the contributions.

---

<sup>(5)</sup> 1992 c. 4.

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

(6) Where the full amount of contributions due has not been paid within 6 months of the date of the notice in paragraph (5), 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 contributions paid relate to the total amount of contributions due.

(7) Where the period of additional maternity or additional adoption leave ended prior to \*, the provisions of this rule shall apply where the person gives written notice to his fire authority (or, if he has left, to the fire authority by whom he was last employed) by \*.<sup>1</sup>

17. In rule G7 (payment of periodical contributions for increased benefits), after paragraph (3), insert—

i(3A) If the lump sum payment under paragraph (3) is not paid within 3 months of the date that payment of periodical contributions commenced, that portion of the election shall be treated as not having been made.<sup>1</sup>

*Part H: Determination of questions and appeals*

18. In rule H1 (determination by fire authority)—

(a) in paragraph (2), for “and consider” to the end of the paragraph substitute “the written opinion of an independent qualified medical practitioner selected by them and the opinion of the independent qualified medical practitioner shall be binding on the fire authority”;

(b) after paragraph (2), insert—

i(2A) In his written opinion, the independent qualified medical practitioner must certify that—

(a) he has not previously advised, or given his opinion on, or otherwise been involved in, the particular case for which the opinion has been requested; and

(b) he is not acting, and has not at any time acted, as the representative of the member, the fire authority, or any other party in relation to the same case.<sup>1</sup>; and

(c) in paragraph (3), delete “or practitioners”.

19. In rule H2 (appeal against opinion on a medical issue)—

(a) for the heading substitute “Appeal to board of medical referees”; and

(b) in paragraph (3), for “a medical issue” substitute “any issue referred to in sub-paragraphs (a) to (f) of rule H1(2)”.

*Part I: Servicemen*

20. In rule I3 (awards on death of servicemen), after paragraph (2), insert—

i(2A) Subject to paragraph (3), where this rule applies rule D1 (child’s ordinary allowance) has effect as if the serviceman had died in the circumstances mentioned in rule D1(1).<sup>1</sup>

*Part J: Special cases*

21. In rule J3 (whole-time member of brigade who is not a regular firefighter)—

(a) in the heading and paragraph (1), after “whole-time” insert “or part-time” in each place where it appears; and

(b) in paragraph (3), delete “, or if the deceased was a woman” to the end of the paragraph.

22. In rule J4 (part-time member of brigade)—

(a) in the heading and text, for “part-time” substitute “retained or volunteer” in each place where it appears;

(b) in paragraph (4), for “and E5 (gratuity in lieu) insert “, E5 (gratuity in lieu) and E8 (increase of pensions and allowances during first 13 weeks)”;

(c) in paragraph (5) delete “, subject to paragraph (6),” and for “and E6 (gratuity in lieu)” substitute “, E6 (gratuity in lieu) and E8 (increase of pensions and allowances during first 13 weeks)”;

(d) delete paragraph (6); and

(e) in paragraph (7), after “is one who” insert “is a whole-time member of a brigade and”.

*Part K: Revision and withdrawal of awards*

23. In rule K1 (cancellation of ill-health and injury pensions), in paragraph (2), delete sub-paragraph (a).

24. In rule K4 (withdrawal of pension during service as regular firefighter), after “or any part of the pension” insert “, except a pension under Part C (Awards on death – spouses),”.

*Part L: Payment of awards and financial provisions*

25. In rule L4 (prevention of duplication), in paragraph (4), at the end of sub-paragraph (b), insert—  
ior

(c) to pensions as the surviving child of both parents who served as members of a brigade<sup>1</sup>.

*Schedule 1: Interpretation*

26. In Part I of Schedule 1 (Glossary of expressions)—

(a) for the meaning of “Regular firefighter”—

(i) after “29th February 1992” insert “but before \*”; and

(ii) add at the end—

In relation to any time after \*, the expression means a whole-time or part-time member of a brigade, other than a retained or volunteer member of a brigade, appointed on terms under which he is, or may be, required to engage in firefighting or, without a break in continuity of such an appointment, may be required to perform other duties as appropriate to his role as a firefighter (other than, or in addition to, engaging in firefighting) and whose appointment is not a temporary one.<sup>1</sup>; and

(b) insert in the appropriate place—

<sup>1</sup>Adoption leave

Leave under sections 75A and 75B of the Employment Rights Act 1996<sup>(6)</sup> (and ordinary adoption leave and additional adoption leave shall be construed accordingly).

Independent qualified medical practitioner

A medical practitioner holding a diploma in occupational medicine or an equivalent qualification issued by a competent authority in an EEA State (which has the meaning given by the European Specialist Medical Qualifications Order 1995<sup>(7)</sup>) or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

Maternity leave

In respect of any period prior to 22<sup>nd</sup> August 1996, leave under section 33 of the Employment Protection (Consolidation) Act 1978<sup>(8)</sup> and in respect of any period after that date, leave under sections 71 and 73 of the Employment Rights Act 1996<sup>(9)</sup> (and ordinary maternity leave and additional maternity leave shall be construed accordingly).

Paternity leave

Leave under regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002<sup>(10)</sup>.

Retained member of a brigade

A member of a brigade who—

(a) is obliged to attend—

(i) at the station to which he is attached for training and maintenance duties for an

<sup>(6)</sup> 1996 c. 18; sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

<sup>(7)</sup> S.I. 1995/3208.

<sup>(8)</sup> 1978 c. 44.

<sup>(9)</sup> 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).

<sup>(10)</sup> S.I. 2002/2788.

average of 2 hours each week (or such less time as the officer in charge of the station, subject to any orders of the Chief Officer, considers necessary) and promptly, at any time, in response to a call; and

(ii) at any other station for reserve or standby duties in accordance with any orders he receives; and

(b) receives a retaining fee and such other fees as appropriate in respect of those duties.

Volunteer member of a brigade

A member of a brigade who is obliged to carry out the duties set out in paragraph (a) of the meaning of “Retained member of a brigade”, but does not receive a retaining fee or other fees as appropriate in respect of those duties. **1.**

#### *Schedule 2: Personal awards*

**27.** In Parts I, II and III of Schedule 2 (Ordinary pension, short service pension and ill-health pension), after “Subject to Parts” insert “VIA,” in each place where it appears.

**28.** In Part V of Schedule 2 (Injury awards)—

(a) in paragraph 1(1), add at the beginning, “Subject to Part VIA of this Schedule,”;

(b) in paragraph 1(2), after “rule G3” insert “or a failure to elect under rule G2A”;

(c) in paragraph 2(1), after “rule G3 had effect” insert “or the person failed to make an election under rule G2A”.

**29.** In Part VI of Schedule 2 (Deferred pension), in paragraph 1(1), for “Parts VII and VIII” substitute “Parts VIA, VII and VIII” and add at the end—

i

## PART VIA

Rule B13

### CALCULATION OF AWARDS FOR PART-TIME SERVICE

**1.** Where some or all of a person’s service, by virtue of which his pensionable service is reckonable, is part-time service, his award shall be calculated in accordance with this Part.

**2.** The amount of an ordinary pension, short-service pension, ill-health pension or deferred pension is—

$$\frac{A \times (B + C)}{D}$$

D

where—

A is the amount of ordinary pension, short-service pension, ill-health pension or deferred pension, as appropriate, calculated under Parts I, II, III or VI respectively, if the average pensionable pay was the pay the person would have received had he been a whole-time member of a brigade;

B is the period in years of his service as a whole-time member of a brigade;

C is the period in years of his service as a part-time member of a brigade, expressed as a fraction, where the numerator is the total number of contractual hours during the part-time service and the denominator is the total number of contractual hours had that period of service been whole-time service; and

D is the period in years of his pensionable service.

(B + C) and D cannot exceed 30 years.

3. The amount of injury award shall be calculated under Part V but relevant service shall be reckoned by counting periods of part-time service as the appropriate fraction of periods of whole-time service.<sup>11</sup>

*Schedule 3: Awards on death – spouses*

30. In Part I of Schedule 3 (Spouse’s ordinary pension), in paragraph 1(2), add at the end “but taking account of Part VIA of Schedule 2 (Calculation of awards for part-time service)”.

31. In Part III of Schedule 3 (Spouse’s accrued pension), in paragraph 2(3), after “this paragraph” insert “account shall be taken of Part VIA of Schedule 2 (Calculation of awards for part-time service), but”.

*Schedule 4: Awards on death - children*

32. In Part 1 of Schedule 4 (Child’s ordinary allowance), in paragraph 1(4), add at the end “but taking account of Part VIA of Schedule 2 (Calculation of awards for part-time service)”.

33. In Part III of Schedule 4 (Child’s accrued allowance), in paragraph 4, after “paragraph 2 or 3” insert “account shall be taken of Part VIA of Schedule 2 (Calculation of awards for part-time service), but”.

*Schedule 9: Appeals*

34. In Part I of Schedule 9 (Appeal to board of medical referees)—

(a) in paragraph 4—

(i) in sub-paragraph (1)(a), after “interview”, insert “and medically examine” and in sub-paragraph (1)(b), for “interview him or cause him to be interviewed” substitute “interview or medically examine him or cause him to be interviewed or medically examined”;

(ii) in sub-paragraph (2), after “interview”, insert “and medical examination”;

(iii) in sub-paragraph (3), delete “submit himself at the interview to”; and

(b) after paragraph 8(2), insert—

i(2A) Where the appellant gives notice to the board of withdrawing the appeal within a period of 10 working days prior to the date appointed for an interview or medical examination by the board under paragraph 4(2), the fire authority may require the appellant to pay such sum as they think fit, not exceeding the referees’ total fees and allowances under paragraph 7(1).<sup>11</sup>

35. In Part II of Schedule 9 (Appeal tribunals), in paragraph 2(2), for “counsel, a solicitor” substitute “an authorised advocate as defined in section 119 of the Courts and Legal Services Act 1990”<sup>(11)</sup>.

**EXPLANATORY NOTE**

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

This Order amends the Firemen’s Pension Scheme, as set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992 (“the principal Order”), as it applies in Scotland. The amendments are set out in the Schedule to this Order. The changes are (references to rules, Parts and Schedules, are references to the same in Schedule 2 to the principal Order, as amended by this Order):

– to make provision for part-time regular firefighters to be treated the same as whole-time regular firefighters for the purposes of the Scheme (see rules A7, A13, A14, B13 and Schedules 3 and 4), except that awards for part-time members will be reduced using the formula in Part VIA of Schedule 2 to take account of the fact that the member’s pensionable service will relate to a period of part-time service;

– to make provision for the making of contributions and counting as pensionable service periods during when a member is on maternity, paternity or adoption leave (see rules A8, A14, B5, F1, F2, F2A, G1, G2A, Schedule 1 and Part V of Schedule 2);

– to make provision for retained and volunteer members of a brigade to receive certain awards where they have retired and are permanently disabled as a result of a qualifying injury (see rules A9, J4 and Schedule 1);

– to provide that when considering whether a disablement is permanent, the authority will consider whether the disablement will continue until the age the person would have otherwise retired (see rule A10);

---

(11) 1990 c. 41.



– to amend the requirement to allocate a portion of pension to a beneficiary, so that the authority must be satisfied that the member has a normal life expectancy and to provide that a pension shall not be reduced by the allocated portion where the beneficiary has died (rule B9);

– to reduce the period of pensionable service required to be entitled to a spouse’s ordinary pension and widow’s requisite benefit and temporary pension from 3 years to 2 years (rules C1 and C6);

– to require a lump sum relating to a payment of periodical contributions for increased benefits to be paid within 3 months of the commencement of periodical contributions (rule G7);

– to provide that when determining medical issues, the authority must obtain a binding written opinion from an independent qualified medical practitioner, who must certify that he is independent from the case (rules H1, H2 and Schedule 1);

– to allow a child’s ordinary allowance to be paid in certain circumstances where a serviceman dies during his forces period or from an injury sustained during that period (rule I3);

– to enable an authority to review all cases where a firefighter has received early payment of a deferred pension due to permanent disablement (rule K1);

– to prevent an authority withdrawing a pension under Part C (Awards on death – spouses) from a regular firefighter who is entitled to it whilst serving as such (rule K4);

– to provide that where both parents of a child were firefighters and have died, the child may receive a pension in respect of both parents (rule L4);

– to make changes to require an appellant, in certain circumstances, to pay the costs when he withdraws an appeal to the board of medical referees and to allow a party before an appeal tribunal to be represented by an authorised advocate (see Schedule 9); and

– to make a minor clarification to rule B7 (commutation – general provision).

Some of the amendments take effect from a date before the Order comes into force. Section 12 of the Superannuation Act 1972, as applied by section 16 of that Act, provides that regulations made under section 26 of the Fire Services Act 1947 may have retrospective effect. Amendments in relation to the following rules, and any matter incidental to them, in the principal Order shall, therefore, have effect as follows:

– rules C1 (spouse’s ordinary pension) and C6 (widow’s requisite benefit and temporary pension) shall have effect from 6th April 1997;

– rules F2A, G1 and G2A, in so far as they relate to maternity leave, shall have effect from 23rd June 1994;

– rules F2A, G1 and G2A, in so far as they relate to adoption and paternity leave, shall have effect from 8th December 2002; and

– rules I3 (awards on death of servicemen) and paragraphs (4) and (5) of rule J4 (part-time member of a brigade) shall have effect from 1st March 1992.

**Employment of Regular Time Firefighters as Retained Firefighters - Pension Implications -****BACKGROUND**

Fire Authorities (FAs) may employ regular firefighters as retained firefighters. The retained duties may be either with the same FA or with a second Authority. We are aware that varying contractual arrangements are being made. Although this method of resourcing may have operational advantages, there are pension issues of which FAs should be aware.

**RELEVANT FIREFIGHTER PENSION SCHEME PROVISIONS**

Under rule J4 of the Firemen's Pension Scheme Order 1992 (FPS), a retained member of a brigade who retires due to permanent disability occasioned by a qualifying injury is treated as a regular whole-time firefighter for the purposes of rules B3 (ill-health award) and B4 (injury award).

Furthermore, under Rule J4 (7), any award will be calculated as if the retained firefighter held the rank of a regular whole-time firefighter and had the same service in that rank and was entitled to reckon as pensionable service a period equal to the retained service.

Rule L4 of the FPS normally prevents duplication but specifically excludes awards payable under rule J4.

**Examples**

**A regular firefighter who has a separate contract as a retained firefighter with the same brigade has a qualifying injury derived from his regular employment.**

- *Regular firefighter contract:*  
*Ill-health award based on regular firefighter service and pay.*  
*Injury award based on regular firefighter service and pay.*
- *Retained firefighter contract:*  
*No award.*

**A regular firefighter who has a separate contract as a retained firefighter with the same brigade has a qualifying injury derived from his retained employment.**

- *Regular firefighter contract:*  
*Ill-health award based on regular firefighter service and pay.*  
*No injury award.*
- *Retained firefighter contract:*  
*Ill-health award based on retained firefighter service and pay of a regular firefighter of equivalent rank and service.*  
*Injury award based on retained firefighter service and pay of a regular firefighter of equivalent rank and service.*

**A regular firefighter who has a separate contract as a retained firefighter with a different brigade has a qualifying injury derived from his regular employment.**

- *Regular firefighter contract:*  
*Ill-health award based on regular firefighter service and pay.*  
*Injury award based on regular firefighter service and pay.*
- *Retained firefighter contract:*  
*No award.*

**A regular firefighter who has a separate contract as a retained firefighter with a different brigade and has a qualifying injury derived from his retained employment.**

- *Regular firefighter contract:  
Ill-health award based on regular firefighter service and pay.  
No injury award.*
- *Retained firefighter contract:  
Ill-health award based on retained firefighter service and pay of a regular firefighter of equivalent rank and service.  
Injury award based on retained firefighter service and pay of a regular firefighter of equivalent rank and service.*

**A regular firefighter who has a single contract that includes certain retained duties and has a qualifying injury.**

- *Regular firefighter contract:  
Ill-health award based on regular firefighter service and pay.  
Injury award based on regular firefighter service and pay.*

A firefighter whose retained duties are part of a whole time contract is not a part time member of a brigade and rule J4 could not apply.

## **PENSION IMPLICATIONS**

Double Payment:

Separate regular and part time retained contracts bring clarity to the working arrangements but would result in double payment where the qualifying injury was derived from retained employment as in examples 2 and 4 above. A situation could also arise where qualifying injuries are derived from both regular and retained employment. Rule L4 would not apply. Similarly, abatement provisions in Schedule 2, Part V (injury awards) para 2 would only apply to any other pensions calculated by reference to the service during which the qualifying injury was received. There could therefore be no abatement of the ill-health award derived from the regular contract.

Single Contract that includes retained duties:

A single contract of this type could prevent double payment but there would need to be clarity with regard to any separation of duties as pension contributions do not apply to retained service pay.

## **FINANCING OF AWARDS**

Rule L1(1) states that an award is payable by the fire authority by whom the regular firefighter was last so employed.

Rule L1(2) deals with the payment of awards to persons employed as a member of a brigade but not as a regular firefighter (i.e. awards under Rules J3 and 4).

Example 2 shows that there can be double payment when a person has separate contracts as a regular and a retained firefighter with one FA; and Example 4 where there are contracts with different FAs.

The double payment arising from Example 4 involves two authorities. If a firefighter is employed as a regular firefighter with Brigade A and as a retained firefighter with Brigade B and becomes permanently disabled as a result of a qualifying injury derived from the retained duties raises the

question of who should pay the award. Rule L1(2) would apply. The implication is that Brigade B should finance both awards (ill-health and injury).

## **CONCLUSION**

The FPS does not envisage regular firefighters being employed also as retained firefighters.

FAs should be aware of the pension and compensation implications of employing regular firefighters as retained firefighters.

FAs should exercise caution when issuing single contracts that include retained duties.

FAs should agree prior to employment as retained firefighters of persons who are regular firefighters in another brigade how any subsequent ill-health and injury awards will be financed.