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Dear Sir/Madam

## **SCOTTISH FIRE SERVICE CIRCULAR 18/2006**

- 1. THE FIREFIGHTERS' COMPENSATION SCHEME (SCOTLAND) ORDER 2006**
- 2. THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (SCOTLAND) ORDER 2006**
- 3. UNMARRIED PARTNER BENEFITS – COMPLETION OF NOMINATION FORMS**

This circular advises on two Orders that have come into force from 1 July 2006. The first is the Firefighters' Compensation Scheme (Scotland) Order 2006 ([SSI 2006/338](#)) which puts injury and compensatory benefits on a separate statutory basis. The second Order, The Firefighters' Pension Scheme Amendment (Scotland) Order 2006 ([SSI 2006/342](#)), introduces changes which are a consequence of removing injury benefits from the scheme but there are other important amendments which are listed below.

### **1. FIREFIGHTERS' COMPENSATION SCHEME (SCOTLAND) ORDER 2006**

As a consequence of the Finance Acts 2004 and 2005, HM Revenue and Customs (HMRC) have introduced a simplified tax regime for pensions. Amendments to the Firefighters' Pension Scheme (FPS) were required to ensure that payments made in respect of pensions that come into payment after the 5<sup>th</sup> April 2006 comply with the new tax regime. If injury benefits had been retained in the FPS then any non-contributory benefit would have been treated as an unauthorised payment and would have been subject to an additional tax charge. The amendments are effective from 6<sup>th</sup> April 2006 and guidance on the changes has been provided to Fire and Rescue Authorities (FRA).

Making the changes required under the new tax regime allows the opportunity to combine these provisions with those injury and compensation benefits made to firefighters under the FPS and Section IX, 13 of the Conditions of Service (Grey Book 5<sup>th</sup> Edition), on a separate statutory footing.

The Order contains transitional provisions at articles 3 and 4. In article 3 where a firefighter who has either died or left the Fire and Rescue Service before 6 April is placed in a worse position by the introduction of the Order written notice can be made so that the provision(s) will not apply in that case. Written notice must be given no later than 30 September 2006. Article 4 ensures that the new provisions will not apply (with the exception of Rule 3 Part 2) where a determination or decision is made before 6 April 2006 in which case the previous provisions will apply.

The new scheme consists primarily of provisions relating to ill-health and injury awards in respect of firefighters, their spouses, civil partners, children and other dependants and the benefits remain as they were previously in the pension scheme, however, some changes have been necessary in order to standardise the wording with other parts of the Order and the pension scheme.

Schedule 2 of the Order outlines the corresponding provisions of the pension scheme in relation to the new Rules of the Compensation Order.

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

Similar to the Compensation Order this Order also provides transitional provisions which are shown at Article 3. Firstly those firefighters who have had a determination or decision relevant to ill-health retirement made before 1 July 2006 will not be subject to the new two-tier system. In deciding if a firefighter meets the terms of this condition FRAs will need to decide on each case if a determination or decision has been made before 1 July. For example the decision by the FRA's medical advisor that the case should be referred to the Independent Qualified Medical Practitioner (IQMP) would, if made before 1 July, be reasonable to include in this transitional provision. The point at which ill-health retirement is first considered can be reasonably justified to be the first point at which a determination on ill-health retirement is being made.

Article 3 also provides that where a firefighter who has either died or left the Fire and Rescue Service before 1 July is placed in a worse position by the introduction of the Order written notice can be made so that the provision(s) will not apply in that case. Written notice must be given no later than 3 months after the New Firefighters Pension Scheme (NFPS) regulations come into force (which is expected towards the end of the year).

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

Schedule 1 paragraph 1 confirms that the existing FPS has been 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. In the interim period between 6 April 2006 and the NFPS regulations coming into force those members recruited from 6 April 2006 onwards will be covered by the terms of the FPS.

Schedule 1 Paragraph 37 amends rule G2 to the effect that persons who take up employment with a fire and rescue authority as firefighters on or after 6<sup>th</sup> April 2006 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.

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

Paragraphs 6 and 55 of Schedule 1 sees the replacement of a single ill-health award 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).

The new Rule B3(7) defines "regular employment" as employment for an average of not less than 30 hours in each week in any period of 12 months.

Guidance for IQMP's on the new system is currently being finalised and will be issued as soon as possible.

## 2.3 Review and cancellation of ill health pensions:

Paragraph 46 of Schedule 1 amends Rule K1 and the FRA's discretion to not conduct reviews is removed. There is however 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.

**2.4 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.

**2.5 Lower tier ill health pension** – If the condition worsens there is no provision for substituting the lower tier award with a higher tier one. Nor can 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.

## **2.6 Other amendments consequential to the new tax regime for pensions**

Under the new tax regime, the cap of 15% of pensionable pay on tax privileged contributions for increased benefits is removed and contributions equivalent to an individual's relevant taxable UK earnings for the year are permitted. Rule G7 (Payment of periodical contributions for increased benefits) is amended accordingly but the limit on accrual of pension benefits to 40/60ths of pensionable pay remains.

The other main changes that affect the FPS are those concerning the conditions under which schemes can make lump sum payments, the limitations applied to lump sum payments and changes to the timescales in relation to decisions to commute pension for a lump sum. A short service lump sum (paid where a firefighter retires with less than two years' service) cannot exceed an amount equivalent to the aggregate of pension contributions. This applies to Rule B2 (Short service award) and Rule B3 (Ill-health award). Small pensions may continue to be commuted under "Trivial Commutation" rules but these stipulate that the value of the pension commuted must not exceed 1% of the Lifetime Allowance determined by HMRC (currently £1.5m). This applies to Rule B8 (Commutation – small pensions), Rule E5 (Lump sum in lieu of surviving spouse's or civil partner's pension), Rule E6 (Lump sum in lieu of child's allowance) and Rule E7 (limitation on discretion to commute pension or allowance for gratuity). Decisions to commute pension for a lump sum must now be made before the pension comes into payment and awards on death must be commuted before the date on which the deceased would have reached age 75.

## **2.7 Costs of medical appeals**

Paragraph 59 of Schedule 1 amends paragraph 8(2A) of Schedule 9 in that a person who withdraws his/her appeal to a board of medical referees within 21 days of the date appointed for the interview or medical examination may be required to pay the fire and rescue authority an amount not exceeding that payable by the authority in respect of the board's fees and allowances. The previous provision referred to withdrawal within 10 days of the appointed date. Under the terms of a new contract with the service provider this has been extended to ensure that costs that have been reasonably incurred can be recovered.

## **3. Unmarried partners**

Scottish Fire Circular 2006/9 outlined the requirement for a nomination form to be completed in all cases where a firefighter wished unmarried partner benefits to be paid in the event of their death. A number of queries have arisen regarding those FPS members who, on the basis of having an unmarried partner, may wish to transfer to the NFPS as part of the planned exercise. It is planned that membership of the NFPS will run from 6 April 2006 for all those who transfer over in the options exercise and it is therefore recommended that any members considering transferring for unmarried partner benefits should complete a nomination form as soon as possible. This will ensure that they would be covered in the interim period between 6 April 2006 and the commencement of the options exercise.

Attached at Annex A is a letter which FRAs should issue to all current members of the FPS. This letter provides general information on the new scheme, the planned options exercise and the



introduction of the new two tier ill health system. In addition it alerts members that an unmarried partner's nomination form can be completed now. If, at the end of the options exercise, the firefighter decides not to transfer to the NFPS, then the declaration form will become void and should be destroyed by the FRA.

Yours faithfully

A handwritten signature in purple ink that reads "J. Preston." The signature is written in a cursive style with a period at the end.

Jim Preston

# **New Fire Pension Scheme – draft text of letter to all firefighters about the new scheme, the options exercise and the new two tier ill health system**

## **NEW FIRE PENSION SCHEME 2006**

As you may know, a New Fire Pension Scheme (NFPS) came into effect on 6 April this year for new entrants to the fire service on or after that date. The purpose of this letter is to alert you to the introduction of the new scheme, to explain briefly what it might mean for you as a firefighter already in service and to explain the next steps.

All new entrants to the service from 6 April join the NFPS. Members of the current Fire Pension Scheme (FPS) will remain in FPS, but they will also have an opportunity later this year to transfer to NFPS if they wish.

If you choose to remain in FPS then the introduction of the new scheme should have little or no impact on you. However, there has also been a change to the FPS ill health benefits which is dealt with further below.

All serving firefighters are members of FPS unless they have elected by notice in writing not to pay pension contributions and have thereby opted out of the scheme (or never joined). Those firefighters who had opted out of the scheme were advised that if they wished to apply to rejoin the FPS then they had to do so by no later than 5 April 2006. Any application to rejoin the scheme made from and including the 6 April 2006 will only be considered for entry to the NFPS.

### **Firefighters on career breaks**

Firefighters taking an approved career break will continue in membership of the current scheme. However, if you were simply to leave the fire service and then rejoin the force on or after 6 April 2006, you have to join the new scheme.

### **Members' Guide for NFPS**

A Members' Guide for NFPS is now available and outlines the benefits of the scheme. A copy can be obtained from .....[FRA contact details]

### **Transferring to NFPS: the 'options exercise'**

You will have plenty of time to decide whether to stay in the FPS or transfer to the new scheme. It is planned that there will be a 3 month options exercise towards the end of the year where FPS members will be allowed to join the NFPS and will have the opportunity of transferring their FPS service into the new scheme. Work is still underway to finalise what information will be available to FPS members as part of the options exercise. We will contact you nearer the time with sufficient information to enable you to make a choice on whether to transfer or not. Ultimately, the decision on whether to transfer or not will rest with you. You do not need to decide until the options exercise whether to stay in FPS or transfer across, but you may wish to start thinking now about what is best for you.

## **Pensions for partners who are neither married nor in a civil partnership**

This section applies only to those who have a partner to whom they are not married and with whom they are not in a civil partnership and they are both free to marry or register a civil partnership.

An important new feature of NFPS is the provision for the payment of a pension for life to a fire firefighters' partner, even if they are not married to each other or in a civil partnership with each other, in the event of the firefighter's death. Such a benefit is not payable in FPS, where adult survivor pensions are paid only to those who are married or in a civil partnership. Payment of a pension to a partner who was not married or in a civil partnership will not be automatic: you must satisfy a number of conditions and complete the necessary documentation. In particular, you and your partner must have completed and sent to your pensions administrator a joint declaration form to confirm that you are living together, that your partner is financially dependent on you (or both of you are financially interdependent), your relationship is exclusive, committed and long-term and that a number of other conditions apply.

Declaration forms (with more detailed guidance) are available from your pension's administrator [**FRA to put in contact**] and may be completed and returned now. Completing a form at this stage does not commit you to joining NFPS. If you do not opt to transfer to NFPS your declaration form will simply lapse at the end of the options period.

If you are living with a partner who is not married to you or in a civil partnership with you then you are strongly advised to consider completing a declaration form without waiting to decide whether or not to join NFPS, as this will help to protect your partner's position. **If you were to die between 6 April and the 'options exercise' your partner would be able to submit a claim for a pension under NFPS but only if you had jointly completed a declaration form.** The fire authority would then consider the claim and determine whether an award should be made.

## **Changes to the ill-health benefits**

From 1 July 2006 a new two tier ill-health system is introduced for FPS members who retire on the grounds of ill-health. The new system introduces two tiers of ill health pension for those FPS members who are permanently incapable of carrying out the duties appropriate to their role. A lower tier pension will be paid to those members who are capable of regular employment. Regular employment is defined as employment for an average of not less than 30 hours in each week in any period of 12 months. The lower tier pension is an unenhanced pension based only on service accrued up to the date of retirement.

Where a member is also found to be incapable of undertaking regular work then an additional higher tier pension will also be paid which will include enhancements based on length of service. Please note a higher tier pension cannot be paid to a member with less than 5 years pensionable service. More information on the new two tier system is available from your pension administrator.

## **Further information**

If you would like any further information on any of the issues covered in this notice, you should contact your pension's administrator at.....