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Dear Sir or Madam

## **THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (SCOTLAND) ORDER 2006**

## **THE FIREFIGHTERS' COMPENSATION SCHEME (SCOTLAND) ORDER 2006**

I enclose for any comments you may wish to make on the attached draft Orders. Any responses should be made by 28 April 2006. Similar Orders are being introduced in England by the Office of the Deputy Prime Minister (ODPM).

The amendments fall under three broad headings:

- Amendments consequential to the new tax regime for pensions
- New arrangements for ill-health awards
- Closure of the existing pension scheme to new members

Copies of the draft amending orders are attached.

### **Death and Injury Benefits**

As part of the amendments consequential to the new tax regime, the non-contributory compensatory provisions covering death and injury that are currently in the FPS are to be removed to a freestanding Firefighters' Compensation Scheme (FCS). There are no changes to the death and injury provisions and, where possible, the provisions have been lifted intact and placed in the new FCS.

These amendments will be effective from 6th April 2006.

Where death or serious injury occurs on duty, benefits additional to those from the FPS become payable under Section IX, 13 of the Conditions of Service (Grey Book 5<sup>th</sup> Edition). They are subject to abatement by any damages or other compensation received by the employee or their dependants and any gratuities payable under the FPS. The Audit Commission have taken the view that compensation payments made under these provisions are illegal because Section 27 of the Fire



Services Act 1947 (now Section 34 of the Fire and Rescue Services Act 2004) provided for the making of a statutory scheme for payments in death. The benefits were consequently removed from the Grey Book 6th edition but have continued on the basis that they will be replicated in the FCS.

Making the changes required under the new tax regime allows the opportunity to put these provisions on a statutory footing and place them in the new FCS from 6th April 2006. The benefits will remain as they were, however, some changes have been necessary in order to standardise the wording with other parts of the FCS and the pension scheme.

### Amendments consequential to the new tax regime for pensions

As a consequence of the Finance Acts 2004 and 2005, HM Revenue and Customs are introducing a simplified tax regime for pensions that will come into force on 6th April 2006. The amendments we propose to make to the FPS are detailed in the table below. Payments made in respect of pensions that come into payment after the 5<sup>th</sup> April 2006 will need to comply with the new tax regime in order to avoid being deemed as unauthorised payments and incurring additional tax charges. HMRC have confirmed that any unauthorised payments made in the interim period, between 6 April when the new tax regime comes into force and the necessary scheme changes coming into force retrospectively from 6 April, will have any unauthorised payment tax charge deferred until the relevant regulations are in place; at which point they will then not apply. This is on the understanding that the reason for the non-enforcement of the unauthorised payment tax charges i.e. that HMRC have agreed to defer such charges during the interim period mentioned above, is clearly recorded and communicated to those affected.

<b>Rule</b>	<b>Amendment</b>	<b>New Tax Rules</b>
<b>Rule B2: Short service award</b>	The amount of the short service gratuity is the aggregate of pension contributions in all circumstances including for an ill-health gratuity under B3(3)(b). Schedule 2 Part IV also amended.	Under FA2004, the amount of a short service lump sum must not exceed the aggregate of pension contributions.
<b>Rule B6: Repayment of aggregate contributions</b>	Amendment required to B6(1) to add “with less than 2 years’ pensionable service” after “regular firefighter” to clarify circumstances of award.	See above as for B2.
<b>Rule B7: Commutation</b>	Amendment to B7 (7). Decisions to commute must be made before a pension comes into payment (see FPS Circular 3/2006).	Under FA2004, a commuted lump sum must be paid within 3 months beginning with the day on which the member became entitled to it to be considered a pension commencement lump sum.
<b>Rule B8: Commutation -small pensions</b>	Amendment to limit the amount of the gratuity payable under this rule by reference to Schedule 29, Part 1 of the Finance Act 2004.	FA2004 places an upper limit on the amount that may be commuted in these circumstances of 1% of the Standard Lifetime Allowance. For 2006/2007 this would be £15k.
<b>Rule B11: Deduction of tax from certain</b>	Amendment to provide for FRAs to make necessary deductions from any payment which is chargeable to tax or subject to any recovery charge prescribed by the Finance Act 2004.	FA2004 requires scheme administrators to pass on tax charges by payover to HMRC and subsequent recovery from

<b>awards</b>		payments.
<b>Rule C1: Spouse's ordinary pension</b>	Amendment to delete paragraphs (3) to (6), and reference to them, to remove the option of a reduced pension and gratuity.	FA2004 does not provide for reduced pensions or lump sums in these circumstances.
<b>Rule E1: Lump sum death grant</b>	Amendment to limit payment to those members who die in service before their 75th birthday and to require the FRA to make payment within 2 years of date of death.	FA2004 places limits on lump sum death benefits.
<b>Rule E5: Gratuity in lieu of surviving spouse's pension</b>	Similar to B8, the amount of gratuity in these circumstances is limited to not more than 1% of the standard lifetime allowance and, as it is lump sum death benefit, can only be paid where the member dies before their 75th birthday and, in this case, for the payment to be made before the date the member would have reached their 75th birthday.	FA2004 places limitations on trivial commutation lump sum benefits.
<b>Rule E6: Gratuity in lieu of child's allowance</b>	The amount of gratuity in these circumstances is limited as for E5.	FA2004 places limitations on trivial commutation lump sum benefits.
<b>Rule E7: Limitation on discretion to commute pension or allowance for gratuity</b>	The limitations in E7(3) and (4) are replaced by the limitations in the FA2004 for trivial commutation of lump sum death benefits.	FA2004 places limitations on trivial commutation lump sum benefits.
<b>Rule G7: Payment of periodical contributions for increased benefits</b>	Amendment to remove the cap of 15% of pensionable pay on periodical contributions for increased benefits.	FA2004 removes the 15% cap on tax privileged pension contributions and permits contributions equivalent to the individual's relevant taxable UK earnings for the year.
<b>Rule G9: Pension debit members: restriction on replacement of debited rights</b>	Delete G9 in its entirety.	This restriction will not apply after 5 April 2006.

### **New arrangements for ill-health awards- Coming into effect from 1 July 2006**

The provisions for determining a scheme member's entitlement to an ill-health award under Rule B3 will be amended to keep the FPS 1992 in line with the arrangements which have been agreed for the NFPS 2006. This will avoid the risk of confusion amongst administrators and medical practitioners when dealing with members of the two schemes. Changes will also be necessary to the provisions in Rule K1 for review of ill-health awards.



Any person who has been retired with an ill-health award prior to the new arrangements coming into operation will be unaffected by the changes; including the new arrangements for review of awards.

**Rule B3 Ill-health award:**

The single ill-health award will be replaced by two awards:

- a lower tier pension calculated in a similar way to a deferred pension under Rule B5(1), i.e. without any enhancement of service but taking account of dual accrual, awarded where the scheme member is able to undertake other regular employment; or
- a higher tier pension with an enhancement if the scheme member is unable to undertake other regular employment. This would be based on service already accrued in the scheme plus an enhancement. Two pension awards are made: the first equal to a lower tier award that would have been paid at the date of retirement, and the second based on the amount of enhancement that would be awarded in accordance with Part III of Schedule 2 of the FPS Order 1992, less the first award. Part III of Schedule 2 will be amended to reflect the new arrangements.
- An award for a scheme member with less than 5 years' pensionable service is calculated without enhancements.
- A scheme member with less than 2 years service will continue to be entitled to an ill-health gratuity in accordance with new Rule B3(3)(b).

Rule B3(4) defines “regular employment” as employment for an average of not less than 30 hours in each week in any period of 12 months.

**Review and cancellation of ill health pensions:**

Under amended Rule K1, the FRA’s discretion to not conduct reviews will be removed. There will, however, be discretion concerning the intervals of such reviews. The FRA will have to consider, at such intervals as they in their discretion think proper whether the firefighter has become capable of:

- carrying out any duty appropriate to the role from which he/she was retired on ill health grounds;  
and where a higher tier ill health pension was awarded
- whether he/she is fit to undertake other regular employment.

The FRA will also review pensions paid where the person —

- is entitled to a deferred pension, and
- has begun to receive payments in respect of the pension on becoming permanently disabled under B5.

**Higher tier ill health pension** - if the condition improves so that the former scheme member could seek regular employment the enhanced pension will be cancelled and the pension equal to a lower tier award substituted.

**Lower tier ill health pension** – If the condition worsens there will be no provision for substituting the lower tier award with a higher tier one. Nor will a lower award be replaced by a higher one because of general deterioration in health. If the condition improves to the point where the individual could return to a role as firefighter and the FRA re-employ him/her in that capacity the lower tier pension will be cancelled. If the individual refuses the job offered by the FRA, the pension will be cancelled and replaced by a deferred award under Rule B5.

## **Closure of the existing pension scheme to new members**

The existing FPS will be closed to new members from 6th April 2006. The Rule A3 amendments will provide for the Pension Scheme to cease to have effect in relation to persons who take up employment with a fire and rescue authority as regular firefighters on or after 6<sup>th</sup> April 2006, their spouses, civil partners and dependants, on the day on which the new scheme is brought into operation. The paragraph substituted in rule G2 will have the effect of requiring persons who take up employment with a fire and rescue authority as firefighters on or after 6<sup>th</sup> April 2006 to make pension contributions at a lower rate than is required of firefighters whose employment began before that date. The new pension scheme will require firefighters whose employment begins on or after 6th April 2006 to transfer to the new scheme, and will require firefighter members of the new scheme to make contributions at that lower rate.

## **New Finance Arrangements for Firefighter Pensions introduced in England.**

You may be aware that a new funding mechanism is being introduced into the funding of firefighters pensions in England which will work on the basis of a notionally funded scheme with the introduction of employer contributions. This new system does **not** apply to Scotland but as a consequence of the changes being made in England there are some amendments required to the FPS that mirror those being introduced in England.

Where a firefighter opts out within 3 months of first joining the scheme under Rule G3 and there has not been a transfer of pension rights from some other pension scheme: the person will be treated as never having joined the scheme, and a refund of the employee's pension contributions will be made to the individual.

## **Payment of contributions when an employee has been absent without pay**

Rule F2 (3) provides that the FRA which employs a person as a regular firefighter may resolve that he shall be entitled to reckon as pensionable service all or any period of absence from duty without pay and in that event the firefighter becomes liable to pay the authority the contributions that would have been payable for the reckonable period if he had been paid at his normal rate.

This provision will be amended to remove the discretion from the FRA and give the scheme member the right to decide to pay contributions. Under the amended provision, the firefighter will be responsible for paying his/her contributions payable for the period of absence and those of the FRA based on the amount that would be payable by the FRA under a notional funding system. The FRA has discretion to pay the employer's share as calculated. Unpaid contributions must be paid within 6 months of the agreement to repay them.

We aim to finalise the draft orders and have them both laid at Parliament before the summer recess but where applicable coming into force retrospectively from 6 April 2006. **Comments are therefore required by close on 28 April.**

Yours faithfully



Jim Preston



INVESTOR IN PEOPLE

Addressees

COSLA

Fire Brigades Union (Scottish Region)

Chief and Assistant Chief Fire Officers Association (Scottish Region)

Retained Firefighters Union (UK)

Audit Scotland

National association of Pension Funds

Women's National Commission

ODPM Fire Pensions section

ODPM LGPS Pensions section

Home Office Police Pension section

HM Treasury

Government actuary's Department

DWP

HMRC

Scottish Executive Justice Department FSEPD

Office of the Solicitor, Scottish Executive

