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Dear Colleague

1. THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (SCOTLAND) (No.2) ORDER 2010

2. THE FIREFIGHTERS' PENSION SCHEME (SCOTLAND) ORDER 2007 AMENDMENT (No.2) ORDER 2010

Please find enclosed the above regulations which introduce the legislative basis for the new financing system for Firefighter pensions being introduced from 1 April 2010. Unlike the police pension schemes where a stand alone set of regulations were provided for both police schemes the enclosed make amendments to each respective firefighter scheme Orders to reflect the requirements of the new system. The first listed above amends the Firefighters' Pension Scheme (FPS) and the second the New Firefighters' Pension Scheme (NFPS).

Background

In October 2008, the Scottish Government and COSLA reached agreement on the extra funding needed to offset pressures on the police service and the fire and rescue service caused by a record number of retirements. As part of that agreement, a way forward on reforming the funding arrangements for police and fire pensions was negotiated.

As a result a Steering Group was set up to progress the police and fire pension reform project. The Steering Group consisted of representatives from:

- the Scottish Government
- COSLA
- ACPOS



- CFOA(S)
- Police Conveners Forum
- Fire Conveners Forum

In addition to the Steering Group, a Working Group was established in order to manage the changes required to introduce the new financial arrangements. The Working Group is made up of members from:

- the Scottish Government
- ACPOS
- CFOA(S)
- Local Authority Directors of Finance

The members of both the Steering Group and the Working Group support the new financial arrangements and the attached guidance for firefighter pensions was consulted on and agreed.

Briefly under the new arrangements, firefighter pension costs (with the exception of Compensation scheme benefits and ill-health capital charges) will be met through a combination of employee contributions, a new actuarially-based employer's contribution calculated as a percentage of pensionable pay and, as required, a "top-up" payment by the Scottish Government. Authorities will be required to set up and maintain a new Pension Account into which defined income will be made for example member and employer contributions and out of which pensions in payment will be made. Any shortfall between the Pension Account income and expenditure will be met by top up payments from the Scottish Government and any surpluses will be taken into account as part of future pension funding.

The attached amendments aim to reflect the terms of the agreed guidance so there should be no divergences from what has been agreed as part of that process. Similar amendments for the police pension schemes were issued for consultation on 18 March 2010.

The following provides a brief explanation of each amendment planned and where applicable the relevant reference in the guidance. For clarity I have provided an explanation for each Order although this does mean there is some duplication.

1. THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (SCOTLAND) (No.2) ORDER 2010

Citation and Comment

The amendments are planned to come into force on 30 September and will have effect from 1 April 2010. Retrospective effect is a commonly used feature and is permitted by section 12 of the Superannuation Act 1972. The only exception to this date is for the amendment made under paragraph 7 of Schedule 1 which is an amendment outside the new finance regime.

Schedule 1 lists the amendments being made to the Firefighters' Pension Scheme Order 1992.



Paragraphs 1 and 2

Amends rules A4 and A5 where currently the Scottish Ministers take on the role of Fire and Rescue Authority (FRA) where the firefighter takes up relevant employment. Section 8 of the guidance outlines the revised approach to secondments which will cover these type of postings.

Paragraph 3 and 7

Updates references on the introduction of the two tier ill health system. These amendments are not part of the new finance system but the opportunity has been taken to make the updates with this amending Order. The change proposed to rule B3 aligns the 12 month period under which regular work is considered to the period where the capacity under question began and the amendment to rule H1 confirms the questions to be considered includes those outlined in rule B3.

Paragraph 4

Reflects the fact there is a Scottish employer contribution rate when considering payment of contributions for periods of unpaid absence. The rule currently refers to a “notional” employer’s contribution.

Paragraphs 5 and 6

Recognises that transfer payments between Scottish FRAs are no longer applicable from 1 April 2010 and are replaced by the use of service certificates. At the same time the amendment confirms that transfers to other UK FRA’s or the Fire service of N Ireland still require a transfer to be calculated and made as before. Section 8 of the guidance confirms this new process.

Paragraph 8

Introduces new Part LA which outlines the new financing system.

New rule LA1. Confirms that FRAs need to set up and manage a Firefighters’ Pension Account. Section 3 of the guidance outlines this requirement.

LA2

This outlines what can be paid into and out of the Pension Account. Section 4 of the guidance indicates approved income and expenditure from the pension account

LA3

- (i) Confirms what the FPS employer contribution rate is and when should it be paid i.e. in line with member contributions but also in specified cases where contributions are deemed as paid. The regulation confirms that the rate going forward from April 2010 is 21.8%. Section 5 of the guidance outlines how this rate has been determined and confirms that separate rates are applicable for the FPS and NFPS.
- (ii) Paragraph (7) and (8) confirms that a capital equivalent charge is due where a firefighter is retired on the grounds of ill-health and the amount due from the FRA is determined by the award made. In upper tier awards it is a payment totalling four times the firefighters’ average pensionable pay and for lower tier the payment is two times the firefighters’ average pensionable pay. This is a compensation payment to the scheme to reflect that the pension is being paid early. Section 6 of the guidance



provides more detail on capital equivalent charges and in particular paragraph 6.13 of the guidance confirms when a payment is due.

- (iii) This rule also confirms at paragraph (10) that where a FRA chooses not to abate a pension that it can abate under rule K4 then that FRA has to compensate the Pension Account accordingly. Section 7 of the guidance covers this in more detail.

LA4

The Pension Account is for pension related payments only. Compensation scheme benefits are available to all firefighters, are not reliant on membership of either of the pension schemes and for tax purposes are not recognised as pension benefits. This regulation makes clear that Compensation scheme awards have to be paid from the Operating Account. In cases where there is an underlying entitlement to a pension scheme benefit for example a spouse's ordinary pension under rule C1 whilst at the same time a special or augmented award is due from the Compensation scheme the ordinary pension element of the award will be paid from the Pensions Account with the remainder representing the special or augmented award in payment coming from the Operating Account. Section 4 of the guidance details the approach to be taken.

LA5

The FRA must balance its pension account to a zero balance each year (see para 2.6 of the guidance). The amendment provides that in achieving that aim any Pension Account surplus is transferred to the Firefighters' Operating Account and any deficit cleared by a payment from the Operating Account. Paragraph (3) provides that this is done without inclusion of any top up paid to the FRA. This will indicate what shortfall or deficit arises from the Pension Account and the top up required.

LA6

Confirms that the audited pension accounts will determine future funding of pension contributions and top up. It is expected that the audited accounts will be available in the October following the end of financial year to which they refer and any surplus or deficit will inform on any future pension funding i.e. top up. It will be likely that it will affect the top up due in the financial year the audited accounts are actually received and considered but the term "future funding" is used to avoid the application of strict timescales on determining what impact the audited accounts have on pension funding.

LA7

Outlines the information that Scottish Ministers can request. This will include forecasts, outturns, unaudited and audited pension accounts. This information will ensure the resulting deficits and surpluses are correctly managed.

Section 9 and annexe C of the guidance provides information on how the funding will flow and when and what information is required from FRAs.

LA8

Simply confirms that associated pension costs as defined should be charged to the Operating Account.

Paragraph 9

Provides for the new terms used in the amendments to be defined for the purposes of the main 1992 Order.



2. THE FIREFIGHTERS' PENSION SCHEME (SCOTLAND) ORDER 2007 AMENDMENT (No.2) ORDER 2010

Citation and Comment

The amendments are planned to come into force on 30 September and all the proposed amendments will have effect from 1 April 2010. Retrospective effect is permitted by section 34(3) of the Fire and Rescue Services Act 2004.

Schedule 1 lists the amendments being made to the Firefighters' Pension Scheme (Scotland) Order 2007.

Paragraph 1.

Provides for the new terms used in the amendments to be defined for the purposes of the main 2007 Order.

Paragraph 2

Reflects the fact there is now a Scottish employer contribution rate when considering payment of contributions for periods of unpaid absence. The rule currently refers to a "notional" employer's contribution.

Paragraph 3

Amends Part 12 concerning transfers to recognise that transfer payments between Scottish FRAs are no longer applicable from 1 April 2010 and are replaced by the use of service certificates. At the same time the amendment confirms that transfers to other UK FRAs or the Fire service of N Ireland still require a transfer to be calculated and made as before. Section 8 of the guidance confirms this new process.

Paragraph 4

Introduces new Part 13B which outlines the new financing system

Paragraph 1 of 13B

Confirms that FRAs need to set up and manage a Firefighters' Pension Account. Section 3 of the guidance outlines this requirement.

Paragraph 2

This outlines what can be paid into and out of the Pension Account. Section 4 of the guidance indicates approved income and expenditure from the pension account

Paragraph 3

- (i) Confirms what the FPS employer contribution rate is and when should it be paid i.e. in line with member contributions but also in specified cases where contributions are deemed as paid. The regulation confirms that the rate going forward from April 2010 is 11.5%. Section 5 of the guidance outlines how this rate has been determined and confirms that separate rates are applicable for the FPS and NFPS.
- (ii) Paragraph (7) and (8) confirms that a capital equivalent charge is due where a firefighter is retired on the grounds of ill-health and the amount due from the FRA is determined by the award made. In upper tier awards it is a payment totalling four



times the firefighters' average pensionable pay and for lower tier the payment is two times the firefighters' average pensionable pay. This is a compensation payment to the scheme to reflect that the pension is being paid early. Section 6 of the guidance provides more detail on capital equivalent charges and in particular paragraph 6.14 of the guidance confirms when a payment is due.

- (iii) This rule also confirms at paragraph (9) that where a FRA chooses not to abate a pension that it can abate under rule 3 Part 9 then that FRA has to compensate the Pension Account accordingly. Section 7 of the guidance covers this in more detail.

Paragraph 4

The Pension Account is for pension related payments only. Compensation scheme benefits are available to all firefighters, are not reliant on membership of either of the pension schemes and for tax purposes are not recognised as pension benefits. This regulation makes clear that Compensation scheme awards have to be paid from the Operating Account. In cases where there is an underlying entitlement to a pension scheme benefit and a Compensation scheme benefit the pension element of the award will be paid from the Pensions Account with the Compensation element coming from the Operating Account. Section 4 of the guidance details the approach to be taken.

Paragraph 5

The FRA must balance its pension account to a zero balance each year (see para 2.6 of the guidance). The amendment provides that in achieving that aim any Pension Account surplus is transferred to the Firefighters' Operating Account and any deficit cleared by a payment from the Operating Account. Paragraph (3) provides that this is done without inclusion of any top up paid to the FRA. This will indicate what shortfall or deficit arises from the Pension Account and the top up required.

Paragraph 6

Confirms that the audited pension accounts will determine future funding of pension contributions and top up. It is expected that the audited accounts will be available in the October following the end of financial year to which they refer and any surplus or deficit will inform on any future pension funding i.e. top up. It will be likely that it will affect the top up due in the financial year the audited accounts are actually received and considered but the term "future funding" is used to avoid the application of strict timescales on determining what impact the audited accounts have on pension funding.

Paragraph 7

Outlines the information that Scottish Ministers can request. This will include forecasts, outturns, unaudited and audited pension accounts. This information will ensure the resulting deficits and surpluses are correctly managed.

Section 9 and annexe C of the guidance provides information on how the funding will flow and when and what information is required from FRAs.

Paragraph 8

Simply confirms that associated pension costs as defined should be charged to the Operating Account.



Timescale for comments

I should be grateful for your comments on the proposed regulations by 30 June 2010. Unless specifically asked to treat a response as confidential, the Agency may wish to publish, in due course, responses to this consultation, or deposit them in the libraries of the Scottish Executive or the Scottish Parliament.

A copy of this consultation will also be placed on the Agency's website.

Yours sincerely

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An agency of  **The Scottish Government**

*SE Approved
Version 0.2*